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August 29, 2023

Phil Stutzman
Compliance Office
Washington Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: PDC Case No. 139384
BIL No.: 3450*008-001

Dear Mr. Stutzman,

We are writing on behalf of Washington Education Association (WEA) PAC to respond to the allegations raised by Glen Morgan in his June 15 complaint. The complaint, one of over 40 filed by Mr. Morgan this year alone, alleges that WEA PAC has been in violation of RCW 42.17A.235 and .240 from 2018 to 2023 by failing to disclose complete descriptions of in-kind contributions. As there is no basis in the Fair Campaign Practices Act (FCPA) for the level of disclosure Mr. Morgan is seeking and WEA PAC's reporting has consistently gone above and beyond what is required, we ask that the PDC promptly dismiss this case as unfounded or frivolous.

Background

WEA PAC first registered with the PDC in 2004 and has routinely reported to the PDC since then. The PAC is governed by a 30+ member board of directors and is funded by small-dollar donations from WEA members (Washington public educators) and staff and from WEA itself. The PAC also receives significant in-kind support from WEA, mostly in the form of staff time, office space, supplies, and other overhead. WEA PAC has diligently reported these shared expenses on its C-4 reports along with any other expenses incurred by WEA on behalf of the PAC. Throughout WEA PAC's reporting, WEA's identity as the source of virtually all the PAC's in-kind contributions has been repeatedly disclosed. Moreover, WEA PAC has taken care to individually report in-kind contributions from WEA broken out both by reporting period and by the nature of the contribution.

In a June 15 letter to the PDC, serial complainant Glen Morgan alleged that WEA PAC has been in violation of RCW 42.17A.240 by failing to adequately report information related to certain in-kind contributions. To support his allegations, Mr. Morgan cited not to the language of the FCPA or accompanying administrative regulations in WAC Title 390, but to language on the PDC's website. Mr. Morgan's complaint was accompanied by a list of 457 in-kind entries from past WEA PAC C-4 reporting

from June 30, 2018 through May 31, 2023 that he claimed run counter to the PDC's online guidance. In response to the PDC's prompt asking the complainant to describe the impact of the alleged violations on the public, Mr. Morgan stated that "[t]he public has a right to know the truth about the real source of in-kind contributions."

On July 7, you contacted WEA PAC to inform it of Mr. Morgan's complaint. In your email, you noted:

In reviewing the reports linked in the spreadsheets provided by the Complainant, it appears there are some instances where addresses of vendors are not disclosed in the description field for in-kind contributions, and in some cases, the name of the vendors paid are not disclosed. In our guidance, staff encourages more complete disclosure of vendor addresses in the description field for in-kind contributions even if not strictly required.

Your email also noted alleged violations of both RCW 42.17A.235 and .240.

Authority and Argument

I. Language on the PDC Website Is Not Binding and WEA PAC Is Not Required to Provide Vendor Addresses Under the FCPA.

The PDC's online guidance to candidates and committees cannot serve as standalone grounds for a finding of violation. This is a fact that WEA knows all too well: in 2001, WEA filed suit to challenge PDC guidelines that unduly restricted the free speech and associational rights of its members. In defense, the Commission argued that "the guidelines are the agency's opinion only and cannot be violated or enforced." *Wash. Educ. Ass'n v. Wash. St. Pub. Disclosure Comm'n*, 150 Wn. 2d 612, 614 (2003) (en banc). After WEA prevailed at the trial court level, the Washington Supreme Court dismissed the suit as seeking a purely advisory opinion because "the guidelines have no legal or regulatory effect and implicate no one's legal interests." *Id.* at 615.

The PDC's authority to adopt rules implementing the FCPA is governed by the state Administrative Procedures Act (APA). RCW 42.17A.110(1). Commission rules that have undergone rulemaking proceedings under the APA and declaratory orders issued pursuant to WAC 390-12-350 can be grounds for a finding of violation subjecting a person to a penalty or administrative sanction. *Wash. Educ. Ass'n*, 150 Wn. 2d at 619. However, any less formal statements of policy by the PDC cannot. In *Washington Education Association*, the guidelines at issue took the form of an interpretive statement issued by the PDC that had been further revised through a stakeholder process and public comment period.¹ *Id.* at 616. Agencies are encouraged under state law to adopt such statements in order "to advise the public of [their] current opinions, approaches, and likely courses of action." RCW 34.05.230(1). But they carry the force of law only after being subjected to rule-making proceedings under the APA and adoption as formal agency rules; otherwise, they are "advisory only." *Id.*

¹ Interpretive statements, as defined in the APA, are "a written expression of the opinion of an agency, as to the meaning of a statute or other provision of law, a court decision, or an agency order." RCW 34.05.010(8).

