

FORM



DECLARATORY RULING NO. 1

LEGISLATOR NEWSLETTERS CONCERNING BALLOT PROPOSITIONS (RCW 42.17.130; WAC 390-05-270; Sec. 5, Ch. 336, Laws of 1977, 1st Ex. Sess.): One or more of the cited prohibitions against use of office facilities or public office funds to promote or oppose a ballot proposition would be violated by a legislator using such facilities or funds (a) to prepare and distribute the attached newsletter expressing views in opposition to two ballot measures, or (b) to make speeches or distribute legislative materials for the purpose of opposing such measures. (November 15, 1977).

The Honorable R. Ted Bottiger
State Senator
15711 - 62nd Avenue East
Puyallup, Washington 98371

Dear Senator Bottiger:

You have petitioned for a declaratory ruling under the provisions of RCW 34.04.080 and WAC 1-08-580 and -590 as to:

(1) Whether a proposed newsletter, expressing your views on two ballot propositions which are scheduled to appear on the November, 1977, general election ballot, may be lawfully prepared and mailed to your constituents in the period before the election with monies from your "public office fund," created under Section 5, Chapter 336, Laws of 1977, 1st Ex. Sess.

(2) Whether expenses incurred in making public speeches, the text of which would be similar to that of your proposed newsletter, may be lawfully paid from your "public office fund."

(3) Whether RCW 42.17.130 and/or WAC 390-05-270 would prohibit the preparation and mailing of the proposed newsletter at public expense to constituents and/or the news media.

In addition to clarifying the above questions, a supplementary letter from you dated October 17, 1977 raises,

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in our view, these additional questions:

(4) whether and to what extent under RCW 42.17.130 and WAC 390-05-270 a legislator may distribute analyses, visual aids, fiscal notes, and similar materials which have been prepared at public expense for use in legislative committee hearings, or copies of such materials, as part of a presentation on a ballot proposition to groups of constituents; and

(5) whether a legislator, upon request of a news reporter for background information on a ballot proposition, may supply information such as staff and agency analyses and favorable and unfavorable hearing testimony without violating RCW 42.17.130, as construed in WAC 390-05-270.

The Commission has considered your Petition and supplementary letter of October 17, 1977, and your oral testimony and the ensuing discussion presented at its September 20, 1977 meeting, and now issues this binding declaratory ruling. By oral agreement, you have consented to our issuing this ruling after the election if there is insufficient time in advance of the election, in order to give it the fullest possible consideration, with the understanding that these are ongoing issues and therefore shall not be regarded as moot.

(1) Newsletter--Public Office Fund:

Your first two questions concern the application of Section 5, Chapter 336, Laws of 1977, 1st Ex. Sess., which took effect on September 21, 1977 and which provides, in pertinent part, that:

"(1) Elected and appointed officials required to report under RCW 42.17.240, shall report for themselves and for members of their immediate family to the commission any contributions received during the preceding calendar year for the officials' use in defraying nonreimbursed public office related expenses. Contributions reported under this section shall be referred to as a 'public office fund' and shall not be transferred to a political committee nor used to promote or oppose a candidate or ballot proposition, other than as provided by subsection (3)(a) of this section. . . .

". . .

"(3) Any funds which remain in a public office fund after all permissible public office related expenses have been paid may only be disposed of in one or more of the following ways:

"(a) Returned to a contributor in an amount not to exceed that contributor's original contribution. . . ." (Emphases supplied.)

You have expressly stated with regard to the first question that part of the cost of the newsletter will be paid from your public office fund. The issue then, in terms of the statute, is whether the proposed use of funds for this newsletter would be ". . . to promote or oppose a . . . ballot proposition. . . ."

We are not aware of any Washington authorities which have undertaken to develop guidelines for determining whether a particular activity is for the purpose of promoting or opposing a ballot proposition. The attorney general, in interpreting the similar language of RCW 42.17.130, has observed as a general proposition that the determination depends upon the objective nature and purpose of the expenditure or activity, which is a fact question which must be answered in each case; put another way, the threshold question is whether the activity is aimed at attempting to persuade persons to vote for or against the subject ballot proposition. AGO 1975 No. 23 at 5 and 9.

