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*Original via US First class mail  
And via email to pdc@pdc.wa.gov*

February 12, 2020

Mx. Fox Blackhorn  
Compliance Coordinator 2  
Washington State Public Disclosure Commission  
711 Capitol Way S #206  
Olympia, WA 98504

Re: Washington Federation of State Employees (Freedom Foundation Complaint)  
PDC Case Number 62411  
Our File No. 3389-009

Dear Mx. Blackhorn:

We are writing in response to the e-mail the PDC sent to myself and Greg Devereux, who was at that time the Executive Director of Washington Federation of State Employees (WFSE), on January 22, 2020, relating to a complaint filed against WFSE by the Freedom Foundation (Foundation) on January 3, 2020. The undersigned is legal counsel for WFSE in this matter. WFSE's current Executive Director is Leanne Kunze.

The Foundation's complaint alleges that WFSE's Separate Segregated Fund (SSF) was or is obligated to register and report to the PDC as a political committee. That complaint is identical, in all key respects, to at least one portion of a complaint the Foundation filed against WFSE almost exactly three years ago, on January 17, 2017 (PDC Case Number 14266). That complaint was referred to the PDC by the Attorney General's Office (AG) for investigation on February 8, 2017. On March 17, 2017, after careful investigation, PDC staff concluded that WFSE was not obligated to register and report its SSF as a political committee because the SSF is an account established, controlled, and funded by WFSE, such that expenditures from the SSF are the equivalent of expenditures from WFSE's general fund.

On March 28, 2017, the PDC referred the matter back to the AG with "no recommendation," asking the AG "to determine the status of the separate segregated fund issue." On April 10, 2017, the AG did so, explaining in detail (in a letter to the Foundation) the basis for its conclusions, as follows:

... WFSE's creation and maintenance of a bank account, considered as Separate Segregated Fund under the Internal Revenue Code, which is used for political activity in Washington, does not create a separate person distinct from WFSE itself under Washington's campaign finance laws.... Washington law does not

cite a bank account among the entities that may be considered a political committee.... While the definition of “person” within the campaign finance laws includes a broad of “any other organization or person, however organized,” nowhere does it mention a bank account belonging to and operated by a single organization as an entity that may be considered, in its own right, a political committee distinct from the organization that created, maintains, and controls it.... For the reasons set forth above, our office concludes that WFSE’s Separate Segregated Fund should not be considered as a person in its own right under state campaign finance laws.

A copy of this April 10, 2017, letter is attached as Exhibit A.

This remains the operative legal principle and an accurate statement of the law. *See, e.g.*, the Citizen Action Notice dated October 19, 2017, sent by the AG to the Foundation with regard to the identical complaint filed against Teamsters Local 117 (attached as Exhibit B), and Thurston County Superior Court Judge Christine Schaller’s subsequent ruling, dated February 16, 2018, dismissing as a matter of law that same claim after it was brought against Local 117 in court (attached as Exhibit C).

As was the case back in 2017, the Foundation’s allegations lack merit because they are premised on the incorrect premise that an SSF that has been set up by a labor organization for political purposes is a “person,” as defined by RCW 42.17A.005(38), subject to being characterized as a political committee under RCW 42.17A.005(40). It is not. An SSF, as described above, is by definition not a separate “person.” It is, instead, merely a separate bank account, or fund, within the total control of the labor organization that has created it. The significance of contributions made to, or expenditures made from, the SSF, may be examined in the context of an assessment of the status of the labor organization itself. But an SSF that is operated and funded solely by the labor organization that has created it may not itself properly be characterized as a political committee under any circumstances.

This was made clear by the PDC almost 25 years ago, in a letter it sent to James Oswald, then an attorney with the firm of Davies, Roberts & Reid, on May 11, 1995. In that letter, a copy of which is enclosed as Exhibit D, the PDC confirmed that the PDC “does not believe” that a local union is required to register or report the activities of an SSF that is fully funded by the local union, even though the SSF engages in electoral political activity such as making contributions to state office candidates. The PDC wrote, in pertinent part, that “union political contributions made from the segregated account ... are tantamount to being made from its general fund and this activity does not trigger registration and reporting under the Public Disclosure Law, 42.17 RCW.”

