



## State of Washington PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission  
FROM: Nancy Krier, General Counsel  
DATE: November 25, 2013  
SUBJECT: Background Discussion of Online Lobbying Discussions & Check-In ---  
December 5, 2013 Commission Meeting

### **Agenda Item**

At the December 5 meeting, the Commission is scheduled to receive background information on its prior discussions concerning lobbying via the Internet (“online lobbying”). The background is provided as a “check in” to see whether the Commission wishes to again consider providing formal guidance on this topic, such as in an interpretive statement. The Commission last looked at this issue in early 2009, but did not approve an interpretive statement at that time. Several new developments have occurred since then.

### **Additional Background; Meeting Materials**

This matter had been scheduled for discussion at the September 26 meeting but was deferred due to lack of time. The September meeting materials are enclosed, as well as supplemental materials collected or prepared since September.

The September meeting materials provide an historical background, up to 2009. Those materials also describe that new issues have cropped up since 2009.

For example, in 2009, the discussion primarily concerned online lobbying by private entities. Since then, one new issue is whether public agencies that are involved in public-private coalitions can share a website or link to a private entity’s website, when the private entity is engaged in the type of lobbying that is not authorized for a public agency. See page 2 of September 26 meeting materials. Different provisions in RCW 42.17A govern public agency lobbying as compared to private entity lobbying. Public agencies are much more restricted in their lobbying activities.

In fact, public agencies can engaged in only the direct lobbying activities listed in RCW 42.17A.635 or other statute. Public agencies are not authorized to engage in indirect lobbying, sometimes referred to as “grassroots lobbying.” RCW 42.17A.635; RCW 42.17A.640.<sup>1</sup>

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<sup>1</sup> RCW 42.17A.635(2) and (3) provide:

(2) Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying. However, this does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for

Direct lobbying is communicating directly with legislators or their staff. In contrast, grassroots lobbying, or indirect lobbying, is “a program [presented] to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation.” RCW 42.17A.640(1). Emphasis added. Thus, public agencies are not permitted to use public funds<sup>2</sup> take out newspaper ads or radio ads asking the public to contact legislators to support or oppose the agency’s legislative agenda. This kind of activity is sometimes referred to as a “call to action” to the public. More modernly, a similar issue arises when considering agency websites available to the public. The question is, does the grassroots lobbying prohibition also apply when a public agency: (1) uses its website to link to other websites of private entities engaged in grassroots lobbying, or (2) is a member or participant in a coalition or group of public and private entities that maintain a separate website which may include both a call to action and a listing of the public agency participants/members?

After the September meeting materials were prepared, staff learned that the Executive Ethics Board has issued an advisory opinion addressing a somewhat comparable issue concerning state agency website links to private websites that may include advocacy information about candidates and ballot measures.<sup>3</sup> A copy of EEB AO 04-01 is attached, as another resource. Footnote 1 of that opinion references RCW 42.17.190, the former codification of RCW 42.17A.635 (the direct lobbying authorization for public agencies). The Commission has also provided guidance on local agency website restrictions for information concerning candidates and ballot measures in PDC Interpretation 04-02 (*Guidelines for Local Government Agencies in Election Campaigns*), but has not similarly specifically addressed links to other (non-public entity) websites.

Staff is also including a copy of the staff guidance letter provided in 2009 regarding some Internet lobbying questions in lieu of the Commission adopting an interpretive statement. Staff is also preparing a PowerPoint presentation for this agenda item.

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legislative action or appropriations that are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties. This subsection does not apply to the legislative branch.

(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency. Public funds may not be expended as a direct or indirect gift or campaign contribution to any elected official or officer or employee of any agency. For the purposes of this subsection, "gift" means a voluntary transfer of any thing of value without consideration of equal or greater value, but does not include informational material transferred for the sole purpose of informing the recipient about matters pertaining to official agency business. This section does not permit the printing of a state publication that has been otherwise prohibited by law.

(Emphasis added.)

<sup>2</sup> If the Commission decides to review these questions in future meetings, it will also want to review PDC Declaratory Order No. 15, which addresses lobbying issues posed by the University of Washington, including as they involved use of non-public funds (UW discretionary funds).

