



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (206) 753-1111 • FAX: (206) 753-1112

DECLARATORY ORDER NO. 12

COMMITTEE SEEKING CREATION OF NEW COUNTY (RCW 42.17.200): A committee which has been formed for the purpose of creating a new county, solicits contributions for their activities and is engaged in a campaign to obtain the required number of signatures on the petitions to be presented to the Legislature for the formation of the new county is a sponsor of a "grass roots lobbying campaign" and therefore must file reports pursuant to RCW 42.17.200. (May 24, 1994).

Rhys A. Sterling, P.E., J.D.
Attorney at Law
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P.O. Box 218
Hobart, Washington 98025-0218

Dear Mr. Sterling:

You petitioned, on behalf of David O. Fields, individually and as an officer and director of the Cedar County Committee, for a declaratory order pursuant to RCW 34.05.240 and WAC 390-12-250. Although you do not represent them, you stated that the Cedar County Committee and its other officers and directors joined as petitioners in this request for a declaratory order. The petition asks for a ruling as to whether Cedar County Committee's petition-drive effort to create a new Cedar County from a designated portion of existing King County constitutes a "grass roots lobbying campaign" subject to the reporting and registration requirements of Chapter 42.17 RCW. At our regular meeting held February 22, 1994, we decided to issue this binding written declaratory order so as to provide guidance to the Cedar County Committee and all other persons engaged in similar activities and therefore faced with similar issues.

"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."

RCW 42.17.010 (10)

Your request concerns the application and interpretation of RCW 42.17.200 which provides in pertinent part¹:

(1) Any person who has made expenditures, not reported by a registered lobbyist under RCW 42.17.170 or by a candidate or political committee under RCW 42.17.065 or 42.17.080, exceeding five hundred dollars in the aggregate within any three-month period or exceeding two hundred dollars in the aggregate within any one-month period in presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall be required to register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

BACKGROUND

Your petition was generated as a result of a letter received by the Petitioners.² By letter dated February 10, 1994, from David R. Clark, Assistant Director, Public Disclosure Commission, petitioners were notified that their activities to promote the creation of a new county, Cedar County, was a grass roots lobbying campaign pursuant to RCW 42.17.200. Therefore, the Cedar County Committee (Committee) must register and report pursuant to Chapter 42.17 RCW if the Committee exceeded the monetary threshold set forth in RCW 42.17.200. The letter specified that the first reports must be filed by February 25, 1994.

Petitioners assert that they do not fall within the provisions of RCW 42.17.200 and therefore do not have to report and register pursuant to the chapter. By letter dated February 18, 1994, you expressed this position, indicated your intention to file for a declaratory order regarding this issue and requested that any reporting requirements be stayed pending the outcome of this order, if granted.

Your letter of February 18th was presented to us at our regular meeting on February 22, 1994. At that meeting, we granted your request to stay the Committee's reporting requirements and issue a declaratory order if the request for a declaratory order

¹ A copy of the entire text of RCW 42.17.200 is attached.

² The following persons have been designated as Petitioners in the Petition for Declaratory Order: (a) Cedar County Committee and (b) Cedar County Committee's directors and officers, namely David O. Fields, President; Richard Peacock, Vice President/Treasurer; and Con Butenko, Sr., Secretary.

was made within ten days of receipt of notification of this decision. The request for a declaratory order was timely received.

FACTS

Cedar County Committee has been formed as a non-profit corporation. The Committee was formed for the purpose of creating a new county, Cedar County.³ In order to reach this goal, the Committee is engaged in a petition-drive.⁴ To aid in the petition drive, the Committee is putting out "fact sheets", soliciting contributions and making expenditures in support of this campaign.⁵

From the materials presented, it can be seen that the campaign is aimed at those members of the registered voters in the area which is within the boundaries of the proposed new county. If enough signatures are obtained, the Committee will present the petitions to the Secretary of State, who will in turn present the petitions to the legislature for possible legislative action, creating the new county.

ISSUE

Whether Cedar County Committee, formed for the purpose of creating a new county, is a sponsor of a grass roots lobbying campaign under RCW 42.17.200 by virtue of their activities, which are addressed to the public for the purpose of having the legislature create the new county, and therefore subject to the reporting and registration requirements of Chapter 42.17 RCW?

