



Building Industry Association of Washington

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Public Disclosure Commission

June 2, 2004

Vicki Rippie
Executive Director
Public Disclosure Commission
711 Capitol Way #206
PO Box 40908
Olympia, WA 98504-0908

Dear Ms. Rippie:

I request formal guidance from the PDC on the following question:

If a PAC is set up to (among other things) support a particular candidate by doing independent expenditures, is it permissible for that same candidate to informally refer supporters (who wish to make a contribution) to the PAC? *I.e.*, may a candidate give the names of selected supporters to the PAC, or may the candidate make a phone call to a supporter to facilitate a meeting with PAC representatives?

Of course, the PAC would be independent and the candidate would have no say with respect to any spending, content of message, etc.-- *i.e.* there would be no "encouragement or approval to make the expenditure." Nor will the candidate otherwise collaborate with any PAC members for the purpose of making the expenditure.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy M. Harris", written over a horizontal line.

Timothy M. Harris
General Counsel



State of Washington
PUBLIC DISCLOSURE COMMISSION

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MEMORANDUM

TO: Members, Public Disclosure Commission

FROM: Susan Harris, Assistant Director

DATE: June 15, 2004

RE: Advisory Matter Related to Independent Expenditures

Issue

Tim Harris, General Counsel for BIAW, has asked whether a candidate may solicit funds for a political committee (PAC) that would make independent expenditures in support of that candidate, if the candidate:

- (1) has no say with respect to the spending of the PAC or other content of the message;
- (2) would not encourage or approve the actual specific expenditure; and
- (3) would not otherwise collaborate with any PAC officials regarding the expenditure?

Suggested Answer

Staff believes the answer to the question is no. Not all of the elements of an Independent Expenditure as defined in RCW 42.17.020(24)(a) could be satisfied.

Statute

An independent expenditure is defined in RCW 42.17.020(24) as "an expenditure that has each of the following elements:

- (a) it is made in support of or in opposition to a candidate for office by a person who is not:
- (i) a candidate for that office,
 - (ii) an authorized committee of that candidate for that office,

- (iii) a person who has received the candidate's **encouragement** or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or
- (iv) a person with whom the candidate has **collaborated for the purpose of making the expenditure**, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of ***five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one independent expenditure if their cumulative value is five hundred dollars or more."¹

(Emphasis added)

Background---Initiative 134

RCW 42.17.620---Intent

"By limiting campaign contributions, the people intend to:

- (1) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;
- (2) Reduce the influence of large organizational contributors; and
- (3) Restore public trust in governmental institutions and the electoral process."

Contribution Limits

Since its inception in 1972 up to the passage of Initiative 134 in 1992, the public disclosure act was primarily a disclosure law. Contribution limits were non-existent. Initiative 134 imposed contribution limits of \$500 per election for legislative candidates and \$1,000 per election for state executive candidates. The limits have since been adjusted for inflation and are now at \$675 and \$1,350 respectively. State party committees, county and legislative district committees and caucus campaign committees acquired an election cycle limit. State party committees and caucus political committees may give state executive and legislative candidates up to \$0.68 per registered voter in the district in which the candidate is seeking office. County and legislative district committees are subject to a combined limit of no more than \$0.34 per registered voter.

¹ The limit, adjusted for inflation, is now at \$675.

While independent expenditures had been made prior to the passage of Initiative 134, the imposition of contribution limits fueled large scale independent expenditures, since they are a mechanism to continue to support candidates when a donor has reached the statutory contribution limits to those candidates. Since the passage of Initiative 134, independent expenditures have continued to have a significant monetary impact in the election process, as shown below:

1994	\$ 269,275
1996	219,978
1998	411,106
2000	1,104,514
2002	795,511

Discussion and Staff Recommendation

As noted above, the definition of "independent expenditure" includes a four part test in RCW 42.17.020(24)(a). Each of the four parts must be met in order for the expenditure to satisfy the definition. The circumstances posed by BIAW fail two of the four parts.

Specifically, subdivision (iii) requires that the spender not be a person who has received the candidate's "encouragement," and subdivision (iv) says the candidate and the spender may not have "collaborated for the purpose of making the expenditure," when the expense pays for political advertising supporting that candidate or opposing that candidate's opponent.

Webster's II New Riverside University Dictionary defines "encourage" as: "1. To inspire with hope, courage or confidence: HEARTEN; 2. To give support to: FOSTER; 3. To stimulate."

One of the most fundamental ways a candidate could encourage a person to purchase political advertising supporting that candidate is to help make sure that person has sufficient funds to undertake an effective advertising effort. Assisting a PAC in fundraising fosters that committee's ability to make the political advertising expenditure benefiting the candidate. As such, the PAC expenditure is not sufficiently removed from the candidate to qualify as an independent expenditure.

"Collaborate" is defined in *Webster's* as: 1. To work together, esp. in a joint intellectual effort; 2. To cooperate treasonably, as with an enemy occupying one's country.

Staff is of the opinion that if a candidate solicits contributions for a PAC by, for example, referring potential contributors to the committee, putting a link to the PAC's website on his or her campaign website, or referencing the PAC in his or her own campaign literature, then the candidate and the PAC are working

together for the purpose of making a political advertising expenditure. That collaboration disqualifies any resulting expenditure from the definition of independent expenditure.

Based on a reasonable application of the definition of independent expenditure that is consistent with the intent of the statute, staff is recommending the Commission find that if a candidate assists a PAC in fundraising and the PAC then undertakes political advertising supporting that candidate or promoting the defeat of that candidate's opponent, that expenditure does not satisfy the definition of "independent expenditure." Examples of fundraising assistance include helping the PAC identify potential contributors, referring potential contributors to the PAC, and referencing the PAC on the candidate's website or in his or her literature.

If you wish to discuss this further prior to the meeting, please contact Vicki at 360-586-4838 or me at 360-753-1981.

