



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In the Matter of Enforcement Action
Against:

David Schmidt (Re: 2006 David
Schmidt Campaign)

Respondent.

PDC Case No. 11-018

Notice of Administrative Charges

IT IS ALLEGED as follows:

I. Jurisdiction

1. The Public Disclosure Commission (PDC) has jurisdiction over this proceeding pursuant to Chapter 42.17 RCW, the Public Disclosure Act; Chapter 34.05 RCW, the Administrative Procedure Act; and Title 390 WAC. These charges incorporate the Report of Investigation and all related exhibits by reference.

II. Allegations

2. PDC staff alleges that David Schmidt violated RCW 42.17.125, in the total amount of \$41,518.35, by:
 - a. improperly reimbursing himself from campaign funds for wages he claims to have lost for the years 2003, 2004, 2005 and 2006 following his 2006 campaign for State Senate in the 44th Legislative District.
 - b. improperly using campaign funds for personal use, including:
 - 1) payments for airfare and registration fee to attend American Legislative Exchange Council (ALEC) conferences in 2005 and 2006, totaling \$663.90;

- 2) payments for airfare and registration fee to attend Council of State Governments (CSG) conferences in 2006, totaling \$1,152.79;
- 3) payment of condominium association fees in 2005 as payment for the 2006 campaign's use of Mr. Schmidt's in-home office during 2005, for eight monthly payments of \$180.00 each, totaling \$1,440;
- 4) payment of condominium association fees in 2006 as payment for the 2006 campaign's use of Mr. Schmidt's in-home office during 2006, for two duplicate monthly payments of \$180.00 each, totaling \$360;
- 5) payment of second-mortgage payments in 2006 as payment for the 2006 campaign's use of Mr. Schmidt's in-home office during 2006, for two duplicate monthly payments of \$351.30 each, totaling \$702.60;
- 6) payment of condominium association fees and second-mortgage payments in 2006 as payment for the 2006 campaign's use of Mr. Schmidt's in-home office during 2006, when nine monthly payments of \$531.30 each (\$180.00 for condominium association fees and \$351.30 for second-mortgage payments) exceeded the fair rental value of the in-home office of \$400 by \$131.30 for each of the nine months, totaling \$1,182;
- 7) payment for airfare for Mr. Schmidt and a campaign worker, Mary-Jim Montgomery, to travel to Arizona following the 2006 general election, totaling \$755.20; and
- 8) payment for a new computer on November 1, 2006, totaling \$1,363.88, and related office items, including a color printer, totaling \$1,589.00, which Mr. Schmidt converted to personal use following his defeat in the November 7, 2006 general election, but did not reimburse the campaign for the fair market value of the items.

3. PDC staff alleges that David Schmidt violated RCW 42.17. 080 and .090 by:
 - a. filing his 2006 post-general election C-4 report three years and seven months (1,320 days) late on July 23, 2010. The late-filed C-4 report included \$40,831 in expenditures not previously reported;
 - b. filing his December 2006 C-4 report three years and six months (1,289 days) late on July 23, 2010. The late-filed C-4 report included \$37,012.69 in previously unreported expenditures;
 - c. failing to list a complete and accurate description and purpose for expenditures to “Cole Properties” for eight payments made in 2005 and 12 payments made in 2006, totaling \$3,600;
 - d. failing to list a complete and accurate description of expenditures to “GMAC” for 11 payments made in 2006 totaling \$3,864.30;
 - e. failing to report an in-kind contribution of \$220 from himself for the amount by which the fair rental value of Mr. Schmidt’s in-home office during March 2006 (\$400) exceeded the campaign’s payment to Cole Properties (\$180.00) for Mr. Schmidt’s condominium association fees as payment for use of Mr. Schmidt’s in-home office during March 2006.

III. Background and Facts

4. David Schmidt was elected to the Washington State Legislature, in the 44th Legislative District, in 1994. He served four, two-year terms as a State Representative followed by one, four-year term as a State Senator. Mr. Schmidt was defeated in the November 7, 2006 General election in his bid for re-election to the State Senate. On April 7, 2010, Mr. Schmidt filed a C-1 Candidate Registration stating that he was running for State Senate in the 44th Legislative District in 2010.