The California Supreme Court, however, recently approached the similar problem of evaluating the purpose of election communications paid for with public monies (rather than with contributions kept in a public office fund) in Stanson v. Mott, 17 Cal. 3d 206, 551 P. 2d 1, 11-12, 130 Cal. Rptr. 697 (1976), as follows:

"Problems may arise, of course, in attempting to distinguish improper 'campaign' expenditures from proper 'informational' activities. With respect to some activities, the distinction is rather clear; thus, the use of public funds to purchase such items as bumper stickers, posters, advertising 'floats,' or television and radio 'spots' unquestionably constitutes improper campaign activity, as does the dissemination, at public expense, of campaign literature prepared by private proponents or opponents of a ballot measure. On the other hand, it is generally accepted that a public agency pursues a proper 'informational' role when it simply gives a 'fair presentation of the facts' in response to a citizen's request for information or, when requested by a public or private organization, it authorizes an agency employee to present the department's view of a ballot proposal at a meeting of such organization.

"Frequently, however, the line between unauthorized campaign expenditures and authorized informational activities is not so clear. Thus, while past cases indicate that public agencies may generally publish a 'fair presentation of facts' relevant to an election matter, in a number of instances, publicly financed brochures or newspaper advertisements which have purported to

contain only relevant factual information, and which have refrained from exhorting voters to 'Vote Yes,' have nevertheless been found to constitute improper campaign literature. In such cases, the determination of the propriety or impropriety of the expenditure depends upon a careful consideration of such factors as the style, tenor and timing of the publication; no hard and fast rule governs every case." (Citations omitted.)

In a footnote at page 12, the Court referred with approval to a 1960 Opinion of the California Attorney General, dealing with a newspaper advertisement placed by a school district one day before a school bond election, as follows:

"The advertisement did not explicitly urge voters to 'Vote Yes' on the bond issue, but stated in large letters that 'A CLASSROOM EMERGENCY EXISTS NOW AT MADERA UNION HIGH SCHOOL.' and listed a number of reasons why additional funds were needed by the school district. The county counsel requested the Attorney General's opinion as to whether public funds could be used to pay for the advertisement.

"After reviewing the relevant judicial authorities, the Attorney General concluded that although the advertisement did not explicitly urge a 'Yes' vote and did disclose relevant factual information, the use of public funds to pay for the advertisement would nonetheless be improper. The opinion reasoned: 'Viewed as a whole, the advertisement cannot properly be held to be a publication primarily designed to educate the voters as to the activities carried on by or the condition of the schools of the district. . . . The style, tenor and timing of the advertisement placed by the board of trustees points plainly to the conclusion that the publication was designed primarily for the purpose of influencing the voters at the forthcoming school bond election.' (35 Ops. Cal. Atty. Gen. 112, 114.)"

We accept the criteria stated by the aforementioned California authorities in making our determination that the preparation and mailing of your newsletter with public office funds would be for the unlawful purpose of opposing ballot propositions. In our view, the communication for which an expenditure is made must be tested by viewing it as a whole to determine whether it reasonably appears to be primarily designed to influence in one way or another the vote of a disinterested reader or listener, with such factors as the style, tenor (or content), and timing of the communication to be considered.

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Your attached newsletter fails this test, at least when viewed as a whole. Perhaps this could not be said on the basis of the style of presentation alone, since your newsletter format is certainly less campaign-oriented than, for example, a poster or handbill or even another letter with "Vote No" or similar exhortations or alarms in bold print. On the other hand, we do understand that at least some of the newsletters would receive mass distribution in your district, which suggests an attempt to persuade voters more than would individualized replies to inquiries. In any event, we believe the tenor (content) and timing of the newsletter are more persuasive indications of its primary intent.

The tenor, or content, may fairly be said to consist almost exclusively of your reasons for voting against the two Initiatives. The Initiative 348 discussion begins with a paragraph describing the intent of the variable gas tax as a solution to an impending problem in financing the state's highway program. Its next paragraph states as an additional reason why you voted for the variable gas tax in the legislature the revenue needs of local governments; certain projected revenue losses if the variable gas is repealed are mentioned. In other words, these two paragraphs simply develop separate arguments in support of the variable gas tax and thus in opposition to the ballot proposition. The third paragraph states the cost of the variable gas tax for an average passenger car and then asks the reader: is this too much to pay for good roads? Such a rhetorical question in this context is at best arguably neutral and certainly does not represent an attempt to present otherwise omitted opposing considerations.

