



PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: August 20, 2015
Re: Rule Making – Converting PDC Interpretation 01-04

Agenda Item

In 2014, the Commission began converting long-standing interpretive statements to rule. Interpretive statements are advisory only and the Administrative Procedures Act encourages agencies to convert long-standing interpretations to rules. Staff believes converting the interpretive statements better serves the public and regulated community by consolidating into one location the Commission's opinions and approaches for enforcing RCW 42.17A

At the August 27 meeting, the Commission will be asked to consider draft proposed language that will incorporate PDC Interpretation 01-04, *Participation in Fund Raising Events by State Officials During Legislative Freeze Period* into WAC 390-17-400.

Background

Initiative 134 enacted a “freeze” period during which a state official or a person employed by or acting on behalf of a state official is not allowed *to solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire campaign debt.* [RCW 42.17A.560](#). Currently, the freeze takes effect 30 days before a regular legislative session convenes and continues through adjournment. A freeze period is also in effect during any special legislative session. WAC 390-17-400 implemented I-134's session freeze provisions.

PDC Interpretation 01-04 clarifies that a state official may be a “draw” during the freeze period for a fund raising event held by a candidate who is not subject to the freeze, a bona fide political party, or a political committee. The interpretation also clarifies that the proceeds from the fund raiser are subject to the provisions of RCW 42.17A.560 and the parameters under which a state official may accept complimentary admission to the event. The interpretation was adopted in 2001.¹ Staff believes the guidance has been well vetted and should now be converted to rule.

¹ An earlier version had been adopted in 1996. That version was revised to incorporate the Supreme Court's decision in *Senate Republican Campaign Committee v. PDC* and adopted as #01-04.

Commission Action

Staff is requesting the Commission approve the proposed draft language to amend WAC 390-17-400 that will convert PDC Interpretation 01-04 to rule. Once the language is approved, staff will schedule a public hearing during which the Commission will consider adopting the rule.

Attachments: PDC Interpretations 01-04
Proposed draft language to amend WAC 390-17-400

PDC Interpretation

APPROVAL DATE:	December 4, 2001	NUMBER:	01-04
STATUS:	Effective December 4, 2001	SUPERSEDES:	01-01
REFERENCES:	RCW 42.17.710	APPROVED BY:	The Commission

SEE ALSO: WAC 390-17-400; WA State Supreme Court Decision in SRCC v PDC, 133 Wn.2d 229,943 P. 2d 1358 (1997); and Interp. 95-05 (Fund raising Through 900 Telephone Numbers)

Participation in Fund Raising Events by State Officials During Legislative Freeze Period

State Law prohibits a state elected official (or a person employed by or acting on behalf of a state elected official), during the legislative session freeze period, from soliciting or accepting contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. RCW 42.17.710.

At its meeting on February 20, 1996, by adopting Interpretation 96-01 the Commission clarified the application of this prohibition to certain fund raising activities. However, since adoption of that interpretation, the Washington State Supreme Court issued its decision in Senate Republican Campaign Committee v. PDC [133 Wn.2d 229, 943 P. 2d 1358 (1997)] and the Commission amended its rule, WAC 390-17-400, implementing RCW 42.17.710 in 1998. The Commission revisited this session freeze fund raising issue at its April 2001 meeting and amended its earlier interpretation accordingly.

Legislators or Other State Elected Officials Attending an Event Held by a Local Office Candidate (Who is not a State Official) or State Office Candidate (Who is not a State Official):

- 1) Section .710 does not prohibit a state official's mere attendance at a fund raiser held by a candidate who is not subject to section .710, but the official may not solicit or accept any contributions in connection with the fund raiser. If the candidate distributes notice about the event and, as part of that notice, merely

indicates that a state official will be in attendance, such reference on its own does not mean that the official has solicited or accepted contributions for the candidate.

- 2) The state official may receive complimentary admission from the candidate so long as he or she is there to show support for the candidate and his or her attendance does NOT assist his or her own campaign. If there is any doubt about whether the official's own campaign is assisted, the official is advised to pay the standard admission charge out of personal funds [otherwise free admission would result in the official receiving a contribution prohibited by .710 and .095(8)].
- 3) Except as qualified in #2 above, complimentary admission is not reportable by the elected official.

Legislators or Other State Elected Officials Attending a Traditional Party Event:

- 4) Section .710 does not prohibit an official from speaking at or attending a party fund raiser so long as no funds raised at the event are earmarked or otherwise designated for any incumbent state official or known candidate, for an official's public office fund or for retiring an official's campaign debt.
- 5) State officials may only solicit or accept contributions on behalf of the party (e.g., sell tickets to a party fund raiser) if the money raised is deposited into a separate bank account and not spent for the benefit of incumbent state officials or known candidates. WAC 390-17-400(12). If the party distributes notice about a fund raising event and, as part of that notice, merely indicates that a state official will be in attendance, such reference on its own does not mean that the official has solicited or accepted contributions for the party.
- 6) An official may receive complimentary admission to the event from the party so long as the official is present to show party support and loyalty, and the official does not receive endorsements, travel or other things of value to a candidate. (Officials may be admitted free-of-charge in order that they may assist the party, as opposed to the party assisting the candidates.)
- 7) Complimentary admission is not reportable by an official unless admission constitutes a contribution as discussed in #6.

Legislators or Other State Elected Officials Attending a PAC Event:

- 8) Section .710 does not prohibit an official from attending a PAC fund raiser. Officials must use personal funds to pay the standard donation or admission charge.

- 9) Depending upon the circumstances, complimentary admission would constitute either a gift (that may not be permissible under the Ethics Law) or a campaign contribution that is prohibited by RCW 42.17.710. [Note: Complimentary admission of candidates who are not state officials by a PAC to its fund raiser is an in-kind contribution valued at the price of admission, reportable by both the donor and the candidate, and subject to limit.]
- 10) State officials may solicit or accept contributions on behalf of a political committee that supports or opposes state or local office candidates only if the contributions are deposited by the committee into a separate bank account and not spent for the benefit of incumbent state officials or known candidates. WAC 390-17-400(12)
- 11) State officials may solicit or accept contributions on behalf of a ballot measure committee so long as that committee does not spend the contributions for the benefit of incumbent state officials or known candidates. WAC 390-17-400(7)

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) ~~(("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.~~

~~(7) State officials may do the following.) 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;

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

~~((f))~~ (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.

~~((8))~~ (7) ~~((State officials may not do the following.))~~ 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.

~~((9) **Caucus political committees.** During a legislative session freeze period, a caucus political committee~~

~~(a) 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;~~

~~(b) May not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.~~

~~(10)) (8) — "**Person((s)) employed by or acting on behalf of a state official((s.))**" 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 ~~((8))~~ (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.

((+11+)) (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.

((+12+)) (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 are
- 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 be-

half of a state official to take any of the actions prohibited by subsection ~~((8) or (9)(b))~~ (7) or (8)(c) of this section.

~~((13))~~ (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.

~~((14))~~ (12) **Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections ~~((7)(f), (8)(e) and (f), and (12))~~ (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 terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are 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 their agents.

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 not why he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek that elective office,

- Whether respondents currently hold a favorable opinion about these individuals, their abilities 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 they to seek office, but not why respondents would vote in the manner they indicated or whether they 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. 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.]