



State of Washington
PUBLIC DISCLOSURE COMMISSION

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Memo

To: PDC Commissioners

From: Sean Flynn, General Counsel

Date: October 20, 2023

Re: Application of RCW 42.17A.560 (legislative freeze) to employees

Earlier this year, the Commission denied a petition for declaratory order submitted by Blue Wave Political Partners, seeking a clarification to what extent the legislative freeze period in RCW 42.17A.560, prohibiting campaign fundraising during the legislative session, applies to the employees of a state official who are fundraising for their own election campaigns. In denying the petition, the Commission acknowledged the desire for clarity in this area and instructed PDC staff to collect information, review past discussion on this topic, and report back to the Commission. The Commission anticipated considering clarifying the law through guidance, interpretive statement, or rulemaking. This memo makes general recommendations for drafting policy as guidance or interpretative statement.

The legislative freeze period provides that beginning 30 days before a regular session and continuing through that session, or during a special session, “no state official *or a person employed by or acting on behalf of a state official or state legislator* may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt.” RCW 42.17A.560(1). The question here is whether and to what extent the law applies to “employees” of a state official, and specifically whether it includes employees fundraising for their own campaigns for local or state office. The Blue Wave petition contended that the freeze should not apply to employees running for office.

The Commission previously considered this question in 2017, involving a question whether the legislative freeze of RCW 42.17A.560 applied to a legislative staff member fundraising for their own campaign for local office. After consultation with the assistant attorney general, PDC staff recommended to the Commission that the restriction applies to legislative staff fundraising activities for their own campaigns for local office. The conclusion was based upon the plain reading of the statute and the legislative history. The Commission agreed with staff’s recommendation. Staff has continued to follow this guidance.

The conclusion reached in 2017 rests a on a reasonable reading of the statute and is supported by the purpose of the law. First, the law is not limited to restricting the activities of state officials or

legislators, as it expressly includes persons “employed or acting on behalf of” an official or legislator. Second, the law is not limited to fundraising directly for a state official or legislator, as it prohibits fundraising “to a candidate or authorized committee,” which implies *any* candidate campaign, not just the state official’s own campaign. The rules further explain that the restriction applies to a state official or a “known candidate,” which expressly includes candidates for state and local office. WAC 390-17-400(2).¹

This reading is consistent with the intent of the law. The legislative freeze was first enacted under Initiative 134 (1992), which included a package of reforms expressly intended to reduce the influence of large contributors and restore public trust in government. RCW 42.17A.400. That law established the freeze period to protect against such influence during the time when influence is most brought to bear on government.

Influence is not always directed at the state official alone, but can reach the assistants, deputies, and other persons who share in policymaking responsibilities, through independent or delegated authority. State officials have specific authorization for appointing assistants and deputies to perform the duties of that office.² Professional staff of the Legislature and Governor’s office, who exercise judgement and discretion, including the development of legislation, are deemed “executive state officers” and required to file annual personal financial affairs statements (F-1 reports) because of their position in relation to state officials. *See* WAC 390-24-160.

The legislative freeze protects against the effects of influence over these policymakers as much as with the state officials and legislators who oversee them. For example, the deputy of a state official running their own campaign for office may be influenced by a campaign contribution to bring forth a policy idea to their state official that favors the donor’s interest. A legislative assistant with scheduling responsibilities for a senator may be pressured to schedule a meeting or make a special accommodation with the senator for a person who has donated to that LA’s own campaign.

The Commission could continue simply to apply the decision reached in 2017 and conclude that an employee of a state official is covered under the freeze. At some point, however, the relationship between an employee and state official may become sufficiently attenuated as to eliminate concern regarding influence. While a deputy or a legislative assistant have direct access to their state official, other employees in administrative or clerical roles generally do not share the same proximity. Indeed, it may seem overkill to prohibit any entry-level employee from running their own campaign for local office for fear of the influence their donors may exert over the executive functions of that office. Furthermore, there are collateral protections against

¹ *See Republican Committee v. PDC*, 133 Wn.2d 229, 245 (1997) (holding that the law prohibited a caucus committee from soliciting or accepting contributions from any “known candidate”).