In the first paragraph of your discussion of Initiative 345, after briefly acknowledging what are identified as the two main arguments for removal of the sales tax on food (as provided for in the Initiative), you state that you prefer to streamline the entire tax system rather than "take an axe and chop out a 16% chunk" of the state's revenue. Your next paragraph suggests that, budget cuts having already been made, Initiative 345 would probably require seeking new revenue sources. In the following paragraph, you cite figures as showing that the most severe impacts of Initiative 345 would be for local government--"a critical blow." The Initiative 345 discussion, then, similarly consists largely of opposing arguments, including the vivid image of an axe at work, together with, at least arguably, neutral observations; the brief mention of arguments supporting the Initiative merely serves to allow you to answer them immediately with a statement of another approach you prefer.

Your newsletter concludes by stating that you too are one of those who are tired of paying taxes, then going on to express your belief that changes in taxation and governmental services must be made with an intelligent management

approach, citing two presumed examples from the last legislative session. Finally, you assert that your views as an elected official on these tough decisions should be known and that you feel you "must vote against Initiatives 345 and 348," believing that "government should be run with sound management principles and not with a meat axe." Enclosed with the newsletter is a chart comparing estimated fuel tax revenues for Pierce County and the cities within that county with and without the variable gas tax. In short, your conclusion merely restates your opposition to the two Initiatives.

In characterizing your newsletter as we have, no attempt has been made to state what additional arguments could or should have been included, although we would feel safe in assuming that both of the Initiatives are not as lacking in supporting arguments as is your newsletter. Rather, we merely note that this newsletter makes only the barest reference to the existence or even the non-existence of arguments supporting the Initiatives, and the result cannot be described as a fair presentation of all relevant facts.

Finally, the proposed timing of your newsletter also causes us to view that letter as primarily designed to influence the vote of a disinterested reader or listener. The newsletter is dated September 12, 1977, which indicates that it would have been distributed within the two months leading up to the November 8 general election. While this factor alone is not decisive, we find that such a proximity to the election campaign period represents an attempt to reach and influence voters at a time when they are deciding how to vote.

(2) Speeches--Public Office Fund:

The second question you have presented is whether expenses incurred in making speeches "similar" in text to that of the attached newsletter may be lawfully paid from your "public office fund" in view of the language of Section 5, Chapter 336, Laws of 1977, 1st Ex. Sess. quoted above. We are handicapped in making that determination because, although you have indicated that the text would be "similar" to that of the proposed newsletter, the actual text of the speeches is not presently available for our analysis. We have indicated above that a determination of whether or not a communication is made to promote or oppose a ballot proposition requires a necessarily careful and detailed analysis and we are unable to express an opinion without such an analysis of the actual subject matter. For the purpose of answering this question, therefore, we must assume that the contemplated speeches which involve expenditures from your "public office fund" would be for the purpose of supporting or opposing a ballot proposition.

On that basis, we have little hesitation in concluding that such expenditures from a public office fund would constitute

a clear violation of the express terms of this recently-enacted statute. Although this fund consists of private contributions rather than public monies, the legislature has expressly prohibited the use of contributions contained in a public office fund to promote or oppose a ballot proposition, unless those contributions have first been returned to the contributors. Furthermore, the statutory language contains no general exemptions for legislators whether or not the proposed activity is claimed to be part of the normal and regular conduct of their offices.

We wish to emphasize, however, that the aforementioned prohibition does not affect the right of a legislator himself or herself to make independent campaign expenditures or to form or participate in a separate political committee which receives contributions or makes expenditures in support of or opposition to a ballot proposition. In the latter instance, Section 3(3) of Chapter 336, Laws of 1977, 1st Ex. Sess., does expressly allow the transfer of a candidate's surplus campaign funds, not exceeding a total of two thousand dollars in a calendar year, to political committees, parties, and candidates. The prohibition in question is only against certain uses of public office funds in ballot proposition campaigns, uses which otherwise might permit an elected official to effectively exceed the two thousand dollar limitation on further political transfers of campaign funds.

(3) Newsletter--Use of Office Facilities:

Your remaining questions concern the application of RCW 42.17.130, and WAC 390-05-270. RCW 42.17.130 reads:

"(1) No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: PROVIDED, That the foregoing provisions of this section shall not apply to those activities which are part of the normal and regular conduct of the office or agency."

