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ATTORNEYS AT LAW

Of Counsel Lawrence Schwerin

LAURA EWAN
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Sent via email to tonyp@atg.wa.gov

October 23, 2017

Tony Perkins
Investigator, Campaign Finance Unit
Washington Attorney General's Office
P.O. Box 40100
Olympia, WA 98504-0100

RE: Whatcom County Democrats—allegations by Glen Morgan
SCBIL File No. 6552-016

Dear Mr. Perkins,

We write on behalf of our client, the Whatcom County Democrats, responding to your email dated October 3, 2017, regarding the above-referenced matter.

This is sent both to meet your preferred response date of October 23 and to outline the substance of our defense against the complaint. We hereby request that the complaint be referred to the Public Disclosure Commission ("PDC") for resolution because the issues outlined in Mr. Morgan's allegations fall into three groups, each of which is better suited to PDC resolution than burdening the Attorney General's investigatory unit.

Mr. Morgan reports three types of what he characterizes as violations: (1) late filings of Forms C-3 and C-4, Exhibit A to the Complaint; (2) improper characterization and filing of what Mr. Morgan has decided are debts rather than expenses, Exhibit B to the Complaint; and (3) failure to identify sub-vendors, Exhibit C to the Complaint. Had Mr. Morgan done the even the most basic of investigations, or examined our records at any level of detail, he would have discovered that the "violations" he notes are without merit, trivial, or could and should be easily resolved by the PDC.

Mr. Morgan complains that 26 Forms C-3 or C-4 were filed late. He calculates that there were cumulatively 604 days of late filing. Of the 26 forms he lists, 10 are forms amending prior timely filings. There is no "due date" for filing amended forms—in fact, to interpret things as Mr. Morgan would here, any "amendment" of any filing would automatically be a late filing, a stance which would render meaningless the actual goals of transparency set out in Washington's campaign finance laws. One of the remaining 16 forms was a C-4, which a simple check of the PDC calendar would have shown was actually filed on time.

The remaining 15 "late" forms are C-3s. Seven of these forms report multiple items, all but one of which were reported on time, but upon which the reporting of savings account interest was late. In each case the savings account interest was well under the \$50 reporting requirement. In five of the seven, the interest was less than one dollar (\$1.00). Review of the other eight

allegedly tardy forms, along with the PDC filing deadlines, shows cumulative late filings totaling only 18 days spread over the 32 months of reporting that Mr. Morgan examined. These trivial violations are *de minimis* violations at best, and are more properly resolved with the PDC rather than with the Attorney General's office.

Mr. Morgan's Exhibit B alleges violations regarding the failure to report amounts paid for various charges as "debt" on the C-4 and then presumably a filing of the satisfaction of the "debt" on the subsequent C-4. For an organization that keeps its books on a cash basis as does the Whatcom County Democrats, such a characterization makes no sense. At its base, this is a dispute with the accounting methods used by the Whatcom County Democrats and, we believe, the overwhelming majority of groups that use a cash basis accounting method, against Mr. Morgan's preference for unnecessary use of time and pixels needed to satisfy his view of proper accounting under the regulations of the PDC.

For example, alleged violations 1, 6, 12, etc., call out our office rent to Daylight Properties, which is paid monthly in accordance with our lease. Mr. Morgan says that these payments, or perhaps part of them, should be characterized as "debt." As far as we can see, he would have us characterize that portion of our rent that is paid for the days between the first of the month and the date we write the check as an expense, and the remainder of the rent as "debt" because we are pre-paying an obligation which is not yet due. This is legally, per our lease and applicable PDC regulations, and factually, per standard business practice, improper. Mr. Morgan's "debt" characterization would also impose a heavy burden on our volunteer Treasurer and staff to make the duplicate entries and calculations, as well as upon persons trying to untangle C-4s filed under his scheme.

As another example, alleged violations 2, 8, etc., are deposits or payments to secure venues for events. The amounts paid refer to present obligations and, while they may be a partial payment anticipating later payments, those later payments are not due until the obligation matures or the venue is released from its performance. The Whatcom County Democrats keep its books on a cash basis, and these payments are made for current obligations and reported when made. They do not represent a "debt."

