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VIA USPS MAIL
AND ELECTRONIC TRANSMISSION

November 8, 2016

Jacob Berkey
Public Disclosure Commission
P.O. Box 40908
Olympia, WA 98504-0908

Re: November 10, 2014 Freedom Foundation
Citizen Action Notice – WEA-PAC, a political committee
Response to Allegations

Dear Mr. Berkey:

I am an attorney with the Washington Education Association (WEA). I write in response to your email of November 1, 2016 to Gena Mansell, in which you requested that the WEA respond to the October 28, 2016 complaint by Eileen Cowen that the WEA falsely implied in an internal member communication that Monica Stonier, a candidate for State Representative in the 49th Legislative District, was the incumbent. This communication (referred to herein as the “Stonier Post”) is described more fully below.

On October 19, 2016, the WEA, working through a third party vendor, posted a 35-second video to the Facebook pages of approximately 1,100 WEA members living in the 49th Legislative District.¹ See Declaration of Linda Mullen. The video featured still photographs of classrooms, students and educators, as well as three educators who are also members of the WEA discussing the importance of electing law makers who support public education. It ended by urging members to “Vote pro-education; vote pro-labor candidates; and vote the whole ballot”. Ms. Stonier was featured in still photographs only for several seconds at the beginning and end of the video. The final still photograph of Ms. Stonier was captioned with her name, with “re-elect” in smaller font above her name.

¹ The communication can be viewed at the following link/address:
<https://www.facebook.com/WashingtonEducation/videos/10154514803542457/?pnref=story>

In her complaint, Ms. Cowen alleges that the WEA violated RCW 42.17A.335(1)(b) because WEA members were urged to “re-elect” Monica Stonier. Ms. Cowen contends that the use of “re-elect” created the false impression that Monica Stonier is the incumbent in the election.,

RCW 42.17A.335(1)(b) prohibits the sponsoring “with actual malice” of:

Political advertising or an electioneering communication that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.

For the following reasons, the WEA did not violate this statute with respect to the challenged communication.

First, the Stonier Post was targeted to specific WEA members residing in the 49th Legislative District. The WEA provided a list of WEA members living in the 49th Legislative District to a third party vendor, who then matched that list of WEA members to individuals with Facebook accounts. That vendor then posted the video and message to only those identified WEA members’ pages. The advertisement was not posted to the WEA’s Facebook page or other social media, nor was it aired or broadcast in any other forum or medium. *See* Mullen Declaration.

As an internal union communication “primarily limited” to the members of the union, this advertisement does not constitute an “electioneering” communication subject to RCW 42.17A.335. Indeed, internal political communications primarily limited to the members of a labor organization are specifically excluded from the definition of an “electioneering communication” by RCW 42.17A.005(19)(b)(vii).

To determine whether an internal communication is “primarily” limited to union members, the PDC must consider whether any distribution to nonmembers was “incidental and isolated”. WAC 390-05-515. Here, the WEA did not distribute the Stonier Post to any other social media or individuals. Rather, as has been previously explained, the vendor retained by the WEA identified the WEA members who live in the 49th Legislative District and then caused the video to be posted to only those individuals’ Facebook pages.

By its express terms, RCW 42.17A.005(19)(b)(vii) appears to be limited to only “mailed” internal union communications. However, when read in connection with WAC 390-05-505, it is clear that communications conveyed through web sites and e-mails are specifically excluded from the definition of “electioneering communications”. As such, the targeted communication to the 1,100 WEA members living in the 49th Legislative District do not constitute electioneering communications despite the electronic delivery of the Stonier Post.

Likewise, the Stonier Post is not subject to RC W 42.17A.335 because it does not constitute a “political advertisement” as defined by RCW 42.17A.005(36):

“Political advertising” includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.

Although the Stonier Post was a communication for the purpose of appealing for support of an election campaign, it was not a general message targeted to the public like the types of communication contained in the above definition. Unlike billboards, signs, television and radio presentations and other “mass communications” which target the general population, the Stonier Post was a communication prepared for and targeted to a limited and specific group of people. On its face, this type of directed communication does not constitute mass communication.

Second, even if the advertisement did constitute an electioneering communication or political advertising, it nonetheless does not violate RCW 42.17A.335 because the WEA did not act with actual malice when it urged voters to “re-elect” Monica Stonier.

RCW 42.17A.005(1) defines “actual malice” as acting “with knowledge of falsity or with reckless disregard as to truth or falsity”. Here, Ms. Cowen complains that the WEA falsely implied that Ms. Stonier was the incumbent by using the word “re-elect” at the end of the advertisement.

WAC 390-18-040 states that “re-elect” may be used only for an incumbent or for a candidate who “has previously been elected to the office being sought”. The WEA acknowledges that Ms. Stonier does not meet this definition. However, when the WEA created the Stonier Post, it was unaware of the regulatory definition and used the term in its more general, common meaning of returning Ms. Stonier to the state legislature where she had previously served. Merriam-Webster defines “re-elect” to mean “to elect (someone) again” or “to elect for another term in office”. It was this meaning that the WEA intended when it urged WEA members in the 49th Legislative District to “re-elect” Ms. Stonier since she had been elected in 2013 to serve as State Representative from the 17th LD.

The WEA did not believe that the Stonier Post contained any falsehood because it was unaware of the narrower regulatory definition of “re-elect”. As such, it cannot be said that the WEA acted “with knowledge of falsity” with respect to Ms.

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Stonier's incumbent status. Similarly, it cannot be said that the WEA acted with "reckless disregard as to truth or falsity" of Ms. Stonier's incumbent status because as explained above, Ms. Stonier had previously served as a State Representative and the WEA believed that by returning her to the legislature, voters would be "re-electing" her.

For the foregoing reasons, the Commission should find Ms. Cowen's complaint to be unfounded and enter an appropriate Order of Dismissal.

Very truly yours,



Shelby A. Hopkins