This conclusion is also compelled by the common and long-recognized practice of organizations such as, but by no means limited to, labor unions, creating and operating SSFs in order to limit the tax consequences of their political expenditures. An SSF, by definition, has as one of its primary, if not its sole, purpose the intent “to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.” Pursuant to *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass’n*, 111 Wn. App. 586,

598-99, 49 P.3d 894 (2002), and the authority cited therein, every single SSF would therefore be an unlawfully unregistered political committee, were it not the case, as urged herein, that an SSF that exists merely as a separate fund of a different entity is not treated as a “person” at all for purposes of RCW 42.17A.005(37). That would be a radical and unjustified transformation of existing law and practice under the FCPA.

Nor does the fact that WFSE’s SSF has filed an IRS Form 8871 change this analysis. The obligation to file a Form 8871 flows from federal tax law, but does not materially change the nature or status of an entity for purposes of state law. Every SSF has applied for an Employer Identification Number, which it does in order for the SSF to obtain its own bank account and be treated as a separate taxable entity. Whether or not the SSF exceeds the level of income that requires it to file an IRS Form 8871 (currently, \$25,000 in any calendar year) is irrelevant to whether it is, or is not, a separate “person” for purposes of RCW 42.17A.005(37).

*Voters Educ. Committee v. Washington State Public Disclosure Com’n*, 161 Wn.2d 470, 166 P.3d 1174 (2007), is not inconsistent with this conclusion. In that case, the Supreme Court, in trying to determine whether the Voters Education Committee (“VEC”) was or was not a political committee subject to the registration and reporting requirements of the Act, noted that it had previously registered as a Section 527 political organization under the Internal Revenue Code (i.e., by filing an IRS Form 8871). The majority decision observed that “the fact that VEC registered as a “political organization” under section 527 is a persuasive fact that indicates that VEC was seeking the tax benefits of section 527 while disingenuously seeking to avoid the disclosure requirements of the FCPA.” 161 Wn.2d at 491 n.14. But VEC was a stand-alone entity, not an SSF. Thus, the issue as to whether an SSF is properly analyzed as being a separate “person” subject to the registration and reporting obligations of the FCPA, or instead is examined only as one part of the organization of which it is merely a fund, was not raised.<sup>1</sup>

In the instant situation, there is no dispute that WFSE’s SSF is managed, operated, funded and directed entirely by WFSE itself. WFSE’s Executive Director makes all final approvals of monies provided to and spent from the SSF.

We are aware that the Foundation points to evidence presented in PDC Case No. 54145 of a September 9, 2016, transaction involving \$200,000 that was transmitted from the American Federation of State, County and Municipal Employees (AFSCME)’s “Special Account” to WFSE as evidence that the SSF received money from a source other than WFSE, i.e., AFSCME’s Special Account. However, the Foundation has provided no evidence, and we are aware of none, indicating that this \$200,000 was in fact deposited into WFSE’s SSF. The SSF’s records relating to the time period in question show no deposits other than money that has been “transfer[red] from dues.”

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<sup>1</sup> *Utter v. Building Industry Ass’n of Washington*, 182 Wn.2d 398, 341 P.3d 953 (2015) is similarly inapposite. The issue in that case was whether BIAW, because of its own electoral political activities, fell within the statutory definition of a “political committee” during the relevant time period. 182 Wn.2d at 412-413. There was no dispute that BIAW-MSA, a for-profit organization created by BIAW, itself a not-for-profit entity, was a separate “person” for purposes of RCW 42.17A.005(37). It was not simply an SSF operated by BIAW.

Absent any evidence that WFSE's SSF was separately funded (i.e., funded by any entity other than WFSE), there is no evidence that the SSF was anything other than "a bank account belonging to and operated by a single organization," *see* Exhibit A, p. 3, 3<sup>rd</sup> paragraph, something that (as has repeatedly been found and declared) is not and cannot be a "person" subject to registration and reporting requirements under the Fair Campaign Practices Act.

WFSE is not a political committee and has not been alleged to be one. WFSE's SSF is not a separate person subject to any reporting or disclosure requirements under the FCPA. The latest complaint by the Foundation against WFSE's SSF is entirely duplicative of its 2017 complaint, which articulated a legal theory that has now been found to be meritless by the PDC, the AG, and Thurston County Superior Court. It should therefore be dismissed by the PDC forthwith.

If you have any follow-up questions on this matter, please do not hesitate to contact the undersigned.

