

Public Disclosure Commission

Discussion: Seattle Democracy Vouchers

January 26, 2017

Background:

In November 2015, Seattle voters approved I-222, which, among other things, adopted a Democracy Voucher Program to be administered by the Seattle Ethics and Elections Commission (SEEC). Under the Democracy Voucher Program, eligible Seattle residents will receive four \$25 campaign contribution vouchers, and residents may give one or more voucher to any eligible candidate. Candidates who qualify to participate in the program will be able to convert each \$25.00 voucher into a \$25.00 campaign contribution and may use the money to finance selected campaign activities.

A Seattle resident wishing to contribute a voucher to a candidate has three options to assign his or her voucher. The resident may deliver the complete voucher to: (1) the candidate; (2) the SEEC; or (3) to a candidate's registered representative. A resident, or the candidate's representative, may deliver the voucher by mail, in person, or electronically by a secure SEEC online portal.

SEEC Request for Guidance:

The SEEC asked the state's Public Disclosure Commission (PDC) to consider:

- Whether Democracy Vouchers are contributions, and subject to the rules applicable to contributions? and
- Whether the "bundling" provisions of RCW 42.17A apply to the bundling of Democracy Vouchers?

PDC staff concluded that a Democracy Voucher is a campaign contribution, based on the definition of "contribution" in RCW 42.17A.005(13)¹ because it qualifies as "*anything of value*" and as such is subject to the provisions of Washington's campaign finance law in the same way that any other contribution is subject to the campaign finance law.

Bundling is the process by which campaign contributions are collected from donors and are delivered to a campaign in bulk. In accordance with RCW 42.17A.470(1)², only

¹ RCW 42.17A.005(13)(a) states, in part, "Contribution" includes: (i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

² RCW 42.17A.470 states, (1) A person, other than an individual, may not be an intermediary or an agent for a contribution. (2) An individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if

“individuals” may bundle contributions and deliver them to a candidate. Organizations, businesses or other entities are prohibited from bundling campaign contributions. As contributions, Democracy Vouchers may be bundled by individuals but not by organizations, businesses or other entities. In addition, an individual who bundles vouchers must disclose to the voucher recipient his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each individual contributor. RCW 42.17A.470(2). This means that when Democracy Vouchers are delivered by an intermediary to a candidate or to the SEEC, the intermediary is required to provide employer and occupation information.

PDC staff summarized the issues as follows:

- Individuals may bundle Democracy Vouchers, but organizations may not;
- Individuals may bundle Democracy Vouchers under RCW 42.17A.470 even if not registered with the SEEC as a candidate’s representative;
- When an individual is paid by, or volunteers for, an organization, he or she may only bundle Democracy Vouchers if acting in his or her own capacity as an individual, and not as a representative of an organization.

Draft PDC Interpretation and Commissioner Comments:

Staff provided the Commission, and those present at the meeting, a copy of a draft Commission Interpretation.

Commissioner Johnson noted that if the Commission concludes that a Democracy Voucher is a contribution, then all the rules that apply to contributions also apply to Democracy Vouchers. He suggested that the interpretation could end after the purpose, effective date, and a statement that the Seattle Democracy Voucher Program is subject to RCW 42.17A.470 and that a Seattle Democracy Voucher is a campaign contribution and as such is subject to RCW 42.17A. He further noted that an Interpretation would not have to answer every specific question, but should contain a set of principles that could be used to analyze questions.

Commissioner Asay noted that one of the concerns regarding bundling was the pressure that an organization might exert on members to make contributions to a specific candidate, and that those concerns would be the same whether it was cash collected or vouchers.

Commissioner Bridges concurred that it was not necessary to anticipate every possible scenario and develop a complex set of guidelines in the interpretation. .

any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent.

Chair Levinson suggested that even though the requirements are the same, because most people are not familiar with the requirements of the bundling law, it might be helpful to include some basic information about reporting, limitations, and bundling, whether checks or vouchers. She also asked staff to add a sentence stating how all rules that apply to contributions also apply to Democracy Vouchers.

