

**Protecting In-State Access to Commercial Advertiser Books of Account
Administrative Procedures Act Petition per RCW 34.05.330
Petition for Amendment of WAC 390-18-050**

Proposed Modification

WAC 390-18-050 [excerpted]

Commercial advertisers—Public inspection of records.

...

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours, however if the commercial advertiser is located out-of-state, the location for in person inspection must be within the state of Washington; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

...

Background

Washington state law allows any member of the public to request information about a political advertisement from the company that provided the advertising. These companies are referred to as "commercial advertisers" in the law. This disclosure, which dates back 50 years to Initiative 276 which created the PDC, is an important counterpart to the reporting done by campaigns and sponsors of independent expenditures. It also provides critical information when sponsors of political advertising fail to identify themselves.

Recently, I made a request to inspect the books of account for a commercial advertiser who was located out-of-state who had provided political advertising for WA-based campaigns. The commercial advertiser refused to make the books of account available digitally and would only make the books of account available in Massachusetts where the commercial advertiser was based.

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I filed a complaint alleging that this commercial advertiser failed to make their books of account available within Washington State. The agency staff dismissed this complaint on 11/22/24 on the basis that the commercial advertiser was not required to make their books of account available within Washington State.

Many of the commercial advertisers that provide political advertising services to WA-based campaigns are headquartered out-of-state (Comcast, Hulu, Facebook, Google, Twitter ("X"), etc.) Currently, there are even two cases pending before the agency where the commercial advertisers are actually headquartered out of the country (Vistaprint and TikTok).

Explanation

The purpose of this rulemaking petition is to protect the ability for Washingtonians to be able to access commercial advertising books of account within state borders.

The statutory right to inspect a commercial advertiser's books of account would be greatly undermined if a Washington voter could be required to travel to the other side of the United States or even to another country in order for that right to be exercised.

The language in this petition is borrowed from WAC 390-16-043 which governs the inspection process to view a campaign's books of account. The agency's rule on that subject specifies that: "...if the treasurer is located out-of-state, the default location must be within the state of Washington and reasonably accessible to both parties."

Applying this same requirement to commercial advertisers would seem to be a reasonable change to protect the ability for Washingtonians to access this information.

Conclusion

For the reasons described above, I would encourage you to vote to approve this rulemaking petition. In the event this rulemaking petition is denied, I intend to appeal the denial to both the Governor's Office and the Joint Administrative Rules Review Committee per RCW 34.05.330(2) & (3).

Best,

Conner Edwards
(425) 533-1677 cell

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Postscript

Over the last several months, I have requested to inspect the books of account of approximately 30-50 different commercial advertisers.

What I find is that, in nearly every instance, the commercial advertisers are completely unaware of their obligation under RCW 42.17A.345 to maintain books of account and that it is necessary to file a PDC complaint in order to obtain their compliance. This is the case not only for WA-based commercial advertisers but also for out-of-state commercial advertisers.

There are a number of ways that this statute/rule might be amended to make it easier for commercial advertisers to comply with the law. However, one of the commercial advertisers I recently contacted suggested a simple way for the agency to help commercial advertisers comply with the law: sending out notices to these businesses informing them of their legal obligations.

That commercial advertiser's suggestion is attached to this Petition. In his e-mail, he includes some tough but fair criticism of the PDC. I believe that his perspective deserves consideration, so I wanted to pass it on. Portions of his e-mail have been bolded by me for emphasis.

-Conner

----- Forwarded message -----

From: <amdoc@comcast.net>

Date: Sun, Jun 30, 2024 at 1:19 PM

Subject: RE: RCW 42.17A.345 Request (Kaufman Direct Mail)

To: Conner Edwards <cg.edwards53@gmail.com>

Thank you for the recommendation. Will call in the morning.

Initiative 276 (passed in 1972) requires direct mail companies (specific to me) to maintain 'books of account' available to the public with details about political mailings.

The PDC was created to 'provide timely and meaningful public access to accurate information'. I looked it up. That's why they were created. That's why they exist. **In 2003, when I filed my Corporate Charter for Kaufman Direct Mail with the Washington Secretary of State, the PDC should've informed me about Initiative 276 and my requirements.** That's when I would've figured out how to make a 'books of account' to maintain and keep available. That didn't happen.