Sincerely,

  
Dmitri Iglitzin  
Counsel for WFSE

Enclosures

cc: Leanne Kunze

# Exhibit A



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

Campaign Finance Unit  
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

April 10, 2017

Maxford Nelsen  
Director of Labor Policy  
Freedom Foundation  
P.O. Box 552  
Olympia, WA 98507

**RE: Citizen Action Notice – Washington Federation of State Employees (AFSCME  
Council 28)  
Notice of Results**

Dear Mr. Nelsen:

I am writing in response to the citizen action notice referenced above, which your organization, the Freedom Foundation, filed with the Attorney General's Office (AGO) and the King, Spokane, and Thurston County Prosecuting Attorneys' Offices. Your notice alleges that the Respondent, the Washington Federation of State Employees (WFSE), operates an unregistered political committee in violation of Washington campaign finance laws, in the form of a Separate Segregated Fund (SSF) established and maintained under the provisions of 26 U.S.C. § 527. Your notice alleges that WFSE's SSF is a person distinct from the union itself, and that the SSF is a political committee under applicable state law.

The AGO reviewed the notice referenced above and accompanying materials, including a supplement you filed with our office on March 29, 2017. We also obtained the input of the Respondent, and reviewed a recommendation of the staff of the Public Disclosure Commission, and a letter from the Public Disclosure Commission without a recommendation as to the disposition of your notice. At this time, insufficient evidence exists to initiate judicial enforcement proceedings against the Respondent based on the allegations in the notice. In particular, WFSE's creation and maintenance of a bank account, considered a Separate Segregated Fund under the Internal Revenue Code, which is used for political activity in Washington, does not create a separate person distinct from WFSE itself under Washington's campaign finance laws. By way of further explanation, the following is our analysis of the legal authority on the issue of SSF reporting.

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Relevant provisions of Internal Revenue Code and related authority

Under the Internal Revenue Code, a “political organization” is generally exempt from income taxes. 26 U.S.C. § 527(a); *see generally* 26 C.F.R. § 1.527-1. “The term ‘political organization’ means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.” 26 U.S.C. § 527(e)(1). Exempt functions are broadly defined to include influencing and attempting to influence various federal, state, and local elections and political contests. 26 U.S.C. § 527(e)(2).

The Code further provides that an organization exempt from taxation under Code Section 501, which may not expend its funds on political activity while enjoying tax-exempt status, may engage in political activity by establishing a so-called separate segregated fund through which to manage such activity:

For purposes of this subsection and subsection (e)(1), a separate segregated fund ... which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

26 U.S.C. § 527(f)(3); *see generally* 26 U.S.C. § 527 (f)(1)-(2); *see also* 26 C.F.R. § 1.527-6(f) (“an organization described in section 501(c) that is exempt from taxation under section 501(a) may, if it is consistent with its exempt status, establish and maintain [ ] a separate segregated fund to receive contributions and make expenditures in a political campaign”), *and id.* (“If such a fund meets the requirements of § 1.527-2(a) (relating to the definition of a political organization), it shall be treated as a political organization subject to the provisions of section 527.”). A segregated fund may consist of a bank account. 26 C.F.R. § 1.527-2(b)(1) (“A savings or checking account into which only contributions to the political organization are placed and from which only expenditures for exempt functions are made may be a segregated fund.”).

Relevant provisions of Washington campaign finance laws

Under Washington campaign finance laws, the term “[p]olitical committee” means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” RCW 42.17A.005(37). The term “[p]erson” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.” RCW 42.17A.005(35).

Respondent WFSE and its Separate Segregated Fund

Respondent, the Washington Federation of State Employees (American Federation of State, County, and Municipal Employees Council 28), is a tax-exempt labor organization under 26 U.S.C. §§ 501(a) and 501(c)(5). WFSE established a separate segregated fund, the “Washington Federation of State Employees SSF,” on February 1, 2011. Your notice, and input shared by

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WFSE, shows that WFSE's SSF receives funds for political purposes, and expends funds on political activity, in the State of Washington. You have not disputed WFSE's position that its Separate Segregated Fund consists of "a separate bank account, or fund, within the total control of the labor organization that has created it," or that WFSE's SSF "is operated and funded solely by [WFSE]." WFSE's SSF is assigned a separate Employer Identification Number by the IRS from that assigned to WFSE, and the SSF's purpose as stated in its IRS filings is specifically dedicated to political activity, in contrast with the separate purpose stated by WFSE.

*Allegations concerning WFSE Separate Segregated Fund*

Your notice alleges that WFSE violated Washington law by failing to register its separate segregated fund as a political committee and file related reports. Under the Internal Revenue Code, a separate segregated fund is "treated as a separate organization" from the tax-exempt entity that maintains it. 26 U.S.C. § 527(f)(3); *see also* 26 C.F.R. § 1.527-6(f) (separate segregated fund "shall be treated as a political organization subject to the provisions of section 527"). Under the tax code, a "political organization" is defined to include a "fund ... organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1). Such a fund may consist of "[a] savings or checking account." 26 C.F.R. § 1.527-2(b)(1).

