



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

Campaign Finance Unit  
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

April 10, 2017

Maxford Nelsen  
Director of Labor Policy  
Freedom Foundation  
P.O. Box 552  
Olympia, WA 98507

**RE: Citizen Action Notice – Washington Federation of State Employees (AFSCME  
Council 28)  
Notice of Results**

Dear Mr. Nelsen:

I am writing in response to the citizen action notice referenced above, which your organization, the Freedom Foundation, filed with the Attorney General's Office (AGO) and the King, Spokane, and Thurston County Prosecuting Attorneys' Offices. Your notice alleges that the Respondent, the Washington Federation of State Employees (WFSE), operates an unregistered political committee in violation of Washington campaign finance laws, in the form of a Separate Segregated Fund (SSF) established and maintained under the provisions of 26 U.S.C. § 527. Your notice alleges that WFSE's SSF is a person distinct from the union itself, and that the SSF is a political committee under applicable state law.

The AGO reviewed the notice referenced above and accompanying materials, including a supplement you filed with our office on March 29, 2017. We also obtained the input of the Respondent, and reviewed a recommendation of the staff of the Public Disclosure Commission, and a letter from the Public Disclosure Commission without a recommendation as to the disposition of your notice. At this time, insufficient evidence exists to initiate judicial enforcement proceedings against the Respondent based on the allegations in the notice. In particular, WFSE's creation and maintenance of a bank account, considered a Separate Segregated Fund under the Internal Revenue Code, which is used for political activity in Washington, does not create a separate person distinct from WFSE itself under Washington's campaign finance laws. By way of further explanation, the following is our analysis of the legal authority on the issue of SSF reporting.

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Relevant provisions of Internal Revenue Code and related authority

Under the Internal Revenue Code, a “political organization” is generally exempt from income taxes. 26 U.S.C. § 527(a); *see generally* 26 C.F.R. § 1.527-1. “The term ‘political organization’ means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.” 26 U.S.C. § 527(e)(1). Exempt functions are broadly defined to include influencing and attempting to influence various federal, state, and local elections and political contests. 26 U.S.C. § 527(e)(2).

The Code further provides that an organization exempt from taxation under Code Section 501, which may not expend its funds on political activity while enjoying tax-exempt status, may engage in political activity by establishing a so-called separate segregated fund through which to manage such activity:

For purposes of this subsection and subsection (e)(1), a separate segregated fund ... which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

26 U.S.C. § 527(f)(3); *see generally* 26 U.S.C. § 527 (f)(1)-(2); *see also* 26 C.F.R. § 1.527-6(f) (“an organization described in section 501(c) that is exempt from taxation under section 501(a) may, if it is consistent with its exempt status, establish and maintain [ ] a separate segregated fund to receive contributions and make expenditures in a political campaign”), *and id.* (“If such a fund meets the requirements of § 1.527-2(a) (relating to the definition of a political organization), it shall be treated as a political organization subject to the provisions of section 527.”). A segregated fund may consist of a bank account. 26 C.F.R. § 1.527-2(b)(1) (“A savings or checking account into which only contributions to the political organization are placed and from which only expenditures for exempt functions are made may be a segregated fund.”).

Relevant provisions of Washington campaign finance laws

Under Washington campaign finance laws, the term “[p]olitical committee” means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” RCW 42.17A.005(37). The term “[p]erson” 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.” RCW 42.17A.005(35).

Respondent WFSE and its Separate Segregated Fund

Respondent, the Washington Federation of State Employees (American Federation of State, County, and Municipal Employees Council 28), is a tax-exempt labor organization under 26 U.S.C. §§ 501(a) and 501(c)(5). WFSE established a separate segregated fund, the “Washington Federation of State Employees SSF,” on February 1, 2011. Your notice, and input shared by

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WFSE, shows that WFSE's SSF receives funds for political purposes, and expends funds on political activity, in the State of Washington. You have not disputed WFSE's position that its Separate Segregated Fund consists of "a separate bank account, or fund, within the total control of the labor organization that has created it," or that WFSE's SSF "is operated and funded solely by [WFSE]." WFSE's SSF is assigned a separate Employer Identification Number by the IRS from that assigned to WFSE, and the SSF's purpose as stated in its IRS filings is specifically dedicated to political activity, in contrast with the separate purpose stated by WFSE.

