



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

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DECLARATORY ORDER NO. 16

GRASSROOTS LOBBYING AND EXEMPTION FROM REGISTRATION AND REPORTING (RCW 42.17.200, RCW 42.17.160): RCW 42.17.160 does not provide petitioners an exemption from the registration and reporting requirements for grassroots lobbying in RCW 42.17.200, given the facts presented. In particular, RCW 42.17.160(4) does not exempt petitioners because that exemption does not apply to grassroots lobbying. If the petitioners engage in the anticipated activities outlined in the petition and exceed the current reporting thresholds by spending at least \$500 in the aggregate in one month or \$1,000 in the aggregate in three months on a grassroots lobbying campaign, they will be required to register and report their grassroots lobbying expenditures under RCW 42.17.200.

William R. Maurer
Executive Director
Institute for Justice
101 Yesler Way Suite 603
Seattle, WA 98104

Dear Mr. Maurer:

On December 3, 2009, on behalf of two petitioners you submitted a petition to the Washington State Public Disclosure Commission (PDC) seeking a declaratory order regarding grassroots lobbying, pursuant to RCW 34.05.240 and WAC 390-12-250.

Having reviewed your written materials and having considered your presentation at its January 28, 2010 meeting, and having reviewed the written materials prepared by PDC staff and having considered the staff presentation, the Commission unanimously agreed that based upon the facts presented none of the subsections in RCW 42.17.160 apply to exempt petitioners from registering and reporting under RCW 42.17.200. In particular, the exemption at subsection (4) does not exempt petitioners because the language specifies it applies to direct lobbying of legislators and other officials and does not reference grassroots lobbying. The Commission determined that if the petitioners engage in the anticipated activities outlined in the petition, and exceed the current reporting thresholds by spending at least \$500 in the aggregate in one month or \$1,000 in the aggregate in three months on a grassroots lobbying campaign, they will be required to register and report under RCW 42.17.200. This binding written order will serve to formalize that decision.

*"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)



SUMMARY OF PETITION AND QUESTION PRESENTED

You submitted the petition on behalf of "Many Cultures, One Message" (MCOM) and "Red State Politics, d/b/a 'Conservative Enthusiasts'" (CE) ("petitioners"). You posed several anticipated activities concerning lobbying by MCOM and CE in the 2010 legislative session. You specifically asked the following question:

Assuming these entities engage in the activities described [in the petition], are MCOM and CE required to

- (i) register with the Public Disclosure Commission (the "Commission") and
- (ii) file monthly statements, pursuant to RCW 42.17.200?

You described that the petitioners do not wish to register and submit monthly reports as sponsors of a grass roots lobbying campaign, or report other lobbying-related information to the Commission as required in RCW 42.17. You described that the petitioners do not want to be considered sponsors of a grassroots lobbying campaign.

You described that petitioners anticipate that in the 2010 legislative session each will spend at least \$500 in the aggregate in one month or \$1,000 in the aggregate in three months organizing efforts that will include presenting a program addressed to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation. You described that neither MCOM nor CE is a candidate or political committee and neither anticipates that a registered lobbyist, candidate, or political committee will report any expenditures made by or on behalf of MCOM or CE. You described that neither MCOM nor CE will pay any registered lobbyist to act on behalf of MCOM or CE.

RCW 42.17.200 requires persons to register and report their grassroots lobbying campaigns. Exceptions from registration and reporting are also provided in RCW 42.17. You therefore inquired whether the exemptions in RCW 42.17.160 are applicable to the petitioners under the facts presented. You described that MCOM and CE particularly ask whether the exemption in RCW 42.17.160(4) applies.

SUMMARY OF FACTS

MCOM. You described that MCOM is an unincorporated group initially formed to combat efforts by Seattle to use Washington's Community Renewal Law (CRL) to declare portions of Seattle a Community Renewal Area. MCOM anticipates that in the 2010 session of the State Legislature a bill will be introduced to substantially reform the CRL, and another bill will be introduced and may be premised on use of the CRL. For these reasons, MCOM anticipates mobilizing the local residents and business owners to contact their legislators and the Governor to urge them to support reform of the CRL and to stop another bill if introduced that relies upon the CRL. As noted, MCOM anticipates it will spend at least \$500 in the aggregate in one month or \$1,000 in the aggregate in three months organizing efforts regarding these legislative initiatives.

