



**LEGAL RESTRICTIONS ON POLITICAL ACTIVITIES OF
PUBLIC HOSPITAL DISTRICTS AND THEIR
COMMISSIONERS, OFFICERS, EMPLOYEES AND
AFFILIATED ORGANIZATIONS**

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I. Support for, or opposition to, candidates for local, state or federal office

A. Public hospital districts

1. No public funds may be used for political campaigns for local, state or federal office

RCW 42.17.128 provides as follows:

Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or local office.

2. With one limited exception, no public facilities may be use for political campaigns for local, state of federal office

RCW 42.17.130 provides, in part, as follows:

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency

3. Exception for activities that are part of the normal and regular conduct of the public hospital district

RCW 42.17.130 provides as follows:

PROVIDED, That the foregoing provisions of this section shall not apply to the following activities: . . . Activities which are part of the normal and regular conduct of the office or agency.

The Washington Public Disclosure Commission and the courts have defined normal and regular conduct as follows:

Conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized by some extraordinary means or manner.

- B. Public hospital district commissioners, officers and employees acting on behalf of the public hospital district

To the extent that a commissioner, officer or employee is acting on behalf of the public hospital district, the same rules described above apply.

- C. Public hospital district commissioners, officers and employees acting in an individual capacity

So long as a commissioner, officer or employee is acting purely in an individual capacity and is not using any funds, facilities or resources of the public hospital district, the commissioner, officer or employee is free to support or oppose individual candidates.

- D. Public hospital districts and affiliated foundations and auxiliaries that are exempt from federal income tax under Section of 501(c)(3) of the Internal Revenue Code

- 1. Background on Section 501(c)(3) organizations

Section 501(c)(3) of the Internal Revenue Code (“IRC”) describes “charitable” organizations that are exempt from federal income taxation under IRC §501(a). Contributions to IRC §501(c)(3) organizations are generally deductible to the donors. IRC §170 (c)(2). A §501(c)(3) organization must be organized and operated “exclusively” for exempt purposes. To meet the “organizational” test, an organization’s articles of incorporation may not permit it to participate or intervene in the campaign of a candidate for public office, nor may they permit the organization to engage in activities that would result in its characterization as an “action” organization. Treas. Rec. §1.501(c)(3)-1(b)(3). To satisfy the “operational” test of IRC §501(c)(3), an organization may not be an “action” organization, which means, inter alia, that it may not participate

or intervene in any political campaign. Treas. Reg. §1.501(c)(3)-1(c)(3)(iii).

2. Absolute prohibition

The prohibition of political campaign by §501(c)(3) organizations is an *absolute* prohibition. There is no substantiality test as there is for legislative activity by the organization

3. Potential penalties

The penalty for violating the political campaign activity prohibition is loss of exemption for the organization. In addition, the IRS may impose an excise tax on impermissible political expenditures by the organization under the authority of IRC §4955. In cases where the violation is minor relative to the overall program of charitable activities carried on by the organization, the IRS has tended to assess only the excise tax, while leaving the organization's tax exemption intact.

E. AWPHD

In a recent court decision (Telford v. Thurston County Board of Commissioners, 95 Wn. App. 149, 974 P.2d 886 (1999)), the Washington Court of Appeals concluded that the Washington State Association of Counties ("WSAC") and Washington Association of County Officials ("WACO") were "local agencies" within the meaning of the Chapter 42.17 RCW and therefore subject to the same restrictions with respect to use of their funds for the support of political activities as their members. As a result, the court concluded that neither WSAC nor WACO could use their funds to support political activities. Although there are several factors that distinguish AWPHD from WSAC and WACO, it is possible that a Washington court would reach the same conclusion with respect to AWPHD and conclude that AWPHD is subject to the same restrictions with respect to political activities as its members.

F. WSHA

So long as the primary purpose of WSHA is not to engage in political activities and so long as the dues paid by the public hospital districts are not treated as indirect expenditures by the public hospital districts themselves, WSHA may use its funds for political campaigns. However, such political activity directly by associations can give rise to a federal tax on political campaign activities and significant reporting requirements. As a result, it is generally advisable for an association to maintain separate political organizations for the purpose of conducting campaign activities.