In contrast with federal law defining a "fund" as one species of "political organization," Washington law does not cite a bank account among the entities that may be considered a political committee. Rather, Washington's statute defines a political committee to include "any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) (emphasis added). While the definition of "person" within the campaign finance laws includes a broad range of "any other organization or group of persons, however organized," nowhere does it mention a bank account belonging to and operated by a single organization as an entity that may be considered, in its own right, a political committee distinct from the organization that created, maintains, and controls it.

Your notice agrees with the input our office received from WFSE that the individuals who exercise control over the WFSE SSF are all employees or board members of WFSE. As such, the SSF is in essence a bank account controlled by WFSE. While under the Internal Revenue Code, the SSF is "treated as a political organization subject to the provisions of section 527" for federal income tax purposes, under state law, the person that owns and controls the SSF is WFSE.

In 2007, the Washington Supreme Court recognized that "the definition of 'political organization' in section 527 does have a broader sweep than does the definition of "[p]olitical committee" in [RCW 42.17A.005(37)]." *Voters Educ. Comm. v. Washington State Public Disclosure Comm'n*, 161 Wn.2d 470, 491 n. 14, 166 P.3d 1174 (Wash. 2007). Unlike in the *Voters Education Committee* case, here, the fact that the alleged committee consists of nothing more than a bank account maintained and controlled by WFSE—and considered a "political organization" under the Internal Revenue Code—provides a clear reason to distinguish the

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Separate Segregated Fund's federal "political organization" status from the fund's status as a fund operated by WFSE under Washington's campaign finance law.

You supplemented your notice with the specific allegations that WFSE's SSF is assigned a separate employer identification number by the IRS (distinct from WFSE's own EIN), and that the SSF's identified purpose in its filings with the IRS differs from that of WFSE itself. Neither of these allegations supports treating the SSF as a person distinct from WFSE itself under Washington's campaign finance law. The Internal Revenue Code requires that any U.S. entity filing a return must be assigned a unique identifier such as an EIN. 26 C.F.R. § 301.6109-1(b)(1). Further, federal law distinguishes between the acceptable purposes of a Section 527 organization (including a separate segregated fund or bank account), and the purposes acceptable for its establishing non-profit organization exempt from taxation under Section 501(c). As stated above, the Internal Revenue Code treatment of a separate segregated fund for tax purposes does not, on its own, make the fund a separate "person" under state law.

For the reasons expressed above, our office concludes that the WFSE's Separate Segregated Fund should not be considered as a person in its own right under state campaign finance laws. It is, however, a part of the person which created, funds, and maintains it in all known respects: WFSE. This view is consistent with the view of the Public Disclosure Commission staff, who analyzed WFSE's organizational activity related to Washington campaign finance laws, and recommended in an Investigative Review Memorandum dated March 17, 2017 that no further action be taken with regard to the allegations in your notice because WFSE fails to meet applicable legal tests to qualify as a political committee under Washington law. It is also consistent with previous statements of the Commission's Executive Director when queried about the treatment of separate segregated funds under the state campaign finance and disclosure law.

Accordingly, the Attorney General's Office will not be filing a lawsuit against the WFSE or its SSF for failing to register and report as a political committee. Please note that the views expressed in this letter are limited to the specific facts in your notice, and this letter expresses no opinion as to the applications of law to any situation other than those addressed above.

Sincerely,



WALTER M. SMITH  
Assistant Attorney General

WMS:kj

cc: Darwin Roberts, Deputy Attorney General  
John Gerberding, King County Prosecuting Attorney's Office  
Elizabeth Petrich, Thurston County Prosecuting Attorney's Office  
Larry Haskell, Spokane County Prosecuting Attorney  
Dmitri Iglitzin, Counsel for Respondent Washington Federation of State Employees  
Evelyn Fielding Lopez, Executive Director, Public Disclosure Commission

# Exhibit B



**Bob Ferguson**  
**ATTORNEY GENERAL OF WASHINGTON**

Campaign Finance Unit  
PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

October 19, 2017

Maxford Nelsen  
Director of Labor Policy  
Freedom Foundation  
P.O. Box 552  
Olympia, WA 98507

**RE: Citizen Action Notice – Teamsters Local 117 Segregated Fund  
Notice of Results**

Dear Mr. Nelsen:

I am writing in response to the citizen action notice referenced above, which your organization, the Freedom Foundation, filed with the Attorney General's Office (AGO) and the King and Thurston County Prosecuting Attorneys' Offices. Your notice alleges that Teamsters Local 117 Segregated Fund (Teamsters Local 117) operates an unregistered political committee in violation of Washington campaign finance laws, in the form of a Separate Segregated Fund (SSF) established and maintained under the provisions of 26 U.S.C. § 527. Your notice alleges that Teamsters Local 117 SSF is a person distinct from the union itself, and that the SSF is a political committee under applicable state law.

