

April 22, 1996

No. 96-1E

Re: Commingling Solicited Office Fund Contributions With Surplus Campaign Funds

Dear *****:

On January 29, 1996, the Commission asked the Washington State Public Disclosure Commission for a formal interpretation advisory or a declaratory order addressing the following question:

whether Seattle elected officials may transfer surplus campaign funds under state law to a separate account established as a public office fund and deposit contributions to the public office fund into the same account.

RELEVANT LAW

We cited the following relevant law:

A new section was added to RCW 42.17.095 which provides for the placement of surplus campaign funds into a separate account to be used for non reimbursed public office expenses. RCW 42.17.095(7) provides:

The surplus funds of a candidate, or of a political committee supporting or opposing a candidate, may only be disposed of in any one or more of the following ways:

- (7) Hold the surplus campaign funds in a separate account for nonreimbursed public office-related expenses or as provided in this section, and report any such disposition in accordance with RCW 42.17.090. The separate account required under this subsection shall not be used for deposits of campaign funds that are not surplus.

The law prohibits depositing campaign funds into the separate account, but it does not address whether funds from the surplus funds account may be transferred into a public office fund. The Seattle Elections Code was amended in October 1994 to permit elected officials to establish a separate account to be used for non reimbursed public office expenses (public office fund) and to permit solicitation of contributions for the public office fund. SMC 2.04.480(A) provides:

***** , ***** , ***** , upon election to office, may each establish an individual account for the deposit of contributions solicited and received for the

purpose of defraying non-reimbursed public office related expenses. Such accounts shall be called public office funds.

City law and rules adopted by the Seattle Ethics and Elections Commission prohibit the transfer of such funds to a campaign account, prohibit the use of such funds to promote anyone's candidacy and restrict contributions to no more than \$250 per contributor per year from parties who are not doing business with the City.

Attached is the Public Disclosure Commission's formal interpretation advisory.

CONCLUSION

The Public Disclosure Commission's (PDC) formal interpretation advisory states that state law and Seattle law, when read together, authorize elected officials to have three separate accounts: (1) active campaign accounts; (2) surplus campaign fund accounts; and (3) office fund accounts. State law provides that active campaign funds may not be transferred into a surplus campaign account or into an office fund account. Office funds may not be transferred into a surplus campaign fund account and City law prohibits the transfer of office funds into an active campaign account. Only surplus campaign funds may be placed in a surplus campaign account. Surplus campaign funds may be transferred, however, into an office fund account.

The PDC advisory cautions that if there are excess funds in the office fund account after the official leaves office, those funds may not be transferred to the Seattle General Fund if they were commingled at any time with surplus campaign funds. The limited means of disposing of surplus campaign funds under state law do not include transfer to the Seattle General fund. Since commingling would make it impossible to identify those funds that were surplus campaign funds and those that were solicited office funds, no funds from such commingled account could be transferred to the Seattle General Fund.

The Commission's advisory opinion is based upon the general facts as stated above. The Commission does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Commission to reach a different conclusion. In addition, Commission advisory opinions are narrowly drawn to interpret the ordinances that the Commission is authorized to administer. They do not address whether the proposed action is prudent, good public policy or effective management practice.

FOR THE SEATTLE ETHICS AND ELECTIONS COMMISSION

Carolyn M. Van Noy,
Executive Director

This action was reviewed and approved by the Commission at its meeting of April 10, 1996. The Commission members voting to take this action were:

Timothy Burgess, Chair
Marc A. Boman
Lue Rachelle Brim-Atkins
Daniel J. Ichinaga
John A. Loftus
Catherine L. Walker

Not present:
Jeri A. Rowe

STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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March 18, 1996

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EXECUTIVE DIRECTOR 'REC'D CITY OF SEATTLE ETMCS AND ELECTIONS
COMMISSION

226 MUNICIPAL BUM-DING
600 FOURTH AVENUE
SEATTLE WA 98104

Dear Carol:

You have asked whether Seattle elected officials may transfer surplus campaign funds to a public office fund created pursuant to local law and continue to deposit contributions to the public office

fund into the same account.

RCW 42.17.095 (copy attached) addresses the disposition of surplus campaign funds and enumerates seven ways in which they may be disposed of, these options are the n@l ways m

which a candidate may use surplus funds.

As you note, RCW 42.17.095 was amended in 1995 by ESSB 5684 (Chapter 397, Laws of 1995) to add the seventh option to permit a candidate to:

Hold the surplus campaign funds in a separate account for nonreimbursed public office-related expenses or as provided in this section, and report any such disposition in accordance with RCW 42.17.090. The separate account required under this subsection shall not be used for deposits of campaign funds that are not

surplus.

Thus, RCW 42.17.095, as amended by ESSB 5684, permits a candidate to establish an account in which to deposit surplus funds; moneys from this account may be used to pay for nonreimbursed public office-related expenses, or they may be used in any of the other ways in which surplus funds may be disposed of as specified in .095(i)-(6). It should be noted that a candidate may

RCW 42.17.095(1)-(6) permit surplus campaign funds to be: (1) returned to contributors; (2) refunded to the candidate as reimbursement for lost earnings incurred as a result of the campaign; (3) refunded without cost to a

"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

directly dispose of surplus funds as provided in RCW 42.17.095(1)-(6), without moving those moneys into the separate surplus funds account, if he or she so chooses. However, a candidate is required by .095(7) to move the moneys into the separate account before using them to pay for nonreimbursed public office-related expenses.

