

PDC Interpretation

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SEE ALSO: [Sec. 703, Chap. 204, Laws of 2010](#) (effective March 25, 2010);
[RCW 42.17.128](#);
[RCW 42.17.130](#);
[WAC 390-05-271](#);
[WAC 390-05-273](#);
[WAC 390-05-525](#);
[PDC Interpretation 04-02 \(Guidelines for Local Government Agencies in Election Campaigns\)](#);
[RCW 42.23.020\(2\)](#); and,
[RCW 42.52.180](#)

Public Service Announcements By State-Elected Officials and Municipal Officers [Section 703, Chapter 204, Laws of 2010](#)

Intent

The Public Disclosure Commission enforces the election and campaign reporting requirements in chapter [42.17 RCW](#). This interpretation is intended to provide guidance to state-elected officials and municipal officers on [Section 703, Chapter 204, Laws of 2010](#), a new law to be codified in [RCW 42.17](#) concerning limitations on public service announcements when those officials and officers are candidates. This interpretation is also intended to interpret and provide guidance on current laws and rules in light of the new law.

Background

[Section 703, Chapter 204, Laws of 2010](#) – “2010 PSA Law”

Effective March 25, 2010, a new law was passed which will be codified in [RCW 42.17, Section 703, Chapter 204, Laws of 2010](#) (“2010 PSA Law”). It reads:

No state-elected official or municipal officer may speak or appear in a public service announcement that is broadcast, shown, or distributed in any form whatsoever during the period beginning January 1st and continuing through

the general election if that official or officer is a candidate. If the official or officer does not control the broadcast, showing, or distribution of a public service announcement in which he or she speaks or appears, then the official or officer shall contractually limit the use of the public service announcement to be consistent with this section prior to participating in the public service announcement. This section does not apply to public service announcements that are part of the regular duties of the office that only mention or visually display the office or office seal or logo and do not mention or visually display the name of the official or officer in the announcement.

Other Laws

[RCW 42.17.020](#) defines “state official” as a person who holds a state office.

[RCW 42.17.020](#) defines “elected official” as any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in such office.

[RCW 42.17.020](#) defines “candidate” as any individual who seeks nomination for election or election to public office and provides several factors demonstrating when a person becomes a candidate.

[RCW 42.17](#) does not define “municipal officer.” The Legislature otherwise defined the term in current law at [RCW 42.23.020\(2\)](#) as “all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer.” The term “municipality” is defined in that same statute at subsection (1) as “all counties, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the State of Washington.”

[RCW 42.17.128](#) restricts the use of public funds to finance campaigns with an exception not relevant here. [RCW 42.17.130](#) restricts the use of public facilities and agency facilities in campaigns. ([RCW 42.17.130](#) does not apply to persons who are state officers or state employees because they are subject to similar restrictions in the State Ethics Laws in [RCW 42.52.180](#). See [RCW 42.17.131](#).) [RCW 42.17.130\(3\)](#) provides that this restriction in [RCW 42.17.130](#) does not apply to activities that are part of the “normal and regular conduct of the office or agency.”

The Commission has provided further guidance with respect to [RCW 42.17.130](#) in [WAC 390-05-271](#), [WAC 390-05-273](#), and [PDC Interpretation 04-02 \(Guidelines for Local Government Agencies in Election Campaigns\)](#).

Rules

The Commission adopted the following rules prior to the passage of the [2010 PSA Law](#):

[WAC 390-05-525](#) Public service announcement.

(1) "Public service announcement" means a communication meets all the following criteria. The communication is:

- (a) Designed to benefit or promote the community's health, safety or welfare or nonprofit community events;
- (b) Not selling a product or service;
- (c) Sponsored by an organization with a history of routinely providing the community such outreach public service messages in the service area of the organization;
- (d) Of primary interest to the general public and is not targeted to reach only voters or voters in a specific jurisdiction;
- (e) Not coordinated with or controlled or paid for by a candidate's authorized committee or political committee;
- (f) Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution; and
- (g) One for which the arrangements to include a reference or depiction of the candidate or candidates in the communication were made at least six months before the candidate became a candidate.

