



Washington State Public Disclosure Commission  
711 Capitol Way, Room 2016  
PO Box 40908  
Olympia, WA 98504-0908  
Phone: 360-753-1111 Fax: 360-753-1112  
www.pdc.wa.gov

To: Commissioners, Washington State Public Disclosure Commission  
From: Evelyn Fielding Lopez, Executive Director *efl*  
Date: April 24, 2017  
Re: Request Interpretation of WAC 390-17-400  
Time Limit to Solicit or Accept Contributions—Session Freeze

### **Request for Interpretation or Review**

On April 17, 2017, Representative Laurie Dolan asked if the Commission could look into interpretations regarding WAC 390-17-400, specifically whether legislative staff members were prohibited from soliciting contributions during the Legislative session when the contributions would be for the staff member's local government campaign, and would not be contributions for the Legislator's campaign.

WAC 390-17-400 is based on RCW 42.17A.560, which provides in pertinent part:

(1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. Contributions received through the mail after the thirtieth day before a regular legislative session may be accepted if the contribution is postmarked prior to the thirtieth day before the session.

...

(Emphasis added.) A copy of the statute is attached.

The PDC's rule provides more detailed information about the fundraising activities that are not allowed during session. Specifically, with regard to what activity is at issue, and who is bound by the rule, WAC 390-17-400 provides:

(7) Activities not allowed during a freeze period. During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a

state official, may not solicit or accept contributions that:

- (a) Go to an incumbent state official or known candidate;
- (b) Go to a public office fund;
- (c) Are used to pay a nonreimbursed public office related expense;
- (d) Are used to retire a campaign debt;
- (e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or
- (f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(8) "Person employed by or acting on behalf of a state official" includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(a) During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (7) of this section.

(b) During a legislative session freeze period, a caucus political committee may solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17A.005.

(c) During a legislative session freeze period, a caucus political committee may not solicit or accept contributions for any of the purposes specified in subsection (7) of this rule.

(Emphasis added.) A copy of the rule is attached.

Representative Dolan indicated that other Legislators and legislative counsel believe that this rule was previously interpreted to limit legislative staff from fundraising for Legislators, and that staff were not prohibited from raising contributions for their own, non-legislative, campaigns.

However, the plain language of the statute and rule seem to establish that legislative staff cannot fundraise for any public office during session. It might be helpful to request the AGO to look into the legislative history of RCW 42.17A.560 to see if there is any information about the intent of the Legislature regarding fundraising by legislative staff.

### **Recommendation**

The Commission may ask for legal advice and legislative history, or the Commission may decide based upon the statutory and rule language whether legislative staff members are prohibited from fundraising for a state or local government campaign during the Legislative session.

Request for Rule Interpretation

April 24, 2017

Page 3

From my review, the statute plainly prohibits both Legislators and their staff from fundraising for public office campaigns during the Legislative session, but it might be helpful to review the legislative history before responding to the request.

Enclosures

**RCW 42.17A.560****Time limit for state official to solicit or accept contributions.**

(1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. Contributions received through the mail after the thirtieth day before a regular legislative session may be accepted if the contribution is postmarked prior to the thirtieth day before the session.

(2) This section does not apply to activities authorized in RCW 43.07.370.

[ 2006 c 348 § 5; 2006 c 344 § 31; 2003 c 164 § 3; 1993 c 2 § 11 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.710.]

**NOTES:**

**Reviser's note:** This section was amended by 2006 c 344 § 31 and by 2006 c 348 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

## WAC 390-17-400

### Time limit to solicit or accept contributions.

The purpose of this rule is to clarify and implement RCW 42.17A.560.

(1) **"Campaign debt,"** as used in RCW 42.17A.560 and this rule, means any debt incurred by a candidate seeking election to a nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) **"Known candidates"** means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) **"Legislative session freeze period"** means the period of time in RCW 42.17A.560 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends at 11:59 p.m. on the day the special session adjourns.

(c) If a special session is held other than within thirty days before a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17A.560 until sworn into office.

(5) A state official must comply with RCW 42.17A.560 until he or she no longer holds state office.

(6) **Activities allowed during a freeze period.** During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist his or her own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund-raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Attending a fund-raiser held by a candidate who is not subject to RCW 42.17A.560, provided the state official does not solicit or accept any contributions in connection with the fund-raiser.

(i) The state official's planned attendance may be included in publicity for the fund-raiser.

(ii) The state official may receive complimentary admission from the candidate so long as the official attends to show support for the candidate and the attendance does not assist the official's own campaign.

(e) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17A.005, to their own campaign account, so long as the funds are properly reported;

(f) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(g) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(7) **Activities not allowed during a freeze period.** During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

(a) Go to an incumbent state official or known candidate;

(b) Go to a public office fund;

(c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(8) **"Person employed by or acting on behalf of a state official"** includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(a) During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (7) of this section.

(b) During a legislative session freeze period, a caucus political committee may solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17A.005.

(c) During a legislative session freeze period, a caucus political committee may not solicit or accept contributions for any of the purposes specified in subsection (7) of this rule.

(9) **Bona fide political parties.** During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund-raising purposes.

(10) **Segregating session freeze funds.** During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
-



- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW 42.17A.560 , unless the contributions a
- Deposited into a separate bank account and
  - Not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsection (7) or (8)(c) of this section.

(11) **Session freeze solicitations.** If a person is solicited for a contribution during the legislative session freeze period

- By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and
- The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and
- The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject to RCW 42.17A.560 and subsection (12) of this section.

(12) **Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections (6)(g), (7)(e) and (f), and (10) of this section, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes.

(a) Contributions to incumbent state officials or known candidates.

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period.

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates.

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the written confidentiality agreement and, if the agreement is breached, all reasonable steps taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or the

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference,
- The level of support the incumbent currently has and how strong that support is, but he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek to elective office,

- Whether respondents currently hold a favorable opinion about these individuals, the or fitness for elective office, but not why such opinions are held,
- Whether respondents would likely vote for one or more of these individuals were the office, but not why respondents would vote in the manner they indicated or whether could be persuaded to change their vote, and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

[Statutory Authority: RCW 42.17A.110, 42.17A.125(1). WSR 16-04-081, § 390-17-400, filed 1/29/16, effective 2/29/16. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-17-400, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 08-01-062 and 08-06-067, § 390-17-400, filed 12/14/07 and 3/3/08, effective 1/14/08 and 4/3/08. Statutory Authority: RCW 42.17.370(1). WSR 98-23-016, § 390-17-400, filed 11/6/98, effective 12/7/98; WSR 96-01-103, § 390-17-400, filed 12/19/95, effective 1/19/96. Statutory Authority: RCW 42.17.370. WSR 93-16-064, § 390-17-400, filed 7/30/93, effective 8/30/93.]