



PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: February 20, 2014
Re: Rule Making – Converting Interpretive Statements to Rules

Agenda Item

Staff is proposing the Commission begin converting select interpretive statements to rules. Interpretive statements are advisory only and the Administrative Procedures Act encourages agencies to convert long-stating interpretations to rules. At the February 27 meeting, the Commission will be asked to consider draft proposed language would that convert the following two PDC interpretations to rules:

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

Background

Computing Thresholds for Independent Expenditures:

Independent expenditure disclosure (C-6) reports are required in these situations:

1. A person who is not otherwise subject to the disclosure requirements of RCW 42.17A must file an Independent Expenditure (C-6) report within five days of spending \$100 or more to support or oppose a candidate or ballot measure. RCW 42.17A.255. Those who are subject to RCW 42.17A – political committees, lobbyists, lobbyist employers – report independent expenditures with other expenditures and do not file the C-6 report.
2. The sponsor of political advertising, who within 21 days of an election, publishes, mails or otherwise presents to the public an ad supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of \$1,000 or more must file a C-6 within 24 hours of the ad's distribution. RCW 42.17A.260. This filing requirement is in addition to any other disclosures the sponsor is required to make.

In 2002, the Commission considered the \$100 threshold and adopted PDC Interpretation 02-02 to explain how to prorate and attribute independent expenditures for the purposes of determining when disclosure is required. The Commission determined that an independent expenditure supporting or opposing more than one candidate or ballot measure should be prorated. Disclosure is triggered by a \$100 pro rata cost that is attributed to one candidate or ballot measure. Once disclosure is triggered, the entire cost of the ad must be reported, including the amounts attributed to other candidates and ballot measures addressed in the same ad, regardless of the pro rata amount.

The Commission, in 2007, adopted a new interpretation to supersede 02-02. Interpretation 07-01 incorporated the earlier interpretation and offered the same prorating guidance for independent expenditure political advertising appearing within 21 days of an election with a fair market value of \$1,000 or more. Interpretation 07-01 offered further instruction on attributing pro rata amounts for the purposes of determining when disclosure is required and the appropriate sponsor identification.¹

The Commission's guidance in Interpretation 07-01 involves two steps. First, the cost of the ad is prorated among the subjects. The second step is to add together the pro rata amounts attributable to each candidate or ballot measure if the ad is about candidates who are opposing one another for the same office or competing ballot measures. The sum is used to determine whether the ad must be disclosed on a C-6 and the appropriate sponsor identification to include in the ad. The interpretation contained examples that are included in the draft proposed language.

Contribution Limits:

The limits for contributions given by donors (other than bona fide political parties) to state office candidates enacted by Initiative 134 and then expanded by the legislature to certain local and judicial candidates are "per election." This means that the contributor has separate contribution limits for primary and general elections. State law allows primary and general contributions to be made from the start of the election cycle, which is January 1 following the general election for that office. For example, January 1, 2011 was the first day of the 2014 election cycle for county offices that are on the ballot this year.

Interpretation 04-01 advises that a candidate is entitled to a contribution for a primary election only when his/her name appears on the ballot or s/he is an eligible write-in candidate. The interpretation instructs candidates to "immediately" refund any contributions that exceed the general election limit upon learning there will be no primary election.

In 2007, the Commission adopted WAC 390-17-303, Superior court candidates – Eligibility to receive contributions to clarify how receiving a certificate of election when no election is held impacts the candidate's eligibility to receive contributions. WAC 390-17-303 allows superior court candidates two weeks in which to refund contributions they are not eligible to receive.

Proposed Amendments

Draft Language:

Proposed amendments to **WAC 390-16-063** include clarification and examples regarding prorating and attributing independent expenditures that support/oppose multiple candidates or ballot measures for the purposes of determining when disclosure is required, instructions that the entire independent expenditure must be disclosed when a pro rata portion reaches or exceeds the

¹ A special "notice to voters" sponsor ID is required for political advertising regarding a candidate that is an independent expenditure and has a cost of \$950, either alone or in conjunction with other ads by the same sponsor about the same candidate. RCW 42.17A.005(26). (The Commission adjusts the dollar amount at the beginning of every even-numbered year.)

statutory disclosure threshold, and a cross-reference to the political advertising requirements of which spenders should be aware.