MCOM anticipates communicating with people who are not members of MCOM regarding these legislative initiatives. MCOM will reimburse volunteers for expenditures made on MCOM's behalf. MCOM anticipates that its volunteers on their own will each spend more

than four days or parts thereof during any three month period in the described efforts. MCOM anticipates its own expenditures for grassroots lobbying will exceed \$25.¹ MCOM will not be paid for its grassroots lobbying efforts.²

CE. You described that CE is a 501(c)(3) organization dedicated to educating the public regarding the benefits of lower taxes, less regulation, smaller government, and strong national defense. In the past, CE has not spent \$500 in the aggregate in any one month or \$1,000 in the aggregate in any three months, on presenting a program addressed to the public, a substantial portion of which was intended, designed, or calculated primarily to influence legislation. However, CE anticipates that in the 2010 legislative session, bills will be introduced to raise taxes, increase regulation, and grow the size of the state government. CE anticipates changing the nature of its organization to allow it to take a more active role in opposing these legislative efforts, including contacting people on its email list and visitors to its website and urging them to contact state officials regarding these legislative efforts. As noted, CE anticipates it will spend at least \$500 in the aggregate in one month or \$1,000 in the aggregate in three months organizing efforts regarding these legislative initiatives.

CE anticipates communicating with people who are not members of CE regarding these legislative initiatives. CE reimburses volunteers for expenditures made on CE's behalf. CE anticipates that its volunteers on their own will each spend more than four days or parts thereof during any three month period in the activities described in the petition. It is anticipated that CE's expenditures for the grassroots lobbying activities described in the petition will exceed \$25.³ CE will not be paid for its grassroots lobbying efforts.

DISCUSSION AND ANALYSIS

RCW 42.17.200 defines grass roots lobbying and states in pertinent part that,

(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**

¹ The Petition was submitted on behalf of MCOM and CE. While anticipated or possible activities of volunteers are also described, the Petition concerns the activities of the two organizations and their reporting obligations. PDC staff also confirmed that neither organization anticipates expending any money on behalf of state officials or their staff.

² These additional facts were also developed by PDC staff: Neither MCOM nor CE has employees. Both anticipate that volunteers or members may directly contact legislators to do such things as invite them to speak at a meeting or to communicate their concerns regarding specific legislation. Neither organization has a formal membership structure. Neither organization anticipates reimbursing members or volunteers for expenses incurred in direct contacts with state officials nor paying volunteers for their time or asking them to seek employer-funded or other time away from work. In the past, neither organization has expressly solicited funds for a campaign to influence legislation. In the future, MCOM does not anticipate expressly soliciting funds for a campaign to influence legislation. CE anticipates soliciting funds from its members to establish distribution infrastructure that would allow CE to inform its members of possible legislative action and to help the recipient send a fax or email to legislators. The leadership of MCOM and CE do not know of any volunteers who share a common employer.

³ See footnote 1.

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.”⁴

(Emphasis added.)

RCW 42.17.160 provides exemptions from registering and filing lobbying reports. It states in pertinent part that,

“The following persons and activities shall be exempt from registration and reporting under RCW 42.17.150, 42.17.170, and 42.17.200:

...

(4) Persons who lobby without compensation or other consideration for acting as a lobbyist: PROVIDED, Such person makes no expenditure for or on behalf of **any member of the legislature or elected official or public officer or employee of the state of Washington in connection with such lobbying. The exemption contained in this subsection is intended to permit and encourage citizens of this state to lobby any legislator, public official, or state agency without incurring any registration or reporting obligation provided they do not exceed the limits stated above.** Any person exempt under this subsection (4) may at his or her option register and report under this chapter;

...

(Emphasis added).

You state that the petitioners will not be paid for their grassroots lobbying efforts and they ask whether any of the exemptions in RCW 42.17.160 apply to enable them to not register and report, and in particular, whether the exemption in RCW 42.17.160(4) applies. Given the facts and specific question presented, the focus of this Declaratory Order is on RCW 42.17.160(4).⁵

⁴ The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under RCW 42.17.370. The \$500 dollar amount has been raised to \$1,000 and the \$200 amount has been raised to \$500. WAC 390-20-125 (L-6 grassroots lobbying form).

⁵You described that petitioners have a question as to whether “any” of the RCW 42.17.160 exemptions to registration apply. However, given the facts presented and the reference in the petition “specifically” to subsection (4), only the exemption in subsection (4) appears to be at issue. The remaining exemptions in RCW 42.17.160 are not applicable to the facts as presented. Those exemptions address agency solicitations in subsection (2), a media exemption in subsection (3) and activities by elected officials and their employees in subsections (6) – (10). With respect to subsection (5) (casual lobbying), that exemption also addresses direct lobbying to public officials and staff, not grassroots lobbying. The facts presented describe that the petitioners do not anticipate engaging in direct lobbying or making any expenditures for or on behalf of members of the Legislature, state elected officials, public officers, or their employees, including reimbursements to volunteers for those types of expenditures. To the extent any volunteers engage in activities on their own to contact legislators or state officials directly, the activities were stated as being outside the control of MCOM or CE.

