

Lawson, David reported via email Mon, 9 Sept 2019 at 9:21AM
to: "pdc@pdc.wa.gov" <pdc@pdc.wa.gov>
cc: jenniferf@mopop.org

To: Ms. Tabatha Blacksmith, Compliance Coordinator
Re: Case 56613

Dear Ms. Blacksmith:

We are outside legal counsel for Experience Learning Community, a Washington nonprofit corporation, d/b/a MoPOP. Thank you for informing MoPOP of the complaint filed with your agency by Glen Morgan, case 56613. This email transmits MoPOP's response to the complaint.

Mr. Morgan's complaint is based on MoPOP's payment of 2019 membership dues in the amount of \$27,460.00 to Cultural Access Washington ("CAW"), a Washington nonprofit corporation. Mr. Morgan appears to allege that this single payment caused MoPOP to qualify as an incidental committee within the meaning of RCW 42.17A.005(28), giving rise to registration and reporting requirements under RCW 42.17A.207 and RCW 42.17A.235, respectively. For the reasons set out below, MoPOP believes that its payment of membership dues to CAW does not cause it to qualify as an incidental committee, and therefore that MoPOP is not subject to the registration and reporting requirements applicable to incidental committees.

1. The Payment Satisfied a Liability Accrued in 2018.

The provisions of Chapter 42.17A RCW imposing registration and reporting requirements on incidental committees were enacted through the DISCLOSE Act of 2018, and became effective January 1, 2019. Registration requirements therefore apply to any organization that "ha[d] the expectation of making contributions or expenditures" in periods beginning after January 1, 2019. The DISCLOSE Act was not effective during 2018, and there was no reporting requirement for contributions or expenditures made in 2018 by nonprofit organizations that do not qualify as political committees, such as MoPOP.

Although CAW received MoPOP's payment on February 4, 2019, MoPOP accrued liability for its 2019 CAW membership dues in 2018. MoPOP agreed to continue as a member of CAW in 2018, and included the CAW membership expense in the expenses reported in its 2018 Form 990 information return and its 2018 financial statements, either of which we are happy to supply upon request. MoPOP uses the accrual method of accounting for its financial and tax reporting. While PDC guidance for Forms C-11C and C-8 does not expressly state that incidental committees should use the accrual method in reporting expenditures on those forms, the instructions to other PDC forms such as Form L-7 direct organizations to use the accrual method. Using the accrual method, MoPOP's payment to CAW would have been correctly reported by MoPOP in 2018, not 2019, if the DISCLOSE Act provisions had then been in effect and MoPOP had qualified as an incidental committee.

2. MoPOP Did Not Have the Expectation of Making Expenditures in an Election Campaign or to a Political Committee.

Even if the DISCLOSE Act provisions had been effective in 2018, or if for some reason incidental committees are required to report using the cash method of accounting, MoPOP did not expect that, in paying membership dues to CAW, it would be making an expenditure in an election campaign or to support a political committee—which is an essential element of status as an incidental committee.

CAW is not a traditional or typical political committee. It is a Washington nonprofit corporation formed in 2015 and recognized by the Internal Revenue Service as a social welfare organization described in Section 501(c)(4) of the Internal Revenue Code. CAW's current Articles of Incorporation, as amended, state that it is organized (in relevant part):

(1) to support, facilitate, and, as appropriate, advocate for the creation and renewal of cultural access programs throughout the State of Washington and to support nonprofit cultural organizations whose primary purpose consists of the advancement and preservation of science and technology, the visual or performing arts, zoology, botany, anthropology, heritage, or natural history in furthering their nonprofit missions; [and]

(2) to lobby and advocate for support for culture organizations at the state and local level and to maintain government relations at the state and local levels in support of cultural organizations across the State of Washington.

CAW derives its funding from dues paid by CAW members, including nearly all of the large arts organizations in the state of Washington. Virtually all of CAW's members are Section 501(c)(3) charitable organizations, which are prohibited under federal tax law from participating in campaign activity for or against candidates, and which are subject to strict limitations on lobbying activity. (For a list of CAW members, see <http://culturalaccesswa.org/member-organizations>.) While CAW has been active during its history in supporting several ballot measure campaigns, which its members are permitted to support under federal tax law, a substantial amount of CAW's work is not of a type that would give rise to political committee reporting requirements at all. Had CAW been formed in 2019 rather than 2015, we believe it is likely that CAW would have been more correctly registered as an incidental committee than a political committee.

MoPOP paid its membership dues to CAW to support the purposes laid out in CAW's Articles of Incorporation, not to influence any election or participate in any campaign. MoPOP is a cultural organization, not a political organization. The allegations in Mr. Morgan's complaint that MoPOP's payment of membership dues to CAW constitutes "dark money" and is a "nefarious" attempt to conceal donor participation in the political process are absurd.

Please do not hesitate to contact me if we can be of assistance in this matter.

Thank you,
David

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(he/his)

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