Two separate proposals are offered for the Commission to consider:

Option #1: Leave WAC 390-17-303 intact and proceed with rule making to adopt new WAC 390-17-301 that would clarify that candidates subject to limit may receive primary election contributions only when their name appears on the ballot or as a write 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. The two week period differs from Interpretation 04-01, but is consistent with the more recent WAC 390-17-303.

Option #2: Proceed with amending WAC 390-17-303. In the attached draft proposal, the current rule is retooled to include a general statement that a candidate subject to contribution limits is eligible to receive a contributions for elections in which the candidate's name is on the ballot or appears as a write-in candidate. A new subsection is added to direct candidates who are not superior court candidates to refund contributions received in excess of the general election limit within two weeks of the elections official's determination that there will be no primary. The current subsections directing superior court candidates to refund contributions upon receiving a certificate of election without an election being held remains unchanged in the draft. They are treated differently because candidates for superior court who are issued a certificate of election before the primary is held do not appear on any ballot. Candidates for other offices who do not appear on the primary election ballot will appear on the general election ballot.

Both options contain a new subsection to clarify that candidates who fail to refund contributions they are not eligible to receive are violating RCW 42.17A, but not the persons who gave the contributions before it was known there would be no election.

Commission Action:

Staff is requesting the Commission approve the proposed draft language to amend WAC 390-16-063 and approve either the proposed draft language for new WAC 390-301 (Option #1) or the proposed draft language to amend WAC 390-17-303 (Option #2) to convert PDC Interpretation 04-01 to rule. Staff will file a notice of hearing (CR-102) with the code reviser after the draft language is approved. Considering the Commission's regular meeting schedule and the state's required notice periods for rule making, the public hearing to approve the amendment will likely be scheduled for the May meeting. Having the hearing in May will also allow the rules to take effect in June before the moratorium on campaign finance related rules takes effect July 1.

Attachments: PDC Interpretations 07-01 and 04-01
WAC 390-17-303
Proposed drafts amendments to WACs 390-16-063, 390-17-301, and 390-17-303

PDC Interpretation

APPROVAL DATE: March 22, 2007 NUMBER: 07-01

STATUS: Effective March 22, 2007 SUPERSEDES: 02-02

REFERENCES: RCW 42.17.020(28) APPROVED BY: The Commission
 RCW 42.17.100
 RCW 42.17.103

SEE ALSO:

Computing Thresholds for Independent Expenditures

Intent: To provide guidance to persons who make independent expenditures regarding when the expenditures need to be reported on a C6 form and when the “notice to voters” and “top five contributor” information must be included as part of the advertising.

Discussion of Issue: On October 2, 2002, the Commission approved PDC Interpretation 02-02, Filing a Report of Independent Expenditures That Support or Oppose More Than One Candidate or Ballot Measure. That interpretation implemented RCW 42.17.100 and determined that a C6 report disclosing independent expenditures is required when the pro-rata cost attributed to one candidate or ballot measure featured in the ad is \$100 or more. If that threshold is reached or surpassed, the entire cost of the advertisement must be reported, including the amounts attributed to other candidates and ballot measures benefited by the ad.

That interpretation addressed a specific question: Is reporting required when at least \$100 is spent on independent advertising regardless of how many candidates or ballot measures are featured, or must the portion of the ad devoted to one candidate or ballot measure cost at least \$100? The Commission opted for the latter option.

However, there are two other issues related to independent expenditures that were not brought to the Commission’s attention in 2002 and that are not directly addressed by Interpretation 02-02:

1. RCW 42.17.103 requires special 24-hour reporting of independent expenditures supporting or opposing a candidate or ballot measure with a fair market value of \$1,000 or more if the expenditures are presented to the public within 21 days of an election. If such an independent expenditure supported or opposed more than one candidate or ballot measure would special reporting only be required when at least \$1,000 per candidate or ballot measure had been spent by the sponsor?