The AGO reviewed the notice referenced above, including supplemental materials you filed with our office on August 7, 2017. We also obtained a response from the Respondent. At this time, insufficient evidence exists to initiate judicial enforcement proceedings against Teamsters Local 117 based on the allegations in the notice. In particular, Teamsters Local 117's creation and maintenance of a bank account, considered a Separate Segregated Fund under the Internal Revenue Code, which is used for political activity in Washington, does not create a separate person distinct from Teamsters Local 117 itself under Washington's campaign finance laws. By way of further explanation, the following is our analysis of the legal authority on the issue of SSF reporting.

*Relevant provisions of Internal Revenue Code and related authority*

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Maxford Nelsen  
October 19, 2017  
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Under the Internal Revenue Code, a “political organization” is generally exempt from income taxes. 26 U.S.C. § 527(a); *see generally* 26 C.F.R. § 1.527-1. “The term ‘political organization’ means a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.” 26 U.S.C. § 527(e)(1). Exempt functions are broadly defined to include influencing and attempting to influence various federal, state, and local elections and political contests. 26 U.S.C. § 527(e)(2).

The Code further provides that an organization exempt from taxation under Code Section 501, which may not expend its funds on political activity while enjoying tax-exempt status, may engage in political activity by establishing a so-called separate segregated fund through which to manage such activity:

For purposes of this subsection and subsection (e)(1), a separate segregated fund ... which is maintained by an organization described in section 501(c) which is exempt from tax under section 501(a) shall be treated as a separate organization.

26 U.S.C. § 527(f)(3); *see generally* 26 U.S.C. § 527 (f)(1)-(2); *see also* 26 C.F.R. § 1.527-6(f) (“an organization described in section 501(c) that is exempt from taxation under section 501(a) may, if it is consistent with its exempt status, establish and maintain [ ] a separate segregated fund to receive contributions and make expenditures in a political campaign”), *and id.* (“If such a fund meets the requirements of § 1.527-2(a) (relating to the definition of a political organization), it shall be treated as a political organization subject to the provisions of section 527.”). A segregated fund may consist of a bank account. 26 C.F.R. § 1.527-2(b)(1) (“A savings or checking account into which only contributions to the political organization are placed and from which only expenditures for exempt functions are made may be a segregated fund.”).

Relevant provisions of Washington campaign finance laws

Under Washington campaign finance laws, the term “[p]olitical committee” means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” RCW 42.17A.005(37). The term “[p]erson” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.” RCW 42.17A.005(35).

Respondent Teamsters Local 117 and its Separate Segregated Fund

Teamsters Local 117 is a tax-exempt labor organization under 26 U.S.C. §§ 501(a) and 501(c)(5). Teamsters Local 117 established a separate segregated fund, the “Teamsters Local 117 SSF” on July 20, 2011. Your notice and input shared by Teamsters Local 117 shows that its SSF receives funds for political purposes and expends funds on political activity in the State of

ATTORNEY GENERAL OF WASHINGTON

Maxford Nelsen  
October 19, 2017  
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Washington. Teamsters Local 117's SSF is assigned a separate Employer Identification Number by the IRS from that assigned to Teamsters Local 117. Additionally, the SSF's stated purpose as stated in its IRS filings is specifically dedicated to political activity in contrast with the separate purpose stated by Teamsters Local 117.

*Allegations concerning Teamsters Local 117 Separate Segregated Fund*

Your notice alleges that Teamsters Local 117 violated Washington law by failing to register its separate segregated fund as a political committee and file reports. Under the Internal Revenue Code, a separate segregated fund is "treated as a separate organization" from the tax-exempt entity that maintains it. 26 U.S.C. § 527(f)(3); *see also* 26 C.F.R. § 1.527-6(f) (separate segregated fund "shall be treated as a political organization subject to the provisions of section 527"). Under the tax code, a "political organization" is defined to include a "fund ... organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1). Such a fund may consist of "[a] savings or checking account." 26 C.F.R. § 1.527-2(b)(1).