5. Mr. Schmidt raised \$193,999 during his 2006 campaign, and had a surplus of \$32,260.98 at the end of the campaign. On December 30, 2006, after losing the election, Mr. Schmidt reimbursed himself \$32,260.98 for wages he claims he lost in 2003, 2004, 2005 and 2006, reducing his campaign surplus to zero.
6. Shortly before the 2006 general election, Mr. Schmidt experienced a computer crash. He did not file his post-general election C-4 report (due December 10, 2006) or his December 2006 C-4 report (due January 10, 2007) which included identification of his reimbursements for lost earnings, until July 23, 2010, after he became a candidate for State Senate in the 2010 election.

Alleged Improper Reimbursement of Lost Earnings (RCW 42.17.125)

7. On July 23, 2010, Mr. Schmidt filed PDC form C-4 covering the period December 1, 2006 through December 31, 2006. He reported \$37,021.69 in previously unreported expenditures, including \$32,260.98 in reimbursements to himself on December 30, 2006 for claimed lost wages he identified as occurring during 2003, 2004, 2005 and 2006.
8. Mr. Schmidt acknowledged that after he was defeated in the 2006 general election, he faced unemployment and had no job prospects. As a result, he identified dates from 2003 through 2006, which he said were dates he could have trained with his National Guard unit, but did not. He identified those dates as employment opportunities he was unable to accept because of his legislative duties and 2006 re-election campaign activities. A total of \$12,159.41 were identified by Mr. Schmidt as lost earnings for dates preceding June 9, 2005, the date Mr. Schmidt identified himself as a candidate for re-election in 2006.
9. Mr. Schmidt served in the Washington Army National Guard (National Guard) as a non-commissioned officer (NCO) from 1982 through 2007. The National Guard required Mr. Schmidt to serve one weekend each month, normally with his assigned unit. This training is known as Inactive Duty Training (IDT). The National Guard also required Mr. Schmidt to

serve two weeks each year, normally with his assigned unit. This training is known as Annual Training (AT). The National Guard has other training opportunities for which individuals can apply. Those training opportunities are known as Active Duty Operational Support (ADOS) and have been known as Active Duty Special Work (ADSW).

10. PDC staff spoke to Lieutenant Colonel Andrew Leneweaver, assigned to Mobilization, Readiness and Force Management at the National Guard's Camp Murray, where Mr. Schmidt's unit is assigned. He stated that missed weekend drills (IDT) and missed annual training (AT) can be made up at an alternative time, if the absence is excused. He stated that Mr. Schmidt was an NCO with special skills, and that he could have made up missed weekend drills and missed annual training.

11. Mr. Schmidt claimed the following amounts for lost wages:

Year	Lost Wages
2003	\$2,798.02
2004	\$7,432.03
2005	\$9,394.20
2006	\$12,636.73
TOTAL	\$32,260.98

12. Mr. Schmidt accounted for the claimed reimbursed lost wages in the following manner:

<u>Lost Wages</u> <i>per Dec. 2006 C-4 Schedule A</i>	<u>Relevant Dates</u> <i>per David Schmidt</i>	<u>Purpose of duty</u> <i>unable to attend due to campaign & legislative duties (per Mr. Schmidt)</i>
\$1,878.08	2003 : Jan. 4-5, Feb. 1-2, Mar. 1-2, Apr. 5-6	Inactive duty training
\$919.94	2003 : June (7 days)	Annual training
\$1,907.28	2004 : Jan. 3-4, Feb. 7-8, Mar. 6-7, Sep. 4-5	Inactive duty training
\$667.10	2004 : June (5 days)	Annual training
\$4,857.65	2004 : Jul.-Aug. (35 days)	Special operations training mission to Phillipines

