

**BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON**

In the Matter of Complaint Disposition
Concerning:

2024 Bob Ferguson for Governor
Campaign

Respondent.

PDC Case 137263

STIPULATION AS TO FACTS
CONCERNING THE REPORTING OF
TRANSFERRED CONTRIBUTIONS
AND STAFF RECOMMENDATION

I. INTRODUCTION

The parties to this Stipulation, namely, the Public Disclosure Commission Staff (“staff”), through its Deputy Director, Kim Bradford, and the 2024 Bob Ferguson for Governor Campaign (“Ferguson Campaign” or “Campaign”), Respondent, through Wellesley Daniels, Campaign Manager, submit this Stipulation as to Facts Concerning the Reporting of Transferred Contributions and PDC staff also submits, as part of this document, its recommendation for resolution of two complaints filed against the Ferguson Campaign. The parties agree the Commission has the authority to accept, reject or modify this Stipulation. The parties further agree that in the event the Commission suggests modification to the Stipulation, each party reserves the right to reject that modification. In the event either party rejects a modification, PDC staff will find an appropriate way to bring the matter back to the Commission for resolution.

II. JURISDICTION

The Public Disclosure Commission has jurisdiction over this proceeding pursuant to Chapter 42.17A RCW, the state campaign finance and disclosure laws; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC.

III. FACTS

1. On April 27, 2023, the Commission considered a petition for a Declaratory Order concerning the interpretation of RCW 42.17A.490 and the use of contributions to further the candidacy of an individual for an office other than the office designated on the statement of organization. The petition questioned the correctness of the published guidance on the PDC website, *PDC Guidelines & Restrictions – Using Contributions for a Different Office*, which provided that the transfers of leftover contributions to a new campaign for a different office, pursuant to RCW 42.17A.490, were not attributed to the original contributor and did not count against that contributor’s contribution limit for the new campaign. The basis for the published guidance came from a legal memo prepared for the Commission in 1995, which the Commission adopted on August 27, 1995. The guidance was published on the Commission’s website. The Commission asked staff to bring these matters back to a special meeting on May 11, 2023, at which staff would present draft interpretations for the Commission’s consideration, and to allow for public comment.
2. The Ferguson Campaign stated that on April 24, 2023 it began asking past donors from Bob Ferguson’s 2016 and 2020 campaigns for attorney general for written permission to transfer funds left over from their contributions to his gubernatorial Campaign.
3. On May 2, 2023, staff published notice seeking public comment on two options regarding the interpretation of RCW 42.17A.490, which the Commission was considering. The first option included the current agency guidance that “[w]hen a candidate is transferring contributions left over from a previously completed election campaign to a new campaign for a different office, those contributions that are moved to the new campaign are NOT attributed to their sources, nor do they count toward the contributor's limit for the new campaign.” The second option proposed a new alternative interpretation that “[w]hen, with the written approval of the contributor, a candidate is transferring contributions left over from a previously completed election campaign, whether or not designated as surplus funds, to a new campaign for a different office, those contributions that are moved to the new campaign **must be attributed to their sources, and count toward the contributor's limit for the new**

campaign. Each contributor whose written approval was obtained must be identified along with their contribution.” The April 25 staff memo advised the Commission on the two options.