In contrast with federal law defining a "fund" as one species of "political organization," Washington law does not include a bank account among the entities that may be considered a political committee. Rather, Washington's statute defines a political committee to include "any person ... having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(37) (emphasis added). While the definition of "person" within the campaign finance laws includes a broad range of "any other organization or group of persons, however organized," nowhere does it mention a bank account belonging to and operated by a single organization as an entity that may be considered, in its own right, a political committee distinct from the organization that created, maintains, and controls it.

Teamsters Local 117's SSF is in essence a bank account controlled by Teamsters Local 117. While under the Internal Revenue Code, the SSF is "treated as a political organization subject to the provisions of section 527" for federal income tax purposes, under state law, the person that owns and controls the SSF is Teamsters Local 117.

In 2007, the Washington Supreme Court recognized that "the definition of 'political organization' in section 527 does have a broader sweep than does the definition of "[p]olitical committee" in [RCW 42.17A.005(37)]." *Voters Educ. Comm. v. Washington State Public Disclosure Comm'n*, 161 Wn.2d 470, 491 n. 14, 166 P.3d 1174 (Wash. 2007). Unlike in the *Voters Education Committee* case, here, the fact that the alleged committee consists of nothing more than a bank account maintained and controlled by Teamsters Local 117—and considered a "political organization" under the Internal Revenue Code—provides a clear reason to distinguish the Separate Segregated Fund's federal "political organization" status from the fund's status as a fund operated by Teamsters Local 117 under Washington's campaign finance law.

ATTORNEY GENERAL OF WASHINGTON

Maxford Nelsen  
October 19, 2017  
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Your notice alleges that Teamsters Local 117's SSF is assigned a separate employer identification number by the IRS (distinct from Teamsters Local 117's own EIN), and that the SSF's identified purpose in its filings with the IRS differs from that of Teamsters Local 117 itself. Neither of these allegations supports treating the SSF as a person distinct from Teamsters Local 117 itself under Washington's campaign finance law. The Internal Revenue Code requires that any U.S. entity filing a return must be assigned a unique identifier such as an EIN. 26 C.F.R. § 301.6109-1(b)(1). Further, federal law distinguishes between the acceptable purposes of a Section 527 organization (including a separate segregated fund or bank account), and the purposes acceptable for its establishing non-profit organization exempt from taxation under Section 501(c). As stated above, the Internal Revenue Code treatment of a separate segregated fund for tax purposes does not, on its own, make the fund a separate "person" under state law.

For the reasons expressed above, our office concludes that the Teamsters Local 117's Separate Segregated Fund should not be considered as a person in its own right under state campaign finance laws. It is, however, a part of the person which created, funds, and maintains it in all known respects: Teamsters Local 117. This view is consistent with the view taken by the Public Disclosure Commission staff, who previously analyzed a similar allegation you made against the Washington Federation of State Employees' organizational activity related to Washington campaign finance laws, and who recommended in an Investigative Review Memorandum dated March 17, 2017 that no further action be taken with regard to the allegations in your notice because WFSE fails to meet applicable legal tests to qualify as a political committee under Washington law. It is also consistent with previous statements of the Commission's Executive Director when queried about the treatment of separate segregated funds under the state campaign finance and disclosure law.

*Teamsters Local 117 – status as political committee*

Alternatively, you allege that Teamsters Local 117 itself is an unregistered political committee because it meets the definition of political committee under either prong of the test. Our review of the citations and the response from Teamsters Local 117 do not lead to that conclusion. We evaluated Teamsters Local 117's spending on electoral and non-electoral activities through 2016 and concluded that less than 1% of the total spending went to electoral activities. We also reviewed the quotations you provided and could not agree that they lent support to your claim that Teamsters Local 117 was a receiver of contributions.

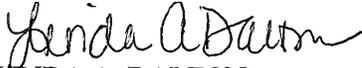
Accordingly, the Attorney General's Office will not be filing a lawsuit against Teamsters Local 117 or its SSF for failing to register and report as a political committee. Please note that the views expressed in this letter are limited to the specific facts in your notice, and this letter

ATTORNEY GENERAL OF WASHINGTON

Maxford Nelsen  
October 19, 2017  
Page 5

expresses no opinion as to the applications of law to any situation other than those addressed above.