² *See for example* RCW 43.07.020 (providing for an assistant and deputy secretary of state, and chief of staff with “the power to perform any act or duty relating to the secretary of state's office”); *and see* RCW 43.12.021 (authorizing the commissioner of public lands to appoint a deputy); RCW 43.10.060 (authorizing the attorney general to appoint assistants with “the power to perform any act which the attorney general is authorized by law to perform”).

the infiltration of campaigning within government agencies.³ The more the restriction is drawn away from the purpose of the law, the more vulnerable the law may become to constitutional scrutiny in regards to protected activity like political speech.

The Commission may want to consider adopting a position that balances the purpose of the law in guarding against the influence money on government, and the practical limitations of influence for employees removed from decision-making responsibilities. Such a balance would continue to follow the 2017 guidance in relation to legislative staff and could extend to include certain executive officers of a state official.

Achieving such balance could be in the form of designating a bright line distinction for which positions to include within the freeze, such as a deputy official. Alternatively, the Commission could articulate a general standard for each office to apply within its own structure. For example, the State Ethics Act defines a “state officer” as “every person holding a position of public trust in or under an executive, legislative, or judicial office of the state,” and in addition to legislators and elected state officials, includes “employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work.” RCW 42.52. 010(20). Also, the standard for “professional staff” who must file an F-1 report is left up to the Legislature and the Governor’s office to select who meets the criteria under WAC 390-24-160. Either version, whether specific or general, would provide a reasonable limit of the law to a group or class of employees susceptible to the kind of influence the law intended to prevent.

Depending on which direction the Commission wants to take, PDC staff could prepare a draft policy and seek public input for consideration. The policy could take the form of agency guidance similar to the 2017 memo, including staff recommendations, or could be adopted as a formal interpretive statement of the Commission. Neither approach would bind the Commission’s decision-making authority, but would guide staff’s approach in applying the law, and could be used to inform possible rulemaking in the future if the Commission deemed it appropriate.

³ See RCW 42.52.180 (prohibiting any state employee from using public facilities to support or oppose any campaign); and see RCW 42.17A.565 (prohibiting state officials from soliciting contributions from an employee or for providing hiring preferences based on contributions).

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



STATE OF WASHINGTON
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April 28, 2017

The Honorable Laurie Dolan
House of Representatives
PO Box 40600
Olympia, WA 98504

Dear Representative Dolan:

You recently asked the Public Disclosure Commission (PDC) to review PDC staff's interpretation regarding WAC 390-17-400, specifically whether legislative staff members are prohibited from soliciting contributions during the legislative session when the contributions would be for the staff member's local government campaign, and not to support their legislator's campaign.

During the April 27, 2017 PDC meeting, the Commission considered the PDC's rule and the authorizing statute in light of your concerns about the potential limitations on legislative staff political activity.

WAC 390-17-400 is based on RCW 42.17A.560, which provides in pertinent part:

(1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. Contributions received through the mail after the thirtieth day before a regular legislative session may be accepted if the contribution is postmarked prior to the thirtieth day before the session.

(Emphasis added.)

Our Assistant Attorney General reviewed the legislative history of RCW 42.17A.560, and found that it was part of the contribution limit laws developed in Initiative 134 in 1992. The Initiative was somewhat narrower in scope than the resulting statutory language, but our attorney agrees that the statute does preclude legislative staff from fundraising, even if the fundraising is for the staff member's local government campaign.

The PDC's rule provides more detailed information about the fundraising activities that are not allowed during session. Specifically, with regard to what activity is at issue, and who is bound by the rule, WAC 390-17-400 provides:

(7) 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.

(8) "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.

(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 (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.

(Emphasis added.)

Representative Dolan

April 28, 2017

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The Commissioners agreed with staff's interpretation that legislative staff members are restricted from all fundraising for political campaigns during the legislative session. The Commissioners also understand that with special legislative sessions running into the late spring, and potentially into summer, this can create problems for anyone campaigning for public office. However, this is not a problem that can be solved with a rule change given the clear language of RCW 42.17A.560. Rather, a statutory change may be needed if the Legislature would like to limit the session freeze on campaign fundraising to the period of the regular legislative session, or to exempt staff from the fundraising freeze with regard to their personal political campaigns.

