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Via U.S. Mail
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January 17, 2019

Peter Lavallee
Executive Director
Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Complaint from The Freedom Foundation
PDC Case No. 43940
BIL File No. 3327-002

Dear Mr. Lavallee:

We write to you on behalf of our client, the Amalgamated Transit Union Legislative Council of Washington State ("ATULC"), in response to the e-mail we received from you on December 13, 2018, regarding a 45-day Citizen Action Letter filed by The Freedom Foundation ("Freedom Foundation") with the Washington Attorney General's Office on December 11, 2018 ("Complaint").

Respectfully, we believe the allegations made by Freedom Foundation are without merit. As noted in its complaint, under RCW 42.17A.005(41), "'Political committee' means any person . . . having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." Elaborating on that definition, the state Supreme Court has noted that "the legislature provided a skeletal outline of the salient characteristics of a political committee. The definition, though, was not drafted to ensnare indiscriminately all persons seeking to influence governmental decision-making by their contributions given in support of or opposition to candidates or ballot propositions." *State v. 1972 Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 508 (1976).

Taking into account the statutory definition prescribed by the state legislature and the applicable case law, ATULC is not an unregistered political committee under either the "receiver of contributions" or "maker of expenditures" prongs of the statute. Accordingly, it has not violated any of the reporting requirements that otherwise would have been applicable to it.

ATULC is not an unregistered political committee under the “receiver of contributions” prong.

ATULC does not qualify as an unregistered political committee under the “receiver of contributions” prong of RCW 42.17A.005(41). In interpreting RCW 42.17.010(33) (since recodified as RCW 42.17A.005(41)), the Court of Appeals affirmed the trial court’s adoption of a 1973 Attorney General Letter Opinion noting that, “[w]hen an organization is funded primarily by membership dues, it is a ‘receiver of contributions’ if the members are called upon to make payments that are segregated for political purposes and the members know, or reasonably should know, of this political purpose.” *Evergreen Freedom Found. v. Washington Educ. Ass’n*, 111 Wn. App. 586, 602 (2002) (“*WEA*”), (quoting 1973 Lett. Op. Att’y Gen. No 114, at 4). In that letter opinion, the Attorney General stated that “if the only source of revenue of [an] organization is use or assessments to fund general operations, and the membership has no actual or constructive knowledge that the organization is setting aside funds to support or oppose a ballot proposition, then the organization is not a political committee under the ‘receiver of contributions’ prong.” *WEA*, 111 Wn. App. at 602.

However, if members’ payments are segregated into a fund for political purposes and members know or should know about that segregation, those payments are contributions, qualifying the organization as a receiver of contributions and a political committee. *Id.* at 602-03. Applying that reasoning, the *WEA* found that the WEA was not a receiver of contributions, because members paid dues into a general fund which was not segregated in any manner for political expenditures; accordingly, the members had no actual or constructive knowledge that their dues would be used for electoral political activity. The dues, therefore, were not contributions, and WEA did not qualify as a political committee under the receiver of contributions prong. *Id.* at 603.

Here, ATULC does not receive dues from union members at all. Instead, it receives dues from Amalgamated Transit Union locals. The locals transmit money to ATULC from the moneys they receive from their members. Individual union members’ dues payments are *not* segregated into a fund for political purposes even at the local level, much less by ATULC. Instead, the locals transmit money to ATULC on a per capita basis based on the number of dues-paying members each local has.

The Freedom Foundation’s argument that these per capita payments to ATULC from ATU locals none-the-less qualify as contributions lacks merit. There is no way that ATU locals can know in advance what proportion of the per capita payments they provide to ATULC will be spent by ATULC on electoral political activity. Much less could any members of those locals have any idea what that proportion might be. All money received by ATULC is spent as ATULC deems appropriate, after due consideration, in pursuit of ATULC’s goal of furthering ATU locals’ members’ interests through legislation, cooperation, and coalition building throughout the transportation industry. None of the money it receives is earmarked at the time of receipt for any particular use. Accordingly, Freedom Foundation’s assertion that ATULC is a receiver of contributions under RCW 42.17A.005(41) is without merit.

ATULC is not an unregistered political committee under the “maker of expenditures” prong.

ATULC also does not qualify under the “maker of expenditures” prong of RCW 42.17A.005(41). To qualify as a political committee under the expenditure prong an organization must not only have made or expected to make expenditures in support of a candidate or election initiative, it must also have had as one of its primary purposes supporting election candidates or initiatives. *Utter v. Bldg. Indus. Ass’n. of Washington*, 182 Wn.2d 398, 419 (2015). While ATULC has made some expenditures in support of candidates or election initiatives, electoral political activity is not one of ATULC’s primary purposes. Instead, ATULC devotes its efforts to functioning as a forum for Washington State ATU locals and providing educational training for those locals and their members, as well as to support substantial lobbying efforts at ATULC’s expense.