<sup>3</sup> The Executive Ethics Board implements RCW 42.52.180, the restriction on state agencies’ use of public facilities to support or oppose ballot measures. The Commission enforces the comparable provision for local government agencies in RCW 42.17A.555.

**Next Steps**

Staff will await further direction from the Commission before determining (1) whether it should seek stakeholder input, and (2) if future Commission meeting agendas should include further discussion and options.

Enclosures: September 26 Meeting Materials  
EEB Advisory Opinion 04-01  
2009 Staff Guidance Letter

## **September 26 Meeting Materials**



State of Washington  
PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission  
FROM: Nancy Krier, General Counsel  
DATE: September 18, 2013  
SUBJECT: Background Discussion of Online Lobbying Discussions & Check-In ---  
September 26, 2013 Commission Meeting

**Agenda Item**

At its September 26 meeting, the Commission is scheduled to receive background information on its prior discussions concerning lobbying via the Internet ("online lobbying"). The background is provided as a "check in" to see whether the Commission wishes to again consider providing formal guidance on this topic, such as in an interpretive statement. The Commission last looked at this issue in early 2009, but did not approve an interpretive statement at that time. Several new developments have occurred since then.

**Next Steps**

Staff will await further direction from the Commission before identifying any possible next steps.

**Background – 2007 - 2009**

**2007.** Beginning in 2007, the Commission began looking at campaign activities on the Internet that may come within the scope of former RCW 42.17. The Commission issued Interpretation 07-04, addressing Internet campaign activities. As you may recall, in 2013, the Commission significantly updated that guidance for online campaign activities, and updated its relevant rules.

**2008.** In 2008, the Commission had next discussed whether to issue an interpretive statement addressing lobbying conducted via the Internet. The discussion was prompted by several questions from a stakeholder. The Commission had an initial discussion on the topic in October 2008, when it reviewed information on Washington State lobbying laws and some experiences in other jurisdictions with respect to Internet lobbying.

Staff held a stakeholder meeting on the topic in November 2008 and media coverage of these Commission discussions also occurred that same month. See, "PDC Talks of Internet's Influence," *The Olympian*, Nov. 15, 2008. Stakeholder input concerned lobbying emails, websites and blogs. The Commission discussed the topic again at its December 2008 meeting, received additional stakeholder input, and reviewed a draft interpretation. The Commission decided it was not prepared to go forward with issuing a formal interpretation at that time. See December 4, 2008 meeting minutes. Staff suggested an interim staff advisory letter could be prepared to respond to the stakeholder's questions.

**2009.** Thus, after the December meeting, staff prepared a draft letter responding to the stakeholder who had originally raised the Internet lobbying questions. The Commission reviewed that draft at its January 2009 meeting and had no objection to staff sending the letter. See attached January 14, 2009 memo from former Assistant Director Doug Ellis and the January 22, 2009 Commission meeting minutes. The Commission anticipated discussing the topic again more generally at a later date but due to the press of other agency business, further discussion has not yet occurred.

### **Developments Since 2009**

Since 2009, the following has occurred:

- **New Technologies and Online Activity Levels.** As you are aware from your discussions over this past year, technological developments have occurred since 2009 and online activity levels have increased significantly. Some of those activities, such as Twitter feeds, were not addressed in the 2009 letter.
- **New Statutory Citations.** RCW 42.17 was recodified to RCW 42.17A in 2010, effective in 2012. The 2009 letter refers only to the RCW 42.17 citations.
- **New Issues.** New issues have been raised beyond those considered in the 2009. For example, the 2009 letter addresses an organization's website with links to blogs or media outlets that cover government topics, and whether that constitutes "lobbying". See question # 2. However, the letter does not address public agency lobbying, or public agencies that may be part of a "coalition" of public and private entities supporting a particular legislative agenda. Public agencies may engage in direct lobbying but are prohibited under RCW 42.17A from indirect lobbying (grassroots lobbying). Private agencies may engage in both direct and indirect lobbying. Query: What if a public agency and a private entity, as part of a lobbying coalition, share a website or link to each other's website?
- **New Research.** This summer, staff researched whether other jurisdictions or agencies like the PDC have provided guidance on online lobbying.<sup>1</sup> That preliminary research showed that 16 states and 5 of the 20 most populous cities have issued some guidance, either formal or informal. Preliminary research indicates that some states have statutes or rules that may address the topic (Minnesota and North Carolina) and some states have issued advisory opinions (California). San Diego is an example of a local jurisdiction that has issued guidance.