The exemptions from reportable lobbying in RCW 42.17.160 were part of Initiative 276. Laws of 1973, ch. 1, § 16 (Initiative Measure No. 276, approved November 7, 1972). In 1982,⁶ the Legislature amended the provision now codified in subsection (4) for persons who lobby without compensation in order to add the sentence stating that the exemption "is intended to permit and encourage citizens of this state to lobby any **legislator, public official, or state agency** without incurring any registration or reporting obligation provided they do not exceed the limits stated above." (Emphasis added). This means twice in this exemption – in the first sentence after "PROVIDED" and again in the second sentence added in 1982 --- the statutory exemption addresses direct lobbying to legislators, public officials and state agencies or state agency employees, and does not reference grassroots lobbying addressed to the public.

Subsection (4) of RCW 42.17.160 therefore applies only to activities associated with direct lobbying (to legislators, public officials and state agencies or employees), not those with grassroots lobbying addressed to the public. To nevertheless apply the RCW 42.17.160(4) exemption to a grassroots lobbying campaign when the sponsor of the campaign does not receive compensation or other consideration would render meaningless the specific language in RCW 42.17.160(4) concerning direct lobbying, as well as the separate specific reporting threshold for grassroots lobbying in RCW 42.17.200.

While we recognize that the introductory language in RCW 42.17.160 as it was originally passed in 1972 references RCW 42.17.200, given the specific language in RCW 42.17.160(4) to direct lobbying, and as confirmed again in subsequent legislation in 1982, RCW 42.17.160(4) does not apply to grassroots lobbying.

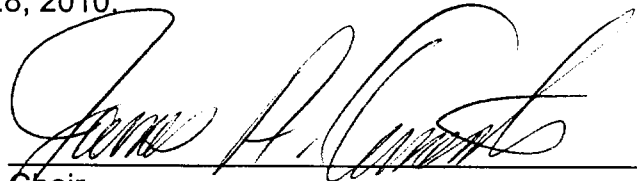
Finally, although we understand from you that the petitioners do not want to register or file lobbying reports, we also keep in mind the disclosure purposes of RCW 42.17. In the passage of Initiative 276 by a vote of the people, RCW 42.17 was adopted to maintain openness and transparency in lobbying and the financial efforts to affect legislation, along with other provisions enabling disclosure and transparency in other areas such as in political campaigns. RCW 42.17.010. Disclosure and transparency in the funding of grassroots lobbying efforts was also part of Initiative 276 in Section 16. The declaration of policy for RCW 42.17 makes clear that all provisions of the chapter are to be liberally construed to promote full disclosure of such information to the public. *Id.* These statutes enable the voters to "follow the money" in lobbying and campaigns, including grassroots lobbying.⁷

⁶ Mr. Stutzman's memo referenced the amendment as occurring in 1981. While the bill (SB 3249) was introduced in 1981, it did not pass until 1982. Laws of 1982, ch.147, § 12.


⁷ Your petition did not specify but may have presumed all contributions to and expenditures of organizations that also engage in a grassroots lobbying campaign are reportable. That is not the case. See RCW 42.17.200(2) and WAC 390-20-125 (L-6 grassroots lobbying form).

CONCLUSION

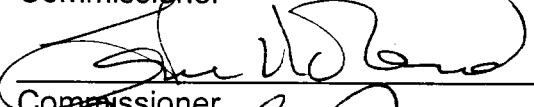
By a vote of 4-0, this written, binding Declaratory Order was adopted at a Commission meeting in Olympia, Washington on February 26, 2010 based upon the conclusions reached by the Commission at its meeting on January 28, 2010.



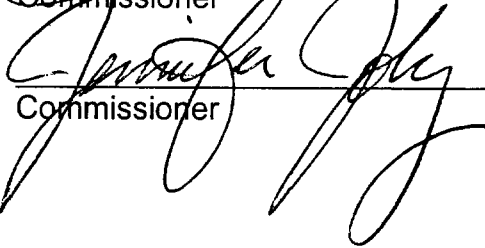
Chair



Commissioner

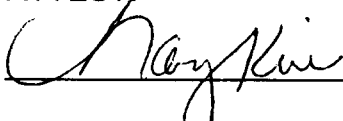


Commissioner



Commissioner

ATTEST:



General Counsel

TITLE