II. Support for, or opposition to state and local ballot propositions, referenda and initiatives

A. Public hospital districts

1. With certain limited exceptions, public hospital districts may not use their funds or facilities to support or oppose ballot propositions

RCW 42.17.130 provides, in part, as follows:

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for . . . the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency

2. Exceptions

RCW 42.17.130 provides, in part, as follows:

PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

- B. Public hospital district commissioners, officers and employees acting on behalf of the public hospital district

To the extent that a commissioner, officer or employee is acting on behalf of the public hospital district, the same rules described above apply.

- C. Public hospital district commissioners, officers and employees acting in an individual capacity

So long as a commissioner, officer or employee is acting purely in an individual capacity and is not using any funds, facilities or resources of the public hospital district, the commissioner, officer or employee is free to support or oppose ballot propositions.

- D. Public hospital districts and affiliated foundations and auxiliaries that are exempt from federal income tax under Section of 501(c)(3) of the Internal Revenue Code

A Section 501(c)(3) organization may not devote a “substantial part” of its activities to attempting to influence legislation, including ballot propositions, by propaganda or otherwise. As a result, Section 501(c)(3) organizations may engage in a limited amount of activity that is directed towards the support or opposition to ballot propositions.

- E. AWPHD

In a recent court decision (Telford v. Thurston County Board of Commissioners, 95 Wn. App. 149, 974 P.2d 886 (1999)), the Washington Court of Appeals concluded that the Washington State Association of Counties (“WSAC”) and Washington Association of County Officials (“WACO”) were “local agencies” within the meaning of the Chapter 42.17 RCW and therefore subject to the same restrictions with respect to use of their funds for the support of political activities as their members. As a result, the court concluded that neither WSAC nor WACO could use their funds to support political activities. Although there are several factors that distinguish AWPHD from WSAC and WACO, it is possible that a Washington court would reach the same conclusion with respect to AWPHD and conclude that AWPHD is subject to the same restrictions with respect to political activities as its members.

- F. WSHA

So long as the primary purpose of WSHA is not to engage in political activities and so long as the dues paid by the public hospital districts are not treated as indirect expenditures by the public hospital districts themselves, WSHA may use its funds for political campaigns. However, such political activity directly by associations can give rise to a federal tax on political campaign activities and significant reporting requirements. As a result, it is generally advisable for an association to maintain separate political organizations for the purpose of conducting campaign activities.

III. Lobbying

A. Key definitions under state law

RCW 42.17.020 provides, in part, as follows:

"Lobby" and "lobbying" each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state Administrative Procedure Act, chapter 34.05 RCW. Neither "lobby" nor "lobbying" includes an association's or other organization's act of communicating with the members of that association or organization.

"Lobbyist" includes any person who lobbies either in his or her own or another's behalf.

"Lobbyist's employer" means the person or persons by whom a lobbyist is employed and all persons by whom he or she is compensated for acting as a lobbyist.

B. Public hospital districts

1. Subject to certain restrictions, public hospital districts are authorized to engage in lobbying activities

RCW 42.17.190 provides, in part, as follows:

(2) Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying: PROVIDED, This does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties: PROVIDED FURTHER, That this subsection does not apply to the legislative branch.

(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency: PROVIDED, That public funds may not be expended as a direct or indirect gift or

campaign contribution to any elected official or officer or employee of any agency. For the purposes of this subsection, the term "gift" means a voluntary transfer of any thing of value without consideration of equal or greater value, but does not include informational material transferred for the sole purpose of informing the recipient about matters pertaining to official agency business. This section does not permit the printing of a state publication which has been otherwise prohibited by law.

2. Special limitations relating to initiatives

RCW 42.17.190(4) provides as follow:

(4) No elective official or any employee of his or her office or any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, in any effort to support or oppose an initiative to the legislature. "Facilities of a public office or agency" has the same meaning as in RCW 42.17.130 and 42.52.180. The provisions of this subsection shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose an initiative to the legislature so long as (i) any required notice of the meeting includes the title and number of the initiative to the legislature, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any initiative to the legislature at an open press conference or in response to a specific inquiry;

(c) Activities which are part of the normal and regular conduct of the office or agency;

(d) Activities conducted regarding an initiative to the legislature that would be permitted under RCW 42.17.130 and 42.52.180 if conducted regarding other ballot measures.

