



STATE OF  
WASHINGTON

Dixy Lee Ray  
Governor

PUBLIC DISCLOSURE COMMISSION

403 Evergreen Plaza, Mail Stop FJ-42, Olympia, Washington 98504

206/753-1111

DECLARATORY RULING NO. 3

GROUP SEEKING INCORPORATION OF CITY (RCW 42.17.020(24); RCW 42.17.090): A group of citizens which has publicly circulated petitions to a boundary review board seeking to incorporate a second-class city and has solicited contributions from the general public is a political committee and therefore must file reports of contributions and expenditures from the time of its first contribution or expenditure. (March 25, 1980).

Mr. Robert Conoley  
Breskin, Robbins, Cohen & Conoley  
Attorneys at Law  
Suite 803 Hoge Building  
Second and Cherry  
Seattle, WA 98104

Dear Mr. Conoley:

As attorney for Better Government is Needed (BEGIN), you requested that we issue a declaratory ruling regarding the application of the reporting requirements of Chapter 42.17 RCW to BEGIN. At our regular meeting held on February 26, 1980, we announced our decision to issue this written binding declaratory ruling so as to provide guidance to BEGIN and other similar organizations.

You requested guidance on three issues:

- 1) Whether Chapter 42.17 RCW applies to BEGIN, and
- 2) If it does, when must BEGIN file its initial reports, and
- 3) What information must be included in the initial report?

FACTS

On March 8, 1979, several hundred people attended a community meeting which was sponsored by several community clubs in the unincorporated area of King County between the cities of Bellevue and Renton. The meeting was held to discuss a recent rezoning of a property from single family use to multi-family use which had

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been granted by King County. An attorney advised the group that although the rezone could be appealed, the chances of success were small and the legal expense would be great. Those attending the meeting voted to not appeal the rezone.

Henry McCullough (now the treasurer for BEGIN) suggested the formation of a study group to examine alternative methods of gaining local control over land use decisions. The study group consisted of three persons, Joy Maclin and Charles E. Hamilton (now co-chairmen for BEGIN) and Henry McCullough. The study group retained a new law firm no later than May, 1979, to assist its study.

In late June, 1979, a consulting engineering firm, Jones Associates, Inc., was contacted for the purpose of performing a feasibility study of three alternatives: 1) preserve status quo, 2) petition for annexation by either the cities of Bellevue or Renton, or 3) incorporate a new city. Jones Associates, Inc., agreed to perform that study without compensation.

Weekly meetings were held between Jones Associates and the study group. About the first week in September, 1979, Jones Associates concluded that it would be feasible to incorporate a new city. In mid-September, Mr. McCullough circulated petitions in the area which requested the King County Boundary Review Board (Review Board) to place a question on the ballot which would either incorporate a new city or oppose annexation into any existing municipality. Before sufficient signatures were gathered, it was learned that the Review Board would not accept those petitions because they were phrased in the alternative. Mr. McCullough had engaged in limited "one on one" fund-raising during early September.

Other than the initial announcement of the formation of the study group at the March 8 meeting and the abortive petition effort by Mr. McCullough, the first time the study group "went public" was with the announcement of a community meeting to be held November 15, 1979, to be sponsored by BEGIN. The meeting was announced through the media, through various community clubs and by passing out handbills in the area.

At the November 15, 1979 meeting, BEGIN asked for volunteers to circulate petitions in the area which called for the formation of a second-class city to be called Newcastle. In addition, the volunteers were asked to solicit contributions from households in the area to pay an estimated \$25,000 in legal, filing and engineering costs. Mr. McCullough was identified as the treasurer of BEGIN.

A number of persons in the audience did volunteer to circulate petitions and solicit contributions. The signature drive proved successful and the King County Auditor certified that there were sufficient signatures on December 11, 1979. On that same day, BEGIN invoked the jurisdiction of the Review Board.

At the time of the hearing on this matter, BEGIN had received more than \$16,000 in cash contributions as well as at least one in-kind contribution (the feasibility study).

#### ANALYSIS

##### 1. Application of Act to BEGIN

Your first question is whether the Washington State Open Government Act (Chapter 42.17 RCW) applies to BEGIN's effort to incorporate a new city. We believe that it does.

The Act provides for comprehensive coverage of the financing of election campaigns:

"The provisions of this chapter relating to the financing of election campaigns shall apply in all election campaigns . . ." (Emphasis supplied.)  
RCW 42.17.030.