4. On May 2, 2023, the Ferguson Campaign filed a Candidate Registration (C-1) with the PDC.
5. On May 9, 2023, May 10, 2023, and May 11, 2023, the Ferguson Campaign filed eight C-3 reports disclosing that beginning April 24, 2023, it had received monetary contributions totaling \$1,272,079.71. The reports consisted of transfers, with permission from the underlying contributors, from surplus funds remaining after the 2016 and 2020 campaigns of Bob Ferguson for Attorney General. The C-3 reports included lump sum amounts and did not identify the individual contributors attributed to the transfers. All of these transfers occurred prior to the time the Commission’s May 11, 2023, special meeting began.
6. On May 11, 2023, the Commission voted unanimously to change its published guidance of RCW 42.17A.490, providing that the transfer of unspent campaign funds to a campaign for a different office are contributions to the new campaign.
7. On May 11, 2023, PDC staff informed Abbot Taylor, Treasurer for the Ferguson Campaign, of the Commission’s action. After the Commission adopted a new interpretation to RCW 42.17A.490, the Ferguson Campaign began immediately following the new interpretation for subsequent transfers with permission.
8. On May 19, 2023, the PDC received a complaint filed by Michael Christophersen alleging that the Ferguson Campaign had violated RCW 42.17A.235 and .240 by failing to identify the names and other required information for contributors who gave their written approval to use their contributions, originally given to further the 2016 or 2020 Bob Ferguson campaigns for Attorney General, to further the 2024 campaign for Governor. On June 9, 2023, the Campaign responded to the complaint, defending its reliance on the published interpretation of RCW 42.17A.490 as it existed at the time of the transfers.
9. On May 25, 2023, the Commission formally adopted PDC Interpretation 23-01 regarding application of RCW 42.17A.490 on contribution limits applied to transferred campaign

funds, which states in part, "...the Commission determines that the use of a candidate's surplus contributions for the same person's campaign for a different office are considered contributions to that new campaign."

10. On June 27, 2023, the PDC received a complaint from Tallman Trask that was similar to the complaint filed by Michael Christophersen. On July 14, 2023, the Campaign responded to the complaint, again defending its reliance on published interpretation of RCW 42.17A.490 as it existed at the time of the transfers.
11. On July 21, 2023, staff held an Initial Hearing (Case Status Review) to convert staff's initial review of the two complaints to a formal investigation.
12. On August 17, 2023, Mr. Taylor informed PDC staff that on August 16, 2023, the 2024 Ferguson Campaign voluntarily filed amended C-3 reports that retroactively applied the new PDC Interpretation 23-01 to the campaign's past surplus fund transfers.
13. The amended C-3 reports disclosed the required contributor information for contributions totaling \$1,183,403.88, in accordance with RCW 42.17A.235 and .240. The remaining \$88,675.83, initially transferred to the Campaign in lump sum amounts, was returned to the Bob Ferguson Surplus Fund.
14. The Campaign used the FIFO (First-In-First-Out) standard, based on the assumption that the first contributions received were the first contributions spent by the campaign, to determine which contributions were eligible to be transferred. All transfers were made with the written permission of the contributors.
15. No evidence was found that remaining surplus contributions transferred to the 2024 campaign for Governor exceeded contribution limits.

RELEVANT STATUTES

PDC INTERPRETATION 23-01

PDC INTERPRETATION BEFORE ADOPTION OF INTERPRETATION 23-01

RCW 42.17A.490 states,

(1) Except as provided in subsection (2) of this section, a candidate for public office or the candidate's authorized committee may not use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general election for which the candidate is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate or the candidate's authorized committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate or the candidate's authorized committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization. If the contributor does not approve the use of his or her contribution to further the candidacy of the individual for an office other than the office designated on the statement of organization at the time of the contribution, the contribution must be considered surplus funds and disposed of in accordance with RCW 42.17A.430.

RCW 42.17A.235 and .240 require candidates and political committees to report the identify of contributors along with other required information.

PDC Interpretation 23-01 Transfer of Surplus Contributions to a Candidate's Campaign for a Different Office (Issued May 25, 2023)

A candidate who solicits or receives contributions for a state, local, or judicial office may not use those contributions to further that same person's candidacy for a different office without first obtaining written approval from the applicable contributor. RCW 42.17A.490. The authorization and required written approval apply to the use of contributions to the original campaign "whether or not surplus". Id. Although it is clear from the overall statutory scheme that the authorized transfers of contributions from an active campaign do constitute contributions to the new campaign for a different office, the treatment of surplus contributions used for a different office warrants further consideration in light of the authorized disposal of surplus funds for other purposes.

