



To: Members of the Seattle Ethics and Elections Commission
From: Alan Durning and Margaret Morales, Sightline Institute
Re: Unspent Democracy Voucher Proceeds and Post-Election Regulations
Date: April 25th, 2016

Initiative 122 Section 2.04.630 (j) calls on the Seattle Ethics and Elections Commission to define “Unspent Democracy Voucher Proceeds” by rule. Specifically, the section reads,

A candidate who has redeemed a Democracy Voucher, then withdraws, dies, becomes ineligible, loses qualifications, or is eliminated in any primary or general election or wins a general elections, shall within a reasonable period, as defined by SEEC, pay all debts and obligations, account to SEEC and restore to SEEC and the Program “Unspent Democracy Voucher Proceeds.” SEEC shall define “Unspent Democracy Voucher Proceeds” by rule.

Defining “Unspent Democracy Voucher Proceeds” will necessitate defining two things:

- 1) the range of circumstances under which these occur (though many of these are already outlined in the Initiative, the Commission may encounter additional instances), and,
- 2) the formula that will be applied to determine what portion of a candidate’s remaining funds are considered Democracy Voucher Proceeds versus proceeds from other contributions.

The Initiative also leaves open for interpretation the definition of a “reasonable period” for the return of Unspent Democracy Voucher Proceeds, as well as regulations defining acceptable post-election expenditures using public funds.

We examined existing rules governing surplus public funds from four other jurisdictions that have public funding mechanisms for elections. These ranged from Arizona’s Clean Election Fund, which has the strictest rules regarding return of excess funds, to New York City’s Matching Funds Program, which has the longest timeline for returning public funds.

While both Arizona and Connecticut function under a Clean Elections grant system, in which participating candidates receive full public funding for campaign expenses, New York City and Los Angeles have matching funds programs. These matching funds programs are somewhat more analogous to Seattle’s new Voucher Program in that candidates receive a mixture of public and private funds.

This table summarizes some of the key regulations governing unspent public funds from each jurisdiction.

	Program Type: All public money, or mix of public/private?	If mix, how is public portion calculated?	Time following election to return public funds	Post-election expenditures permitted?
Arizona, Clean Election Fund	All public	N/A	5 days after primary; 1 mo. after general	None
Connecticut, Citizens' Election Program	All public	N/A	90 days after primary; ~4.5 months following general	Moderate
Los Angeles, CA, Matching Funds Program	Mix	1 st in, 1 st out	90 days	Moderate
New York City, NY, Matching Funds Program	Mix	All post-election funds presumed public, up to total matching funds candidate received	14-18mo	Minimal

Below we detail more fully the rules in each of these programs pertaining to unspent public money definitions, post-election spending regulations, and post-election fundraising and return requirements. We also mention a few notable regulations from each jurisdiction concerning restrictions on the uses of public funds during an election, a topic not thoroughly covered in Initiative 122.

Arizona:

Return of unspent Clean Elections Fund monies in Arizona is governed under Arizona Revised Statute, Title 16, Chapter, 6, Article 2, 16-953. Full text is available here:

[[<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/16/00953.htm&Title=16&DocType=ARS>]]

Arizona has the strictest rules of all jurisdictions we examined concerning return of public funds.

Post-election expenditures

- Arizona permits no post-election spending, beyond paying for debts incurred during the campaign.

Post-election return requirements:

- At the end of both the primary and general elections, participating candidates must return to the Fund all unspent monies. These are defined as monies in the candidate's campaign account above an amount sufficient to pay any unpaid bills for expenditures made during the primary or general election period. (16-953 A-B)
- Participating candidates must pay all uncontested bills within thirty days of the primary or general elections (16-953 C).
- The AZ Clean Elections Commission states that any unspent monies must be returned to the Commission within five days of the primary, and within one month of the general election (pg 29, here: <http://azcleelections.gov/CmsItem/File/19>)).
- If a candidate is determined ineligible for the general election via recount, he or she must return funds within 10 days of the determination of disqualification (R2-20-106 E; pg 33 <http://azcleelections.gov/CmsItem/File/37>).

Additional requirements

- Arizona law is clear that public funds can be spent on "direct campaign purposes only" (R2-20-104 C; page 29 here: <http://azcleelections.gov/CmsItem/File/37>)).
- Candidates cannot purchase fixed assets valued over \$800, and must return all fixed assets valued over \$200 to the Commission within 14 days of a primary or general election (R2-20-702 D; page 66 here: <http://azcleelections.gov/CmsItem/File/37>).
- Candidates are liable to repay the fund for any income on investment of Fund monies (R2-20-704, B 5; page 68 here: <http://azcleelections.gov/CmsItem/File/37>))
- Arizona regulations describe several unique situations in which participating candidates may generate unspent public funding that are in addition to the 'standard' situations (all of which are captured in Initiative 122 2.04.630 (j), above). One such circumstance described in Arizona's regulations pertains to the transfer of public funds in the case of a replacement candidate. The Seattle Ethics and Elections Commission may wish to consider whether and how replacement candidates will be governed with respect to Democracy Vouchers. Arizona regulations governing participating candidates lay out the following guidelines:
 - When a participating candidate is replaced during a campaign, that candidate's account can be transferred to the replacement candidate so long as the replacement candidate files an oath with the Secretary of State, agreeing to comply with the conditions of the Program. If not, the campaign account is liquidated and remaining money is returned to the Fund. (16-953 D)