(2) Examples of public service announcements include but are not limited to communications regarding nonprofit community events, outreach or awareness activities such as: Breast cancer screening, heart disease, domestic violence, organ donation, emergency or other disaster relief for organizations such as the Red Cross, programs designed to encourage reading by school children, childhood safety, fund drives for charitable programs such as United Way, and similar matters.

[WAC 390-05-273](#) Definition of normal and regular conduct.

Normal and regular conduct of a public office or agency, as that term is used in the proviso to [RCW 42.17.130](#), means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

Also see [WAC 390-05-271](#) (general applications of [RCW 42.17.130](#)).

Interpretation

Considering the above references, the Commission provides the following interpretation:

“State-Elected Official” and “Candidate”

“State-elected official” and “candidate” are defined in [RCW 42.17.020](#) and require no further interpretation in order to implement the [2010 PSA Law](#).

“Municipal Officer”

At this time, for the purposes of implementing the [2010 PSA Law](#), the Commission will interpret the term “municipal officer” to include those persons described by the Legislature in RCW [42.23.020\(2\)](#).

“Public Service Announcement”

The Commission recognizes it adopted the PSA definition in [WAC 390-05-525](#) in 2006 to implement a different law, the “electioneering communications” PSA exemption in [RCW 42.17.020\(21\)\(f\)](#). The [2010 PSA Law](#) presents additional considerations particularly with respect to public agencies employing state-elected officials and municipal officers.

At this time, the Commission will use its definition of PSA in [WAC 390-05-525](#) in implementing the [2010 PSA Law](#), with the following interpretations.

- The phrase at [WAC 390-05-525\(1\)\(d\)](#) describing that a PSA means a communication “not targeted to reach only voters or voters in a specific jurisdiction” does not include PSAs of public agencies charged by law with implementing election laws and communicating with voters as part of their normal and regular duties. For example, election law agencies produce or fund messages encouraging persons to register to vote, return ballots on time or other similar messages. While state-elected officials and municipal officers who are candidates cannot speak or appear (nor otherwise be named) in such PSAs for the period beginning January 1 through the general election, their offices can produce or arrange for such PSAs if it is part of the normal and regular activities of that office.
- The phrase at [WAC 390-05-525\(1\)\(f\)](#) (“Subject to the policies for public service announcements of the entity broadcasting, transmitting, mailing, erecting, distributing or otherwise publishing the communication including policies regarding length, timing and manner of distribution;”) describes that PSAs are typically scripted and time and/or space-limited ads, the text of which must satisfy the policies of the entity distributing the message before the PSA is transmitted. If the entity producing and/or distributing the message is a public agency, the PSA must be part of the normal and regular activities of the agency, conform to internal policies or rules the agency applies to all communications produced by the agency, and not assist a campaign, pursuant to [RCW 42.17.128](#), [RCW 42.17.130](#), RCW 42.52.180,¹ [WAC](#)

¹ State officials subject to [RCW 42.52.180](#) should also consult the relevant ethics agency rules, advisory opinions or other guidance. For example, see [Legislative Ethics Board Advisory Opinion 00-04 \(Press](#)