PDC staff also cautioned that pursuant to RCW 42.17A.565 (Soliciting Contributions from Public Employees), state and local elected officials may not knowingly request, directly or indirectly, public employees in the official's agency to assign their voucher to a candidate or to bundle, collect, or otherwise act as an intermediary or agent for public employees in the official's agency. In addition, RCW 42.17A.555 (Use of Public Office or Agency) prohibits elected and appointed officials as well as public employees from using or authorizing the use of any facilities of a public office or agency, directly or indirectly, to assist a candidate in soliciting, obtaining or requesting the assignment of a voucher.

The Commission reached a consensus that PDC staff should refine the draft Interpretation based on the comments heard at the meeting, and post the revised interpretation on the PDC website, soliciting feedback from the public. The Commission suggested that staff bring the matter back for further discussion and possible action at the Special February 8, 2017 meeting or at the regular February 23, 2017 meeting.

SEEC Questions and PDC Staff Answers:

1. May a "candidate's representative," as that term is used in SMC 2.04.620(d), collect and transmit vouchers to a candidate without violating RCW 42.17A.470?

A candidate's representative is a person who is registered with the SEEC for the purpose of receiving vouchers on behalf of the candidate. SMC 2.04.620(d). Assuming that a candidate's representative is an individual and not an organization, RCW 42.17A.470 would allow a candidate's representative to collect and transmit vouchers.

2. May a "candidate's representative," as that term is used in SMC 2.04.620(d), collect and transmit vouchers directly to the Commission without violating RCW 42.17A.470?

Assuming that a candidate's representative is an individual and not an organization, RCW 42.17A.470 would allow a candidate's representative, as the candidate's agent, to collect and transmit vouchers to the SEEC.

3. Would State law permit an organization to be designated a "candidate's representative"?

While state law would not prohibit an organization from being designated as a candidate's representative, RCW 42.17A.470 would prohibit it from acting as an

intermediary or an agent for the purposes of accepting, receiving or collecting Democracy Vouchers.

4. If a candidate's representative is either paid or volunteering for an organization at the time they collect a voucher, does that have any implications under RCW 42.17A.470?

A candidate's representative must be acting in his or her own capacity as an individual and not as a representative of an organization.

5. May an individual who is **not** registered as a candidate's representative collect and transmit vouchers **to a candidate** without violating RCW 42.17A.470?

Under RCW 42.17A, an individual may act as an intermediary even though he or she is not registered with the SEEC.

6. May an individual who is **not** registered as a candidate's representative collect and transmit vouchers directly **to the Commission** without violating RCW 42.17A.470?

Under RCW 42.17A.470, an individual may act as an intermediary even though he or she is not registered with the SEEC. The individual would be bound by RCW 42.17A.470 whether he or she delivered the vouchers directly to the candidate or to the SEEC for the benefit of the candidate.

7. May an organization – organized as either a non-profit or a for-profit – collect and transmit vouchers **to a candidate** without violating RCW 42.17A.470?

A Democracy Voucher is a contribution, and RCW 42.17A.470 prohibits a person, other than an individual, from acting as an intermediary or an agent for a contribution.

8. May an organization – organized as either a non-profit or a for-profit – provide voucher-holders with a means to transmit their vouchers **to a candidate** (for example, a postage-paid envelope clearly identifying the organization) without violating RCW 42.17A.470?

A Democracy Voucher is a contribution, and RCW 42.17A.470 prohibits a **person**³, other than an individual, from acting as an intermediary or an agent for a contribution. Providing a means for transmitting vouchers is the equivalent of acting as an intermediary, which is prohibited for organizations.

³ RCW 42.17A.005 (35) states that "Person" **includes an individual**, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, **or any other organization or group of persons, however organized**.

9. May an organization – organized as either a non-profit or a for-profit – collect and transmit vouchers directly **to the Commission** without violating RCW 42.17A.470?

A Democracy Voucher is a contribution, and RCW 42.17A.470 prohibits a person, other than an individual, from acting as an intermediary or an agent for a contribution. Transmitting vouchers directly to the Commission on behalf of a candidate, is the equivalent of acting as an intermediary, which is prohibited for organizations.