STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

403 Evergreen Plaza, Mail Stop Fj-42 • Olympia, Washington 98504-3342 • (206) 753-1111

DECLARATORY RULING NO. 6

RECALL PETITION IS BALLOT PROPOSITION WHEN INITIALLY FILED (RCW 42.17.020(2)): The reporting requirements of chapter 42.17 RCW begin as soon as supporters of a recall election file a petition with the election officer under RCW 29.82.010 (August 22, 1989).

Stephen Kenyon, Attorney at Law
Erickson & Barkshire
10801 Main Street, Suite 204
Bellevue, WA 98004

Dear Mr. Kenyon:

You petitioned, on behalf of John and Valerie Gower, for a declaratory ruling regarding the application of the state Public Disclosure Law, chapter 42.17 RCW, to their current effort to recall certain elected officials of the Normandy Park City Council. In particular, you have asked when a recall petition becomes a "ballot proposition" thereby initiating the periodic campaign reports required under the Public Disclosure Act. We have agreed to issue this binding declaratory ruling. Your request concerns the interpretation of RCW 42.17.020(2), which provides

> "Ballot proposition" means any . . . recall . . . proposed to be submitted to the voters of . . . any municipal corporation . . . from and after the time when the proposition has been initially filed with the appropriate election officers of that constituency prior to its circulation for signatures.

BACKGROUND

Your clients have initiated a recall action in King County which, if successful, would be submitted to the voters of the

the Public Disclosure Act definition. You argue that the disclosure of expenditures which consist entirely of legal fees is premature because no political campaign would begin until the initial judicial process was complete and the recall charges would be placed on the ballot.

We cannot agree. The law is clear. A recall action becomes a "ballot proposition" under RCW 42.17.020(2) "from and after the time when the proposition has been initially filed with the appropriate election officer." Following the initial filing there may be a lengthy process of judicial review and it may be true that during that initial review process, one would not expect to see any political campaigning in the traditional sense; that is, rather than expending money upon advertising, signs, consultants, etc. during this initial process, the supporters of a recall would be most likely to expend monies only for legal fees. Arguably, disclosing expenditures for legal fees is of little public interest. However, the reports would also show the source of the monies used to pay those fees.

The basic purpose of the Public Disclosure Act is to permit interested citizens to ascertain the source and amount of financial support provided to support or oppose candidates or ballot issues. We have previously noted that the disclosure of the early money in a campaign may be the most significant and important because it provides insight into those persons and interests who most strongly support a particular position. Declaratory Ruling No. 3, copy enclosed. For whatever reason, the Legislature chose not to amend the Public Disclosure Act and it is the existing language of RCW 42.17.020(2) which this Commission is charged with enforcing.

Whatever arguments can be generated regarding the reasonableness of reporting legal fees, we do not see any room for interpretation. We therefore conclude that when your clients filed the recall charges with the King County Records and Election Division, the matter became a ballot proposition and the reporting requirements of the act applied thereafter.

You have represented that your clients have only expended their personal funds and have not solicited money from other sources. However, we do not feel that we have sufficient information to determine whether your clients have now or will become a "political committee" under RCW 42.17.010(24). We do note, however, that if there is no obligation to file monthly reports as a political committee under RCW 42.17.090, the statute

City of Normandy Park. You have expressed doubt regarding the application of the reporting requirements of the Public Disclosure Act until such time as the courts have completed their review of the recall charges. You have pointed out that due to amendments of the statutes in 1984, "recall is now very much a judicial process." Every recall petition must now be submitted to the superior court for a determination as to whether the proposed recall charges are legally sufficient. RCW 29.82.020. You have also noted that recent decisions of the supreme court have made it more difficult to obtain judicial approval of recall charges. Estey v. Dempsey, 104 Wn.2d 597 707 P.2d 1338 (1985); Teaford v. Howard, 104 Wn.2d 580 707 P.2d 1327 (1985); Chandler v. Otto, 103 Wn.2d 268, 693 P.2d 71 (1984).

The election laws were amended in 1984. Laws of 1984, chapter 170. Under the amended statute, those seeking a recall must initially draft charges against an elected public official which allege acts of misfeasance, malfeasance or violation of the oath of office. RCW 29.82.010. The recall charges are then filed with the appropriate election's officer. RCW 29.82.015. The election's officer then directs the charges to that person charged with preparing the ballot synopsis. RCW 29.82.021. Upon preparation of the ballot synopsis, the recall charges and synopsis are directed to the superior court which must then review the charges and synopsis for their legal sufficiency. A direct appeal to the supreme court is available for those wishing to appeal the sufficiency decision. RCW 29.82.023.

Your clients initially prepared the charges and the King County Superior Court has declared those charges not legally sufficient. At the time of your request, the matter was on appeal to the Supreme Court.

Finally, we note that you have represented that your clients have not solicited funds to support this effort, rather they have used their own funds to pay the costs associated with preparing the recall charges and legal fees and costs associated with the judicial review of those charges.

ANALYSIS

The question before us is determining when a recall action becomes a "ballot proposition" under the statute quoted above. When the Legislature amended the recall statutes in 1984, it did not amend the statutory definition in the Public Disclosure Act. You argue that the 1984 amendment should be read together with

does require reports of independent campaign expenditures under RCW 42.17.100.

Because we have agreed that no enforcement action would be taken in this matter until after this Declaratory Ruling had been issued, no reports have been filed to date. Given our decision, we will not initiate enforcement action until 30 days after your receipt of this decision so as to allow your clients sufficient time to seek judicial review of this decision if they so desire.

This written, binding Declaratory Ruling was adopted at the regular commission meeting in Olympia on August 22, 1989.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

Attest:

Executive Director
TITLE