3. Reporting requirements

RCW 42.17.190(5) provides as follows:

(5) Each state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district which expends public

funds for lobbying shall file with the commission, except as exempted by (d) of this subsection, quarterly statements providing the following information for the quarter just completed:

- (a) The name of the agency filing the statement;
- (b) The name, title, and job description and salary of each elected official, officer, or employee who lobbied, a general description of the nature of the lobbying, and the proportionate amount of time spent on the lobbying;
- (c) A listing of expenditures incurred by the agency for lobbying including but not limited to travel, consultant or other special contractual services, and brochures and other publications, the principal purpose of which is to influence legislation; . . .

The statements shall be in the form and the manner prescribed by the commission and shall be filed within one month after the end of the quarter covered by the report.

4. Special exclusions from reporting requirements

RCW 42.17.190(5)(d) provides, in part, as follow:

(d) For purposes of this subsection the term "lobbying" does not include:

. . . (ii) Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject; . . .

(iv) Requests, recommendations, or other communication between or within state agencies or between or within local agencies;

(v) Any other lobbying to the extent that it includes:

(A) Telephone conversations or preparation of written correspondence;

(B) In-person lobbying on behalf of an agency of no more than four days or parts thereof during any three-month period by officers or employees of that agency and in-person lobbying by any elected official of such agency on behalf of such agency or in connection with the powers, duties, or compensation of such official: PROVIDED, That the total expenditures of nonpublic funds made in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington do not exceed fifteen dollars for any three-month period: PROVIDED FURTHER, That

the exemption under this subsection is in addition to the exemption provided in (A) of this subsection;

(C) Preparation or adoption of policy positions.

5. Alternative reporting options

RCW 42.17.190(6) provides as follows:

In lieu of reporting under subsection (5) of this section any county, city, town, municipal corporation, quasi municipal corporation, or special purpose district may determine and so notify the public disclosure commission, that elected officials, officers, or employees who on behalf of any such local agency engage in lobbying reportable under subsection (5) of this section shall register and report such reportable lobbying in the same manner as a lobbyist who is required to register and report under RCW 42.17.150 and 42.17.170. Each such local agency shall report as a lobbyist employer pursuant to RCW 42.17.180.

C. Public hospital district commissioners, officers and employees acting on behalf of the public hospital district

To the extent that a commissioner, officer or employee is acting on behalf of the public hospital district, the same rules described above apply.

D. Public hospital district commissioners, officers and employees acting in an individual capacity

So long as a commissioner, officer or employee is acting purely in an individual capacity and is not using any funds, facilities or resources of the public hospital district, the commissioner, officer or employee is free to engage in lobbying activities subject to the lobbyist registration and reporting requirements.

RCW 42.17.150 provides as follows:

Before doing any lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the commission a lobbyist registration statement, in such detail as the commission shall prescribe, showing:

- (a) His name, permanent business address, and any temporary residential and business addresses in Thurston county during the legislative session;
- (b) The name, address and occupation or business of the lobbyist's employer;
- (c) The duration of his employment;

(d) His compensation for lobbying; how much he is to be paid for expenses, and what expenses are to be reimbursed;

(e) Whether the person from whom he receives said compensation employs him solely as a lobbyist or whether he is a regular employee performing services for his employer which include but are not limited to the influencing of legislation;

(f) The general subject or subjects of his legislative interest;

(g) A written authorization from each of the lobbyist's employers confirming such employment;

(h) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this chapter;

(i) If the lobbyist's employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations, or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments, or other consideration paid to such entity during either of the prior two years have exceeded five hundred dollars or who is obligated to or has agreed to pay fees, dues, payments, or other consideration exceeding five hundred dollars to such entity during the current year.

(2) Any lobbyist who receives or is to receive compensation from more than one person for his services as a lobbyist shall file a separate notice of representation with respect to each such person; except that where a lobbyist whose fee for acting as such in respect to the same legislation or type of legislation is, or is to be, paid or contributed to by more than one person then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so paying or contributing, and the amount of the respective payments or contributions made by each such person.

(3) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(4) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the second Monday in January of each odd-numbered year, and failure to do so shall terminate his registration.

- E. Public hospital districts and affiliated foundations and auxiliaries that are exempt from federal income tax under Section of 501(c)(3) of the Internal Revenue Code

A Section 501(c)(3) organization may not devoted a “substantial part” of its activities to attempting to influence legislation by propaganda or otherwise. As a result, Section 501(c)(3) organizations may engage in a limited amount of activity that is directed towards the support or opposition to legislation.

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