



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. 4

ENDORSEMENTS OF CANDIDATES DISTRIBUTED THROUGH SCHOOL FACILITIES (RCW 42.17.130; WAC 390-05-271 and -273; WAC 390-16-206): Distribution through the internal mail system of a school district of a newsletter published by a local education association, which contains endorsements of candidates for public office, would violate RCW 42.17.130. (May 27, 1980).

Ms. Judith Lonquist
Office of General Counsel
Washington Education Association
33434 8th Avenue South
Federal Way, Washington 98003

Dear Ms. Lonquist:

You petitioned, on behalf of the Washington Education Association (WEA), for a declaratory ruling as to whether the distribution of certain newsletters containing the slate of education association-endorsed candidates would violate RCW 42.17.130 if those newsletters were distributed through the internal mail distribution system of a school district. At our special meeting held on May 13, 1980, we orally issued a binding declaratory ruling that such distribution would violate RCW 42.17.130 and also decided to issue this written ruling.

Your petition concerns the application of RCW 42.17.130 which provides:

"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 the following activities:

"(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon

a motion, proposal, resolution, order or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

"(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

"(3) Activities which are part of the normal and regular conduct of the office or agency."

BACKGROUND

Your petition was, in part, generated by our decision in a contested case heard on October 23, 1979. (PDC Case No. 79-187). In that case, a complaint was filed charging the Superintendent of Renton School District 403 with a violation of RCW 42.17.130. The Superintendent had permitted a newsletter published by the Renton Education Association (REA) to be distributed through the internal mail system of the School District. That newsletter announced that certain candidates for School Board positions, King County Council and King County Assessor had been endorsed by the Political Action Committee of REA and, in addition, it solicited contributions and volunteer workers on behalf of those candidates. We determined that this distribution was an apparent violation of RCW 42.17.130; however, we assessed no penalty upon receipt of assurances that such distribution would not occur in the future (Motion 79-270 passed unanimously at October 23, 1979 meeting).

Following that decision our administrator sent a memorandum to school directors and administrators which outlined the facts of the case and summarized our decision together with past decisions in this area. We felt such a memorandum would prevent future inadvertent violations.

On April 4, 1980, on behalf of the WEA, you requested advice from our staff as to whether the distribution of a newsletter through the internal mail system of a school district would violate the statute where that newsletter contained ratings or endorsements of candidates for public office. On April 11, 1980, our administrator advised that, in his opinion, such distribution would violate the statute.

Subsequently, you filed the petition herein requesting a declaratory ruling which would permit the distribution of newsletters published by local education associations through the internal

distribution system of school districts where those newsletters contained endorsements of candidates by the association.

ISSUE

Initially, it is important to define the issue before us. At the hearing, we heard evidence of communications between school district employees and their associations other than the newsletters issued by the local employee associations. We understand that the WEA separately sends a monthly newsletter through the U.S. mail to its membership throughout the state. In addition, the WEA mails the "WEA Presidents' Notes" to the presidents of the local associations and the "Legislative Outlook" to its membership statewide during legislative sessions. Since these communications are distributed by the U.S. mails, they do not involve use of school facilities and so present no issue under the statute.

The local associations also send a newsletter to their membership regularly (sometimes once each week) through the internal distribution system of school districts. The right to use that internal distribution system is provided for by contracts which have been negotiated by the school districts and the local associations pursuant to chapter 41.59 RCW. These newsletters contain information regarding association activities.

In the past, these newsletters have also contained the endorsements of various candidates, together with solicitations for contributions and volunteer workers on their behalf. However, at the hearing, we were advised that the WEA agreed that newsletters which solicit contributions and volunteers on behalf of endorsed candidates are improper. Therefore, we have limited our decision herein to those newsletters which only announce the endorsements of the association.

Also, in the past, the Political Action Committee of each local association distributed a separate newsletter through the schools' internal distribution systems which described the political activities of the association. At the hearing, we heard testimony that these political newsletters are now mailed. Therefore, we specifically do not address that practice.

ANALYSIS

The specific issue before us, then, is whether a newsletter published by a local education association, which contains ratings or endorsements of candidates, may be distributed through school mail distribution facilities in light of RCW 42.17.130. We have determined that such distribution would be prohibited by the provisions of RCW 42.17.130, which precludes any use of public office facilities which "assists" a candidate.

1. Assistance

At the hearing, some witnesses asserted that the distribution of these newsletters did not violate RCW 42.17.130 because it did not result in assistance to those endorsed candidates. It

was argued that this was only a communication between an association and its membership as to official actions taken by the leadership of the association. We reject such an interpretation. These endorsements are actively sought by candidates precisely because they assist their campaigns. Clearly, the local association endorses candidates because it is perceived that their election will benefit the association's interest. The communication of those endorsements to the membership is done in the hope that the membership will vote accordingly. To hold that the communication of those endorsements does not actually result in assistance to those endorsed would be to ignore reality.