The Commission, in WAC 390-05-270, has interpreted this statute as follows:

"Whereas, RCW 42.17.130 forbids certain political uses of the office facilities of elected public

officials but expressly denies the application of that section to activities which are a part of the normal and regular conduct of an office, it shall be the policy of the Commission to construe the term 'use of any facilities' in RCW 42.17.130 as meaning only (1) uses of 'facilities', as that term is therein defined, which constitute or result in a measurable expenditure of public funds; or (2) such uses which have a measurable dollar value.

"Examples of activities or uses which the Commission considers to be excluded from RCW 42.17.130 are verbal endorsements or statements favoring or opposing candidates or ballot issues which endorsements or statements do not directly or indirectly involve any measurable expenditure of public funds."

Specifically, the third question asks whether the newsletter discussed above may be prepared and mailed at public expense to constituents and/or the news media without violating the statute just quoted. On the basis of your Petition and testimony, we will assume that a measurable expenditure of public funds is contemplated, obviating any issue arising in that regard under WAC 390-05-270. Having concluded above that expenditures for the preparation and mailing of your newsletter would be for the purpose of opposing two ballot propositions, we are left here with the remaining issue of whether your proposed expenditures in opposition to ballot propositions are nevertheless permitted as part of the "normal and regular conduct" of your office, within the proviso concluding RCW 42.17.130.

A useful discussion of this otherwise undefined phrase is contained in AGO 1975 No. 23, at pages 5-9. For present purposes, we adopt that Opinion's formulation of "normal and regular conduct" as requiring, generally, express statutory or constitutional authorization making the conduct lawful and that the conduct be usual and not extraordinary. See also, State ex rel. Port of Seattle v. Superior Court, 93 Wash. 267, 160 Pac. 755 (1916).

Guidance as to the specific application of the RCW 42.17.130 proviso in circumstances such as you have presented is also offered in AGO 1975 No. 23, at pages 9-13. As that Opinion notes, some communications with constituents are part of the "normal and regular conduct" of the office you hold as a state legislator:

"Our research has disclosed no constitutional or statutory provision, nor any senate or house rule or resolution, which expressly deals with the question of how appropriations for legislative purposes are to be expended. The matter

appears to be governed mainly by informal policies and customs of long standing which, as we have said above, may be utilized in determining legislative intent in doubtful cases. . . .

"Based upon these long-established customs and understandings, which are clearly indicative of actual legislative intent, we therefore have no hesitation in concluding that it is not only lawful but also 'normal and regular conduct' for a legislator to utilize the facilities of his office for the purpose of (a) soliciting the views of his constituents on matters which are or may be the subject of action in the legislature and (b) informing his constituents on bills or other matters pending, proposed, enacted or defeated in the legislature, including the legislator's own views and/or voting record on such matters. Nor do we mean this to be an exclusive listing. . . .

"Moreover, even if such a bill or other legislative measure becomes the subject of a ballot proposition we would still think it possible to characterize such communications as being a part of the 'normal and regular' conduct of a legislator's office - depending, however, upon all of the circumstances."

AGO 1975 No. 23 at 10-11 (footnote omitted). The Opinion's discussion of this issue then concludes as follows, at page 12:

"If (all of the) circumstances show, primarily, a normal and regular communication between a legislator and his constituents with only an incidental (and remote, from the standpoint of time) advocacy of passage or defeat of a ballot measure previously considered by the legislature, the statute will probably not have been violated - at least so long as the 'incidental' part of the particular communication resulted in no added expense to the public.

"But if, instead, the apparent primary and immediate purpose of a newsletter or other communication from a legislator to his constituents (at public expense) is that of persuading or attempting to persuade them or other persons to vote one way or another on a pending or proposed statewide ballot proposition - even one previously considered by the legislature itself - a different result should be anticipated. Simply stated, . . . it is our opinion that there is no legal basis for allowing a member of the

legislature to use the facilities of his office or expend funds appropriated for legislative purposes to communicate with his constituents in order to obtain their affirmative or negative votes on such a ballot measure." (Footnotes omitted.)

