



PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdc@pdc.wa.gov • Website: www.pdc.wa.gov

To: Members, Washington State Public Disclosure Commission
From: Lori Anderson, Communications & Training Officer
Date: January 21, 2016
Re: Updates to 1994 Policy Applying Limits to Contributions Made to Affiliated Committees

AGENDA ITEM

On December 4, 2014, the Commission will review a March 1994 policy that interpreted how limits would be applied to contributions made to affiliated committees and which committees would be affiliated for the purpose of receiving contributions subject to limits. The review will focus on updates necessitated by subsequent amendments to RCW 42.17 and 42.17A and whether the Commission wishes to convert the policy to an interpretation or rule.

BACKGROUND

Contribution Limits

Initiative 134, effective December 3, 1992, limited contributions made to state office candidates,¹ bona fide political parties, and caucus campaign committees. The stated intent of I-134 was to ensure that individuals and interest groups have fair and equal opportunity to influence elective and government processes, reduce the influence of large organizational contributors, and restore public trust in governmental institutions and the electoral process. Among other things, I-134 established criteria for independent expenditures.

Commission Policy

In March 1994, the Commission adopted the attached policy statement to guard against a contributor circumventing limits by contributing to other committees created or controlled by recipients who were subject to I-134's limits. Staff believes the Commission chose to convey their guidance through the policy as a stop-gap because, at the time, legislative amendments to the initiative were being proposed and the Commission had not completed its I-134 rule making.

The policy explains four different situations in which committees would be affiliated for purposes of applying a shared limit to contributions received:

- A state office candidate's authorized committee and any other political committee established, maintained or controlled primarily by that candidate;
- A state office candidate's authorized committee and any other committee, except for a caucus campaign committee or a bona fide political party committee, established,

¹ State office candidates include candidates for legislature and the nine statewide elected officials (governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, and state auditor.)



POLICY

DATE: March, 1994	NUMBER:
CANCELS: New	APPROVED: Feb. 22, 1994
SEE ALSO:	

Political Committees Established by State Office Candidates, a Legislative Caucus or a Bona Fide Political Party

For purposes of the contribution limits in RCW 42.17.640, the following political committees are affiliated:

- 1) A state office candidate's authorized committee and any other political committee established, maintained or controlled primarily by that candidate;
- 2) The authorized committees of state office candidates and, except for a legislative caucus or bona fide political party committee, any other political committee established, maintained or controlled primarily by a group of candidates if any of the resources of the political committee are used to make contributions to any of the candidates or make independent expenditures supporting any of the candidates or opposing any of the candidates' opponents;
- 3) a legislative caucus as defined in RCW 42.17.630(4), its campaign committee and any other political committee established, maintained or controlled primarily by the legislative caucus as a whole or the officers of that caucus, unless the purpose of the other political committee is to support or oppose ballot issues; and
- 4) A bona fide political party and any other political committee established, maintained or controlled primarily by the political party as a whole or the officers of the party.

maintained, or controlled primarily by a group of candidates if the committee's resources are used to make contributions to those candidates or make independent expenditures supporting those candidates or opposing their opponents;

- A caucus campaign committee and any other committee established, maintained or controlled primarily by the legislative caucus as a whole or the officers of the caucus, other than a ballot measure committee; and
- A bona fide political party committee and any other political committee established, maintained or controlled primarily by the political party as a whole or the officers of the party.

Subsequent Developments

August 1994	The Commission adopted emergency rules clarifying I-134 in order to give formal guidance to persons interested in making independent expenditures before the primary and general elections. An emergency amendment to WAC 390-05-210 clarified I-134's definition of independent expenditure by defining a contribution to be "any expenditure made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent."
July 1995	Bona fide political parties are limited to a single political committee in each legislative district and county. Chapter 397 §1, Laws of 1995.
March 1996	After letting the 1994 emergency rules naturally expire and evaluating their effectiveness, the Commission permanently amended WAC 390-15-210 to include the coordination elements from the emergency rule.
March 2010	Bona fide political parties are authorized to use exempt funds for independent expenditures. Chapter 204 §602, Laws of 2010.
2006/2010/2012	Contribution limits are extended to candidates for judicial and certain local offices.
2011	9 th Circuit decision invalidating as to ballot measure committees the statute imposing a \$5,000 maximum cap on contributions during the three weeks leading up to the general election.

Updating the Commission's guidance

Staff believes these developments necessitate updates to the policy, as follows:

- Change “state office candidate” to “candidates subject to contribution limits under RCW 42.17A.405 and 42.17A.410.” This change addresses the past as well as future expansion of contribution limits.
- Eliminate section two referencing candidates and independent expenditure committees. The Commission’s 1996 rule making subsumes the policy’s guidance regarding a candidate’s ability to participate in independent expenditures.
- Eliminate section four referencing bona fide political parties. Staff has not been able to locate any records explaining the intent of this portion of policy. It may have been simply to prevent local party officers from creating multiple committees, which is no longer possible since the 1995 change to the law. Another possible intent may have been to restrict party officers from creating political committees for the purpose of making independent expenditures, which parties can now do using exempt funds. Moreover, bona fide political party committees are allowed to accept unlimited exempt funds contributions. In any event, staff believes the policy’s guidance for bona fide parties is no longer necessary.
- Clarify that the policy limitations do not apply to ballot measure committees.

COMMISSION ACTION

Assuming the Commission agrees that some or all of the changes staff has identified are necessary, staff recommends that the Commission’s guidance be converted to rule or interpretation, which are likely places for the public to search for clarification. Staff recommends the Commission proceed with rule making, since the guidance has served as the Commission’s interpretation since 1994. At the meeting, staff will seek the Commission’s input regarding which, if any, changes to the policy should be made and seek the Commission’s direction regarding whether to proceed with developing a draft interpretation or rule language.

Attachments: 1994 Policy Statement