



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm. 206, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX (360) 753-1112
Toll Free 1-877-601-2828 • E-mail: pdcc@pdcc.wa.gov • Website: www.pdcc.wa.gov

January 22, 2020

Delivered electronically to Danielle Franco-Malone, legal counsel for American Federation of State, County and Municipal Employees (AFSCME)

Subject: Complaint regarding the AFSCME Special Account, PDC Case 59678

Dear Ms. Franco-Malone:

Below is a copy of an electronic letter sent to Maxford Nelson with the Freedom Foundation, concerning a complaint he filed with the Public Disclosure Commission (PDC) against your client, American Federation of State, County and Municipal Employees, AFL-CIO Special Account.

As noted below in the electronic letter sent to Mr. Nelson, the PDC will not be conducting a more formal investigation into these allegations or taking further enforcement action in this matter.

Based on these findings, staff has determined that the issues raised in the complaint were previously resolved by the Commission pursuant to Case No. 54145, and this complaint does not raise new issues warranting further investigation. The PDC has dismissed the complaint in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Kurt Young at (360) 664-8854, toll-free at 1-877-601-2828 or by e-mail at pdcc@pdcc.wa.gov.

Sincerely,

Endorsed by,

/s _____
Kurt Young
Compliance Officer

/s _____
BG Sandahl, Deputy Director for
Peter Lavalley, Executive Director



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January 22, 2020

Sent electronically to Maxford Nelson with the Freedom Foundation

Subject: Complaint filed regarding AFSCME Special Account (2), PDC Case 59678

Dear Mr. Nelson,

The Public Disclosure Commission (PDC) has completed its review of the complaint you filed on October 25, 2019, against American Federation of State, County and Municipal Employees, AFL-CIO Special Account (AFSCME Special Account). The complaint alleged that AFSCME Special Account, a separate segregated fund registered with the Internal Revenue Service as a 527 political organization, may have violated RCW 42.17A.250 by failing to timely and accurately file Out-of-State Political Committee Campaign Finance Reports (C-5 reports) disclosing contributions made to Washington State Candidates and Political Committees during calendar years 2014 to 2018.

PDC staff reviewed the allegations listed in the complaint and exhibits that included copies of Form 8872 filed by American Federation of State, County and Municipal Employees, AFL-CIO, the statutes, rules and the C-5 reporting requirements for an out-of-state political committee, the C-5 reports filed by AFSCME Special Account, the response, telephone conversations and email exchanges with Daniel Franco-Malone, an attorney with Barnard, Iglitzin, & Lavitt, LLP on behalf of AFSCME Special Account. Based on staff's review, we found the following:

- American Federation of State, County and Municipal Employees, AFL-CIO Special Account (AFSCME) is the nation's largest services employees' union with 3,400 local unions, 58 councils and affiliates in 46 states, and approximately 1.4 million members in the United States according to its website.
- Between November 10, 2008, to September 10, 2018, AFSCME filed a total of 16 Out-of-State Committee Contributions reports (C-5 reports) disclosing AFSCME expenditures and contributions of more than \$50 made in support of or opposition to any Washington State candidate or ballot proposition. The C-5 reports listed the AFSCME's mailing address for the C-5 report as 1625 L Street NW, Washington DC, 20036.
- You filed an earlier complaint on July 3, 2019 on behalf of the Freedom Foundation (PDC Case 54145) and provided documents that included copies of AFSCME's 8872 forms filed with the IRS as a 527 segregated fund. Your complaint alleged that the C-5 reports filed by AFSCME Special Account for calendar years 2014 through 2018, failed to disclose all contribution and expenditure activities undertaken by the committee on the C-5 reports.