If the Commission decides to discuss this topic again at future meetings in 2013-2014, staff can provide more details about the Commission's prior discussions, on new developments since 2009, and explaining what advice other jurisdictions are currently providing.

Enclosures:   October 16, 2008 Commission Meeting Minutes  
                  December 4, 2008 Commission Meeting Minutes  
                  January 14, 2009 Memorandum from Assistant Director Doug Ellis with Draft Letter  
                  January 22, 2009 Commission Meeting Minutes

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<sup>1</sup> Thanks to Michael Woo, summer 2013 PDC extern.

The motion passed unanimously.

3. Preliminary discussion regarding out-of-state political committees and possible rulemaking

Nancy Krier and Vicki Rippie presented background information on out-of-state political committees and provided a starting point for discussion of a possible draft rule. The Commission discussed options for determining when and how organizations based outside of Washington State would report contributions and expenditures intended to influence Washington State elections and ballot measures.

Commissioner Schellberg directed that the issue be continued to a future meeting to allow the Commissioners to refine their thoughts on the matter and to give staff time to analyze the questions generated during the discussion.

Legislative Matter

Possible 2007-09 supplemental budget decision package

Vicki Rippie outlined a proposed draft 2007-09 supplemental decision package addressing a projected increase in legal costs stemming from current litigation matters and anticipated compliance caseloads. She requested that the Commission approve submission of the draft supplemental decision package to the Office of Financial Management as a placeholder in the event that the supplemental appropriation becomes necessary.

**Motion 09-36**

Moved by Commissioner Noland, seconded by Commissioner Clements:

**The Commission approves submission of the placeholder 2007-09 supplemental decision package to the Office of Financial Management.**

Commissioner Clements asked how often supplemental budget requests have been submitted in the past. Vicki Rippie responded that supplemental budget requests are rare, typically once or twice a decade.

The motion passed unanimously.

Advisory Matters

1. Initial discussion of Internet lobbying-Reporting

Nancy Krier presented background information on Internet lobbying and how other states have addressed reporting requirements for online lobbying

activity. She described several questions about Internet lobbying received via email from Cliff Finch. The Commission engaged in a general discussion of Internet lobbying reporting.

Steve Gano, of Gano and Associates, urged the Commission to be proactive in approaching the issue, stating that organizations are participating in online activities similar to his non-online activities as a lobbyist, and should be regulated in an equitable fashion. He provided a demonstration of a website, [www.fusewashington.org](http://www.fusewashington.org), as merely an example to the Commission of the type of organization he felt should potentially be viewed as Internet lobbying. He also stressed that he had no wish to see regulations which would in any way impinge on the right of persons and organizations to express opinions regarding political matters on the Internet.

Nancee Wildermuth asked the Commission to consider the burden reporting requirements could potentially place upon organizations engaged in Internet lobbying. She also raised a question about organizations coming together to engage in online lobbying, including jointly funding websites.

The Commission further discussed aspects of how Internet lobbying activities could potentially be reported; focusing on ways that the money used to fund these activities could be followed under current laws and rules.

The Commission continued the matter to a future meeting to allow staff time to analyze the questions generated before and during the discussion.

2. Reporting stock options of  
Personal Financial Affairs  
Statements (F1 Forms)

Nancy Krier reviewed information on how stock options are valued under standard accounting and IRS rules, and alternatives to report stock options on the F1 form.

The Commission gave input on the alternatives, including alternative #4, which provided for the most disclosure to the public, and continued the matter to a future meeting.



Performance Reports

Vicki Rippie reviewed the December 2008 updates to the 2007-09 Strategic Plan.

Suemary Trobaugh reviewed the 2008 Annual Report.

Lori Anderson presented a preliminary summary of dollars spent on independent expenditures and electioneering communications in 2008.



Advisory Matters

Possible adoption of interpretation regarding Internet lobbying reporting; possible other action

Nancy Krier presented a draft interpretation for reporting Internet lobbying activity. She explained that nearly all online activities of those seeking to influence legislation, elections, or ballot measures have little to no cost and so, under the current statute, would not be reportable.

