



PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: May 15, 2014
Re: Rule Making – May 22, 2014 Public Hearing – Converting Interpretations to Rule – Eligibility to Receive Primary Election Contributions and Computing Thresholds for Independent Expenditures

In February 2014, the Commission commenced the process of converting certain long-standing interpretations to rule. The first two interpretations that the commission considered in this process and approved draft language for were:

- Contribution Limits: Impact When a Candidate Subject to Limit Does Not Have a Primary Election, Interpretation 04-01 and
- Computing Thresholds for Independent Expenditures, Interpretation 07-01.

A May 22, 2014 public hearing is scheduled so that the Commission can receive public comment and consider for possible adoption:

WAC 390-17-301 Eligibility to receive primary election contributions. This proposed new rule clarifies that candidates subject to limit may receive primary election contributions only when their name appears on the ballot or as a write in candidate for the primary election. Instructions are included to refund any contributions received in excess of the general election limit within two weeks of the election official's determination that there will be no primary election. A reference to additional eligibility criteria for superior court candidates set out in WAC 390-17-303 is included in the proposal.

WAC 390-16-063 Additional information regarding C-6 report filing. The proposed amendment clarifies and explains how to prorate and attribute independent expenditures that support/oppose multiple candidates or ballot measures for the purpose of determining when disclosure is required. The proposed instructions, which include examples, clarify that disclosure is required when a pro rata portion reaches or exceeds the disclosure threshold contained in either RCW 42.17A.255 or 42.17A.260. Finally, the proposed amendment informs spenders that the prorating and attribution instructions should be used to determine whether compliance with sponsor identification requirements for independent expenditures is necessary.

The draft language for the proposed new rule and the proposed amendments was considered and approved by the Commission at its February 27, 2014 meeting. The approved language was filed with the Code Reviser on March 21, 2014 along with notice of this hearing. The hearing date was also noted on the agency's rule making docket, which is linked on the agency website and Facebook page. No comments have been received to date.

Action by the Commission. Staff requests the Commission adopt the proposed new WAC 390-17-301 and the proposed amendments to WAC 390-16-063. Once adopted, the rules are effective 31 days after filing with the Code Reviser. If the Commission adopts the proposals during the scheduled hearing, staff intends to file the final order no later than Friday, May 23 so that the amendments take effect prior to the Commission's July 1 election-related rules moratorium. Once the rules take effect, the Commission's online list of interpretations will be updated to show that PDC Interpretations 04-01 and 07-01 have been superseded by WACs 390-17-301 and 390-16-063.

Enclosures: Proposed new rule WAC 390-17-301
Proposed amendments to WACs 390-16-063

NEW SECTION

WAC 390-17-301 Eligibility to receive primary election contributions. (1) Candidates for state and certain local offices are subject to the contribution limits in RCW 42.17A.405. Judicial candidates are subject to the contribution limits in RCW 42.17A.410. Only candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive primary election contributions.

(2) Once the appropriate elections official determines that no primary election for a particular office will be held, a declared candidate for that office must refund any contributions received in excess of the general election contribution limit. The candidate or the candidate's authorized committee must make the refunds within two weeks of the election's official's determination, and must disclose the refunds on the appropriate report.

(3) Failure by a candidate or a candidate's authorized committee to make refunds as required by subsection (2) of this section is a violation of RCW 42.17A.405 or 42.17A.410 by the candidate, but not by the contributors who made primary election contributions before a determination was made that no primary election would be held.

(4) WAC 390-17-303 sets out additional eligibility criteria for superior court candidates.

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of Chapter 42.17A RCW to disclose an independent expenditure of one hundred dollars or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of one thousand dollars or more that is presented to the public within twenty-one days of an election, that supports or opposes a candidate or ballot measure, and that qualifies as an independent expenditure.

(a) Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures. Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$1,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$1,000.

(b) Disclosing independent expenditures that support or oppose multiple candidates or ballot measures. When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed. Include the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) Other applications of prorating and attributing independent expenditures. Use the prorating and attribution steps explained in (a) (i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005(26) must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320(2) and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form itemized information concerning its sources of funds giving in excess of

two hundred fifty dollars for an electioneering communication, unless the committee received funds that were requested or designated for the communication.

~~((2))~~ (3) An out-of-state political committee shall report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication defined in RCW 42.17A.005.

~~((3))~~ (4) The sponsor of an electioneering communication shall report pursuant to RCW 42.17A.305 and commission rules regarding electioneering communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

~~((4))~~ (5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005 shall file pursuant to RCW 42.17A.305 and commission rules regarding electioneering communications.