

Internet Lobbying



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.¹ 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

¹ 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, 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 Rippie 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