Although Interpretation 02-02 implements RCW 42.17.100, not RCW 42.17.103, both sections of law specify a spending threshold -- \$100 in RCW 42.17.100 and \$1,000 in RCW 42.17.103. Both sections also use comparable language referencing expenditures that support or oppose a candidate or ballot proposition.

2. According to RCW 42.17.020(28), an independent expenditure is an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of \$700 or more. A series of expenditures, each of which is under \$700, constitutes one independent expenditure if their cumulative value is \$700 or more.

(Emphasis added and dollar threshold adjusted for inflation from the original \$500 level.)

One application of the definition of independent expenditures relates to when political committees making such expenditures have to include a special "notice to voters" and identify their top five contributors as part of the ad.

Again, the question has arisen about whether this \$700 is a per candidate amount or an aggregate total for all candidates supported or opposed in an ad. To date, it has been answered consistent with Interpretation 02-02, even though that interpretation formally implements a different section of law.

More recently, another question has come up regarding whether, in determining when the \$700 threshold has been reached, one only includes the cost of that portion of an ad that supports a candidate. Or, would one also consider the ad costs associated with opposing that candidate's opponent. Interpretation 02-02 does not address this question. As indicated by the example given in that interpretation, the decision reached was based on all of the candidates or ballot measures being supported by the ad.

Attached for reference are a copy of Interpretation 02-02, RCW 42.17.100 and RCW 42.17.103.

Interpretation:

For the purposes of RCW 42.17.020(28), RCW 42.17.100, RCW 42.17.103 and RCW 42.17.510(2),(4) & (5):

An independent expenditure that supports or opposes more than one candidate or ballot measure is subject to the applicable reporting and/or sponsor identification requirements referenced above when the pro-rata share of the expenditure attributable to one candidate or ballot proposition equals or exceeds the respective reporting threshold. The pro-rata share includes:

(a) those portions of the expenditure supporting a candidate and opposing that candidate's opponent(s), or

(b) those portions of the expenditure supporting a ballot proposition and opposing a competing ballot proposition.

If a reporting threshold is met or exceeded as described above, the entire independent expenditure shall be reported, including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

Example 1: If an independent expenditure political ad supporting Candidates A, B and C costs \$300 and 50% of the ad is devoted to Candidate A, the entire expenditure is reportable under RCW 42.17.100.

Example 2: If \$400 of an independent expenditure is attributable to supporting a candidate and \$400 is attributable to opposing that candidate's opponent, that expenditure is reportable under RCW 42.17.100 and, if it is political advertising, it must include the notice and top five contributor information required by RCW 42.17.510(2), (4) or (5) depending upon the medium used.*

Example 3: If an independent expenditure ad presented to the public two weeks before the election costs \$1,000 and 50% of it supports a candidate and 50% opposes that candidate's opponent, the ad is reportable under RCW 42.17.103 and must include the notice and top five contributor information required by RCW 42.17.510(2), (4) or (5) depending upon the medium used.*

Example 4: If an independent expenditure ad that is mailed two weeks before the election costs \$1,000 and 50% of it supports Candidate A and 50% supports Candidate B, it is reportable under RCW 42.17.100, but not RCW 42.17.103, unless it is part of series of ads being distributed during the three weeks before the election. In addition, this single ad is not subject to RCW 42.17.510(2), (4) or (5), again unless it is part of a series of ads and the per candidate threshold in RCW 42.17.020(28) as adjusted by WAC 390-05-400 is met or exceeded.

* RCW 42.17.510(2) applies to flyers, brochures, billboards and other written ads. Section .510(4) applies to television and movie screen ads (because the medium includes a visual image). Section .510(5) applies to radio and telephone ads.