Commissioner Clements asked how blogging was different from direct lobbying of a legislator by constituents. Nancy Krier clarified that bloggers usually do not contact elected officials directly on a regular basis; they publish commentary in an open forum.

Commissioner Noland inquired about the cost structure of these online activities. Nancy Krier explained that bloggers typically are not paid to write about specific issues, so they would not be considered as having received compensation for lobbying.

Commissioner Seabrook speculated that the original motivating factor in providing media a lobbying exemption was an assumption that media have a journalistic code to present both sides of the story. He noted that media today seems fairly polarized and, because bloggers are likely to have some bias one way or the other, they would more closely resemble other modern media outlets.

Nancy Krier acknowledged that the issue of bloggers' role in the media, and what is considered "journalism," is one of national debate.

Mike Reitz of the Evergreen Freedom Foundation said that his organization supports the Commission's mission to follow the money, and would also support clarification from the Commission that they intend to follow the money for Internet lobbying. He raised concerns about freedom of speech issues. He urged caution as the Commission considers grassroots

lobbying, citizen participation, and the rapidly evolving nature of the Internet. He also commented on the media exemption.

Jay Arnold, who represents several media and advocacy groups, commented generally on behalf of himself and several of his clients. He discussed a media exemption and potential impact on nonprofits, community journalism, social networks, and other models. He noted that not all journalists are compensated. He clarified, at the request of Commissioner Schellberg, that his primary concern was the definition of "member" in the draft interpretation, believing it was too strict as currently written.

There was general discussion of how "member" can be defined. The main question was whether the Commission should use the same definition of "member," currently in rule at WAC 390-05-515, for campaign contribution circumstances and lobbying circumstances, or whether the definition of "member" in the Internet lobbying context should be different.

Steve Gano, a registered lobbyist, commented that grassroots lobbying on the Internet can easily appear to be citizen activism, disguising a person or organization which is receiving compensation to facilitate those activities. He encouraged the Commission to study organizations to determine the cost of Internet lobbying, and consider revising the reporting thresholds for grassroots lobbying based on that information.

Vicki Rippie clarified that the draft interpretation does not change the existing statute, it only clarifies that lobbying activities conducted on the Internet are subject to the same reporting thresholds and requirements as activities not conducted on the Internet.

Chris Leman, of Seattle and a board member of the Coalition for Open Government, expressed his opinion that the regulations prohibiting the use of public facilities and funds for grassroots lobbying are insufficient. He also said that he felt the underlying statute mis-defines lobbying by including activities which are merely free speech under reportable activities.

Nancee Wildermuth, an attorney, commented that an interpretation on Internet lobbying from the Commission would be helpful in light of the interpretation previously issued on Internet campaign activities. She said that guidance from the Commission would help resolve confusion about her online activities as a lobbyist. She also encouraged the Commission to use the current definition of "member" in both the campaign finance context and in the Internet lobbying context.

Commissioner Noland said that she felt this was an ongoing discussion and was not prepared to vote on the issue. She suggested spring as a time to re-visit the subject.

Commissioner Schellberg said that he often experienced frustration when trying to find clarification on rules for his profession, and that he saw this interpretation as simply a clarification of existing rules and not a change to the underlying regulations.

Commissioner Seabrook agreed with Commissioner Schellberg, stating that the draft interpretation does not change any existing rules.

Commissioner Clements expressed his intent of waiting to vote on the matter. He said he did not see any urgency for action on the issue and would appreciate time to think about the topic further. He stated that he did not believe he had enough specific information to be for or against the interpretation.



Vicki Ripple suggested that, in the interim, staff could write an advisory letter in order to respond to the specific questions raised by a stakeholder.

Except for the staff advisory letter, the Commission decided to revisit the issue and continue the discussion in the spring of 2009. Commissioner Noland suggested that informal workgroups with the Commission and stakeholders in the intervening months would be very helpful, and the other Commission members agreed with her.

Further discussion on possible amendments to the rule defining "member" (WAC 390-05-515) were also held over to a future meeting in 2009.

required to disclose some financial information because of the community property nature of Washington law. Commissioner Schellberg asked if she wanted to go further than the existing provision that spouses must provide information for financial dealings they have knowledge of, but cannot be required to provide information on matters of which they have no knowledge. Commissioner Noland said that she had some questions about the issue and requested that the matter be discussed further at a future meeting along with additional information from Nancy Krier.



