

Sent via email to: pdcc@pdcc.wa.gov

February 8, 2019

Erick O. Agina
Compliance Officer
Public Disclosure Commission
711 Capitol Way S #206
PO Box 40100
Olympia, WA 98504-0100

Re: Whitman County Democratic Central Committee & Glen Morgan PDC
Complaint,
SCBIL File No. 6842-001

Dear Mr. Agina:

On behalf of the Whitman County Democratic Central Committee (“Whitman County Democrats” or “Committee”), we are hereby responding to the allegations raised by Glen Morgan in the above-referenced matter. As explained in detail below, Mr. Morgan’s claims are either unfounded or involve only *de minimis* violations. Therefore, the PDC should exercise its authority under RCW 42.17A.755 and dismiss the complaint. In the alternative, the Commission should resolve the matter by issuing a formal written warning.

In his November 23, 2017, complaint Mr. Morgan sets forth the following allegations:

- Allegation One: Failure to file accurate, timely C-3 and C-4 reports in violation of RCW 42.17A.235;
- Allegation Two: Failure to accurately and timely report debt in violation of 42.17A.240(8); WAC 390-05-295; and
- Allegation Three: Failure to break down and describe expenses in violation of RCW 42.17A.235, WAC 390-16-205, WAC 390-16-037.

These allegations are addressed in turn below.

A. Failure to Timely and Accurately Report Debt

With only a cursory examination of Mr. Morgan's failure to report debt allegations, it can be gleaned that these claims lack basis in law or fact.

As a preliminary matter, RCW 42.17A requires that committees report (1) debts "for any value of more than seven hundred and fifty dollars," (2) that have been outstanding for more than ten days as of the last day of the reporting period.¹ RCW 42.17A.240; WAC 390-16-042. Of the allegations contained in Mr. Morgan's complaint, only two "debts" incurred by the Whitman County Democrats surpass the \$750 debt threshold. *See* Morgan Compl. Ex. B. Accordingly, his claims regarding any expenditures under this amount are facially invalid and must be dismissed.

That leaves two expenditures that Mr. Morgan alleges should have been reported as debt: a pair of expenditures for \$865.15 and \$2,838.76 related to the production and distribution of the Committee's newsletter. These claims are also infirm.

Throughout his complaint Mr. Morgan methodically alleges that certain expenditures made in a given report *should have been* reported as a debt incurred in the prior reporting cycle—i.e., a rental fee paid in April **must** have been a debt incurred in March and therefore should have been reported then. He presents no evidence corroborating his allegations that debts were *actually* incurred when he claims they were; he simply plucks dates out of thin air and plugs them into his spreadsheet.²

Contrary to Mr. Morgan's assertions, the Committee promptly paid for the printing services within days of incurring an obligation to pay. Assuming, *arguendo*, that the purchases constituted "debt," for the purposes of the Act, the Committee was under no duty to report because the obligations were not outstanding for five or ten days as of the last day of the reporting period. Simply put, Mr. Morgan's hollow allegations are insufficient to warrant the Commission expending its limited resources to engage in a fishing expedition.

The requirement to report outstanding debt serves to inform the public of the financial health of a political committee and to allow the public to understand to what entities a committee owes debts. There is no discernable way in which the policies underlying the Act would be furthered by a

¹ Debts of over \$750 are required to be reported if outstanding for more than *five* days as of the last day of the reporting period for reports due within thirty days of an election. WAC 390-16-042.

² It should be noted that the scope of the FCPA's requirement that committees report certain debt obligations is well-defined. WAC 390-16-042 provides that committees must report on a C-4 any "promise to pay," a term that includes "any oral or written order placed, debt or obligation to purchase goods or services or anything of value." *See also* RCW 42.17A.240(8). Black's Law Dictionary defines "debt" as a "[l]iability on a claim; a *specific sum of money due by agreement or otherwise.*" (emphasis added).

Based on the foregoing, it is clear that a committee's obligation to report a debt does not spontaneously arise. Rather, it is only triggered when certain circumstances are present such as when a committee executes an order for goods or services or when it enters into an agreement, the terms of which require it to pay a specific sum of money. That a committee contemplated making a certain expenditure prior to making it or engaged in negotiations before signing a contract alone are insufficient bases to impose upon it an obligation to report.

Committee reporting a debt that is not outstanding but has been fully satisfied and the law does not require it.