As a third set of examples, alleged violations 3, 7, 9, 11-13, etc., are based on the wages paid Ms. Gwen Groden, our paid staffer. While her wages are accrued hourly as she works, they are legally payable at stated intervals. As with the rent, Mr. Morgan complains that, by not accruing her wages on an hourly, daily or other unspecified regular basis and reporting wages to be earned after the C-4 is filed as "debt," we have mischaracterized the payments.

Alleged violations 4, 5, 17, etc., which are federal and state employment tax obligations, suffer from the same flaw: they are not "debt" for cash basis organizations. If there are any truly mischaracterized payments among the 201 violations Mr. Morgan asserts, there are so few that these *de minimis* violations can best be sorted out by the PDC rather than your unit.

Mr. Morgan's Exhibit C claims 90 violations for failure to report sub-vendors. After receiving the complaint, the Whatcom County Democrats sought guidance on sub-vendor

reporting from the PDC. Attached is the e-mail string with Mr. Fox Blackhorn, a Compliance Coordinator with the PDC. Comparison of the guidance from Mr. Blackhorn with our reporting of sub-vendor payments is necessary to determine if any violations have occurred. We believe such an examination will show no violation or, at most, a minor violation rather than the string of “habitual and willful” violations alleged by Mr. Morgan. This review is properly within the purview of the administrative duties of the PDC. We note in passing that at *least* alleged violations 1-20 fall within permissible reporting as we understand Mr. Blackhorn’s advice.

Mr. Morgan has a bare allegation that the Whatcom County Democrats have “habitually and willfully committed frequent and multiple violations of RCW 42.17A” in his PDC complaint. There is no evidence other than his recitation of what he believes to be tardy reporting and mischaracterization of expenditures to support his adverbial accusation of evil intent. Without more, a proper review of his complaint by the PDC is the better way to resolve these allegations, rather than using the scarce resources of the Attorney General’s office.

Finally, the Public Disclosure Act and its implementing regulations provide that any person may inspect the books and records of a reporting organization during certain times of the year. The books and records of the Whatcom County Democrats are open for inspection during the required times. Ms. Peggy Borgens has been the Whatcom County Democrats’ Treasurer and the official custodian of our records since 2012. During her tenure, neither Mr. Morgan nor any other person has asked to review our books and records. Of course, it is easier to make allegations of improper behavior and put the burden of refutation on the reporting organization than it is to do the investigatory work needed to substantiate claims of bad filings.

Resolution of Mr. Morgan’s concerns properly belongs with the PDC rather than your unit. If you have any questions, or if there is anything we can do to be of assistance to you, please do not hesitate to contact us. Please also include Mr. Daniel Raas in your response.

Sincerely,

Laura Ewan
Counsel for Whatcom County Democrats

Enclosure

cc: Daniel Raas (danraas@comcast.net)

From: "PDC Support" <pdcc@pdc.wa.gov>
To: stevl@comcast.net
Sent: Friday, October 13, 2017 11:11:25 AM
Subject: Re: PDC - Get help or information - Steve Lydolph

Hi Steve,

Sorry for the delay in response to your question, we have over 350 active cases spread between 4 people, with an average of 80 new cases pouring in each month. We will respond to inquiries, but must ask for your patience as we try to handle this rapidly increasing volume of work.

So, to answer your question, per [WAC 390-16-037](#), all expenditures are required to have detailed breakdowns showing each vendor, purpose for the purchase, and the cost for goods or services. The complaint you're looking at may have other items in that exhibit alleging a failure to properly breakdown expenditures for failure to list say, the number of items printed, or the channels an advertisement will air on. This is an alleged failure when a candidate or committee pays directly for a service, and fails to provide sufficiently detailed descriptions of their purchase.