When the primary purpose or one of the primary purposes of a person making a contribution is to affect, directly or indirectly, governmental decision-making by supporting or opposing candidates or ballot propositions, that person becomes a political committee and is subject to disclosure requirements under Washington law. *1972 Dan J. Evans Campaign Comm.*, 86 Wn.2d at 509. Put another way, an organization is not considered a political committee under the expenditure prong “unless it also has the support of a political candidate or initiative as the primary [purpose] or one of the primary purposes.” *Utter*, 182 Wn.2d at 415. In contrast, “if electoral political activity is merely *one* means the organization uses to achieve its legitimate broad nonpolitical goals,” the organization does not qualify under the expenditure prong because “electoral political activity cannot be said to be one of the organization’s primary purposes.” *WEA*, 111 Wn. App. at 600 (emphasis added).

An assessment of whether electoral activity is one of an organization’s primary goals looks to, among other things, the stated goals and mission of the organization, whether the organization’s actions further its stated goals and mission, whether the stated goals and mission would be substantially achieved by a favorable outcome in an upcoming election, and whether the organization uses means other than electoral activity to achieve those goals. *Id.* at 599-600.

The stated goals of ATULC, its actions to further those goals, the impact of a favorable election on those goals, and the means which ATULC uses to achieve those goals all establish that the organization does not qualify as a political committee under the expenditures prong.

As noted both on ATULC’s website and in Freedom Foundation’s own complaint, ATULC explains that its purposes are:

To protect the rights of the members of the Amalgamated Transit Union at the level of political activity that can be generated by the combined efforts of this Legislative Council composed of the Local unions embodied within the State of Washington.

To promote and support new legislation before the government bodies of our State by lobbying effectively with the elected officials who have the authority and responsibility of representing the citizens of Washington State.

To cooperate with our Local Unions, and to form a stronger political bond of cohesion with the Washington State Labor Council, and other Labor Councils in the cities where our transit Locals are centered.

To encourage our memberships to be politically alert on matters that affect their livelihood, and create a more favorable public sentiment towards the Transportation Industry.

Our Purpose, Amalgamated Transit Union Legislative Council (January 14, 2019, 5:11 PM), http://www.atulcwa.org/index.cfm?zone=/unionactive/view_article.cfm&HomeID=510298.

Though ATULC does not hide that its purposes include supporting legislation through lobbying efforts, which is in fact what it spends the bulk of its money on, it does *not* state that participating in elections through support or opposition of either candidates or ballot measures is one of its primary purposes. Though Freedom Foundation alleges that “ATULC repeatedly describes its own purpose as ‘engaging in political activity’ and ‘promoting candidates,’” it either twists ATULC’s purpose statement so far as to misrepresent it or wholly concocts language to suit its purposes. The phrase “engaging in political activity” and “promoting candidates” do not appear in ATULC’s mission statement. Supporting legislation through direct lobbying of elected officials is *not* the same as promoting (or opposing) candidates or ballot measures.

Likewise, ATULC’s actions serve to further its stated goals and mission, and the portion of its expenditures dedicated to electoral political activity reflect that political activity in and of itself is not one ATULC’s primary purposes. Even adopting the figures Freedom Foundation asserts in its complaint, analysis of ATULC’s average spending indicates only 22.6% of its expenditures over the past five years has been dedicated to electoral political activity. In contrast, it spent just shy of that – 22.3% of its expenditures over five years – on office and administrative expenses alone. That ATULC spent roughly the same amount of money supporting (or opposing) candidates and ballot initiatives as it does on overhead militates against the conclusion that the former is one of ATULC’s primary purposes.

Nor does the fact that in some years ATULC *did* spend a substantial amount of money in support of or in opposition to candidates and ballot measures justify a different conclusion. As in *WEA*, ATULC engages in electoral political activity to achieve its legitimate broad nonpolitical goals, and its admission that it engages in such activity to that end does not make that activity one of its primary purposes. *WEA*, 111 Wn. App. at 600. No evidence has been suggested, for example, indicating that favorable candidate or ballot measure election results would substantially further ATULC’s goals, much less render further activity by ATULC unnecessary; the absence of such evidence confirms that there is no basis on which to conclude that obtaining such election results is one of ATULC’s primary purposes.

Conclusion

For the foregoing reasons, ATULC is not an unregistered political committee under either

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the receiver of contributions prong or maker of expenditures prong of RCW 42.17A.005(41). Accordingly, Freedom Foundation's complaint is without merit.

If you have any questions or concerns please feel free to contact me at 206-257-6003 or via e-mail at iglitzin@workerlaw.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dmitri Iglitzin".

Dmitri Iglitzin
*Counsel for Amalgamated Transit Union
Legislative Council*

cc: Randal Son, ATULC