We agree with this conclusion that it is not the "normal and regular conduct" of an individual legislator, within the meaning of the proviso to RCW 42.17.130, to use public facilities or funds for the purpose of promoting or opposing ballot propositions through communications with constituents and/or the news media. The result, then, is that a communication by a legislator involving the use of public facilities or funds must be tested to determine whether it is for this prohibited purpose, just as a communications expenditure from a public office fund is tested under the analysis of Question (1), above. Thus, in addition to the matter of timing, which is mentioned in the Attorney General's Opinion as a particularly relevant circumstance, we believe the other factors identified in Stanson v. Mott and discussed above are also among those which can usefully be considered here.

What was said above regarding these aspects of your newsletter--style, tenor (or content), and timing--is, of course, equally applicable to this RCW 42.17.130 discussion. Nevertheless, some additional comment on at least two of these three factors is appropriate here, to emphasize why your newsletter is not within the "normal and regular conduct" proviso of that section.

As to the newsletter's content, we note particularly that the discussion of the two ballot propositions is not incidental to, or part of a larger discussion of or solicitation of constituent views on, legislative matters, nor is the report of your views limited to the context of the legislature. Rather, the newsletter concentrates exclusively on explaining why you as a citizen intend to vote in a particular way at a general election.

In considering the timing of your newsletter, we note that it is dated approximately three months after adjournment of the legislative session and two months before the general election, and thus is closer to the latter than the former. On one hand, we recognize that if voters are to be provided with information on legislative matters, this arguably should be done at a time when these matters are of special interest, as when they have assumed greater significance by becoming, through initiative or referendum, ballot propositions. On the other hand, such a communication concerning legislative matters which is made relatively close to election day must be scrutinized with particular care to see that its content is balanced, factual, legislatively-oriented, and apparently not primarily intended to influence voters' decision-making.

See also AGO 1975 No. 23, at page 11. As noted earlier, the attached newsletter does not fare well under such scrutiny.

In summary, we would again emphasize that RCW 42.17-.130 does not in any manner restrict a legislator from expressing personal views to the same extent as any other citizen, whether through independent campaign expenditures, participation in political committees, or statements or endorsements not involving measurable expenditures of public funds.

In our opinion, RCW 42.17.130 is intended to prevent those citizens having access to public facilities or funds from using that advantage to communicate their own views at the expense of the taxpaying public, which may or may not universally agree with them. Indeed, it may well be that certain constitutional doctrines, including such provisions of our state Constitution as those requiring free and equal elections (Article I, Section 19), prohibiting the granting of special privileges or immunities to any class of citizens which are not available equally to all citizens (Article I, Section 12), and forbidding the use of state funds for private purposes (Article VIII, Section 5), would require the same result even without RCW 42.17.130. See also, Stanson v. Mott, cited above, 551 P. 2d at 9-10. Of course, the Public Disclosure Commission has no authority to pass upon such constitutional issues. We do conclude, however, that the applicable statute, RCW 42.17.130, prohibits a member of the legislature from using the facilities of his or her public office to persuade members of the public to vote one way or another on a ballot proposition; and accordingly we further conclude that a legislator's use of public facilities or funds to prepare and/or distribute the proposed newsletter to constituents and/or the news media would violate that statute.

(4) Presentation of Legislative Materials--Use of Office Facilities:

The fourth question asks whether and to what extent under RCW 42.17.130 and WAC 390-05-270 a legislator may distribute analyses, visual aids, fiscal notes, and similar materials which have been prepared at public expense for use in legislative committee hearings, or copies of such materials, as part of a ballot issue presentation to groups of constituents. Even more than in Question (2) above, we are handicapped by a lack of information both as to the extent and the purpose of the proposed presentation. As our answers to your previous questions indicate, the question, from the standpoint of RCW 42.17.130, turns upon whether or not the activity in question is merely informational or whether it is instead designed to influence members of the public to vote one way or the other on a ballot

proposition.¹ Again, we must assume that the purpose of the activity is not merely informational, but is, rather, to promote or oppose a ballot proposition and, therefore, that the "normal and regular conduct" proviso is not applicable based upon the analysis found earlier in this ruling.