RCW 42.17.100

Special reports — Independent expenditures.

(1) For the purposes of this section and RCW 42.17.550 the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17.060, 42.17.080, or 42.17.090. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a local ballot proposition, the county of residence for the person making the expenditure) an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure) a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.

RCW 42.17.103

Special reports — Political advertising.

(1) The sponsor of political advertising who, within twenty-one days of an election, publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more shall deliver, either electronically or in written form, a special report to the commission within twenty-four hours of, or on the first working day after, the date the political advertising is first published, mailed, or otherwise presented to the public.

(2) If a sponsor is required to file a special report under this section, the sponsor shall also deliver to the commission within the delivery period established in subsection (1) of this section a special report for each subsequent independent expenditure of any size supporting or opposing the same candidate who was the subject of the previous independent expenditure, supporting or opposing that candidate's opponent, or supporting or opposing the same ballot proposition that was the subject of the previous independent expenditure.

(3) The special report must include at least:

(a) The name and address of the person making the expenditure;

(b) The name and address of the person to whom the expenditure was made;

(c) A detailed description of the expenditure;

(d) The date the expenditure was made and the date the political advertising was first published or otherwise presented to the public;

(e) The amount of the expenditure;

(f) The name of the candidate supported or opposed by the expenditure, the office being sought by the candidate, and whether the expenditure supports or opposes the candidate; or the name of the ballot proposition supported or opposed by the expenditure and whether the expenditure supports or opposes the ballot proposition; and

(g) Any other information the commission may require by rule.

(4) All persons required to report under RCW 42.17.065, 42.17.080, 42.17.090, 42.17.100, and 42.17.565 are subject to the requirements of this section. The commission may determine that reports filed pursuant to this section also satisfy the requirements of RCW 42.17.100.

(5) The sponsor of independent expenditures supporting a candidate or opposing that candidate's opponent required to report under this section shall file with each required report an affidavit or declaration of the person responsible for making the independent expenditure that the expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, the candidate, the candidate's authorized committee, or the candidate's agent, or with the encouragement or approval of the candidate, the candidate's authorized committee, or the candidate's agent.

[2005 c 445 § 7; 2001 c 54 § 1.]

Notes:

Effective date -- 2001 c 54: "This act takes effect January 1, 2002." [2001 c 54 § 4.]

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 \$100 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 \$1,000 or more that is presented to the public within 21 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) 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.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-16-063, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 42.17.562. WSR 06-11-132, § 390-16-063, filed 5/23/06, effective 6/23/06.]

PDC Interpretation

APPROVAL DATE: February 24, 2004 NUMBER: 04-01
Revised August 27, 2009
Revised May 26, 2011

STATUS: Effective SUPERSEDES: N/A
February 24, 2004

APPROVED BY: The Commission

SEE ALSO: [RCW 42.17.640\(1\)](#), [RCW 42.17.640\(2\)](#), [RCW 42.17.645](#), [WAC 390-05-400](#), [WAC 390-17-300](#), [WAC 390-17-303](#), Commission Meeting Minutes of September 28, 1993 and September 1, 1993 Memorandum from Roselyn Marcus, Assistant Attorney General

Contribution Limits: Impact When a Candidate Subject to Limit Does Not Have a Primary Election

Intent. PDC Interpretation 04-01: (a) documents the Commission's interpretation of [RCW 42.17.640\(2\)](#) in the event that there is no primary election for a candidate for offices subject to limit, and (b) provides guidance regarding actions an affected candidate is required to take concerning contributions received in anticipation of both a primary and general election.

History: On September 28, 1993, the Commission adopted an interpretation that "Initiative 134 permits contributions up to the stated limit for elections in which the candidate actually appears on the ballot." The meeting minutes do not reference the circumstance where a state office candidate (as referenced in a prior version of [RCW 42.17.640\(1\)](#)) appears as a write-in candidate. See attached excerpt of minutes from September 1993 meeting and memorandum dated September 1, 1993, from Roselyn Marcus, Assistant Attorney General. On February 24, 2004 the Commission adopted this interpretative statement (interpretation). On August 27, 2009 and May 26, 2011, the Commission updated this interpretation to reflect amendments in the relevant provisions of [RCW 42.17](#).

