

December 7, 2022

EBC File: 15110-30/2022/204

Kent Fiddy
Third Party Sponsor, 2022 BC General Local Election
Via email

ENFORCEMENT NOTICE

Dear Kent Fiddy:

This letter addresses a contravention under the *Local Elections Campaign Financing Act* (LECFA) and comprises an Enforcement Notice under Part 2 of *Policy 36.3 Administration of Monetary Penalties under the Local Elections Campaign Financing Act*.

Elections BC provided you with a copy of the Investigator's report into this matter, which included her preliminary findings. You provided submissions to me on November 25, 2022, which I have taken into consideration in reaching my decision.

Background:

You were a registered as an individual Third Party Sponsor in the 2022 General Local Election. For the 2022 General Local Election, the pre-campaign period started July 18, 2022, and ended September 16, 2022, and the campaign period started September 17, 2022 and ended on general voting day, on October 15, 2022.

On October 11, 2022, Elections BC received a complaint regarding an advertisement in the Comox Valley Record October 5, 2022 election supplement on page Z23, that did not provide full authorization statement. The advertisement indicated that it had been "Paid by K. Fiddy & Area B Residents Group". The advertisement did not provide any contact information. The advertisement noted "ATTENTION AREA B VOTERS There are ONLY two candidates, ARZEENA HAMIR and KEITH STEVENS, who are lawful tax paying residents of Area B. Richard Hardy lives in Comox but did not run there. He is neither a resident nor does he pays taxes in our Area B. On October 15, we will be voting for a candidate who lives, pays taxes and has a proven commitment to Area B voters."

Elections BC's Electoral Finance and Compliance Services team reached out to you to reminded you were registered as an individual, not registered as an organization, and that your authorization statement must the name that you registered under - Kent Fiddy. Elections BC also informed you that you must provide contact information as part of the authorization statement, which was absent. The file was then forwarded to the Elections BC Investigations team for follow up.

The Elections BC Investigator reached out to you and requested copies of the invoices for the ad, copies of the original ads and images of the ads that had been revised and brought into compliance.

Your invoices indicated that you purchased the ad on September 26, 2022, for \$296.26.

Legislation:

Section 44 (1) of the *Local Elections Campaign Financing Act* requires that a candidate who sponsors election advertising ensure that the advertisement does the following:

- identifies the financial agent,
- indicates that it was authorized by the financial agent,
- gives a BC telephone number, an email address or a BC mailing address at which the financial agent may be contacted regarding the advertising

Section 7(1) of LECFA defines election advertising as:

7 (1) Subject to subsection (2) and any applicable regulations, election advertising is the transmission to the public by any means,

(a) during the campaign period, of any of the following:

(i) a communication that promotes or opposes, directly or indirectly, the election of a candidate or an elector organization that is endorsing a candidate, including a communication that takes a position on an issue with which the candidate or elector organization is associated;

(ii) assent voting advertising that is election advertising under section 8 (3) [assent voting advertising that is election advertising];

(iii) any other communications prescribed by regulation, and

(b) during the pre-campaign period for a general local election, of any of the following:

(i) a communication that promotes or opposes, directly or indirectly, the election of a candidate or an elector organization that is endorsing a candidate;

(ii) assent voting advertising that is election advertising under section 8 (3);

(iii) any other communications prescribed by regulation.

Section 10 of LECFA sets out the pre-campaign and campaign periods for a local election:

10 (1) The election period in relation to an election is the period that

(a) begins, as applicable,

(i) in the case of an election that is part of a general local election, at the start of the calendar year in which the election is held,

(ii) in the case of a by-election, on the day the local authority office that is to be filled by the by-election becomes vacant, or

(iii) in the case of any other election, on the date specified by or determined under the regulations, and

(b) ends at the beginning of the campaign period for the election.

(1.1) The pre-campaign period in relation to a general local election is the period that

(a) begins on the eighty-ninth day before general voting day for the election, and (b) ends on the twenty-ninth day before general voting day for the election.

(2) The campaign period in relation to an election is the period that

(a) begins on the twenty-eighth day before general voting day for the election, and

(b) ends, as applicable,

(i) in the case of an election by voting, at the close of general voting for the election, or

(ii) in the case of an election by acclamation, at the end of general voting day.

(3)The assent voting proceedings period in relation to non-election assent voting is the period that

- (a)begins on the twenty-eighth day before general voting day for the assent voting, and*
- (b)ends at the close of general voting for the assent voting.*

Analysis and Determination:

I have carefully reviewed the Investigator’s report, and I concur with her preliminary conclusions. The ad clearly promoted two candidates for Comox Valley Regional District Area B director, and opposed a third. The ad did not provide a full authorization statement as required in section 44(1) of LECFA.

I find that the brochures that the October 5, 2022 Comox Valley Record ad that you sponsored contravened section 44(1) of LECFA.

Monetary Penalty:

Because of my finding above, s. 68.25(1) of LECFA requires me to issue an administrative monetary penalty against you, of up to \$5,000.

In assessing this penalty, I note the following:

- You indicated that the publication of the advertisements without an authorization statement was inadvertent.
- You have not previously been the subject of a monetary penalty under LECFA.
- You have not previously participated in a local government election as a regulated entity.
- On October 3, 2022, Elections BC sent you a letter to confirm that you were registered as a third party advertiser, via email. The letter noted:
 - *Advertising conducted by third party sponsors must include sponsorship information as specified by section 44 of LECFA. For example: Authorized by, Kent Fiddy, registered sponsor under LECFA, 123-456-7890*
- The authorization statement does include most of your name; however, it also included “Area B Residents Group”. You confirmed in your November 25, 2022 submission to me that you had sponsored the ad on your own and not as part of a group, which is why you registered using the individual registration form rather than the organizational one. This might mislead a reader about who the sponsor of the advertisement was.

In addition to the above considerations, I have reviewed your submissions to me of November 25, 2022. The investigator’s report had made a recommendation that if I make a finding of non-compliance, that the penalty be increased because both the investigator and the Compliance Services Officer who communicated with you found you to be dismissive of the concerns that they raised. You provided me an explanation for why your response may have come across that way, based on personal matters. I will not reiterate those here, but accept this explanation. I will decline to increase the penalty based on this factor.

Based on these considerations, I make the following finding:

- Kent Fiddy contravened section 44(1) of LECFA, and must pay a penalty of \$200 to the Chief Electoral Officer of BC, under section 68.25(2)(a) of that act.

Review/Court Relief:

You may request a review of this determination by an Adjudicator. A request must be made in writing and must be received by the Investigator within 14 days after the date on which the Subject received the Enforcement Notice. The request must state the grounds on which the request for review is made. The Adjudicator is not bound by the Investigator's determinations or reasons in this Enforcement Notice, and must consider the matter afresh and with an open mind.

You may also seek relief from the BC Supreme Court from the monetary penalties under section 68.26 of LECFA. You may wish to seek legal advice prior to requesting relief.

Penalty Payment:

Under *Policy 36.3 Administration of Monetary Penalties under the Local Elections Campaign Financing Act*, you have 40 days from today's date to pay the monetary penalties. Payments can be made by cheque to the Minister of Finance, C/O Elections BC at the address below:

Mailing Address:

PO Box 9275 Stn Prov Govt
Victoria, BC
V8W 9J6

Physical Location:

Suite 100 – 1112 Fort Street
Victoria, BC
250-387-5305

Sincerely,



Adam Barnes
Director of Investigations