Review of draft staff advisory letter responding to questions about Internet lobbying

Doug Ellis presented a draft response from staff to questions from Clifford Finch about Internet lobbying, for approval by the Commission. While the larger issue of Internet lobbying will be addressed by the Commission at a later date, the letter from staff assists Mr. Finch in resolving his specific questions in the interim.

Commissioner Schellberg asked if Mr. Finch's questions were as comprehensive as previous questions raised during discussion of the matter at Commission meetings. Nancy Krier responded that his questions did cover much of what the discussion at the previous meeting covered. The Commission had no objection to sending the staff letter.

Background and preliminary discussion of 527 organizations

Nancy Krier presented the Commission with information about how 527 organizations are required to report to the Internal Revenue Service and the Federal Election Commission, based on the type of activities they carry out.

Commissioner Noland said that she thought the issue of determining the reporting status of tax exempt organizations needs direct attention to determine what action the Commission could take to improve the process. Nancy Krier offered that the political committee factor test could include tax status as a factor. Commissioner Noland also asked Vicki Rippie to think about installing some processes for staff to give advice to filers who call with highly complex questions.

Commissioner Seabrook said that he appreciated Nancy Krier's work on this issue. He said that it gave

## **Executive Ethics Board Advisory Opinion**

**ADVISORY OPINION**

APPROVAL DATE: May 14, 2004

NUMBER: 04-01

STATUS: **Revised and Active**

SUPERSEDES: N/A

REVIEWED ON: May 13, 2011

APPROVED BY: Executive Ethics Board

NEXT REVIEW: May 2016

REFERENCES: RCW 42.52.160, .180 and WAC 292-110-010

SUMMARY OF CHANGES: Update to new format only.

**Use of Agency Websites to Provide Links to Private Web Sites that Advocate for or Against Ballot Initiatives or Political Candidates****QUESTIONS**

1. May a state agency maintain a direct internet link to private non-governmental web sites?
2. May a state agency establish an internet link to a private web page which does not contain materials that advocate for, or against, a ballot initiative or political candidate even though the private web sites homepage may contain material that advocates for, or against, a ballot initiative or political candidate?

**ANSWERS**

1. Yes - So long as the private organization does not post messages or advertisements on its web site or home page that advocate for, or against, a ballot initiative or political candidate. Providing a direct link to a web page or linked document that includes materials that advocate political positions, however, would violate RCW 42.52.180.
2. Yes - So long as any materials or advertising that advocates for, or against, a ballot initiative or political candidate was located on another web page or linked document within the organization's web site. State agencies that provide links to private web sites should initially verify that the linked web page does not contain political advocacy and establish a reporting mechanism or agreement that will allow the agency to suspend the link if the contents are changed.

**FACTS**

For the purpose of this opinion a web site is a site (location) on the World Wide Web. Each site is owned and managed by an individual, company or organization. A web page is a linked document stored on a web site. Every web page is identified by a unique URL or uniform resource locator, which allows other web sites to provide a direct link to that specific document. Each web site contains a home page, which normally is the first linked document users see when they enter the site. The site might also contain additional documents and files.

Many state agencies maintain web sites which provide important agency information to the public and agency employees. In some cases state agencies may provide direct links to web sites that are managed by other organizations, including private non-governmental organizations such as

non-profits that support the agency mission or unions. On occasion providing a direct link to a private web site is a contractual obligation under a collective bargaining agreement.

Often private organizations will take positions that advocate for or against a state ballot initiative or political candidate. To inform the public and to support such positions, private organizations will post documents and other advertising materials on their web sites. The content of these web sites and documents are not regulated by state agencies. For the purposes of this opinion a private web site is a web site maintained by a private non governmental entity, such as non-profit firm, for-profit firm, or union, whose employees are not subject to the Ethics in Public Service Act.

## ANALYSIS

### **1. State agencies may establish links to a private web site, however, they may not knowingly establish links to a web page or linked document that advocates for, or against, a ballot initiative or political candidate.**

The Ethics Act prohibits the use of state resources for private benefit or gain, unless the use is reasonably related to conduct of official duties. RCW 42.52.160, provides, in relevant part:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

In EEB Advisory Opinion 02-02A the Board advised that the guidelines on the use of state resources apply to all resources under an employee's control including, but not limited to, facilities of an agency, state employees, computers, equipment, vehicles, and consumable resources. The Board further advised that state resources also include state information, e.g., databases, employee lists. Maintaining or updating web sites requires agency equipment, including web servers, and the use of state employees during working hours to accomplish updates or to maintain the web site, including links. Therefore, state agency maintained web sites are a facility of the agency subject to RCW 42.52.160 and RCW 42.52.180.