Surplus funds include the balance of contributions exceeding the amount necessary to pay the remaining campaign debts and expenses after the election. RCW 42.17A.005(51). The law authorizes the ways a candidate may dispose of surplus campaign funds, which are provided under RCW 42.17A.430. The use of surplus contributions for a campaign for a different office, however, is separately authorized under RCW 42.17A.490(2).

While RCW 42.17A.430 provides that the disposal of surplus funds expressly authorized under that section of law, including the transfer of surplus funds to a future campaign for the same office, are not considered contributions, there is no comparable exclusion provided for the uses authorized under RCW 42.17A.490. Indeed, RCW 42.17A.490(2) provides that only where the contributor does not approve the use of their contribution for the candidate's new campaign, the contribution must be disposed as surplus in accordance with RCW 42.17A.430.

Based on the statutory scheme, legislative history, and consistent with the policies and purposes of the law to promote transparency and limit influence in candidate elections — including the law’s mandate that “[t]he provisions of this chapter shall be liberally construed to promote complete disclosure of all information respecting the financing of political campaigns” (RCW 42.17A.001) — the Commission determines that the use of a candidate’s surplus contributions for the same person’s campaign for a different office are considered contributions to that new campaign. Specifically, when a candidate is transferring surplus contributions from a previously completed election campaign to a new campaign for a different office, those contributions moved to the new campaign must be attributed to their sources, and count toward the contributor’s limit for the new campaign. Each contributor whose written approval was obtained must be identified along with their contribution.

PDC Guidance Concerning the Application of RCW 42.17A.490 Prior to Adoption of PDC Interpretation 23-01, Based on an August 28, 1995 Memo Accepted by the Commission and Applied by Staff

The guidance stated, in part:

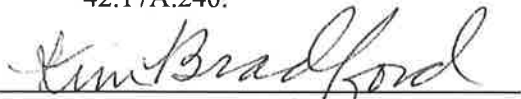
Question: When surplus funds are transferred to a new campaign, are they subject to the contribution limits?

Answer: No, the surplus funds are transferred in one lump sum as surplus funds without attribution to original contributors. The scheme of Initiative 134 is to allow all contributors the ability to contribute up to a certain limit for the primary, general and special election. Once the contribution is counted against the contributor’s limit for that election, it should not be counted against a subsequent limit for a new election. To do otherwise would be to double count one contribution.

PDC STAFF RECOMMENDATION


1. On April 27, 2023, the Commission was presented with a petition to change the PDC’s published interpretation of the application of RCW 42.17A.490, concerning surplus contributions received for a prior campaign being transferred to further the candidacy of the same individual for a different office.
2. The Ferguson Campaign reported that from April 24, 2023, it began receiving transferred surplus contributions from the 2016 and 2020 campaigns for Attorney General to the 2024 campaign for Governor, which were reported in lump sum amounts, without attributing the contributions to individual contributors, in accordance with the published interpretation of RCW 42.17A.490 as it existed at the time of the transfers.

3. Following the Commission's adoption of PDC Interpretation 23-01, the Ferguson campaign voluntarily amended its C-3 reports and disclosed the required contributor information for the amounts transferred to the campaign for Governor.
4. The amended reports were filed more than one year in advance of the 2024 election, which has mitigated any harm to voters.
5. This stipulation does not resolve as a matter of law whether the Ferguson Campaign had a right to rely on the PDC's interpretation of RCW 42.17A.490 as it existed when the transfers of surplus funds were made to a campaign for a different office. The Campaign voluntarily filed amended reports once the Commission adopted PDC Interpretation 23-01. Since the amended reports are in compliance with the Interpretation, it is not necessary to resolve the issue of reliance on the prior interpretation.
6. Therefore, staff recommends dismissing the complaints filed by Michael Christophersen and Tallman Trask with no finding of a violation of RCW 42.17A.490, 42.17A.235 or 42.17A.240.



Kim Bradford, Deputy Director
Public Disclosure Commission

12/1/23
Date Signed



Wellesley Daniels, Campaign Manager
2024 Bob Ferguson Campaign for Governor

11/30/23
Date Signed

