

Public Disclosure Commission
Evergreen Plaza
711 Capitol Way S
Suite 206
Olympia, WA 98504

November 16, 2022

Dear Director Lavalley and Members of the Commission:

I am writing to request a declaratory order answering a question important to potential political candidates and to the public: whether the “fundraising freeze” in RCW 42.17A.560 applies to state employees who decide to run for office.

As background, over the years many employees of state agencies have run for elected office, such as to become judges, school board members, state legislators, or statewide elected officials. Just in the last decade, for example, Chris Kilduff ran for school board and then state representative while working in the Washington Attorney General’s Office, Kristine Reeves ran for state representative while working in the Department of Commerce, Michael Pellicciotti ran for State Treasurer while working in the Attorney General’s Office, and Sharlett Mena ran for the state legislature while working in the Department of Ecology. There are countless other examples.

When state employees run for office, they of course have to comply with the Executive Ethics Act and cannot use any state resources for their campaigns. But recently it has come to my attention that some election observers think that employees of state agencies who choose to run for state office are also covered by the “fundraising freeze” in RCW 42.17A.560. I am not aware of any complaint ever being filed against the individuals above or anyone else on this basis but given how common it is for state employees to run for office, it would be useful for the PDC to clarify its interpretation of the freeze statute.

The freeze statute says 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, which runs from 30 days before the legislative session begins until the end of the legislative session. RCW 42.17A.560(1). The statute defines a state official as “a person who holds a state office,” and defines a “state office” as “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 42.17A.005(49), (50).

The statute thus makes clear that no state official (a legislator or statewide elected official) can solicit or accept contributions during the fundraising freeze. The statute also says that no person “employed by or acting on behalf of a state official or state legislator may solicit or accept contributions” during the freeze period. I currently understand that prohibition 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 on the state official’s behalf during the freeze. For example, the official’s campaign manager, campaign treasurer, or campaign volunteers cannot fundraise on their behalf during the freeze.

It has recently come to my attention, however, that some individuals believe that the phrase “person employed by . . . a state official” means that people employed *by state agencies* that are headed by state officials

are subject to the fundraising freeze if they decide to run for office themselves. On this reading, any employee of the Department of Natural Resources, the Attorney General's Office, the Office of Superintendent of Public Instruction, the Treasurer, the Auditor, or any agency overseen by the Governor (such as Ecology, Commerce, or any other cabinet agency) who themselves runs for office is covered by the fundraising freeze.

I think this interpretation is flawed for at least three reasons: (1) it ignores the statutory text; (2) it is divorced from the purpose of the fundraising freeze; and (3) it leads to bizarre and unfortunate policy consequences.

Starting with the first point, applying the fundraising freeze to state employees doesn't make any sense under the statute's plain language. The freeze statute applies to state officials and people "employed by or acting on behalf of a state official." RCW 42.17A.560(1). A person who works for a state agency is an employee *of the agency*, not of the state official who runs the agency. For example, a person who works for the Department of Natural Resources (DNR) is an employee of DNR, not of Hilary Franz, the Commissioner of Public Lands. While Commissioner Franz leads the agency, she is not the employer of DNR employees. To conclude otherwise is to confuse being a person's *supervisor* and being their *employer*. If a new Commissioner of Public Lands is elected, DNR employees will remain DNR employees, they do not immediately become employees of whoever the new Commissioner is. By the same token, a private CEO, like Jeff Bezos, supervises many employees, but it is the company (Amazon) that is their employer, not the CEO. If the legislature intended the fundraising freeze to cover all state employees, it could have said that in a much more straightforward way.

Turning to the second point, interpreting the fundraising freeze statute to apply to any state employee who works for an agency headed by a state official divorces the scope of the statute's application from its purpose. The fundraising freeze, by its terms, applies to state officials (and their employees and those acting on their behalf) running for any office, not just state offices, e.g., it applies to a state legislator who decides to run for mayor. The purpose of the fundraising freeze is to protect the legislative process from corruption or the appearance of corruption by prohibiting fundraising by elected officials while they are in the process of enacting and supporting proposed legislation. But under the interpretation where all state employees of agencies headed by elected officials are covered, the freeze would apply to people who are not running for a state office and have no role in the legislative process. For example, a DNR employee in Spokane who decided to run for a seat on their local school board would be prohibited from fundraising during the legislative session. Similarly, an Assistant Attorney General in Yakima who decided to run for a seat on the Yakima County Superior Court would be prohibited from fundraising during the fundraising freeze. This makes no sense and does nothing to achieve the statute's purpose.

Finally, interpreting the freeze statute to apply to all employees of agencies headed by state officials puts state employees who run for office at a disadvantage compared to private employees, and for no good reason. Running for office and raising campaign funds are difficult tasks, and state laws should not be interpreted unnecessarily to favor private employees over public employees in that process. But under the interpretation I have described above, any employee of an agency headed by a state official is subject to the fundraising freeze, prohibiting them from fundraising for 3-5 months each year, even as private employees are free to fundraise during that time, even if they are actively involved in the legislative process (e.g., as paid lobbyists). The Commission should not interpret state law to disadvantage public servants in this way.

I have heard an argument that if the statute does not apply to all state employees, then elected officials could pressure employees of their agencies to fundraise on their behalf during session, but that concern makes no sense. To begin with, the freeze statute applies to state officials and people “employed by *or acting on behalf of* a state official.” RCW 42.17A.560(1). Thus, if a state official pushed state agency employees to fundraise for the official’s campaign during the fundraising freeze, that would violate the provision prohibiting fundraising “on behalf of a state official.” It would also violate the Executive Ethics Act by using state resources to support a campaign. The issue I am asking the Commission to address is about state employees fundraising *on their own behalf* in their own campaigns for office, not fundraising on behalf of state officials, which, as just explained, is prohibited regardless of the answer to my question.

For all of these reasons, I ask the Commission to clarify that the “fundraising freeze” in RCW 42.17A.560(1) does not apply to state employees who are fundraising on their own behalf in their own campaigns for office, even if they work for agencies headed by “state officials.”

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, Partner
Blue Wave Political Partners, LLC