B. Late-reported C-3s and C-4s

Next, Mr. Morgan alleges that the Whitman County Democrats violated the FCPA by failing to timely report contributions and expenditures. To the extent Mr. Morgan's allegations are meritorious, they constitute *de minimis* violations and should be dismissed.

As a preliminary matter, a number of Mr. Morgan's allegations are erroneous on their face. As illustrated in Exhibit A to Mr. Morgan's complaint, he alleges that, with regard to its Non-Exempt Account, the Whitman County Democrats late-filed C-4s for March and April 2016, as well as April 2017. However, neither the Committee's gross receipts nor its expenditures surpassed the \$200 statutory threshold for those months; the Committee was thus not required to report. *See* RCW 42.17A.235. With regard to its *Exempt* account, Mr. Morgan has alleged that the Committee has late-filed C4s from February through June 2016. *See* Morgan Compl. Ex. A. That account, however, had *no* reportable activity during that time frame. The statutory obligation to report, therefore, was not triggered. These claims, too, lack merit.

Mr. Morgan also alleges that the Whitman County Democrats failed to timely report contributions of \$0.07 and \$0.05 for "Bank Interest." Apart from the fact that the amount of these contributions is clearly *de minimis*, the FCPA explicitly provides that "legally accrued interest on money deposited in a political committee's account" is not considered a "contribution" for reporting purposes. 42.17A.005(16)(b)(i). It is therefore unreasonable to penalize the Committee for failing to timely report contributions it was not required to report in the first place.

C. Failure to Break Down and Describe Expenditures

Mr. Morgan also alleges that the Whitman County Democrats violated campaign finance reporting laws by failing to sufficiently break down and describe its expenditures. To the extent his claims have merit, they allege *de minimis* violations and do not warrant further action.

For instance, a number of claims set forth by Mr. Morgan are based on the Whitman County Democrats' alleged failure to "list the number of items printed" when reporting an expenditure for printing services. There is not, however, a clear mandate in the law that requires political committees to provide this information. In support of his contention to the contrary, Mr. Morgan cites a regulation, WAC 390-16-37, which provides *examples* of reports made for printing-related expenditures and which include a quantity figure for the copies purchased. His reliance on this illustrative regulation is flawed.

The Attorney General and the PDC have at least implicitly rejected Mr. Morgan's contentions regarding his failure to break down expenditures claims. For instance, in March 2017, Mr. Morgan filed a complaint with the PDC and a corresponding 45-day notice with the Attorney General alleging that John Wilson, a 2015 candidate for King County assessor, committed various violations of the Act. *See* PDC Ticket No. 14854. Relying on WAC-390-16-37, Morgan claimed that Wilson failed to properly break down twenty-two expenditures. *Id.* Among these allegedly problematic expenditures were various payments Wilson made to Overnight Printing & Graphics and Fedex Office for printing

services. *See id.* While Wilson identified on the C-4s the amount and the purpose of the expenditures, he did not list the quantity of the copies he paid for. Despite this, the PDC and the Attorney General declined to take formal action. In so doing the PDC noted that, with the exception of one expenditure that fell outside of the limitations period, all of the expenditures Mr. Morgan flagged as unlawful were “sufficiently identified and accounted for.” *Id.*

Similar to the circumstances surrounding Mr. Morgan’s complaints against Wilson, here Mr. Morgan takes issue with the Whitman County Democrats accurately identifying the amount, purpose and recipient of printing-related expenditures but failing to provide the quantity of copies made. Because the above example reflects the PDC and the Attorney General’s reasonable interpretation of the FCPA as it relates to a committee’s obligation to break down expenditures; i.e., that a failure to list quantities of literature does not constitute a per se violation of the statute, the PDC should reject Mr. Morgan’s erroneous interpretation of the statute and accompanying regulations.

Even assuming, *arguendo*, that a committee’s failure to state the number of copies it made on a C-4 constitutes a violation of the FCPA, there is no basis in the law to support Morgan’s theory that this constitutes an ongoing violation of the statute for which a committee incurs cumulative liability each day after the allegedly deficient report was filed.

Thus, for the reasons set forth above, the Whitman County Democrats urges the PDC to dismiss the minor violations alleged in Mr. Morgan’s complaint.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dmitri Iglitzin".

Dmitri Iglitzin
Carson Phillips-Spotts