In EEB Advisory Opinion 00-09, the Board advised that the limits on using state resources in RCW 42.52.160(1) do not apply when the use of resources is authorized under law or is a part of a state officer's or employee's official duties. In this and several other advisory opinions related to the use of state resources the Board has generally deferred to state agency heads' decisions regarding official duties and the appropriate uses of state resources. While the Board also defers decisions regarding the appropriateness of providing Internet links to private web sites to agency heads, the Board further advises that the State Constitution, state laws, and the Ethics in Public

[1]

Service Act strictly prohibit certain uses of state resources.

The Ethics Act strictly limits the use of state resources to promote or oppose candidates for public office or to promote or oppose passage of ballot initiatives and referendums. RCW 42.52.180 provides, in relevant part:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the

actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. ...

(2) This section shall not apply to the following activities:

- (a) ...
- (b) ...
- (c) Activities that are part of the normal and regular conduct of the office or agency;  
and
- (d) ...

(Emphasis added).

In EEB Advisory Opinion 02-04, the Board advised that distributing newspaper articles and editorial opinions that tend to support or oppose candidates for public office or ballot measures during an election or ballot measure certification period, would not be considered a regular or usual state agency activity. This finding would hold even if the use was related to an otherwise normal or lawful activity such as using state resources to administer a collective bargaining agreement or to provide public information about private groups who support a state agency's mission.

Further, the Board advised that using state facilities to electronically distribute newspaper articles and editorial opinions which discuss public office candidates or ballot measures could result in an indirect use of facilities to support political activity. Therefore, while an election or initiative is pending before the voters a state agency may only electronically distribute newspaper articles that do not tend to support, or oppose, a candidate for public office, or a ballot initiative, or referendum.

Similarly, using state facilities to provide a direct electronic link to a private web page which contains materials and advertisements that support, or oppose, passage of a ballot initiative would also violate RCW 42.52.180.

## **2. Providing a link to a private web page or linked document that contains nonpolitical information would not necessarily violate RCW 42.52.180.**

Board rules note that "responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use." As noted above, the Ethics Act strictly limits the use of state resources to promote or oppose candidates for public office or to promote or oppose passage of ballot initiatives and referendums. By prohibiting indirect uses and the "knowing acquiescence" by a person with authority to direct, control, or influence the actions of other state officers or state employees; RCW 42.52.180 imposes a mandate that state officers actively ensure that agency resources are not used to indirectly support certain political activity.

Since state officers and employees who maintain state agency web sites cannot control or even predict the actions of private organizations, which may be allowed under law to promote certain political viewpoints; providing unmonitored or unsupervised electronic links to a private organization's web site or home page creates significant or unacceptable ethical risks. Therefore, a state officer or employee may violate the Ethics Act if they do not initially verify the content of web pages that are linked to state agency web sites and do not establish a reporting mechanism or monitoring system to ensure that the agency is aware of content changes. By monitoring a link or obtaining an agreement regarding the content of linked documents on the private web site, state employees can avoid a violation of RCW 42.52.180 by suspending the link when needed.

The next issue is the ethical risk created by providing links to a web page or linked document that



does not contain materials which advocate political positions, but which are located on private web sites that post political materials on another page or document, such as the home page. While current users of the Internet often follow various links or tabs on a web page that lead to other documents stored on the web site or to other web sites, such Internet search activity or "surfing" is clearly beyond the control or "knowing acquiescence" of state officers and employees who maintain state agency web sites. Accordingly, the prohibitions under RCW 42.52.180 would not apply to potential actions by others that are clearly beyond the state officer or employee's control, such as Internet searches conducted by private visitors to state agency web sites.