2. Insignificant Use of Facilities

The evidence showed that the newsletters are produced at the sole expense of the local association. They are taken to the school district and placed on school district vehicles and transported to each school together with official school district communications. Each school has a local association representative who then picks up the newsletters and distributes them to the association membership that work in that school.

It was argued that this use of district vehicles, property, and employee time represents an insignificant use of school district facilities. We were urged to adopt a policy which would permit such relatively minor uses of public facilities.

We reject any such de minimis standard in interpreting RCW 42.17.130. The statute does not provide for any such exception to its prohibition. The statute prohibits the use of the facilities of a public office to assist a candidate's campaign. It specifically defines the "facilities of public office" to include use of stationery, use of employees of the office or agency during working hours, use of vehicles, and use of office space. The prohibition is against the use of "any" of the facilities of a public office or agency. When the legislature amended the statute by adding subsections (1) and (2), it addressed what could be described as relatively insignificant uses of public office facilities. We believe this indicates a legislative intent that other "insignificant" uses are included within the general prohibition.

3. Effect of WAC 390-16-206

We have adopted rules interpreting the campaign finance reporting provisions of chapter 42.17 RCW. Included in those rules is WAC 390-16-206 which provides:

"(1) Any person making a measurable expenditure of funds to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition (other than news, feature, or editorial comment in a

regularly scheduled issue of a printed periodical) shall report such expenditure including all costs of preparation and distribution in accordance with RCW 42.17-.030 through 42.17.100.

"(2) A candidate or sponsor of a ballot proposition who, or a political committee which, is the subject of the rating, evaluation, endorsement or recommendation shall not be required to report such expenditure as a contribution unless the candidate, sponsor, committee or an agent thereof advises, counsels or otherwise encourages the person or committee to make the expenditure."

Your petition asserts that if an endorsement is not a reportable contribution, it would be logical to extend that interpretation to distinguish "assistance" under RCW 42.17.130 as well.

That assertion misunderstands the purpose of our rule. That rule does require the reporting of measurable expenditures in communicating certain endorsements. It generally does not require a report by the subject of the endorsement where the endorsement is made independently. We believe the rule serves a policy of encouraging independent public participation in, and comment on, the election process while preserving the public's ability to identify the sources of financial support for campaigns.

Although we have not required a report of an endorsement as a contribution, we believe that the endorsement does assist a campaign, as noted above. Furthermore, we emphasize that RCW 42.17.130 goes beyond the issue addressed in our rule of whether particular assistance should be reported as a contribution. RCW 42.17.130 is one of the relatively few sections of the Public Disclosure Law which actually regulates conduct (as opposed to merely requiring reporting). Therefore, we decline to limit its broad prohibition on one-sided uses of public facilities to assist favored candidates on the basis of a rule adopted in another context to serve a separate policy.

4. Effect of Bargaining Agreement

It was argued that chapter 41.59 RCW authorizes the negotiation of "wages, hours and terms and conditions of employment" and, thus, when a contract negotiated pursuant thereto provides for the use of the internal mail system by the association, this use becomes part of the "normal and regular conduct" of the school district. Such a conclusion would require a finding of no violation since the statute specifically exempts normal and regular conduct. RCW 42.17.130(3).

We have adopted a rule which specifically addresses this argument. WAC 390-05-273 provides:

"Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use."

We do not believe that chapter 41.59 RCW authorizes this use. That chapter merely provides a structure for negotiating agreements between school districts and the local associations. It does not separately authorize this use. Furthermore, we doubt that a school district, which has only those powers granted by state law could lawfully expand its powers by entering into a contract to use school facilities for political purposes. See, for example, the proviso to RCW 28A.58.610.

We also note that the contract submitted at the hearing between the Highline Education Association and the Highline School District No. 401 as an example of such authorization provides, in Article X(F) at page 4:

"The Association shall have the right, to the exclusion of rival labor organizations, to use the District mail services, except as otherwise required by law." (Emphasis supplied).

We believe that this means that the mail service cannot be used in violation of statutes such as RCW 42.17.130.

Finally, we note that the evidence showed that the local associations now mail the political action committee newsletters outside the school district facilities. The effect of this ruling will, we believe, simply mean that the endorsements will be sent through the mails along with the other Political Action Committee information. We do not believe the ability of the local associations to communicate with its membership has been impaired to any significant degree.

This written binding declaratory ruling was adopted at the regular Commission meeting in Olympia on May 27, 1980.

Fred S. Ross
Chairman

Lawrence B. Bradley
Commissioner

Marjorie J. Kaper
Commissioner

M. F. Vanik
Commissioner

Victoria Ann Loveland
Commissioner

Attest:

Thomas S. Holcomb Jr.

NOTARY PUBLIC
Title