ANSWER

The short answer is yes, Cedar County Committee is a sponsor of a grass roots lobbying campaign pursuant to RCW 42.17.200 and is therefore subject to the reporting and registration requirements of Chapter 42.17 RCW.

ANALYSIS

RCW 42.17.200 requires the registration and reporting by persons who sponsor grass roots lobbying campaigns. This provision was part of Initiative 276, when passed by the voters of the state of Washington in 1992. This initiative was created by the people

³ See Cedar County Most Asked Questions, provided by Petitioners and attached as Exhibit A.

⁴ See petition, attached as Exhibit B.

⁵ See Support Cedar County brochure, attached as Exhibit C.

for the express purpose of fostering openness in government. To obtain this goal, "it is important that disclosure be made of the interests that seek to influence governmental decision making." Fritz v. Gorton, 83 Wn.2d 275, 309, 517 P.2d 911 (1974). To this end, the first provision of Initiative 276 sets forth the policy of the act. The first declared policy is the disclosure of contributions and expenditures for campaigns and lobbying. RCW 42.17.010 provides in pertinent part:

Declaration of policy. It is hereby declared by the sovereign people to be the public policy of the state of Washington:

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

...
(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

The provisions of Chapter 42.17 RCW are to be liberally construed to meet these policy declarations. RCW 42.17.010 states:

... The provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected.

With this as a background and applying the standards set forth above, we now turn to whether the activities of the Committee fall within the provisions of RCW 42.17.200. If a person⁶ exceeds the monetary threshold set forth in this provision, the person must

⁶ RCW 42.17.020(22) defines person to include an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity however construed, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

register and report if:

1. the program is addressed to the public, and
2. a substantial portion of the program is intended, designed or calculated primarily to influence legislation.

The Committee's activities are addressed to the public. The Committee is seeking signatures for their petitions from the public. The brochures are directed to the public. Additionally, contributions are being sought from the public to continue to fund these activities. Therefore, the activities of the Committee meet the first criteria as a program addressed to the public.

The second criteria is whether a substantial portion of the program is intended to influence legislation. Legislation is defined in RCW 42.17.020(18) to include both pending matters and matters which may be the subject of legislative action. Specifically, RCW 42.17.020(18) provides:

"Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter that may be the subject of action by either house or any committee of the legislature and all bills and resolutions that, having passed both houses, are pending approval by the governor. (Emphasis added.)

You state that the petition-drive is not for the purpose of influencing legislation because you are only collecting signatures on a petition. Your analysis falls short of the intent for the collection of the signatures and therefore we cannot agree with your characterization of the Committee's activities. The signatures are being collected for the petitions. However, the petitions are being circulated for the express purpose of presenting them to the legislature. The only reason for collecting the required number of signatures is to influence the legislature into enacting legislation which would create the new county. Given the definition of legislation, which includes all matters which may be the subject of legislative action, and the fact that these petitions are for the express purpose of having legislation enacted, we find that the program is primarily designed to influence legislation under the standards of RCW 42.17.200.

You set forth a second argument as to why the activities of the Committee are not primarily designed to influence legislation. You state that the legislature has no discretion as to whether to create a new county. You argue that once the requisite number of signatures are gathered on petitions, and the petitions are

presented to the legislature, the legislature has no discretion but must create the new county. Therefore, you state, as a ministerial function, this does not come within the provisions of RCW 42.17.200.

We cannot agree that the creation of a new county is a "ministerial function" by the legislature and that the legislature has no discretion as to whether to enact a statute creating a new county.

The state constitution provides for the creation of new counties in Article 11, § 3. That section provides:

No new counties shall be established which shall reduce any county to a population less than four thousand (4,000), nor shall a new county be formed containing a less population than two thousand (2,000). There shall be no territory stricken from any county unless a majority of the voters living in such territory shall petition therefor and then only under such other conditions as may be prescribed by a general law applicable to the whole state. Every county which shall be enlarged or created from territory taken from any other county or counties shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken: Provided, That in such accounting neither county shall be charged with any debt or liability then existing incurred in the purchase of any county property, or in the purchase or construction of any county buildings then in use, or under construction, which shall fall within and be retained by the county: Provided Further, That this shall not be construed to affect the rights of creditors.