Connecticut

Connecticut's regulations regarding return of excess funds are spelled out in the 2016 Program Guide, available here: [\[\[http://www.ct.gov/seec/lib/seec/2016CEPGuide20160222.pdf\]\]](http://www.ct.gov/seec/lib/seec/2016CEPGuide20160222.pdf)

Post-election expenditures

Few expenditures are permissible after an election (see page 74):

- Payment for outstanding liabilities;
- Nominal expenses associated with “winding up” a campaign, these include accountant and attorney fees, if needed;
- A post-election thank you meal for committee workers; this meal must occur within 14 days of the election and cannot exceed 30 dollars per worker;
- Thank you notes;
- Up to \$1,000 bonus payment to the campaign treasurer.

Post-election return requirements:

Connecticut regulations outline the following deadlines for post-election Fund returns (page 115):

- Following an unsuccessful primary or special election, a candidate has 90 days to return surplus money to the Fund.
- Candidates have 120 days to return surplus funds if they lose via a post-election review.
- Following a November election, a candidate must return surplus funds by March 31st of the following year (roughly four and a half months following the election).
- If the candidate is selected for a post-election audit, the candidate's committee has until June 30th of the following year to distribute surplus funds.

Additional requirements

Connecticut is slightly more stringent regarding the return of fixed assets than Arizona (page 115).

- Candidates must sell all equipment purchased for their campaign valued over 50 dollars and proceeds must be distributed to the Fund.
- A detailed description of how participating candidates can spend campaign funds is available here: [\[\[http://www.sots.ct.gov/sots/lib/sots/regulations/title_09/706.pdf\]\]](http://www.sots.ct.gov/sots/lib/sots/regulations/title_09/706.pdf)
- In Connecticut, candidates are randomly selected for post-election audit.

Los Angeles, CA

Regulations governing the return of surplus matching funds in Los Angeles' program are detailed in the Los Angeles Administrative Code Division Section 24.36, and Los Angeles Municipal Code Section 49.7, both printed here:

[[http://ethics.lacity.org/PDF/publications/candguides/pub_CityCandGuide2015.pdf]].

Post-election expenditures

Los Angeles Municipal Code, Section 49.7 outlines post-election expenditure regulations.

- Los Angeles law is clear that public funds cannot (at any time) be spent to pay fines, penalties, or inauguration expenses (LAMC Campaign Finance Ordinance Sec 49.7.23 C 11; Page 86 in the document cited above).
- Candidates can continue to receive matchable donations up to three months following an election for the purpose of paying debt incurred during the election (LAMC 49.7.10).
- Candidates can make a limited range of post-election expenditures, including:
 - Paying debts incurred during the election;
 - Attorney's fees;
 - Gifts of less than \$250 to campaign workers.

Post-election return requirements:

Rules governing the return of public funds after an election are detailed in the 2015 Candidate Guide, here: [[http://ethics.lacity.org/PDF/publications/candguides/pub_CityCandGuide2015.pdf]]

- Candidates must return public funds within 90 days of an election.
- Candidates who withdraw from an election must return funds within 10 days of their withdrawal.
- If the Ethics Commission notifies a candidates in writing that matching funds must be returned, the candidate must do so within 15 days of the notice.
- To calculate what portion of surplus funds are contributions, and what portion is from public matching funds, the Commission expects candidates to maintain a running balance log that separates their daily balance from contributions and matching funds. The Commission assumes candidates spend on a first in-first out basis.

New York City, NY

Regulations governing the return of public funding are outlined in the New York City Campaign Finance Handbook for the 2017 election cycle. Full text is available here: [[<http://www.nycffb.info/candidate-services/handbook>]]

Post-Election Expenditures

Participating candidates are permitted to make little post-election expenditure associated with winding down a campaign (see page 59). These include:

- Payment of rent, outstanding utility bills, moving and storage costs, taxes, staff salaries, thank you notes, a single post-election event for staff, volunteers, and supporters, a holiday card printing and mailing.
- Payment of fees associated with defending against claims that public funds must be repaid.
- Campaigns specifically may not spend money after an election on bonuses or gifts for staff or volunteers, or make contributions to other campaigns, organizations, or clubs, or carry out any other post-election mailings.

Post-election return requirements

New York City offers candidates the most lax timelines for returning public funds following an election. This is in part due to the fact that all candidates undergo a complete audit process following an election.

- After an election, participating candidates must repay to the city campaign finance fund all excess funds in their account up to the total amount the candidate received from the Fund. This means that although candidates fundraise a mix of private and public money, the New York City Campaign Finance Board presumes all remaining money after an election is public money (NYC Administrative Code 3-710 2 (c)).
- After each election all campaigns undergo an audit process. The Final Audit Report, which is not sent until 14-18 months after the election, includes a final report of repayment obligations.
- Campaigns can continue to raise matchable contributions until December 31st of the election year. (here: <http://www.nycffb.info/candidate-services/post-election/resources>)

Regulations governing the return of public funds in public financing programs cover a wide range. We hope this review of existing practices provides the Commission with a starting place to develop regulations for Seattle's Democracy Vouchers that both protect the City's public funds, and do not place unreasonable demands on candidates.

Sincerely,

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