While state officer and employees cannot control or predict the actions of private organizations, providing links to private web sites creates the impression to the public that the state agency has reviewed and approved the content of that web site. In order to alleviate any public confusion state agencies should also provide appropriate disclaimers whenever providing direct links to web sites

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whose content are not subject to state laws, such as the Ethics in Public Service Act. The Board cautions state officers and employees that providing a disclaimer does not alleviate state employees from a duty under RCW 42.52.180 to ensure that state maintained links do not result in a direct or indirect use of state resources for prohibited political activity.

### OPINION

Agency decisions to establish a link to a private web site should include an evaluation of the likelihood that the private organization will post political materials on their web site. Based on that assessment those agency employees who maintain the links can determine the appropriate level of monitoring required to comply with the mandates of the Ethics Act.

In the case of non-political organizations that don't have a history of political advocacy, there is a low risk of a violation. In these cases an agency could meet the mandates of the Ethics Act by initially verifying the content of the linked document and then establishing a reporting mechanism that will encourage users of the agency web site to notify the agency when political materials are

[3]

being posted on linked documents. By establishing a reporting mechanism when there is a low risk of violation agency employees who maintain those links could meet the mandates of the Ethics Act through routine maintenance of the links and would not need to closely monitor the content of linked web pages.

The Board's advisory opinion is based on the general facts as stated above. The Board does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Board to reach a different conclusion. In addition, Board advisory opinions are narrowly drawn to interpret the Ethics in Public Service Act. They do not address whether the proposed action is prudent, good public policy or effective management practice.

[1]

See Washington State Constitution, Article 8, section 5 (Prohibits a gift of public funds), RCW 42.17.190 (Prohibits many uses of public funds for lobbying), EEB Advisory Opinion 97-04 (Prohibits the private use of state computers), EEB Advisory Opinion 99-02 (Prohibits or limits the use of state resources to support some non-profits), EEB Advisory Opinion 00-03 (Prohibits adding a personal line to state owned cellular telephones).

[2]

The following suggested disclaimer language is based on federal government web site disclaimers. "The links provided may contain relevant information. These web sites are not maintained by [state agency] and the [state agency] is not responsible for the content available on this site. Since the [state agency] exercises no control over other sites; we take no responsibility for the views that may be represented, or the accuracy, propriety, or legality of any

material contained on other web sites.”

[3]

A reporting mechanism could be established by adding the following language to an agency disclaimer. “When this link was established the linked web page did not contain materials that advocated for any political outcomes. If you find any materials on the directly linked web page that advocate for, or against, any political candidates, ballot measures, or referendums, please report it immediately to our Webmaster so that the link may be promptly removed.”

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## **2009 Staff Guidance Letter**



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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January 23, 2009

Cliff Finch  
P.O. Box 1379  
Olympia, WA 98507

Re: Lobbying Questions

Dear Mr. Finch:

This letter responds to several questions you raise regarding lobbying conducted on the Internet in your July 1, 2008 and October 15, 2008 emails to the Public Disclosure Commission (copies enclosed). As you are aware, the general topic of reporting Internet lobbying has been a subject of discussion by the Commission in 2008. That discussion will continue in 2009. At this time, there is no statute in RCW 42.17 or rule in WAC 390 that specifically mentions lobbying on the Internet. Whether the Commission or the Legislature will determine to expressly address that subject formally in the future remains to be seen. Therefore, the same statutes and rules that apply to lobbying via other means will apply to lobbying via the Internet.

Based upon that premise, and in the interim, the following staff advice is being provided to you in response to your questions.

**Questions and Responses**

**July 1, 2008 Email**

Your July 1, 2008 email contains three questions. The first two questions are premised upon whether PDC Interpretation 07-04, which applies to campaign activities on the Internet, also applies to lobbying. That interpretation addresses campaign laws and rules and did not address lobbying. Therefore, the responses to your questions will rely upon the lobbying laws and rules. The responses also assume the activity in question has not been otherwise reported by the organization's lobbyist, and is not public agency lobbying. For brevity, we will not repeat your questions, but will provide the responses as follows:

1. If an organization creates a website that actively advocates for positions on state legislation and sends emails to site visitors or collects email lists urging support or opposition to particular bills, this call-to-action is reportable lobbying if the statutory reporting thresholds are met, and if no exemptions apply. RCW 42.17.020(31), RCW 42.17.160, RCW 42.17.200. Additional facts would be needed to give a more detailed response.