"It is hereby declared by the sovereign people to be the public policy of the State of Washington:

"(1) That political campaign or lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided."  
RCW 42.17.010.

Taken together, these provisions clearly mandate that any organization seeking to place any question on the ballot is subject to the requirements of the Act.

We recognize that the effort to incorporate a city is not a typical election campaign. While BEGIN has successfully placed this matter before the Review Board, it will be months, possibly years, before the review is completed and the question may be put on the ballot. We believe, however, that the Act does apply to the effort, however long it might take.

##### 2. When Must Reporting Begin?

We believe that BEGIN now is a political committee under the Act and, therefore, is required to file reports of its contributions and expenditures immediately.

RCW 42.17.020(24) defines a political committee as

". . . any person . . . having the expectation of receiving contributions or making expenditures in support of, or opposition to . . . any ballot proposition."

We believe that BEGIN does have an "expectation" of receiving and/or expending monies to assist its efforts to have a matter placed on the ballot.

Your group has been organized for the purpose of encouraging a vote by the people. The objective of the organization, as we understand it, cannot be achieved without a vote of the people on a ballot proposition. BEGIN has selected its officers and opened a bank account. It has publicly announced its intention to seek the incorporation of a city. Finally, it has solicited the general public to provide financial assistance and volunteer help in order to accomplish its purpose. We believe that when the general public has been solicited by an organization to contribute to its effort to influence an election, the Act imposes a duty upon that organization to disclose the sources of its financial support because it then has the "expectation" required under RCW 42.17.020(24) and becomes a political committee.

You have argued that until the Review Board has approved a proposal, there is no "ballot proposition" under 42.17.020(24) and, therefore, BEGIN should not be required to file any reports until that time. RCW 42.17.020(2) defines a ballot proposition to be

". . . any 'measure' as defined by RCW 29.01.110, or any initiative, recall or referendum proposition proposed to be submitted to the voters of the state or any municipal corporation, political subdivision or other voting constituency. . . ."

A question on the ballot seeking the incorporation of a city is not an initiative, recall or referendum proposition. However, after the Review Board has approved a proposal, it would be a "measure" as defined by RCW 29.01.110, which provides:

"'Measure' includes any proposition or question submitted to the voters of any specific constituency."

We agree that BEGIN's effort would not ripen into a ballot proposition until the Review Board has approved a specific proposal to be placed on the ballot. However, we reject your contention that this conclusion requires us to take the next step and conclude that no reports are required until that time.

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The Act does not provide a "grace period" during which groups may secretly solicit for political purposes. We believe that the earliest financial support given a group is often the most important. The sources of such early support are usually the strongest supporters. Such early "seed money" will provide the foundation for future fund raising efforts.

In summary, we believe that BEGIN currently has an expectation of receiving contributions to support its effort and is therefore a political committee under the Act.

### 3. Contents of Reports

Having concluded that BEGIN is a political committee and currently obliged to report, we turn to your last question: what period of time must be covered by the reports?

The answer is found in RCW 42.17.090(1) which provides:

"Each report [to be filed by a political committee] shall disclose for the period beginning at the end of the period for the last report or, in the case of an initial report, at the time of the first contribution or expenditure . . ." (Emphasis supplied.)

It is apparent that following the initial report, each succeeding report simply picks up where the last report ended so as to provide a comprehensive and continuous picture of the committee's financial activity. In the case of the initial report, we believe that it must cover the period after the time when the committee has received its first contribution or made its first expenditure.

We believe that the purpose of the reports filed by political committees is to provide complete and detailed information regarding contributions and expenditures from the beginning to the end of the election campaign. We reject any construction of the Act which would permit any period of time when secret contributions or expenditures could be made, particularly at the formative stages of a campaign.

This written binding declaratory ruling was adopted by the Commission at its regular meeting on March 25, 1980, in Olympia.

  
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FRED ROSS, Chairman

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Lawrence B. Bradley  
LAWRENCE BRADLEY, Commissioner

Valoria Loveland  
VALORIA LOVELAND, Commissioner

Marjorie J. Kaffer  
MARJORIE KAFFER, Commissioner

Attest:

Thomas S. Hotalcomb Jr

NOTARY PUBLIC  
Title

Mel Vanik  
MEL VANIK, Commissioner  
Abstaining; Did Not Participate

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