[390-05-271](#) and [WAC 390-05-273](#).²

- [WAC 390-05-525\(1\)\(g\)](#)'s provision regarding the six-month advance time period for arrangements for PSAs applies only to the electioneering communications exemption at [RCW 42.17.020\(1\)\(f\)](#). This is because the January 1 through general election time period applies specifically to the [2010 PSA Law](#).
- For state-elected officials and municipal officers who are candidates and whose agencies produce PSAs as part of the normal and regular conduct of their agencies, the non-exclusive list of PSA examples at [WAC 390-05-525\(2\)](#) that benefit the public welfare under [WAC 390-05-525\(1\)\(a\)](#) will be read to include additional examples such as: traffic safety messages by transportation agencies, reminders to return ballots by election law agencies, public safety warnings by public safety agencies, and other similar public health, safety and welfare notices if they are part of the normal and regular conduct of the agency. While the state-elected official or municipal officer who is a candidate cannot speak or appear in such PSAs beginning January 1 through the general election, their offices can produce or arrange for such messages if it is part of the normal and regular conduct of that office.
- The non-exclusive list of examples of PSAs in [WAC 390-05-525\(2\)](#) describes announcements often designed to ask the listener to adopt a favorable view with respect to a community health, safety, welfare or a nonprofit community event, when beneficial to the community in which the PSA is aired, and invites them to participate. Those examples show that these scripted PSAs frequently (1) describe limited facts about an event, community outreach effort service or cause and (2) invite listeners to educate themselves and/or to assist in the activities such as those listed as examples.
- As a result of this approach in [WAC 390-05-525](#), the Commission interprets that a PSA would not include, for example:
 - news items or editorials that are of primary interest to the general public in a news medium controlled by a person whose business is that news medium and not controlled by the candidate or committee;
 - hosted radio or television talk shows where the participating public official is not paid by the show's sponsor, and which are of primary interest to the general public in a news medium controlled by a person whose business is that news medium and not controlled by the candidate or committee;
 - open news or press conferences;³
 - news releases and newsletters;⁴

[Releases, Use of Public Resources](#)).

² See also [Telford v. Thurston County Board of Commissioners, 95 Wn.App. 149, 974 P.2d 886 \(1999\)](#) for application to organizations or entities that are the functional equivalent of public agencies.

³ See [PDC Interpretation 02-03, Definition of Open Press Conference](#).

- live speeches;⁵
- testimony;
- rallies;
- responses to a specific inquiry;
- communications produced or made as part of litigation, including but not limited to exhibits, oral or written argument, class action notices, news releases or news conferences to announce litigation filings or case outcomes, and the like;
- public agency websites;⁶ and,
- personal communications not using public facilities, including personal social media (such as personal emails or letters, or an individual's Facebook page that is not published or sponsored by a public agency).

Reminder Regarding [RCW 42.17.128](#), [RCW 42.17.130](#), [WAC 390-05-273](#) and [RCW 42.52.180](#) – The Restrictions on the Use of Public Funds and Public Facilities to Assist a Campaign

As noted, all activities of public agencies including PSAs funded or produced by public agencies are otherwise still subject to the restrictions on the use of public funds and public facilities to assist a campaign, including [RCW 42.17.128](#), [RCW 42.17.130](#) and [RCW 42.52.180](#). Alleged violations by public employees of [RCW 42.17.128](#), [42.17.130](#) or the [2010 PSA Law](#) will be enforced by the Commission. Alleged violations of [RCW 42.52.180](#) will be referred to the appropriate state ethics board.

Because under the [2010 PSA Law](#) it is not lawful for state-elected officials and municipal officers who are candidates to speak or appear in PSAs between January 1 and the general election, it is also not “normal and regular” for such public employees to engage in those activities during that time period under [WAC 390-05-273](#), [RCW 42.17.130](#) or [RCW 42.52.180](#).

Also, with respect to [RCW 42.17.130](#), municipal officers should keep in mind that the [2010 PSA Law](#) is an additional consideration to take into account when engaging in activities during an election, beyond those identified in [PDC Interpretation 04-02 \(Guidelines for Local Government Agencies in Election Campaigns\)](#).

⁴ If a newsletter contained a separate ad run as a PSA, that ad would be subject to the criteria in [WAC 390-05-525](#) and the [2010 PSA Law](#).

⁵ If part of a speech or testimony is recorded and a portion is later used in a PSA, that recording is no longer a live speech or testimony.

⁶ If a webpage contained a separate PSA, that ad would be subject to the criteria in [WAC 390-05-525](#) and the [2010 PSA Law](#).