



## PUBLIC DISCLOSURE COMMISSION

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To: Members, Washington State Public Disclosure Commission  
From: Lori Anderson, Communications & Training Officer  
Date: September 15, 2016  
Re: Proposed Interpretation – Republishing Online Political Advertising and the Application of RCW 42.17A.005(13)(a)(iii)

### AGENDA ITEM

During the September meeting, the Commission will discuss whether to adopt a new interpretation that addresses whether a political advertisement containing a photograph copied from a candidate's campaign website is a contribution to the candidate, absent coordination.

### BACKGROUND

Last year, the Commission presided over an enforcement matter that alleged an over-limit, in-kind contribution of political advertising to a candidate. The advertising sponsor included in the ad the candidate's photograph and other content copied from the candidate's campaign website. The complaint alleged that using content copied from a campaign website in a political advertisement was "republication ... of political advertising ... prepared by a candidate" and thus a contribution as provided in [RCW 42.17A.005\(13\)\(a\)\(iii\)](#). The Commission found there was no evidence of coordination and declined to find a violation.

In 2016, the Commission unsuccessfully attempted to amend the definition of contribution to exclude political advertising that contains a photograph or other neutral content copied from a candidate's website, absent coordination between the candidate or candidate's agent and the sponsor of the political advertisement.

The Commission has expressed interest in continuing to seek an amendment to RCW 42.17A.005(13)(a)(iii), however it is not a priority for 2017. In the meantime, the Commission may consider adopting an interpretation that explains the reasons that led the Commission to not find a violation in the 2015 enforcement matter and why the Commission believes an amendment is appropriate. Staff has drafted the attached interpretation that takes a more restrained approach than the 2016 agency-request bill. The attached draft interpretation allows copying and pasting just a photograph, so long as the activity is not coordinated.

### ACTION

The Commission may adopt the draft interpretation as written or suggest edits.

Attachment: Draft Interpretation 16-01, Republishing Online Political Advertising and the Application of RCW 42.17A.005(13)(a)(iii)

# PDC Interpretation

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APPROVAL DATE:	September XX, 2016	NUMBER:	16-01
STATUS:	New	SUPERSEDES:	None
		APPROVED BY:	The Commission
REFERENCES:	<a href="#">RCW 42.17A.005</a>	<a href="#">WAC 390-05-210(2)</a>	

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## Republishing Online Political Advertising And The Application of RCW 42.17A.005(13)(a)(iii)

The Public Disclosure Commission (Commission) enforces the campaign disclosure and political advertising provisions found in [RCW 42.17A](#) and [Title 390 WAC](#), including certain laws and rules defining what constitutes a contribution. This interpretation is intended to provide guidance by informing the public, candidates, and political committees of the Commission's interpretation of the definition of contribution as it relates to duplicating certain online political advertising.

### I. Authority

[RCW 42.17A.005\(13\)\(a\)](#) defines "contribution" and includes:

*(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;*

*(iii) 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](#) further defines [RCW 42.17A.005\(13\)\(a\)\(ii\)](#) as:

**(3) Consulting with a state, local or judicial candidate.** *An expenditure made by a person in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent is a contribution to such candidate. An expenditure is presumed to be made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent when:*

*(a) Any arrangement, coordination or direction by the candidate, the candidate's authorized committee or agent is given to the expending person prior to the publication, distribution, display or broadcast of political advertising or electioneering communications or prior to an expenditure being made by that person supporting that candidate or opposing one or more of that candidate's opponents; or*

*(b) An expenditure is made based on information about the candidate's plans, projects or needs provided to the expending person by the candidate, the candidate's authorized committee or agent with a view toward having an expenditure made; or*

*(c) An expenditure is made by, through, in consultation with, or with the assistance of, including the fund-raising assistance of, any person who, during the twelve months preceding the expenditure, is or has been an officer of the candidate's authorized committee; or*

*(d) The expenditure is made by or in consultation with any person who, during the twelve months preceding the expenditure, is or has been receiving any form of campaign-related compensation or reimbursement from the candidate, the candidate's authorized committee or agent. However, there is no presumption that an expenditure is made in cooperation, consultation, concert or collaboration with, or at the request or suggestion of a candidate, the candidate's authorized committee or agent, when a person performs only ministerial functions for two or more candidates or political committees pursuant to RCW [42.17A.005](#) and WAC [390-05-243](#).*

## **II. Discussion**

In 1995, the Legislature amended the definition of “contribution” to include the current provisions related to coordination and duplicating political advertising found at [RCW 42.17A.005\(13\)\(a\)\(ii\) and \(iii\)](#). [Chapter 397, Laws of 1995](#).

In 2013, the Commission received a complaint that alleged an over-limit contribution had occurred when a candidate photo and other content copied from a candidate’s campaign website was used in the production of a political advertisement that supported the candidate. There had been no coordination between the advertising sponsor and the candidate or the candidate’s agents. The candidate was unaware that the advertisement was being produced and the sponsor believed it was making an independent expenditure. The 2013 complaint was the first instance in which the

Commission was asked to apply the definition of contribution to copying elements from a candidate's website for use in independent expenditure political advertising.

[RCW 42.17A.005\(13\)\(a\)\(iii\)](#) suggests that passive coordination, or duplicating any or all of a candidate's advertisement without the candidate's knowledge, carries the same weight as active coordination. That may have been the case in 1995. Today, we disagree. Today, candidates are expected to have campaign websites. Generally, websites are easily accessed and copying a photo or other content from a website takes little effort. Sharing links to websites or website content is a routine activity for individuals who access them.

The Commission has a dual role to enforce the campaign finance laws so that the public may access campaign disclosure information it is entitled to and to ensure that requirements are not onerous for the regulated community. As a steward of campaign finance disclosure, the Commission has a duty to adapt the laws and rules it enforces to evolving campaign practices.

There is no detriment to the public if the Commission were to interpret that copying a photo from a campaign website for use in other advertising is not republication of a portion of political advertising, in the absence of coordination as described in [RCW 42.17A.005\(13\)\(a\)\(iii\)](#). The interpretation would also adapt campaign finance laws to current practice and remove the threat to candidates of unknowingly receiving over-limit contributions.

### **III. Interpretation**

In the absence of coordination as described in [RCW 42.17A.005\(13\)\(a\)\(ii\)](#) and [WAC 390-05-210\(3\)](#), copying a photograph from a campaign website and using the photograph in other political advertising does not constitute a contribution as described in [RCW 42.17A.0015\(13\)\(a\)\(iii\)](#).