*Allegations concerning WFSE Separate Segregated Fund*

Your notice alleges that WFSE violated Washington law by failing to register its separate segregated fund as a political committee and file related reports. Under the Internal Revenue Code, a separate segregated fund is "treated as a separate organization" from the tax-exempt entity that maintains it. 26 U.S.C. § 527(f)(3); *see also* 26 C.F.R. § 1.527-6(f) (separate segregated fund "shall be treated as a political organization subject to the provisions of section 527"). Under the tax code, a "political organization" is defined to include a "fund ... organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1). Such a fund may consist of "[a] savings or checking account." 26 C.F.R. § 1.527-2(b)(1).

In contrast with federal law defining a "fund" as one species of "political organization," Washington law does not cite a bank account among the entities that may be considered a political committee. Rather, Washington's statute defines a political committee to include "any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) (emphasis added). While the definition of "person" within the campaign finance laws includes a broad range of "any other organization or group of persons, however organized," nowhere does it mention a bank account belonging to and operated by a single organization as an entity that may be considered, in its own right, a political committee distinct from the organization that created, maintains, and controls it.

Your notice agrees with the input our office received from WFSE that the individuals who exercise control over the WFSE SSF are all employees or board members of WFSE. As such, the SSF is in essence a bank account controlled by WFSE. While under the Internal Revenue Code, the SSF is "treated as a political organization subject to the provisions of section 527" for federal income tax purposes, under state law, the person that owns and controls the SSF is WFSE.

In 2007, the Washington Supreme Court recognized that "the definition of 'political organization' in section 527 does have a broader sweep than does the definition of "[p]olitical committee" in [RCW 42.17A.005(37)]." *Voters Educ. Comm. v. Washington State Public Disclosure Comm'n*, 161 Wn.2d 470, 491 n. 14, 166 P.3d 1174 (Wash. 2007). Unlike in the *Voters Education Committee* case, here, the fact that the alleged committee consists of nothing more than a bank account maintained and controlled by WFSE—and considered a "political organization" under the Internal Revenue Code—provides a clear reason to distinguish the

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Separate Segregated Fund's federal "political organization" status from the fund's status as a fund operated by WFSE under Washington's campaign finance law.

You supplemented your notice with the specific allegations that WFSE's SSF is assigned a separate employer identification number by the IRS (distinct from WFSE's own EIN), and that the SSF's identified purpose in its filings with the IRS differs from that of WFSE itself. Neither of these allegations supports treating the SSF as a person distinct from WFSE itself under Washington's campaign finance law. The Internal Revenue Code requires that any U.S. entity filing a return must be assigned a unique identifier such as an EIN. 26 C.F.R. § 301.6109-1(b)(1). Further, federal law distinguishes between the acceptable purposes of a Section 527 organization (including a separate segregated fund or bank account), and the purposes acceptable for its establishing non-profit organization exempt from taxation under Section 501(c). As stated above, the Internal Revenue Code treatment of a separate segregated fund for tax purposes does not, on its own, make the fund a separate "person" under state law.

For the reasons expressed above, our office concludes that the WFSE's Separate Segregated Fund should not be considered as a person in its own right under state campaign finance laws. It is, however, a part of the person which created, funds, and maintains it in all known respects: WFSE. This view is consistent with the view of the Public Disclosure Commission staff, who analyzed WFSE's organizational activity related to Washington campaign finance laws, and recommended in an Investigative Review Memorandum dated March 17, 2017 that no further action be taken with regard to the allegations in your notice because WFSE fails to meet applicable legal tests to qualify as a political committee under Washington law. It is also consistent with previous statements of the Commission's Executive Director when queried about the treatment of separate segregated funds under the state campaign finance and disclosure law.

Accordingly, the Attorney General's Office will not be filing a lawsuit against the WFSE or its SSF for failing to register and report as a political committee. Please note that the views expressed in this letter are limited to the specific facts in your notice, and this letter expresses no opinion as to the applications of law to any situation other than those addressed above.

Sincerely,



WALTER M. SMITH  
Assistant Attorney General

WMS:kj

cc: Darwin Roberts, Deputy Attorney General  
John Gerberding, King County Prosecuting Attorney's Office  
Elizabeth Petrich, Thurston County Prosecuting Attorney's Office  
Larry Haskell, Spokane County Prosecuting Attorney  
Dmitri Iglitzin, Counsel for Respondent Washington Federation of State Employees  
Evelyn Fielding Lopez, Executive Director, Public Disclosure Commission