



**State of Washington
PUBLIC DISCLOSURE COMMISSION**

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Memo

To: PDC Commissioners
From: Sean Flynn, General Counsel
Date: November 30, 2023
Re: APA rulemaking petition re WAC 390-17-405 (volunteer professional services)

This memo presents the petition for rulemaking submitted by Jo Zichtergerman on October 27, 2023. The Commission has 60 days after submission of the petition either to deny the petition or initiate rulemaking. See RCW 34.05.330.

The petition requests a rule that would exempt certain in-kind contributions for “professional services” from campaign contribution limits. The petition describes professional services as particular skills or competencies developed in a professional career, such as data analysis, music performance, and software program management.

Personal and professional services donated to a campaign generally are considered contributions to the campaign. RCW 42.17A.005(15)(a)(i). Certain professional services for legal and accounting work are excluded from the definition of a contribution if, and to the extent to which, such services are donated: (1) to a political party or caucus committee; or (2) to a candidate specifically for the purpose of ensuring compliance with election or campaign finance laws. RCW 42.17A.005(b)(viii).

There is a separate exception from the definition of a contribution for personal services commonly performed by campaign workers. The types of such “volunteer services” under this exception are set out in rule, under WAC 390-17-405(1), and are distinguished from professional legal and accounting services.

Contributions, including in-kind contributions, are subject to contribution limits. RCW 42.17A.405. The law provides a limited number of exemptions from these limits for certain contributions, including political party-based activities that do not specifically benefit a candidate (such as get-out-the-vote campaigns), internal party-building activities, and independent expenditures. RCW 42.17A.405(15). Donated professional and personal services are not expressly exempted from contribution limits.

The petition here seeks a rule to add an exemption to contribution limits for donated professional services. However, the exemptions to contribution limits are provided by statute. Adding a new category of contributions that are exempt from contribution limits would change the current statutory scheme. It is questionable under what authority the agency could adopt a rule that would expand such statutory exemptions, and the petition does not identify any authority for the agency to create an additional exemption by rule. Therefore, the proposed rule likely is out of scope for rulemaking.

Staff recommends that the Commission deny the petition. The policy considerations raised in the petition may better be addressed to the Legislature for possible legislation to amend RCW 42.17A.405(15).