\$2,894.04	<u>2005</u> : Jan. 8-9, Feb. 5-6, Mar. 5-6, Apr. 2-3, Aug. 13-14, Sep. 10-11	Inactive duty training
\$947.94	<u>2005</u> : June (7 days)	Annual training
\$5,552.22	<u>2005</u> : Jul.-Aug. (41 days)	Special operations training mission to Phillipines
\$2,438.90	<u>2006</u> : Jan. 7-8, Feb. 4-5, Mar. 4-5, Oct. 7-8, Nov. 4-5	Inactive duty training
\$1,093.92	<u>2006</u> : June (8 days)	Annual training
\$7,110.48	<u>2006</u> : Apr.-Dec. (52 days)	WA Youth Challenge program – establishment & support
\$1,993.43	<u>2006</u> : 15 days-variable	Service support for emergency management training

13. Mr. Schmidt provided no evidence, in the form of a calendar or other records, to show that he lost earnings as a result of campaigning for re-election in 2006. Mr. Schmidt acknowledged that he could have worked alternative weekends to make up the monthly IDT training that he missed, totaling \$9,118.30 in lost wages.
14. Mr. Schmidt provided no explanation for why he missed his annual training (AT) requirements in 2003, 2004, 2005, or 2006, why he did not make up the missed training opportunities, or evidence of 2006 campaign activity on these AT dates that caused him to be unable to train, and lose \$3,628.90 in wages.
15. Mr. Schmidt reimbursed himself for wages he claims to have lost in July and August of 2004 totaling \$4,857.65 (\$138.79 per day) and in July and August 2005 totaling \$5,552.22 (\$135.42 per day) when he turned down opportunities to serve as an administrative NCO with a Special Forces Unit of the National Guard on training missions to the Phillipines. He stated that he declined the opportunities to work because of his legislative duties and 2006 campaign activities. Mr. Schmidt provided no evidence of 2006 campaign activities that caused him to lose wages in July and August of 2004 and 2005.
16. The Washington Youth Academy is based in Bremerton, Washington, and is patterned after the National Guard's Youth Challenge program. As a legislator, Mr. Schmidt sponsored

legislation that created the Washington Youth Academy, and played a key role in initiating the program in Washington State. The National Guard supports the Washington Youth Academy, and in 2006, authorized Mr. Schmidt to work with the Washington Youth Academy, referring to this duty as Active Duty Special Work (ADSW).

17. Mr. Schmidt reimbursed himself \$7,110.48 for 52 days between April and December 2006 (\$136.74 per day) when he claims he lost earnings by not being able to work on behalf of the National Guard in establishing the Washington Youth Challenge Program because of his legislative duties and campaign activities. Mr. Schmidt provided no evidence of 2006 campaign activities that caused him to lose these earnings.
18. Mr. Schmidt reimbursed himself \$1,993.43 for 15 days during 2006 at \$136.74 per day when he states he lost earnings by not being able to provide service support for Emergency Management training throughout the state of Washington. Mr. Schmidt provided no actual dates for the lost wages, and provided no evidence of 2006 campaign activities that caused him to lose these earnings.

Alleged Improper Payments for American Legislative Exchange Council Expenses (RCW 42.17.125)

19. The 2006 Schmidt campaign reported making the following expenditures for Mr. Schmidt's attendance at American Legislative Exchange Council (ALEC) conferences in 2005 and 2006:

Date	Vendor	Purpose	Amount
11/28/05	Alaska Airlines	Airfare	\$295.00
11/1/06	Alaska Airlines	Airfare	\$268.90
11/1/06	ALEC	Conference fee	\$100.00
Total			\$663.90

The conferences are for state legislators, members of the private sector, the federal government, and general public to discuss legislative policies. The expenses were not directly related to Mr. Schmidt's campaign, and were a personal use of campaign funds.

Alleged Improper Payments for Council of State Governments Expenses (RCW 42.17.125)

20. The 2006 Schmidt campaign reported making the following expenditures for Mr. Schmidt's attendance at the Council of State Governments (CSG) conferences in 2006:

Date	Vendor	Purpose	Amount
6/7/06	Delta Airlines	Airfare	\$463.19
11/10/06	Alaska Airlines	Airfare	\$339.60
11/1/06	CSG	Conference fee	\$350.00
Total			\$1,152.79

21. The CSG conferences are forums that foster the exchange of insights and ideas to help state officials shape public policy. The expenses were not directly related to Mr. Schmidt's campaign, and were a personal use of campaign funds.