The PDC failed to perform the most basic purpose of their creation and existence. A single e-mail, phone call or letter would've been sufficient to make me aware of initiative 276. In 21 years of operation since formation, this direct mail company received zero communication from PDC.

I'll talk to PDC and figure out more and be in touch. If you have any specific things you're looking for, please let me know.

Best Regards,

Ken Kaufman

Kaufman Direct

360.887.2990



Conner Edwards <cg.edwards53@gmail.com>

Re: PDC - File a Formal Complaint - Conner Edwards

PDC Support <pdcc@pdc.wa.gov>
Reply-To: PDC Support <pdcc@pdc.wa.gov>
To: cg.edwards53@gmail.com

Fri, Nov 22, 2024 at 3:31 PM

November 22, 2024

Delivered electronically to cgedwards53@gmail.com

Subject: Complaint regarding Campaign Partner

Dear Conner Edwards:

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on November 6, 2024, may have violated RCW 42.17A.345 & WAC 390-18-050 for failure to provide commercial advertiser books of account. PDC staff reviewed the allegation(s) and the filing history of the Respondent and found the following:

- The Respondent Campaign Partner has chosen in-person books inspection option to make its records available.
- . [WAC 390-18-050](#) 3) Pursuant to RCW [42.17A.345](#), each commercial advertiser who has accepted or provided political advertising, or electioneering communications, must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

Based on this information, the PDC finds that no further action is warranted and has dismissed this matter in accordance with RCW 42.17A.755(1) and WAC 390-37-060(1)(a).

If you have questions, you may contact Colin Peeples at 1-360-753-1111, toll-free at 1-877-601-2828 or by e-mail at pdcc@pdc.wa.gov

Sincerely,



Colin Peeples

PDC Staff

711 Capitol Way S, Rm 206

Olympia, WA 98504

(360) 753-1111

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Washington State law established email as the PDC's official means of communication as of June 7th, 2018 (RCW 42.17A.055). Filers have a duty to amend their reports within 10 days of any material changes, such as new email addresses. Please ensure your email address is up to date.

To respond, please reply to this email.

Washington Public Disclosure Commission

<http://www.pdc.wa.gov>

1.360.753.1111

On Wed, 6 Nov at 12:38 PM , Conner Edwards <cg.edwards53@gmail.com> wrote:

Description of Complaint

See attached complaint.

Notice to Respondent

I apologize to you for any inconvenience caused by this complaint. The chance that you will actually be fined for the violations identified above is extremely small because the agency is averse to doing the work necessary to bring cases to hearings. Most likely this case – and any future cases against you – will simply be dismissed by staff with a so-called "warning letter".

This complaint is one of hundreds that I have filed to highlight and ultimately fix the significant shortcomings associated with the agency responsible for administering our state's campaign finance laws.

What are these shortcomings?

Overcomplicated and outdated requirements that are difficult to understand and comply with. Failure to properly educate the regulated community about the tasks they must perform to remain in compliance with applicable requirements and avoid complaints. Failure of the agency to send regular reminders to filers about pending deadlines. A failure to proactively enforce applicable requirements which enables the complaint system to become weaponized. Non-intuitive, non-user friendly, and buggy reporting software. Failure to meaningfully enforce core requirements. Failure to follow the best operating practices of other neighboring campaign finance agencies. An agency leadership structure that largely disregards stakeholder input and is slow to identify and resolve major agency deficiencies.

I believe that the best way to motivate the agency to address these problems is by filing a large number of complaints so that the agency's problems become impossible to ignore.

Slowly (too slowly) this strategy is starting to yield concrete and beneficial changes. You can read about these changes here: <https://www.seattletimes.com/seattle-news/politics/why-one-man-filed-800-campaign-finance-complaints-against-wa-candidates/>

If you believe that the agency could have done something different to help you proactively avoid the issues identified in this complaint, I hope that you will consider including it in your response. The agency, and the public, can benefit from your perspective and feedback.

"The journey of a thousand miles begins with a single step."

— **Lao Tzu**