We note that lobbying is defined at RCW 42.17.020(31) and grassroots lobbying is defined at RCW 42.17.200. Reviewing those statutes, your question seems to assume lobbying or grassroots lobbying is occurring. However, regarding reporting thresholds, whether the organization in your question would satisfy the thresholds in RCW 42.17.160 or RCW 42.17.200 is not known, given the limited facts presented. Also, for the same reason, it is not known if the organization is otherwise exempt from lobbying, under RCW 42.17.160.

2. If an organization creates a website that consolidates links to local media and blog articles that focus on state politics and government, and there is no attempt to influence legislation or a call to action, the activity is not a reportable lobbying activity. Under the limited facts provided, it appears lobbying is not occurring. It is also possible that the organization may qualify for the media exemption at RCW 42.17.160(3). Again, more information is needed to provide a more detailed response.

3. With respect to reporting lobbying, it does not make a difference if the lobbying organization is non-profit or for-profit. The lobbying laws make no such distinction.

#### **October 15, 2008 Email**

Your October 15 email contains seven questions. It concerns a general political news and commentary Internet website of an organization. The responses assume the activity in question has not been otherwise reported by the organization's lobbyist, and is not public agency lobbying. In response to your questions:

1. If this organization posts its positions on key legislative issues but does no more than publish them on its website, and its activities do not satisfy the definition of lobbying (and it is assumed from your question that readers are not urged to take any action), it does not have a reporting obligation. RCW 42.17.020(31); RCW 42.17.200. See also the media exemption at RCW 42.17.160(3), which may apply, depending upon the facts concerning the organization.

2. If this organization urges readers to contact their legislators to support a legislative position and provides a link to contact legislators, it is engaged in grassroots lobbying. That activity is reportable if the threshold is met, and if the activity is not otherwise exempt. RCW 42.17.200; RCW 42.17.160. Again, more facts would be needed for a more detailed response.

3. If this organization emails out to subscribers a weekly compilation of all new website articles, including articles that urge a position on a legislative issue, its reporting obligations will depend upon additional facts. For example, it is relevant whether the subscribers are members (see definition of lobbying, which exempts member communications), whether the entity is otherwise exempt (see, e.g., the media exemption at RCW 42.17.160(3)), and what the level of expenditures were (see RCW 42.17.160, RCW 42.17.200, WAC 390-20-143). Without more facts, we cannot provide a more definitive response.

4. If this organization provides its subscriber email list to another organization for grassroots activation campaign on a legislative issue, but takes no other role in the campaign, it does not have a reporting obligation. However, this would be a fair market value in-kind contribution to the grassroots campaign. Therefore, the recipient campaign will have a reporting obligation for the value

of the email list if it exceeds \$25, if the recipient otherwise meets the reporting threshold under RCW 42.17.200. RCW 42.17.200(2)(c).

5. If this organization actively participates in a grassroots campaign but limits support to staff time and its email list, in addition to supporting the campaign on its site, its expenditures attributable to the grassroots lobbying campaign would be reportable if the organization meets threshold in RCW 42.17.200. In addition, if by "limits its support to its e-mail list," the question involves sending an e-mail from the organization to the list (as opposed to providing a copy of the list to the grassroots campaign), the response depends upon who is on the list. Is it members only? Then it is not reportable lobbying. If it is other persons, or the public? Then it may be grassroots lobbying.

6. If this organization uses its email list to unilaterally send emails urging website visitors to contact their legislators and vote in support of or opposition to a legislative issue, since there is a "call to action" directed at the public, this is likely reportable grassroots lobbying by the website organization (reportable as a sponsor, or reportable by its lobbyist). RCW 42.17.200. As with the answers above, a more detailed response depends upon the expenditure level for the website activity directed to the public, and whether any exemptions apply.

7. To the degree there is a reporting requirement under questions 1-6, the requirement applies to the persons or entity engaged in lobbying. RCW 42.17.150, RCW 42.17.170, RCW 42.17.200, WAC 390-20-143. If the activity is reportable lobbying or grassroots lobbying, the expenditures are to be reported by the lobbyist or spender organization.

Please note that under the questions above, if the organization has a registered lobbyist, expenditures to further the lobbying efforts are reportable. See RCW 42.17.170.

Sincerely,



Doug Ellis  
Assistant Director

Enclosures

**RCW 42.17.020**

**Definitions.**

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(31) "Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.