Sincerely,



LINDA A. DALTON  
Senior Assistant Attorney General

LAD:cc

cc: Darwin Roberts, Deputy Attorney General  
John Gerberding, King County Prosecuting Attorney's Office  
Elizabeth Petrich, Thurston County Prosecuting Attorney's Office  
Laura Ewan, Counsel for Respondent Teamsters Local 117  
Peter Lavallee, Executive Director, Public Disclosure Commission

# Exhibit C

1  Expedite  
2  No hearing set  
3 X Hearing is set  
4 Date: February 9, 2018  
Time: 9:00 a.m.  
Judge/Calendar: Skinder

6 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
7 IN AND FOR THE COUNTY OF THURSTON

8 FREEDOM FOUNDATION, a Washington  
9 nonprofit organization, in the name of the  
State of Washington,

No. 17-2-06578-34

10 Plaintiff,

**[PROPOSED] ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS IN PART**

11 v.

12  
13 TEAMSTERS LOCAL 117 SEGREGATED  
14 FUND, an IRS 527(f)(3) political  
organization; TEAMSTERS LOCAL  
15 UNION NO. 117, an IRS 501(c)(5) labor  
organization; John Does 1-10 ,

16 Defendants.

17  
18 THIS MATTER came before the Court on Defendants Teamsters Local 117  
19 Segregated Fund and Teamsters Local Union No. 117 Motion to Dismiss. The Court having  
20 heard argument on the matter on <sup>February 16</sup> ~~January 5~~, 2018 and having considered the pleadings filed  
21 in this matter, including the following:

- 22 1. Defendants' motion, the declaration and attached exhibits <sup>B</sup> and appendices <sup>S</sup>  
23 submitted in support of the motion; <sub>DT</sub>
- 24 2. Plaintiff's opposition, and the supporting declarations and exhibits thereto; <sub>DT</sub>
- 25
- 26

ORDER GRANTING MOTION TO DISMISS- 1  
Case No. 17-2-06578-34

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT, LLP  
18 WEST MERCER STREET SUITE 400  
SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

3. Defendants' reply, including all supporting papers;

4. \_\_\_\_\_

The Motion to Dismiss filed by Defendants is hereby GRANTED <sup>in part</sup> and Plaintiff's claims are hereby DISMISSED with PREJUDICE <sup>only as to Plaintiff's</sup>

~~The Court further finds that this suit was brought without reasonable cause, and Defendants are thereby entitled to their reasonable attorneys' fees, pursuant to RCW 42.17A.765(4)(b). Defendants are accordingly AWARDED the reasonable attorney's fees, and Defendants shall have 10 days from the date of this order to submit a declaration in support of the fees it incurred.~~

DATED this 10 day of Feb., 2018



HONORABLE JOHN C. SKINDER

Christine Schaller

Presented by:



Dmitri Iglitzin  
WSBA No. 17673

Schwerin Campbell Barnard Iglitzin & Lavitt LLP

Approved as to form



Christine Schaller WSBA 22002

request for attorneys' fees; <sup>from the Defendants</sup> plaintiff's claims against Teamsters Local 117's separate segregated fund, and plaintiff's claim that Local 117 is a political committee pursuant to the "contributions" prong; otherwise, it is denied.

ORDER GRANTING MOTION TO DISMISS-2  
Case No. 17-2-06578-34

LAW OFFICES OF  
SCHWERIN CAMPBELL  
BARNARD IGLITZIN & LAVITT, LLP  
18 WEST MERCER STREET SUITE 400  
SEATTLE, WASHINGTON 98119-3971  
(206) 285-2828

# Exhibit D



STATE OF WASHINGTON

PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX: (360) 753-1112

May 11, 1995

James D. Oswald  
Davies, Roberts & Reid  
101 Elliott Avenue West #550  
Seattle, WA 98119

Dear Jim:

In your letter of this date, you explain that a local union is considering establishing a segregated account for "Public Information Fund" activities, including the issuance of contributions to state office candidates.

Based on the information provided, PDC staff does not believe that the local union is required to register and report the segregated account as a political committee. Of particular significance in reaching this conclusion is the fact that the monies going into the information fund account originate with the union's general fund and are deposited into the segregated account at the discretion of the union Secretary/Treasurer. That is, no set amount of each member's union dues is earmarked for the information fund. In addition, as I understand it, there will not be any additional fund raising activities undertaken to augment these transfers from the general fund and, in fact, no monies other than these transfers will be deposited into the information fund account.

In summary, staff believes the union political contributions made from the segregated account described above are tantamount to being made from its general fund and this activity does not trigger registration and reporting under the Public Disclosure Law, 42.17 RCW.