Here, there is no indication that the PDC website language Mr. Morgan cites even rises to the level of an interpretive statement. The PDC's In-Kind Contributions page instructs that for Part 1 of Schedule B to the C-4: "if the in-kind contribution is a good or service purchased from a vendor, include the name and address of the vendor."² But no similar instruction can be found in any of the Commission Interpretations, Declaratory Orders, or other General guidance catalogued on the PDC website.³ Moreover, recent observation of the In-Kind Contributions page revealed that its language was updated multiple times in a single day on July 26, at one point reading "include the name and, preferably, the address of the vendor." This type of ad-hoc updating is far cry from the formal rulemaking procedures of the APA. In your email to WEA PAC alerting it to this complaint, you described reporting addresses for vendors involved in in-kind contributions as "not strictly required." And tellingly, Mr. Morgan's own in-kind contributions to committees have not been reported with this level of detail.⁴

More importantly, the PDC has not identified any language in the FCPA or accompanying regulations that could arguably serve as a basis for the requirement Mr. Morgan would see imposed (on others, if not himself). Nor can WEA PAC identify any such language. The PDC's rules provide that in-kind contributions must be reported on C-4 reports and indicate that in-kind contributions fall within the larger definition of "contribution" in RCW 42.17A.005. WAC 390-16-207(1). Thus, a plain reading of the FCPA suggests that C-4 reporting for in-kind contributions requires the same disclosures as contributions generally: the name and address of the contributor and, if the person has made contributions in the aggregate amount of more than \$250, their occupation and the name and location (city and state) of their employer. RCW 42.17A.240(2); WAC 390-16-034. A greater degree of reporting may be desirable from a public policy perspective—indeed, WEA PAC routinely provides a greater degree of reporting by listing the names of vendors used for in-kind goods or services and providing a description of those goods or services in the interest of public transparency. But there is currently no clear requirement for such disclosure in Washington law.

II. WEA PAC Has Reported Vendor Information and Alleged Omissions Largely Involve Donations by the WEA Directly that Do Not Involve a Third Party Subvendor.

WEA PAC has consistently reported the name of vendors used by WEA to provide in-kind goods and services to the committee. To the extent such information appears in the eyes of Mr. Morgan to have been omitted, it is because the in-kind contributions at issue typically do not involve vendor transactions that WEA entered into primarily for purposes of WEA PAC.

As discussed above, neither state law nor PDC rules clearly require candidates or committees to report information about vendors paid by in-kind contributors. However, WEA PAC has and will continue to report the names of WEA vendors and a brief description of the goods and services furnished to the

² <https://www.pdc.wa.gov/registration-reporting/candidates-committees/contributions/kind-contributions>.

³ <https://www.pdc.wa.gov/rules-enforcement/guidelines-restrictions>.

⁴ See Let's Go Washington C-4 report no. 110097944 filed 7/11/2022 (reporting the in-kind contribution of a U-Haul rental by Glen Morgan on 06/03/2022 without disclosing a vendor name or address); Real Progressives in Thurston County C-4 report no. 100866577 filed 10/16/2018 (reporting the in-kind contribution of a mailbox rental by Glen Morgan on 10/10/2018 without disclosing a vendor name or address).

committee. Where WEA PAC has not provided additional detail, it is typically because the contributions from WEA consist of goods and services paid for and used by the Union in its ordinary course of business.

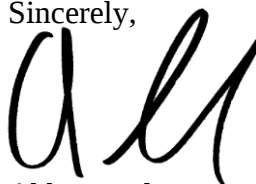
For example, a substantial number of the contributions listed in Mr. Morgan's complaint are reported as meeting expenses and overhead. These contributions involve the use of WEA office space and other expenses associated with the use of shared staff, such as payments for release time, meal reimbursements, mileage, and other expenses processed through the WEA's existing staffing infrastructure. No new vendors were secured by WEA in order to provide these contributions, and they represent an aggregate share of numerous purchases from numerous sources. It is WEA PAC's understanding, confirmed by PDC staff, that WEA PAC is not required to report vendors used by WEA in its ordinary course of business. Similarly, WEA staff regularly provide employee services to the PAC. These services have been reported and the names of WEA staff members who work most frequently with the PAC have even been disclosed.⁵ But no outside vendor has been reported because no new outside vendor was involved in the payment of WEA staff salaries and benefits.

CONCLUSION

WEA PAC's reporting has consistently exceeded the requirements of state law, and neither the PDC nor Mr. Morgan can identify grounds in the FCPA for requiring the level of disclosure called for in his complaint. Mr. Morgan has also failed to identify any public interest that would be served by further investigation or enforcement based on his allegations—there has never been any question that the in-kind contributions he is targeting originated with WEA. Any additional reporting beyond the significant degree of detail already routinely provided by WEA PAC, particularly as it pertains to vendors regularly used by WEA, would be both time consuming and costly for the PAC to provide with no identifiable benefits for public transparency. Therefore, we ask that the PDC promptly dismiss this case as unfounded or frivolous.

Please contact us with any questions or concerns at (206) 644-6002.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abby Lawlor', with a stylized, cursive script.

Abby Lawlor

Danielle Franco-Malone

Counsel for Washington Education Association

⁵ The WEA PAC is also unaware of any basis in state law for requiring it to report individual staff names, though it has chosen to do so in certain instances in the interest of transparency.