



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission

From: Tony Perkins, Acting Assistant Director

Date: July 16, 2015

Re: Consideration of Future Rule Making or Other Commission Action Regarding
Definition of "Contribution"

AGENDA ITEM

At the July 23, 2015 meeting, the Commission will continue its discussion regarding potential rule making or other action regarding the definition of "contribution," specifically as it relates to reproducing political advertising. Presented here are policy options that the staff believes the Commission has authority to enact. The Commission will also decide, during the July meeting, whether to include this subject in its 2016 legislative agenda.

CURRENT AUTHORITIES

RCW 42.17A.005(36) defines "political advertising" to include:

A means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

RCW 42.17A.005(13)(a)(iii) defines "contribution" to include:

The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent[.]

WAC 390-05-210 currently defines "contribution," in relevant part, as follows:

(2) Duplicating political advertising. The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or the authorized agent of a candidate or political committee.

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POLICY OPTIONS

1. Interpret "dissemination, distribution, or republication, in whole or in part...of political advertising" to exclude the copying of a candidate's "head shot" from a candidate's website or other advertising.

The statute contemplates passive collaboration between the sponsor of the original advertisement and the party who later incorporates some or all of the original ad into a different ad. Copying a head shot of a candidate from a website (e.g.) is a function of convenience, not collaboration. In addition, the Commission may interpret that a candidate's photo does not communicate an appeal or expressly advocate the election of that candidate, and so falls outside the definition of "political advertising." Limiting the exclusion to the republication of a candidate's photo would prevent the person copying the photo from 1) disseminating, distributing or republishing the candidate's messaging or other expressive content, or 2) using campaign logos or other design elements in such a way that the advertisements appear to be coordinated.

2. Engage in rule making to relieve the benefitted candidate or ballot measure committee from having to disclose an in-kind contribution.

At its June meeting, the Commission reviewed the federal regulations that similarly consider reproducing all or part of a candidate's advertisement to be a contribution to the candidate. The difference between the federal and state regulations is that the federal regulations relieve the candidate from having to disclose the contribution, unless the expenditure in question is actually coordinated with the candidate. The Commission could amend its rules to offer the same relief. The Commission has other rules that set out parameters under which a benefitted candidate does not report a contribution, namely: WAC 390-16-206(2) Ratings and endorsements and WAC 390-17-030(9) Sample ballots and slate cards.

3. Interpret or engage in rule making to hinge the status of duplicated advertising as a potential contribution on whether the duplication is coordinated activity.

Currently, WAC 390-05-210(2) does not include a presumption that the duplication of a candidate or political committee's advertising is conducted in cooperation, consultation, concert or collaboration with, or at the request or suggestion of the candidate or committee. Rather, the duplication is treated as a per se contribution. The rule's remaining provisions identify objective criteria that, in the Commission's opinion, give rise to the presumption of coordination between a sponsor of an expenditure and the benefitted candidate. This structure leaves room for the sponsor to raise additional facts to rebut this presumption. The Commission may wish to engage in rule making to establish that the duplication of political advertising is presumed to be a contribution, and that the presumption may be rebutted by facts,

including when there is no evidence of coordination with the benefitted candidate or committee.