

Dear Director Lavallee and members of the Commission:

Thank you for considering my recent request for a declaratory order at your last meeting. I'm sorry I couldn't be there, as I was traveling internationally, but I was able to watch the hearing after my return. I appreciate you scheduling my question for a public hearing at your next meeting, and before that I wanted to follow up on a few points you discussed at your last meeting.

As you will recall, my question has to do with the language in the fundraising freeze statute saying that “no state official *or a person employed by* or acting on behalf of a state official or state legislator may solicit or accept contributions” during the fundraising freeze period. RCW 42.17A.560(1). As I noted, I have always understood this language to mean that no one who works for a state official in a personal or campaign capacity, or who otherwise is acting on behalf of the state official, can fundraise for the state official during the freeze. For example, the official's campaign manager, campaign treasurer, or campaign volunteers cannot fundraise on the official's behalf during the freeze. I have never understood this language to apply to people who work for state agencies headed by “state officials” if those agency employees decide to run for office themselves, e.g., if an employee of the Treasurer's Office decides to run for school board, city council, or the legislature. But as I noted in my last letter, I recently became aware that some individuals have suggested a contrary view under which any employee of a state agency headed by a state official would be treated as “a person employed by . . . a state official” and thus covered by the fundraising freeze. I think that interpretation is clearly wrong for all the reasons stated in my prior letter, and I want to follow up now to address some points you all discussed about this at your last meeting.

First, several Commissioners seemed to have a strong initial reaction much like my longstanding view, i.e., that the “fundraising freeze” obviously does not apply to state employees who decide to run for office themselves. Some seemed to wonder whether guidance on this is really even necessary when it seems so obvious. I agree that the language of RCW 42.17A.560 obviously does not apply, and I provided many examples in my prior letter of state employees who have run for office, raised money for their campaigns during the fundraising freeze period, and did not face any complaint. I am not aware of anyone who works in campaign fundraising or any lawyer who works in compliance in this area who thinks that RCW 42.17A.560 does or should apply to state employees who run for office themselves. But I still think guidance would be useful because I know the risk of a complaint has deterred some state employees from fundraising during the freeze period and has caused others needless stress when they decided to fundraise during that period. Even though I advise clients that RCW 42.17A.560 has never been understood to apply to state employees, they still know that opposing candidates who are not state employees may try to use this against them, and just the filing of a complaint can lead to negative news coverage.

Second, some Commissioners suggested that whether the freeze applies might depend in part on whether an employee is running to lead the same office in which they currently work. If I

understood correctly, that would mean, for example, that the freeze would apply to an employee of the Auditor if they ran to be Auditor, but not if they ran to be Treasurer, or for the legislature, or to serve on their local school board. I would respectfully submit that I don't see a basis for this distinction in the language or purpose of RCW 42.17A.560. The key question for purposes of my inquiry is whether a state employee who works for an agency headed by an elected official counts as "a person employed by or acting on behalf of a state official" when they decide to run for office themselves. Whether they run to lead the office in which they currently work or an entirely separate office should not affect that analysis. Either way, they are currently an employee of a state agency, not of the official who runs the agency.

Finally, Commission staff mentioned at the hearing that they have previously given informal advice that legislative assistants who decide to run for office themselves are covered by the fundraising freeze. Given the unique roles and responsibilities of legislative assistants, I am not asking the Commission to revisit that specific question; my question is about state employees more generally. The role of legislative assistants has several unique features that could reasonably lead the Commission to conclude that legislative assistants are more like personal "employees" of state officials covered by the freeze than they are like employees of state agencies headed by elected officials. For example, legislative assistants, as I understand the role, work exclusively with a single legislator (a state official who is clearly covered), they are not supervised by or answerable to anyone else, they don't meaningfully work for an agency distinct from the legislator, they often do all sorts of personal-employee like tasks for legislators (such as picking up food or dry cleaning), many of them also work for their legislator bosses in other capacities (e.g., as campaign staff outside of session), and they very frequently leave the role when a new legislator is elected. Additionally, more than virtually any other type of state employee, legislative assistants are intimately involved in the process of passing legislation (the process the freeze is meant to protect), working closely with their legislator bosses to schedule meetings and hearings, gather input on legislation, and meet with constituents and other legislative staff to refine proposals. Thus, as both a matter of statutory language and purpose, there is at least a reasonable argument that legislative assistants are "employed by or acting on behalf of a state official or state legislator" and thus covered by the freeze. As I explained in my prior letter, there is no such reasonable argument as to other state employees, who simply work in agencies headed by "a state official." So I would ask that you clarify this point as to state employees generally, but leave for another day the specific topic of legislative assistants given their unique roles and considerations.

Thank you for your continued attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "J. PETERSON". The signature is stylized with a large, looped initial "J" and the name "PETERSON" written in a cursive-like font.

Jay Petterson
Blue Wave Political Partners, LLC