

PO Box 112
Southworth WA 98386-0112
July 28, 2021

Tabitha Townsend
Compliance Coordinator
Public Disclosure Commission
PO Box 40908
Olympia WA 98504-0908

RE: Case Number 95960

This constitutes my denial of and response to the allegations in Case Number 95960.

- **Allegation One: Violation of RCW 42.17A.320 for failure to disclose sponsor identification on website**

The complaint from David Kimble included the following links to the website(s) in question:

<https://drive.google.com/file/d/1a0fDgJ5af4HUVPmpHyNKqS6QLRf1XGTH/view>

<https://skschools.info>

The first link provided by Mr. Kimble clearly shows the following at the top of the webpage:

This webpage represents John R. Berg's personal views and opinions and is not intended to speak for the South Kitsap School District nor for its Board of Directors.

John R. Berg is solely responsible for the content of this website.

At the bottom of that same page is the following:

Who pays for this webpage?

The domain name Berg4SK.org is paid for by

John Berg Campaign Committee

PO Box 112

Southworth, WA 98286-0112

The website JohnRBerg.com is a commercial website paid for by John R. Berg. This webpage is an appendage to that website at no additional cost.

The second link to the current website provided by Mr. Kimble clearly shows the following on first page:

This is a private website maintained by John R. Berg for the stakeholders of the South Kitsap School District.

Later on the front page is the following:

About this Website

This website will be used for communication from John R. Berg to the public outside of official School District channels.

This webpage represents John R. Berg's personal views and opinions and is not intended to speak for the South Kitsap School District nor for its Board of Directors.

John R. Berg is solely responsible for the content of this website.

See also [Why this Website](#)

The site is paid for as a public service by the
John Berg Campaign Committee
(a committee of one)
PO Box 112, Southworth, WA 98386-0112

At the bottom of every page of the website is:

COPYRIGHT © 2021 JOHN BERG CAMPAIGN COMMITTEE - ALL RIGHTS RESERVED

The site was originally developed as a separate page on the commercial page www.JohnRBerg.com. The domain name from the 2019 election campaign, Berg4SK.org, was set to redirect to the single page on the parent JohnRBerg.com website. Within about two weeks, after realizing that the two should be separated, a second domain name SKSchools.info was obtained and the material relating to the South Kitsap Schools was moved to the separate website, SKSchool.info. The Berg4SK.org domain then redirected to the new site.

The renewal of the domain name Berg4SK.org and the new domain name SKSchools.info, together with the website development subscription was paid for by the John Berg Campaign Committee. An additional C-1 report was filed April 27, 2021, with the PDC in relation to the possible 2023 re-election campaign.

There is now no link from the SKSchools.info website to the JohnRBerg.com website except for one reference on a "Fireside Chat" page where the application of *Robert's Rules of Order* to school board meetings is discussed. The reference is as follows:

While this is not a commercial plug, more information on my work as a PRP and parliamentary procedure in general can be found on my personal [website](#). (With all the time I put into the School Board, I'm not making much money as a parliamentarian anyway.)

- **Allegation Two: Violation of RCW 42.17A.555 for misuse of public facilities, during public official meeting**

Mr. Kimble alleges that a statement made during a public school board meeting on May 19, 2021 violated state law. However, RCW 42.17A.555 specifically exempts action taken at a public meeting. It reads, with emphasis added:

No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. **However, this does not apply to the following activities:**

(1) Action taken at an open public meeting by members of an elected legislative body or by an elected board, council, or commission of a special purpose district including, but not limited to, fire districts, public hospital districts, library districts, park districts, port districts, public utility districts, school districts, sewer districts, and water districts, to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body, members of the board, council, or commission of the special purpose district, or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

(4) This section does not apply to any person who is a state officer or state employee as defined in RCW **42.52.010**.

“Action” is not defined in RCW 42.17A, but a related statute, RCW 42.20.020(3), the Open Public Meetings Act, defines “action” as “the transaction of the official business of a public agency by a governing body including but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions.”

The context of statement in question was during the Linkages portion of the agenda, in which the individual Board members report on their activities and relationships with the community and other stakeholders. Director Daily had just announced that he communicated with stakeholders by holding office hours at the District headquarters (a clear use of public facilities) on the Tuesday morning before Board meetings. The subsequent discussion was follows:

DIRECTOR BERG: I too have been following the filings and trying to keep track of who's who and what's going where. As far as communication with the public, I have taken my old website that I previously used in the campaign, Berg4SK.org, and I converted it into an informational website, so that it will be available to the public where they can get information from me that isn't necessarily appropriate on the District website. In other words, it is my own views as a Board member but not speaking for the Board. It's at Berg4SK.org, so that should be available.

DIRECTOR GATTENBY: I had one PDC [unclear]... on my Facebook page had the for and [unclear]... it caused confusion that I was once again running. ...[unclear] A word of caution. *[referring to PDC case 72298 from a complaint from David Kimble]*

BERG: Well, when I renewed the domain name, that technically triggered as PDC requirement for the 2021 [sic. 2023] re-election.

GATTENBY: OK.

BERG: Also, the material presented in the executive session, now that final action has been taken on that, it will be publicly available on that website. So by tomorrow anyone can be able to see that 70-page document that we were reviewing.

While the statement objected to by Mr. Kimble does direct citizens to a website paid for by "John Berg Campaign Committee", the website itself is informational in nature and does not overtly promote any re-election campaign, nor does it solicit campaign funds.

I trust that the foregoing is sufficient information to have the complaints dismissed.

Yours truly,

A handwritten signature in black ink, appearing to read "John R. Berg". The signature is stylized with a large, sweeping initial "J" and "B".

John R. Berg