The legislature has not created any laws regarding this constitutional provision and therefore you conclude that the legislature must accept the petitions and create the new county. We do not believe that either law or history support this conclusion.

The Washington State Supreme Court stated in Farquharson v. Yeargin, 24 Wash. 549 (1901) that the creation of a new county is an exercise of legislative power subject to the limitations set forth in the Constitution. This was again iterated in State Ex Rel. Chehalis County v. Superior Court, 47 Wash 453, 92 Pac. 345 (1907) wherein the court stated:

It must, of course, be conceded that the constitutional provision is a limitation upon the power of the

legislature to create a county.

Therefore, this constitutional provision does not set forth the procedure to follow to create a new county, but rather limits the legislature's discretion in creating a new county by having those requirements first met.

This position is supported by the history of the creation of new counties. For each county, the Legislature has enacted a separate section in RCW 36.04 defining the boundaries. An examination of the legislative history of those statutes indicates that the Legislature has enacted statutes creating new counties five times⁷. These statutes differ from each other in significant ways, including two bills enacted by the same legislature in 1899. Each of those acts included provisions that could not be described as ministerial.

Therefore, we conclude that the creation of new counties by the Legislature is not a ministerial function, but a discretionary act. As a discretionary act, it is one in which the petitioners seek to influence by their activities.

Your last argument is that the Committee's activities are not "primarily" for the purpose of influencing legislation. You attempt to draw an analogy between the Committee and the organization in the case of Young Americans v. Gorton, 83 Wn.2d 728, 522 P.2d 189 (1974). We do not find this analogy persuasive.

In the Young Americans, the court was dealing with an organization which was involved in many activities, one of which was lobbying. Further, the court was dealing with whether the organization's membership list need be reported. This situation is remarkably different. Here, the Committee was formed for the sole purpose of creating a new county. The Committee does not engage in any other activities nor does their solicitation for contributions contemplate the expenditure of funds for any other activities. Further, the Committee would only be required to report those contributors to this campaign. Therefore, we do not believe that Young Americans compel us to find for the petitioners.

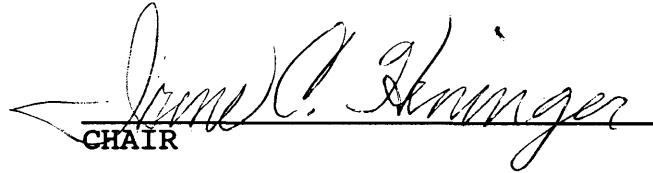
CONCLUSION

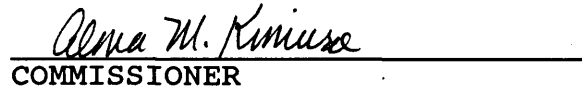
Based on the facts as presented and the law referenced above, we hold that the Cedar County Committee is a sponsor of a grass

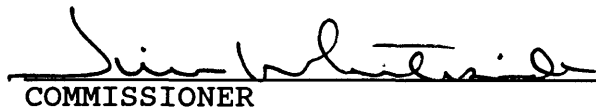
⁷ The five counties are: Ferry County - Laws of 1899 c. 18, Chelan County - Laws of 1899 c. 95, Benton County - Laws of 1905 c. 89, Grant County - Laws of 1909 c. 17 and Pend Oreille County - Laws of 1911 c. 28.

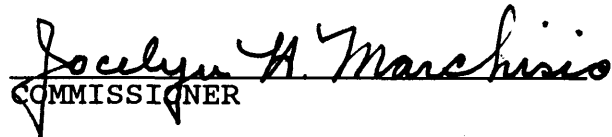
roots lobbying campaign under RCW 42.17.200 and must therefore register and report pursuant to Chapter 42.17 RCW.

By a vote of 4-0, this written, binding Declaratory Order was adopted at the regular commission meeting in Olympia, Washington on May 24, 1994.

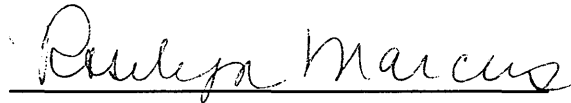

CHAIR


COMMISSIONER


COMMISSIONER


COMMISSIONER

Attest:



ASSISTANT ATTORNEY GENERAL
TITLE