- In the November 27, 2019 response, Ms. Franco-Malone stated that on October 4, 2019, the PDC and AFSMCE executed a stipulated agreement in Case No. 54145, acknowledging violations of RCW 42.17A.250 were committed by AFSCME Special Account for failing to timely and accurately file C-5 Reports “disclosing \$250,000 in monetary contributions made to three political committees in Washington State during calendar years 2015 and 2016.” The stipulated agreement included a \$5,250 civil penalty being assessed, of which \$2,000 was suspended on several conditions, and “AFSCME tendered payment of the other \$3,250 on October 7.”
- Ms. Franco-Malone stated that the Freedom Foundation “filed a new complaint, alleging that AFSCME failed to timely file the same C-5 reports disclosing additional transfers made from AFSCME International to AFSMCE Special Account in calendar years 2014 and 2016. While none of the additional transfers included funds spent in Washington State, she noted that all of the new allegations “were either indirectly contemplated by, or were addressed directly in, the final order in Case No. 54145.”
- Ms. Franco-Malone stated that after reviewing the complaint and AFSCME conducting an internal audit, AFSMCE identified “the source of the discrepancy” and then filed two additional amended C-5 reports. The new information disclosed on the two amended C-5 reports was for additional funds received by AFSCME segregated account as transfers from AFSCME International. The late filed information resulted from AFSCME staff making some data entry or “internal coding errors that caused some reportable transactions to be omitted.” She stated the internal audit’s findings determined that the majority of the late reported transactions were transfers from AFSCME International to the AFSMCE Special Segregated Account.
- Ms. Franco-Malone stated that the remaining two discrepancies were related to refunds from AFSCME affiliates back to AFSCME’s segregated fund from Michigan for All and AFSCME SEIU Florida, and she reiterated the same answer as in the earlier complaint that the transfers were “not reportable transactions.” She stated Freedom Foundation had already “*made identical allegations regarding these two transactions in its July 3, 2019 complaint and in its August 9, 2019 (supplemental complaint information), based on the same misunderstanding of the difference between a partially refunded expenditure, and a contribution*”
- Ms. Franco-Malone stated that the Commission declined to find that the refunds received by AFSCME Special Account from Michigan for All and AFSCME SEIU Florida “constituted a violation of RCW 42.17A.250, presumably because those transactions did not reflect “contributions” to the Special Account that needed to be reported.
- Ms. Franco-Malone stated the audit found “that in the first quarter of 2014, there were 27 deposits, totaling an additional \$6,568,985.05 from what was included in the recently amended report. In the second quarter of 2014 there were seven deposits, totaling an additional \$2,128,469.50, from what was included in the recently amended C-5 report.” She continued stating that the audit found: (1) in the October 2014 C-5 report, \$343,539 of the contributions included “should not have been reported as deposits, as a result of those transactions having been internally mislabeled as deposits”; (2) “four deposits totaling an additional \$1,766,920.61 for 2016, which have also been reported in amended reports”; and (3) that the remaining \$32,609 that was not included in AFSCME’s C-5 reports “is attributable to the partial refunds of contributions from Michigan for All and AFSCME SEIU Florida, which were already addressed in the prior case.”
- Ms. Franco-Malone stated that in 2014, AFSCME’s Special Account transferred funds to Michigan for All throughout calendar year 2014 totaling \$750,000.

In calendar year 2015, she stated that Michigan for All refunded \$21,000 back to the AFSCME's Special Account for the unused portion of the \$750,000 in contributions made in 2014, and that since it "was a partial refund, it did not need to be disclosed" on the C-5 report. She stated the remaining \$11,609 concerned five in-kind contributions were made to AFSCME SEIU Florida, as listed on Form 8872, but the report did not disclose AFSCME having made any cash contributions.

- Ms. Franco-Malone stated the "audit revealed that two of these contributions were inadvertently reported to the IRS as in-kind expenditures, and were, in fact, cash contributions made from AFSCME's segregated account to AFSCME SEIU Florida. AFSCME disclosed the monetary expenditures made to AFSCME SEIU Florida, which included \$17,500 made on August 11, 2017, and an additional \$15,000 made on August 16, 2017. Therefore, the Special Account's prior explanation in Case No. 54145 is entirely correct. This amount is a refund and did not need to be disclosed to the PDC."
- On December 3, 2019, AFSCME filed two additional amended C-5 reports for October of 2014, and September of 2016, disclosing the additional transfers made in 2014 and 2016 from AFSCME International to AFSCME's Special Segregated Account.
- On January 9, 2020, AFSCME timely filed a C-5 report disclosing a \$200,000 monetary contribution made to the Washington State Democratic Central Committee on December 5, 2019. The C-5 report also disclosed a page and one-third of transfers totaling \$8,143,156 made between AFSCME International and AFSCME Special Segregated Account during calendar year 2019.

Staff's review of the facts found that: (1) the late reported contributions received and disclosed on the December 3, 2019 amended C-5 reports were transfers from AFSCME International to AFSCME's Special (segregated) Account made in calendar years 2014 and 2016; (2) the 2014 late reported transfers were beyond the five-year statute of limitations for PDC action; (3) of the total funds transferred from AFSCME International AFSCME to Special Account for calendar years 2014 through 2018, \$790,000 was disclosed as being spent to make contributions to Washington State candidates and political committees, which represented less than one percent of all funds transferred ; and (4) AFSCME took prompt corrective action by filing the amended reports when their noncompliance was brought to their attention by your complaint, and after conducting an internal audit.

Based on these findings, staff has determined that the issues raised in the complaint were previously resolved by the Commission pursuant to Case No. 54145, and this complaint does not raise new issues warranting further investigation. The PDC has dismissed the complaint in accordance with RCW 42.17A.755(1).

If you have questions, you may contact Kurt Young at (360) 664-8854, toll-free at 1-877-601-2828 or by e-mail at pdc@pdc.wa.gov.

Sincerely,

Endorsed by,

/s
Kurt Young
Compliance Officer

/s
BG Sandahl, Deputy Director for
Peter Lavalley, Executive Director

cc: Danielle Franco-Malone, legal counsel for AFSCME Special Account