Alleged Improper Payments for Condominium Fees and Second Mortgage Fees (RCW 42.17.125)

22. During 2005 and 2006, Mr. Schmidt lived in a condominium that he was purchasing. He had turned a bedroom (an area equal to approximately 25 percent of the total square footage of the unit) into a home office. He stated that he used his in-home office as his 2006 campaign office from May 2005 through December 2006, except for January and February 2006. Mr. Schmidt stated that the fair rental value of his home was \$1,600 per month. The fair rental value of the in-home office space can therefore reasonably be presumed to be approximately \$400 per month.

23. The 2006 Schmidt campaign reported making 20 monthly payments to Cole Properties at the rate of \$180.00 per payment, for a total of \$3,600 for condominium association fees. The payments were in exchange for the campaign's use of Mr. Schmidt's home office from May through December 2005, and were, along with a second-mortgage payment of \$351.50, discussed later, in exchange for the campaign's use of Mr. Schmidt's home office from April through December 2006. During 2005, the campaign made eight payments totaling \$1,440. No campaign workers used Mr. Schmidt's home office during 2005. The campaign's activities during 2005 do not justify paying any of Mr. Schmidt's condominium fees during 2005.
24. During 2006, the 2006 Schmidt campaign reported making two duplicate monthly payments of \$180.00 each, for condominium association fees, totaling \$360. The duplicate payments were reported as having been made September 12, 2006 (following a September 5, 2006 payment) and November 1, 2006 (two entries were dated November 1, 2006).
25. During 2006, the 2006 Schmidt campaign reported making 11 monthly payments to GMAC at the rate of \$351.30 for each payment, for a total of \$3,864.30, for Mr. Schmidt's second-mortgage on his condominium purchase. The campaign designated these payments were made, along with the monthly \$180 condominium association fees noted above, in exchange for the campaign's use of Mr. Schmidt's home office from April through December 2006.
26. During 2006, the 2006 Schmidt campaign reported two duplicate monthly payments of \$351.30 each, totaling \$702.60 for Mr. Schmidt's second-mortgage on his condominium purchase. The duplicate payments were reported as reported as having been made September 26, 2006 and November 15, 2006.
27. During 2006, not counting the two duplicate monthly payments of \$180.00 each for condominium association fees or the \$180.00 payment made on March 10, 2006 for condominium association fees, the campaign made nine monthly payments of condominium

association fees (\$180.00 each) and nine monthly second-mortgage payments (\$351.30 each) for a total of nine payments of \$531.30 from April 2006 through December 2006. The fair rental value of the in-home office is presumed to be approximately \$400 for each month. Therefore, the payments made by the campaign of Mr. Schmidt's expenses, as payment for the campaign's use of Mr. Schmidt's home office for the nine months of April 2006 through December 2006, exceeded the fair rental value of the office by \$131.30 for each of the nine months, for a total of \$1,182.

Alleged Improper Payments for Airfare to Arizona After 2006 General Election (RCW 42.17.125)

28. The 2006 Schmidt campaign reported two expenses for travel to Arizona that took place following the 2006 general election, as listed below:

Date	Vendor	Purpose	Amount
12/30/06	Alaska Airlines	Travel to Arizona after election	\$377.60
12/30/06	Alaska Airlines	Travel to Arizona after election	\$377.60
Total			\$755.20

29. Mr. Schmidt purchased the two airline tickets between the primary and general elections, and took the trip two weeks after the general election. The stated purpose of the trip was for Mr. Schmidt and a campaign worker, Mary-Jim Montgomery, to travel to Arizona following the 2006 general election to ask Mr. Schmidt's brother and his family for campaign contributions. The purpose of the trip was personal and was an improper use of campaign funds.