However, should the union choose to register this segregated fund as a political committee, full reporting of all transfers into the account (contributions) and all expenditures made from it will be necessary. If this route is taken, the union PAC would not be restricted to receiving only transfers from the general fund, but could hold political fund raising events and accept additional contributions allowed by law. Let me know if this choice is made so we can provide additional information to the union.

Sincerely,

Vicki L. Rippie, Assistant Director  
Public Information and Policy Development

---

*"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  
any right that these matters remain secret and private."*

RCW 42.17.010 (10)





STATE OF WASHINGTON  
PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 403, PO Box 40908 • Olympia, Washington 98504-0908 • (360) 753-1111 • FAX: (360) 753-1112

October 27, 1995

James D. Oswald  
Davies, Roberts & Reid  
101 Elliott Avenue West #550  
Seattle, WA 98119

Dear Jim:

As a follow-up to my letter of May 11, 1995, regarding unions using a segregated account to make campaign contributions, I need to clarify one reporting matter.

While it remains true that the creation of a segregated account with already existing general fund dollars as discussed in my May letter does not trigger registration and reporting as a political committee under 42.17 RCW, a Special Political Expenditures Report (form C-7) would be required of unions and most other entities under certain circumstances. If a union is not a lobbyist employer and it either:

- 1) contributes over \$10,000 annually in the aggregate to candidates for state office and committees formed to support or oppose statewide ballot measures or
- 2) makes Independent expenditures that during one year exceed \$500, again with respect to state office candidates and statewide ballot measures,

then a C-7 report must be filed no later than the last day of February of the year following the one in which the contributions or independent expenditures occurred. A C-7 and filing instructions are enclosed for reference.

Please contact me if you wish to discuss this further.

Sincerely,

Vicki L. Rippe, Assistant Director  
Public Information and Policy Development

Enclosure

---

*"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 any right that these matters remain secret and private."*

RCW 42.17.010 (10)

**DAVIES, ROBERTS & REID**

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GEORGE H. DAVIES  
WILLIAM A. ROBERTS  
TIMOTHY ST. C. SMITH†  
OF COUNSEL

May 11, 1995

**RECEIVED**

**MAY 15 1995**

TELEPHONE: (206) 285-3610  
FAX NUMBER: (206) 285-8925

**Public Disclosure Commission**

\* Also admitted in California  
\*\* Also admitted in Alaska  
† Also admitted in Washington D.C.

**VIA FACSIMILE  
HARD COPY TO FOLLOW**

Vicki Rippie  
Public Information Officer  
Public Disclosure Commission  
P. O. Box 40908  
Olympia, WA 98504-0908

Re: Segregated Accounts/PDC Reporting

Dear Vicki:

I am writing to you in response to what I perceive to be an excess of caution on the part of a local union.

A local union is considering establishing a segregated "Public Information Fund" account, which would be used, at least in part, to make contributions to candidates for state office. The account will be segregated in order to comply with federal tax laws. It is my perception that the Fund will not be required to register and report to the Public Disclosure Commission. As you and I recently discussed, and as is reflected in the enclosed letter regarding the Washington State Building and Construction Trades Council, entities that do not collect contributions in order to contribute to political campaigns, and whose primary activity is not to contribute to political campaigns, are not required to register with the PDC.

In this case, the local union has passed a motion which reflects that the Public Information Fund will be funded exclusively with discretionary allocations of union resources. For your information, the following is the entire text of the motion:

That the Secretary/Treasurer be authorized to open a segregated "Public Information Fund" checking account and at his discretion allocate periodic deposits into said account hereby named "\_\_\_\_\_, Local \_\_\_ Public Information Account". This account shall not exceed eight thousand dollars (\$8,000.00). Upon the recommendation of the Executive Board the dispensing of monies

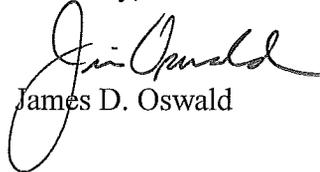
Vicki Rippie  
May 11, 1995  
Page 2

from this fund shall be at the direction of the Business Manager and  
Secretary/Treasurer.

I believe that the arrangement contemplated by this motion is indistinguishable from the facts described in the enclosed letter. They are also essentially identical to the hypothetical facts you and I discussed in our recent telephone conversation. I would be grateful if you could provide me with a written response confirming that registration with the PDC will not be necessary under the circumstances described in this letter.

Thank you for your prompt attention to this matter.

Sincerely,



James D. Oswald

JDO:db

cc: Diane McDaniel

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