



July 30, 2018

Jennifer Hansen
Compliance Officer
Public Disclosure Commission
711 Capital Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Evergreen Public School District's Response to PDC Complaint
Public Disclosure Commission Case No. 37284

Dear Ms. Hansen,

Thank you for granting Evergreen Public Schools ("the District") an extension to August 1, 2018 to respond to the complaint filed with the PDC against the District by Mr. Maxford Nelson, Director of Labor Policy, Freedom Foundation. This letter will serve as the District's response to the complaint. As stated in your email dated June 27, 2018, the Freedom Foundation filed a complaint against the District for an allegation of violating RCW 42.17A.555 for its use of public facilities to process employee contributions to both the Washington Education Association (WEA-PAC) and the National Education Association for Children and Public Education (NEA-FCP). The District has reviewed the complaint and responds as follows.

Public employers under Washington law are permitted to process authorized deductions from the wages or salary of employees for the purpose of political contributions. This does not violate the provisions of RCW 42.17A.555 as asserted by the Freedom Foundation. The conduct is not "assisting a campaign for election" or "the promotion of or opposition to any ballot" that would violate RCW 42.17A.555. The deductions are part of the "normal and regular conduct" of the District (See RCW 42.17A.555(3) and done only with the signed authorization of the employee pursuant to WAC 390-17-100.

Normal and regular conduct has been defined by the PDC for purposes of RCW 42.17A.555 in WAC 390-05-273 as:

Conduct which is (1) lawful, i.e. specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

Part of the District's normal and regular operations is to process payroll on a monthly basis. Part of this process involves the entry of both mandatory deductions and permissive deductions from pay. See RCW 28A.405.400:

In addition to other deductions permitted by law, any person authorized to disburse funds in payment of salaries or wages to employees of school districts, upon written request of at least ten percent of the employees, shall make deductions as they authorize, subject to the limitations of district equipment or personnel.

The District is required to process and pay the money as directed by the employee on a monthly basis. The Freedom Foundation's assertion that RCW 28A.405.400 bars political contributions is patently false. This statute is silent on political contributions being deducted from employee pay with written consent and nothing in the case law cited by the Freedom Foundation in their complaint indicates that Washington Law renders this as a prohibited activity.

The Freedom Foundation misleads the PDC in its complaint. It leads the PDC to believe that if less than ten percent of the employees in the district request a deduction, the deduction is not valid. However, the law clearly states that if less than ten percent of the employees of the district seek a deduction, then the deduction is permissive based upon district resources. "Any person authorized to disburse funds shall not be *required* to make other deductions for employees if fewer than ten percent of the employees make the request for the same payee." RCW 28A.405.400 (*emphasis added*).

State law and PDC regulations further bolster the District's position. The District is authorized as an employer to withhold or divert a portion of the employees' wages or salaries for contributions to committees with the written authorization of the employee. See RCW 42.17A.495(3) and WAC 390-17-100. RCW 42.17A.495(3) states:

No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organizations discrimination described in subsection (2) of this section.

The law patently states that wages can be withheld for contributions to political committees or political contributions with the written consent of the employee. WAC 390-17-100 provides additional detail and the suggested mechanism regarding how these deductions from employee wages need to be properly documented.

The District's teacher's union, the Evergreen Educators Association (EEA), provides the employee with the documentation required to authorize the deduction to the employee's paycheck. If the employee chooses to contribute, the employee fills out the documentation, returns it to EEA, and EEA submits it to the payroll office. The payroll office processes the paperwork as they do all other payroll deduction paperwork as required by RCW 28A.405.400. The documentation is then filed as required by WAC 390-17-100. Deductions to WEA-PAC and NEA-FCPE from wages are not done in the District without the express written consent of the employee as required by law.

The issue raised by the Freedom Foundation has been partially litigated in *State v. Evergreen Freedom Foundation*, 140 Wn.2d 615 (Wash. 2000). In this case, the Freedom Foundation (formally known as the Evergreen Freedom Foundation) filed a complaint against the WEA and several public school districts in the State of Washington alleging violations of campaign finance, reporting, and contribution requirements under the previous statutory scheme 42.17 RCW now codified in 42.17A. Specifically, the Freedom Foundation argued that the districts had failed to follow the annual notification requirements specified in what is now RCW 42.17A.495. The court noted that the Freedom Foundation did not "claim funding of WEA-PAC violates RCW 42.17.680(3)" now codified as RCW 42.17A.495. *Id.* at 659, n.17.

The court states:

Appellants contend that Respondent School Districts violated RCW 42.17.680(3) by withholding dues and COP assessment deductions from the salaries or wages of WEA member-employees without their prior annual written authorization for contribution to "political committee" or for use as "political contributions" to candidates for state or local office. Respondent School Districts counter that transmitting the withheld funds to the WEA is not a "political contribution" under subsection (3). Appellants respond that, since the WEA makes political contributions from the withheld funds, the payments to it are necessarily also "political contributions." This is not necessarily so.

Id. at 632. The court further discusses WAC 390-17-100 by stating:

When an employer has notice that the funds deducted are for the use of a political committee or candidate, the employee may not then make that deduction without specific annual authorization. However, when the employer makes deductions under the Education Employment Relations Act, RCW 41.59.100, and the Public Employees Collective Bargaining Act, RCW 41.56.100, and the employer is not made aware of the specific intended use of the funds, the employer has no legal obligation or authority to seek annual written authorization.

The court ultimately granted judgment for the WEA and school districts as it did not find any violation of RCW 42.17.680(3) (now 42.17A.495) and WAC 390-17-100. The Freedom Foundation's argument that the District is improperly using public facilities lacks merit. RCW 42.17A.495 and WAC 390-17-100 clearly authorize the school district to make the deductions for the political committees with the written consent of the employee. The Washington Supreme Court clearly did not find the school districts listed as defendants in the case in violation of the law.

The Freedom Foundation has cited District policy as further evidence to indicate that the district has improperly deducted political contributions from employee wages. The District acknowledges that

Policy 4400 does state, “public facilities will not be used to assist in any candidate’s campaign or to support or oppose any ballot measure.” In addition, District Policy 5252 does state, “District property and work time, supported by public funds, may not be used for political purposes.” These policies have been adopted by the district with respect to the State of Washington’s general prohibition on using public property and facilities for political purposes. The policies do not contain provisions explaining the exemptions to Washington’s general prohibition found in RCW 42.17A.495 or WAC 390-170-100. Nor do district policies in general include *all* of every statutory provision or statutory exemption affecting the operation of the school district. Ultimately, there is nothing in District policy that would prohibit the District from acting within the statutory authorization provided by RCW 42.17A.495 or WAC 390-170-100.

The District is clearly acting within the scope of Washington Law by processing payroll deductions with written consent of employees per RCW 42.17A.495 and WAC 390-170-100. This is part of the District’s “normal and regular” conduct under RCW 42.17A.555. The complaint filed on behalf of the Freedom Foundation against the District should be dismissed.

If the Commission has any additional questions regarding issues raised in the Freedom Foundation’s analysis, please do not hesitate to contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "John Steach", with a stylized, cursive script.

Dr. John Steach

Superintendent, Evergreen Public Schools