Applicable Statutory References:

[RCW 42.17.640\(1\)](#) provides a list of persons subject to contribution limits. It states:

(1) *The contribution limits in this section apply to:*

- (a) Candidates for state legislative office;
- (b) Candidates for state office other than state legislative office;
- (c) Candidates for county office;
- (d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;
- (e) Candidates for city council office;
- (f) Candidates for mayoral office;
- (g) Persons holding an office in (a) through (d) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;
- (h) Caucus political committees;
- (i) Bona fide political parties.

[RCW 42.17.640\(2\)](#) says, in part:

*No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office, county office, city council office, or mayoral office that in the aggregate exceed eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a state legislative office that in the aggregate exceed *one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. (Emphasis added)*

[RCW 42.17.645](#) provides in part:

*(1) No person may make contributions to a candidate for judicial office that in the aggregate exceed *one thousand four hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary.*

Contributions for special elections to fill a vacancy in a judicial office are addressed in [RCW 42.17.645\(2\)](#).

*These dollar thresholds are adjusted for inflation by the Commission prior to even-numbered year elections in accordance with [RCW 42.17.690](#). See [WAC 390-05-400](#).

[RCW 42.17.020\(45\)](#) says:

"State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

[RCW 42.17.020\(46\)](#) says:

"State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

[RCW 42.17.020\(17\)](#) says, in part:

"Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: . . .

[RCW 42.17.640\(14\)](#) says:

No person may accept contributions that exceed the contribution limitations provided in this section.

Interpretation:

[RCW 42.17.640\(2\)](#) applies to all contributors except bona fide political parties and caucus political committees. The limits in [RCW 42.17.645\(1\) and \(2\)](#) apply to all contributors. Pursuant to [WAC 390-05-400](#) (Changes in Dollar Amounts), with respect to the 2011 elections, subsection [.640\(2\)](#) permits an individual, business, union, PAC or association to donate in the aggregate up to \$800 per election to a legislative candidate, \$800 per election to a county office candidate, \$800 per election to a city council candidate, \$800 per election to a mayoral candidate, \$1,600 per election to a statewide executive candidate, \$1,600 per election to a judicial candidate, and \$1,600 per election to a special purpose district candidate in jurisdictions with more than 200,000 registered voters.

On its face, subsection [.640\(2\)](#) and [.645\(1\)](#) clearly anticipate and require that there be an election in which the candidate subject to limits is on the ballot or is appearing as a write-in.

As such, in the case where there is no primary election for the office and position being sought by a candidate subject to limits, but there is a general election, candidates are only entitled to receive -- and donors subject to section [.640\(2\)](#) and [.645\(1\)](#) are only entitled to give -- up to the maximum allowed for a single election. Contributions for special elections to fill a vacancy in a judicial office are addressed in [RCW 42.17.645\(2\)](#).

For those candidates subject to limits who had reasonably anticipated that there would be a primary election and who, in accordance with [WAC 390-17-300](#), legally had accepted in excess of the maximum allowed for a single election from persons having a per election limit, once it is determined by the appropriate elections official that there is no primary election, those candidates must immediately refund to each contributor the amount of the excess contribution and properly disclose the refund on the appropriate report.

Candidates who do not have a primary election do not file the 21 or 7 day pre-primary C-4 reports. Instead, they continue to file C-4 reports on the 10th of each month in accordance with [RCW 42.17.080](#) until the months in which the 21 and 7 day pre-general C-4 reports are due.

WAC 390-17-303

Superior court candidates—Eligibility to receive contributions.