The additional requirement for the application of RCW 42.17.130 in such an instance is that there must be some use of the facilities of a public office or agency, which we have construed in WAC 390-05-270 to require that a measurable expenditure of public funds be involved. This circumstance will obviously depend upon the facts of the particular situation. Assuming that the identified materials were prepared initially at public expense for the lawful purpose of a bona fide use in legislative committee hearings rather than for use in promoting or opposing a ballot proposition, it might be that these materials could be used later in the latter regard without the making of a measurable expenditure of public funds. (Of course, a question beyond the scope of chapter 42.17 RCW as to the authority for such use would still remain.) On the other hand, the use of public facilities or funds in making measurable expenditures for copying, distributing, displaying or otherwise handling materials for the purpose of promoting or opposing a ballot proposition, even if those materials were lawfully prepared initially, is prohibited.

(5) Information to Reporters--Use of Office Facilities:

The final question is whether RCW 42.17.130 and/or WAC 390-05-270 prohibit a legislator, when asked by a news reporter for background information on a ballot proposition, from supplying information such as staff and agency analyses and favorable and unfavorable hearing testimony.

Preliminarily, we point out again that we are assuming there is some authority for members of the legislature to provide informational materials at public expense. That matter is not governed by RCW 42.17.130 but by general constitutional and statutory provisions relating to the authority of public officers in general. RCW 42.17.130 and WAC 390-05-270 affect such activities only to the extent (a) they involve a measurable expenditure of public funds, and (b) their purpose is to promote or oppose a candidate or ballot proposition. With those assumptions in mind, the answer depends upon the degree of objectivity and impartiality exercised by the legislator in making the information available. For instance, a member of the legislature who provides only selective information which tends to either

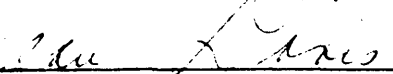
¹ As in the case of the proposed newsletter, if the purpose of this activity is not to support or oppose a ballot proposition, the question may be simply one of determining the extent to which an individual member of the legislature may expend legislative funds to distribute information to the public. That may be an appropriate question for the auditor, but not for the Public Disclosure Commission to determine.

support or weaken the case for a ballot proposition would probably violate RCW 42.17.130. On the other hand, assuming that a member of the legislature may lawfully incur expenditures in making such information available to the public either directly or by supplying it to a member of the news media, the legislator would not violate RCW 42.17.130 if the legislator's gathering and presentation of said information were done in a totally objective and impartial manner.

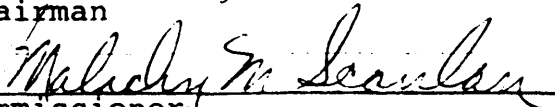
Two final observations are appropriate. First, we would advise you that all of our above conclusions are unaffected by the statement in your Petition that in 1972, prior to the enactment of RCW 42.17.130, you engaged in the type of activities under consideration. Although presumably that was mentioned to suggest that these activities were intended to be included in the normal and regular conduct proviso, we do not find this to be persuasive. Even assuming that you engaged in identical activities at that time, it does not appear that any court passed upon them or that they were necessarily authorized or usual (i.e. normal and regular) even then. We prefer to rely on the Attorney General's restrictive analysis of a legislator's authority, as set out above, and to note the apparent absence of any express authority (such as is given to the Secretary of State for the voters' pamphlet in chapter 29.81 RCW).

Second, we wish to emphasize again the policy position expressed by the Commission in WAC 390-05-270. Activities which do not result directly or indirectly in a measurable expenditure of public funds will not be viewed by us as a violation of RCW 42.17.130. The rule specifically mentions "verbal endorsements or statements favoring or opposing . . . ballot issues" as being thus excluded from the prohibition in this statute. Newspaper interviews, radio and television interviews, speeches and other public appearances, and references to the office held in which partiality on a measure is shown, any of which do not result in payments from public funds, are appropriate for a public official. In addition, we emphasize again that any person--including a legislator--may make independent campaign expenditures or form or participate in a political committee, and limited amounts of surplus campaign funds from a legislator's candidacy may be transferred to such a committee, as noted earlier.


This binding declaratory ruling was adopted at the regular Commission meeting in Olympia on November 15, 1977.



Chairman



Commissioner



Commissioner

Commissioner

Commissioner

Attest:

Francis J. Klein
Notary Public
Title

Commissioners Alfred Harsch and Virginia Gregson were absent from the meeting and were, therefore, unable to participate in the final adoption of this declaratory ruling.