The issue of sub-vendors is addressed in a separate, but related rule, [WAC 390-16-205](#). This relates to situations where a candidate or committee pays one group for a package of services, who then pays other groups to perform the services. This is a common situation with media companies and consultants, as they act as intermediaries between the campaigns and companies producing goods or services. The WAC contains an example that makes this a bit clearer:

Example A: If a campaign committee pays a consultant \$5,000 to prepare and mail a political advertising brochure, all costs associated with the project shall be itemized by identifying each service provided, vendor utilized and amount attributable to each:

Vendor Name	Purpose	Amount
Jones Consulting		\$5,000
	ABC Graphics	\$1,200
	XYZ Printing Co. (5,000 pieces)	\$3,000
	Your Mailhouse	\$800

Some of these firms have in-house services such as phone banks, print shops, graphic design, and the like. In those cases, the candidate or committee must be explicit about which services are being performed in-house, versus being out-sourced to other companies.

Example B: If a campaign committee pays a consultant to perform tasks such as fund-raising, survey design or campaign plan development, and the consultant does not subcontract with other vendors, the expense shall be reported as follows:

Vendor Name	Purpose	Amount
Jones Consulting	Fund-raising, survey design campaign plan development	\$5,000

So, what the complaint you're interested in is alleging, is that the Respondent paid a vendor for a package of services, and that vendor split that money between various sub-vendors to produce the product, like in Example A. The Respondent may amend their reports to reflect this breakdown, or claim that their vendor operates more like Example B. It's the job of the PDC to determine which camp these vendors fall into, to determine whether the reporting requirements were violated.

Does that help clear things up a little bit?

Fox Blackhorn
Compliance Coordinator
360.753.1980 | 360.753.1111



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To respond, please reply to this email.

Washington Public Disclosure Commission
<http://www.pdc.wa.gov>
1.360.753.1111

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From: "PDC Support" <pdc@pdc.wa.gov>
To: stevl@comcast.net
Sent: Monday, October 16, 2017 5:46:26 PM
Subject: Re: PDC - Get help or information - Steve Lydolph

Hi Steve,

So this question is not as straightforward to answer. Generally speaking though, we wouldn't need a detailed sub-vendor breakdown for simple reimbursements, so much as we would need a detailed description for the expenditure. It would depend on the specific facts of the situation as variables like the amount of time between purchase and reimbursement (in case it turns into a debt), the volume and nature of the purchases, and others might modify the reporting requirements.

Let's say for example, that a member of the party goes out and buys pizza for a meeting:

Example A: They spend \$50.05 in total at Costco, and get reimbursed for the full amount within 30 days. This would be recorded by the Party on their C-4, with the person receiving the reimbursement listed as a vendor and the description would state that they are being reimbursed for pizza purchased from Costco. This has the effect of providing the necessary information of where the money went, without requiring a full sub-vendor breakdown.

Example B: They spend \$50.05 in total at Costco, and get reimbursed for the full amount after 30 days. The Party would have to record this on their C-4 as a debt to that person if the debt was known, or it would become an in-kind contribution from that person subject to limits. When the debt is discharged, it would be recorded as an expenditure like in the example above.

Example C: If the person makes any profit at all from this arrangement, above the actual cost incurred, then the Party would be responsible for ensuring that the reporting showed a proper sub-vendor breakdown. The point of this breakdown is to show that the Party paid an outside source for a service, who took that money and paid other sources to provide the finished product.

This is intended to allow the Public and the PDC to follow the train of money to see where it is actually being directed, and prevent concealment of payments which may constitute a conflict of interest or public trust. Not as straightforward of an answer to your question, but this is an area where "it depends" is really the answer.

Provided that we are not crossing into territory closer to Example C however, then the sub-vendor breakdown is less likely to be required. That being said, it is always our advice that over-disclosure is better than under-disclosure. Nobody will get in trouble for providing more detail than is required, but lack of detail and breakdown of expenditures is one of the most common complaints received by the PDC.

Hopefully this helped more than it confused!

Fox Blackhorn
Compliance Coordinator
360.753.1980 | 360.753.1111



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