(1) Candidates for judicial office are subject to the contribution limits in RCW 42.17A.410 and the timing restriction on contributions of a candidate's personal funds in RCW 42.17A.420. Pursuant to Article 4, Section 29, Amendment 41 of the state Constitution and RCW 42.17A.410, candidates for the office of judge of the superior court may only receive contributions for each election in which the candidate is on the ballot or appears as a write-in candidate.

(2) For purposes of RCW 42.17A.410:

(a) Only superior court candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive contributions with respect to that primary; and

(b) Only superior court candidates who appear on the general election ballot or as write-in candidates in the general election may receive contributions with respect to that general election.

(3)(a) A superior court candidate who is issued a certificate of election before the primary election and whose name does not appear on either the primary or general election ballot may receive contributions pursuant to RCW 42.17A.410:

(i) Through the last day for withdrawal of declarations of candidacy pursuant to RCW 29A.24.131; or

(ii) If there is a reopening of filing for the position and no other candidate files, the last day for reopening of filing pursuant to RCW 29A.24.171 and 29A.24.181.

(b) Contributions remaining in the account of such a superior court candidate who is issued a certificate of election must be returned to contributors within two weeks of certification. Primary election related contributions are to be returned using the first-in, first-out accounting method. Any contributions received with respect to the general election must be returned in full to contributors.

(4) A superior court candidate who is issued a certificate of election after the primary election and whose name does not appear on the general election ballot may receive contributions pursuant to RCW 42.17A.410. However, contributions received with respect to the general election must be returned in full to contributors within two weeks of certification.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-17-303, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and 2006 c 348. WSR 07-14-126, § 390-17-303, filed 7/3/07, effective 11/7/07.]

NEW

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 elections 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 rule is a violation of RCW 42.17A.405 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 390-17-303 (~~Superior court candidates~~) Eligibility to receive contributions. 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. All candidates are subject to the timing restriction on contributions of a candidate's personal funds in RCW 42.17A.420. Only candidates whose names appear on an election ballot or as write-in candidates in the election may receive contributions designated for that election.

(1) Primary election contributions. When there is no primary election for an office other than superior court judge, 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 elections official's determination that there will be no primary election and disclose the refunds on the appropriate report.

(2) Superior court candidates: (~~Candidates for judicial office are subject to the contribution limits in RCW 42.17A.410 and the timing restriction on contributions of a candidate's personal funds in RCW 42.17A.420.~~) Pursuant to Article 4, Section 29, Amendment 41 of

the state Constitution and RCW 42.17A.410, candidates for the office of judge of the superior court may only receive contributions for each election in which the candidate is on the ballot or appears as a write-in candidate.

~~((2) For purposes of RCW 42.17A.410:~~

~~(a) Only superior court candidates who appear on the primary election ballot or as write-in candidates in the primary election may receive contributions with respect to that primary; and~~

~~(b) Only superior court candidates who appear on the general election ballot or as write-in candidates in the general election may receive contributions with respect to that general election.)~~

~~((3))~~(a) A superior court candidate who is issued a certificate of election before the primary election and whose name does not appear on either the primary or general election ballot may receive contributions pursuant to RCW 42.17A.410:

(i) Through the last day for withdrawal of declarations of candidacy pursuant to RCW 29A.24.131; or

(ii) If there is a reopening of filing for the position and no other candidate files, the last day for reopening of filing pursuant to RCW 29A.24.171 and 29A.24.181.

(b) Contributions remaining in the account of such a superior court candidate who is issued a certificate of election must be returned to contributors within two weeks of certification and disclosed on the appropriate report. Primary election related contributions are to be returned using the first-in, first-out accounting method. Any contributions received with respect to the general election must be returned in full to contributors.

~~((4))~~ (c) A superior court candidate who is issued a certificate of election after the primary election and whose name does not appear on the general election ballot may receive contributions pursuant to RCW 42.17A.410. However, contributions received with respect to the general election must be returned in full to contributors within two weeks of certification and disclosed on the appropriate report.

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

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-17-303, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370 and

2006 c 348. WSR 07-14-126, § 390-17-303, filed 7/3/07, effective
11/7/07.]