

**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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MINUTES –Special Meeting

AUDIO

1:30 p.m.

July 8, 2016

Evergreen Plaza Building, Room 206

711 Capitol Way

Olympia, Washington

COMMISSION MEMBERS PRESENT
(Participated via telephone)

Anne Levinson, Chair

John Bridges, Vice Chair

Katrina Asay, Member

Jack Johnson, Member

STAFF PRESENT

Evelyn Fielding Lopez, Executive Director

Penny Allen, Assistant Attorney General

Tony Perkins, Compliance Officer

Kurt Young, Compliance Officer

(Participated via telephone)

Chad Standifer, Assistant Attorney General

The Special meeting of the Public Disclosure Commission was called to order by Commission Chair Anne Levinson at 1:30 p.m.

Opening Comments

Commission Chair Anne Levinson opened the special meeting at 1:30 p.m.

Director Lopez provided a brief overview of the procedural posture of the matters in front of the Commission.

Director Lopez stated that PDC staff will present information on two Citizen Action complaints that were filed with the Attorney General's office. She noted that a Citizen Action complaint is filed under RCW 42.17A.765(4), a procedure for citizens to bring issues to the attention of the Attorney General, or the local prosecutor, if the citizen believes there has been a violation of the campaign finance laws.

Once a citizen brings an action, the Attorney General's Office has 45-days in which to review the matter and decide whether to commence a legal action. If no legal action is filed, the citizen may file an action in Superior Court, and if the citizen prevails the State would be responsible for reimbursing the citizen for their costs and attorney fees.

When the Attorney General receives one of these types of complaints, it is referred to the Public Disclosure Commission (PDC) for review and brief investigation. This

is what has occurred in both of the matters being heard.

The Attorney General has asked, in both matters, that the PDC review the issues and determine whether there were any violations of the State's campaign finance laws, and then the Commission has been asked to make a recommendation back to the Attorney General as to what action is appropriate.

Discussion | Citizen Action 45-day Letter Complaints

- ***Kim Wyman, PDC Case 5925***

Kurt Young presented Staff's findings, conclusions, and recommendations regarding PDC Case 5925, a Citizen Action Letter 45-day Notice Complaint alleging that the 2016 Citizens for Kim Wyman Campaign violated RCW 42.17A.235 and .240 by failing to timely file Monetary Contribution reports (C-3 reports) and Campaign Summary Contribution and Expenditure reports (C-4 reports).

Staff concluded the Campaign failed to timely file required contribution and expenditure reports for April 2016. In addition, the Campaign failed to timely file C-3 and C-4 reports during calendar years 2013 to 2015; and failed to timely deposit some monetary contributions received.

Mr. Young stated that if this matter had been filed as a complaint with the PDC staff rather than a Citizen Action letter, the disposition clearly could have been handled through the Commission by a brief adjudicative proceeding, a full commission hearing, or possibly through the alternative responses to non-compliance rules that were adopted by the Commission in WAC 390-37-060.

Commissioner Johnson asked staff to clarify how filing a complaint of this nature would have been triaged and handled in the ordinary course of business, and not in the context of a 45-day Citizen Action notice; to explain what effect the 45-day process had on the matter.

Director Lopez stated that the difficulty of the 45-day process is that the only action by the State that can stop a citizen from having the right to go into court is if the Attorney General commences an action. If the PDC were to take an administrative enforcement action, it would not foreclose the citizen from being able to file suit.

The difficulty is that even if the violation of the campaign finance laws is minor, a court could find a technical violation of the law, and even if a small penalty is imposed, the State of Washington becomes obligated to cover all of the costs and legal fees of the individual who filed the action. This causes both the Commission and the Attorney General's Office to change usual practices for the Citizen Action complaints.

Chair Levinson gave Secretary of State Wyman and her

legal Counsel, Dan Brady, who each participated via telephone, an opportunity to offer comments. Secretary of State Wyman and Mr. Brady explained the circumstances of the late filings.

Motion 16-36

Moved by Commissioner Johnson seconded by Commissioner Bridges that:

The Commission recommend to the Attorney General to take appropriate action as an enforcement matter.

Discussion:

Commissioner Asay stated that this entire matter irritates her; it seems that the 45-day Citizen Action complaint process is being used for political purposes, and not for what the PDC was established for.

Commissioner Levison concurs with the presentation by staff and the discussion of the Commission that these are minor violations that would be better handled with the Commission's alternative resolution mechanisms but the 45-day Citizen Action posture of the complaint gives the Commission only the option of recommending the Attorney General address it.

The motion passed.

Staff will send a letter back to the Attorney General with the recommendation of the Commission and the materials developed in the investigation.

Tony Perkins presented Staff's findings, conclusions, and recommendations regarding PDC Case 5729 a Citizen Action Letter 45-day Notice Complaint alleging violations of RCW 42.17A.235 and RCW 42.17A.240 for failing to properly disclose expenses incurred to sponsor independent expenditure Web videos that opposed candidates for legislative office, and alleged violations of RCW 42.17A.320 for failing to comply with the sponsor identification requirement for independent expenditure political advertising.

Staff recommended that the Commission find multiple apparent violations of RCW 42.17A.205, RCW 42.17A.240, and RCW 42.17A.320, and recommend the Attorney General take appropriate action concerning the apparent failure to supplement the Committee's political committee registration by disclosing updated information, its failure to disclose expenses incurred to oppose candidates for legislative office in a complete and timely manner, and its failure to include complete and accurate sponsor identification and contributor information in the Committee's independent expenditure political advertising.

Mr. Perkins also noted that the Commission may want to

Next Steps/Follow up

- **Tim Eyman, Jack Fagan, Mike Fagan, Barbara Smith, and Bring Back Our \$30 Car Tabs – VWMC – 2016, PDC Case No. 5729**

consider rulemaking or agency request legislation to make the disclosure rules as effective as they can be.

Staff believes that at the staff level the existing rules and reporting framework could provide for more clarity and transparency concerning the campaign activity of Voters Want More Choices and various affiliated committees.

Chair Levinson stated that this case raises concerns about people using the initiative process potentially for self-advantage by filing a number of different initiatives, and generating significant contributions, and then using those contributions for other purposes, as well as not being required to file as an ongoing committee. It is not clear that the rules and statutes that the Commission relies on sufficiently address this type of activity.

Commissioner Johnson stated that a related concern is the notion that a committee that is formed for a specific initiative has the option to evolve into a different direction simply by changing or redefining its purpose, but the contributions that were originally made just roll over regardless?

Director Lopez stated the issues identified are potential concerns in terms of providing transparency and open information to voters and those making contributions to initiative campaigns. There are a lot of questions about initiatives and initiative funding, and those questions are ripe for review given the increase of initiatives in Washington State.

She noted that it would be valuable for the PDC to look into these questions in more depth and that the concerns the Commission raised would be added to the rule-making and legislative priorities list discussed earlier in the meeting.

Motion 16-37

Moved by Commissioner Johnson seconded by Commissioner Bridges that:

The Commission recommend the Attorney General take appropriate action as an enforcement matter.

The motion passed.

Next Steps/Follow up

Staff will send a letter back to the Attorney General with the recommendation of the Commission and the materials developed in the investigation.

Adjourn

Commission Chair Levinson adjourned the meeting at 2:20 p.m.

Approved

July 28, 2016