You ask whether a city elected official who has previously established a public office fund to pay nonreimbursed public office-related expenses, as permitted by local law, may transfer surplus campaign funds to the public office fund and continue to deposit contributions to the public office fund therein. You have stated that Seattle law permits elected officials to establish a separate account to be used for nonreimbursed public office expenses, called a public office fund, and permits solicitations for the public office fund.

RCW 42.17.095(7) gives a candidate the ability to take surplus campaign funds and hold them in a separate account for nonreimbursed public office-related expenses. If the candidate wants to transfer surplus funds to a previously established public office fund and continue to solicit and accept additional donations to that account, there is nothing in the law to prevent that, so long as the moneys in that fund are used only to pay nonreimbursed public office-related expenses. However, if a candidate does deposit his or her surplus funds into this public office fund and continues to deposit additional solicitations into this fund, he or she would be prohibited from using the fund in any of the other ways set forth in .095(1)-(6). The fund could only be used to pay nonreimbursed public office-related expenses.

In other words, if a candidate put surplus campaign funds into a public office fund into which specific donations to the fund were deposited, the candidate could not use the fund in the same manner as a "surplus funds account" envisioned under .095(7); he or she could not use the fund for any and all of the purposes enumerated in .095 (1)-(6). For example, the candidate could not use moneys in that fund to make unlimited "transfer" to a caucus political committee or political party. Such would be a clear circumvention of the law. Once the surplus money is "commingled" with other moneys solicited for the public office fund, it may only be used to pay nonreimbursed

public office-related expenses.

The conclusion that Seattle officials may deposit surplus funds into a public office fund is dependent upon the requirements under local law that the officials report expenditures from their public office funds, and itemize and code expenditures over \$50. In order for an official to permissibly transfer surplus moneys to a public office fund created pursuant to local law, there must be an adequate reporting mechanism required by the law to help ensure that the moneys are used only for nonreimbursed public office-related expenses.

political party or caucus political committee; (4) donated to charity, (5) transferred to the State's general fund; or

(6) held in the campaign depository for a future campaign for the same office.

2 It does not appear that local law would permit an official to use moneys from his or her public office fund for any of the purposes set forth in RCW 42.17.095(1)-(6). (See, however, the discussion of the disposition of "excess" moneys remaining in a local official's public office fund.)

If the official wanted to be able to use at least some of his or her surplus campaign funds for those purposes in (I)-(6), such money would have to be spent directly for those purposes, or placed into another account--the "surplus funds account"-- into which surplus campaign funds are deposited. Furthermore, an official who has both a "surplus funds account" and "public office fund" would not be prohibited from spending money from the former for nonreimbursed public office-related expenses. Clearly, a candidate enjoys more flexibility with the surplus funds account.

Although an official may deposit surplus campaign funds into a public office fund for the payment of nonreimbursed public office-related expenses, a question arises as to the disposition of any "excess" moneys left in the public office fund. Seattle law directs an official to dispose of "any funds which remain in a public office fund after all permissible public office related expenses have been paid" in one or more of the following three ways:

Returned to contributors in respective amounts not to exceed each contributor's original contribution;

Donated to a charitable organization registered in accordance with Chapter 19.09 RCW;
or

Transferred to the Seattle Ethics and Elections Commission for deposit into the City general fund.

RCW 42.17.095(1) permits the return of surplus funds "to a contributor in an amount not to exceed that contributor's original contribution" and .095(4) permits the donation of surplus "to a charitable organization registered in accordance with chapter 19.09 RCW." Thus, if a candidate transfers surplus campaign moneys to a public office fund and excess moneys remain "after all permissible public office related expenses have been paid," those excess moneys could be transferred back to the original donor or donated to a charity without running afoul of RCW 42.17.095, regardless of whether the original source of those excess moneys was surplus campaign funds or donations to the public office fund.

However, .095 does not permit surplus moneys to be transferred to the Seattle general fund (although they may be transferred to the State general fund.) Thus, if excess moneys remain in a public office fund to which surplus campaign funds had previously been transferred, only that amount of remaining money that exceeds the total amount of surplus funds deposited into the account could be transferred to the general fund of the City. Otherwise, .095 could be violated if surplus campaign moneys were transferred, through the public office fund, to the City.

I trust that the foregoing adequately addresses your concerns. The PDC intends to continue developing guidelines for surplus funds accounts, including what may properly be paid from the

3

accounts as nonreimbursed public office-related expenses, as well as how expenditures or transfers from surplus funds accounts should be reported.

The foregoing represents the interpretation of the @ of the PDC. A copy of this letter will be provided to the members of the Commission, and I will relay to you any comments they may have.

Sincerely,

Mefissa Warheit
Executive Director

4