We appreciate your inquiry, your interest in our issues, and your support for the PDC. Please reach out to PDC staff if we can provide any further assistance. Because I am leaving the agency after this month, please get in touch with Deputy Director Barbara (BG) Sandahl at (360) 586-1042, barbara.sandahl@pdc.wa.gov.

Sincerely,


Evelyn Fielding Lopez
Executive Director

cc: Commission



Washington State Public Disclosure Commission
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To: Commissioners, Washington State Public Disclosure Commission
From: Evelyn Fielding Lopez, Executive Director *efl*
Date: April 24, 2017
Re: Request Interpretation of WAC 390-17-400
Time Limit to Solicit or Accept Contributions—Session Freeze

Request for Interpretation or Review

On April 17, 2017, Representative Laurie Dolan asked if the Commission could look into interpretations regarding WAC 390-17-400, specifically whether legislative staff members were prohibited from soliciting contributions during the Legislative session when the contributions would be for the staff member's local government campaign, and would not be contributions for the Legislator's campaign.

WAC 390-17-400 is based on RCW 42.17A.560, which provides in pertinent part:

(1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. Contributions received through the mail after the thirtieth day before a regular legislative session may be accepted if the contribution is postmarked prior to the thirtieth day before the session.

...

(Emphasis added.) A copy of the statute is attached.

The PDC's rule provides more detailed information about the fundraising activities that are not allowed during session. Specifically, with regard to what activity is at issue, and who is bound by the rule, WAC 390-17-400 provides:

(7) Activities not allowed during a freeze period. During a legislative session freeze period, a state official, 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.

(8) "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.

(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 (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.

(Emphasis added.) A copy of the rule is attached.

Representative Dolan indicated that other Legislators and legislative counsel believe that this rule was previously interpreted to limit legislative staff from fundraising for Legislators, and that staff were not prohibited from raising contributions for their own, non-legislative, campaigns.

However, the plain language of the statute and rule seem to establish that legislative staff cannot fundraise for any public office during session. It might be helpful to request the AGO to look into the legislative history of RCW 42.17A.560 to see if there is any information about the intent of the Legislature regarding fundraising by legislative staff.

Recommendation

The Commission may ask for legal advice and legislative history, or the Commission may decide based upon the statutory and rule language whether legislative staff members are prohibited from fundraising for a state or local government campaign during the Legislative session.

Request for Rule Interpretation

April 24, 2017

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From my review, the statute plainly prohibits both Legislators and their staff from fundraising for public office campaigns during the Legislative session, but it might be helpful to review the legislative history before responding to the request.

Enclosures

RCW 42.17A.560**Time limit for state official to solicit or accept contributions.**

(1) During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing through the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. Contributions received through the mail after the thirtieth day before a regular legislative session may be accepted if the contribution is postmarked prior to the thirtieth day before the session.

(2) This section does not apply to activities authorized in RCW 43.07.370.

[2006 c 348 § 5; 2006 c 344 § 31; 2003 c 164 § 3; 1993 c 2 § 11 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.710.]

NOTES:

Reviser's note: This section was amended by 2006 c 344 § 31 and by 2006 c 348 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2006 c 344 §§ 1-16 and 18-40: See note following RCW 29A.04.311.

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) **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;

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

(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.

(7) **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.

(8) **"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.

(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 (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.

(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.

(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 a
- 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 behalf of a state official to take any of the actions prohibited by subsection (7) or (8)(c) of this section.

(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.

(12) **Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections (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 written confidentiality agreement and, if the agreement is breached, all reasonable steps 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 the

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 he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek to elective office,

- Whether respondents currently hold a favorable opinion about these individuals, the 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 the office, but not why respondents would vote in the manner they indicated or whether 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, 42.17A.125(1). WSR 16-04-081, § 390-17-400, filed 1/29/16, effective 2/29/16. 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.]