January 22, 2024

To: Commission members
From: Kim Bradford, Deputy Director
Re: Contributor employer and occupation reporting

Background

Campaign disclosure laws require political committees to regularly report details about the amount and sources of contributions they receive. Under RCW 42.17A.240(12), those reports must include "(a)ny other information required by the commission by rule in conformance with the policies and purposes of this chapter." Since 1993, the Commission has exercised its rulemaking authority to establish additional requirements by requiring disclosure of contributor occupation, employer and employer's location when a donor's aggregate contributions exceed a certain threshold (currently $250). The requirement, an outgrowth of the adoption of contribution limits in the early 90s, supports the public interest in discouraging circumvention of the limits by employers through their employees. The law was protected from repeal by a gubernatorial veto in 1995, which provided strong support for the continued utility of the law.

Recently, commissioners and members of the regulated community have cited a need for better guidance on what campaigns need to report when the employer/occupation information is complicated by the modern employment landscape or is incomplete despite efforts to collect it.

Determining employer and occupation

The first concern is essentially one of too much information. When a contributor has multiple employers, and even occupations, which one should the campaign disclose? And what employer location matters when an employee works in a satellite office or, increasingly, from their home?

The Commission generally has three alternatives at its disposal to promulgate PDC requirements. In order of increasing formality, these are: guidance, interpretations and rulemaking. Often the best approach is to start with the less formal approach of guidance or an interpretation, which offers more flexibility to the agency to "try out" a policy, while retaining the opportunity to tweak the policy as needed, as well as the option to reduce it to formal rule in the future, after a trial period.

The agency may offer informal guidance for use on the agency's website, in trainings, and in response to specific inquiries. This approach provides the quickest response to the regulated community and allows for adaption if further questions or issues arise.

The following guidance is offered as a starting point for consideration:

Campaigns are required to report the contributor's occupation, employer and employer's city and state when their aggregate contributions exceed $250. Some contributors may have more complex employment situations involving multiple employers, locations and occupations. If multiple employers or occupations are provided by the contributor, the campaign should ask the contributor which employer and occupation represents the largest share of their income. Similarly, if the contributor is unsure of what employer location to provide, the campaign should request the location of the office at which the contributor works, or, in the case of teleworkers, the office to which they would report if needed. If no such duty station exists, report the location of the employer's headquarters.

The aim is not to place investigatory obligations on the campaigns but instead to help them ask the right questions of contributors at the outset and to decide what information is relevant when a contributor reports having multiple employers and occupations. As is the case now, campaigns would not be required to verify the information, nor to inquire further when the existence of multiple employers is unknown to them.

When information is missing

The second concern arises when the campaign, conversely, has too little information from the donor. The question is what the campaign should do if it is unable to obtain the occupation and employer information for a contributor giving more than $250. This situation is substantively different from a campaign that needs help identifying what pieces of information in its possession are most relevant. Here too campaigns are faced with making the best of the information provided to them, but in this case, it's a matter of sufficiency rather than relevance.

As previously discussed with the Commission, other jurisdictions vary in how they cure such deficiencies, with approaches ranging from the Federal Election Commission's "best efforts" standard to California's requirement to return the contribution within 60 days. Washington has no such express provision. In the absence of a stated allowance to omit otherwise required information, PDC staff's position is that a contribution that lacks required attribution is not valid or eligible to be retained, and does not serve the purpose for which the law was intended. We would advise the campaign to return the contribution.

If the Commission wants to provide greater latitude than is implied by the rule, it might consider amending WAC 390-16-034 to establish an explicit requirement or to set forth what constitutes a sufficient good-faith effort to obtain a contributor's occupation and employer information. Alternatively, a formal Interpretation could explain the Commission's view of what campaigns must do when required contribution information is missing. That approach is likely more efficient, but also would disconnect the rule from an important element of its application that campaigns and the public need to know.