Alleged Failure to Reimburse Campaign for Computer and Related Items Following the 2006 Election (RCW 42.17.125)

30. Mr. Schmidt stated that his computer crashed approximately two weeks before the 2006 general election. On November 1, 2006, Mr. Schmidt purchased a new computer, color printer and related items using campaign funds. The purchases are listed below:

Date	Vendor	Purpose	Amount
11/1/06	Costco	Computer	\$1,363.88
11/1/06	Costco	Color printer & related items	\$1,589.00
Total			\$2,952.88

31. Following the 2006 general election, Mr. Schmidt converted the computer, color printer, and related items to his personal use, but did not reimburse the campaign for the fair market value of the items.

Alleged Failure to Timely Report Contributions and Expenditures (RCW 42.17.080 and .090)

32. On July 23, 2010, Mr. Schmidt filed PDC form C-4 covering the period October 31, 2006 through November 30, 2006 related to his 2006 campaign. The C-4 was required to be filed by December 11, 2006 and was filed three years and seven months (1,320 days) late. The late-filed C-4 report included \$40,830.59 in previously unreported expenditures.

33. On July 23, 2010, Mr. Schmidt filed PDC form C-4 covering the period December 1, 2006 through December 31, 2006 related to his 2006 campaign. The C-4 report was required to be filed by January 10, 2007 and was filed three years and six months (1,289 days) late. The late-filed C-4 report included \$37,012.69 in previously unreported expenditures.

34. On October 8, 2007, PDC staff contacted Mr. Schmidt to inquire about the status of his 2006 post-general election C-4 report which had not yet been electronically filed. Mr. Schmidt

informed PDC staff that his computer had crashed a few days before the election, and asked if he could file his reports on paper rather than electronically. PDC staff informed Mr. Schmidt that he should file his reports on paper, but because he was required to file his reports electronically, he should include an explanation and request a waiver from filing electronically. In July 2010, after an inquiry from the Everett Herald about Mr. Schmidt's missing 2006 post-election C-4 reports, PDC staff contacted Mr. Schmidt and assisted him in filing his missing reports.

Alleged Failure to Provide Complete and Accurate Purpose and Description of Expenditures (RCW 42.17.080 and .090)

35. The 2006 Schmidt campaign reported 20 payments of \$180.00 each to "Cole Properties" listing "Rent" as the purpose and description. The actual purpose was to pay Mr. Schmidt's monthly "condominium association fees" and a complete description was "for partial payment of use of Mr. Schmidt's home office."
36. The 2006 Schmidt campaign reported 11 payments of \$351.30 each to "GMAC" listing "Rent" as the purpose and description. The actual purpose of the payment was to pay Mr. Schmidt's monthly "second mortgage payment" and a complete description was "for partial payment of use of Mr. Schmidt's home office."

Alleged Failure to Report In-Kind Contribution for Campaign's March 2006 Use of In-Home Office (RCW 42.17.080 and .090)

37. During March 2006, the 2006 Schmidt campaign used Mr. Schmidt's home office, with a fair rental value of \$400. The campaign paid for Mr. Schmidt's March 2006 condominium association fees, totaling \$180. Therefore, Mr. Schmidt failed to report an in-kind contribution from himself for the amount by which the value of his home office space exceeded the payment made on behalf of Mr. Schmidt. The unreported in-kind contribution totaled \$220.

V. LAW

5.1 **RCW 42.17.125** states: Contributions received and reported in accordance with RCW 42.17.060 through 42.17.090 may only be transferred to the personal account of a candidate, or of a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individual's political committee. The political committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount, date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(3) Repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to RCW 42.17.090. However, contributions may not be used to reimburse a candidate for loans totaling more than *three thousand dollars made by the candidate to the candidate's own political committee or campaign.

WAC 390-16-238 states:

(1) Except as specifically allowed by chapter 42.17 RCW, any expenditure of a candidate's campaign funds that is not directly related to the candidate's election campaign is a personal use of campaign funds prohibited under RCW 42.17.125.

(2) An expenditure of a candidate's campaign funds shall be considered personal use if it fulfills or pays for any commitment, obligation or expense that would exist irrespective of the candidate's election campaign.

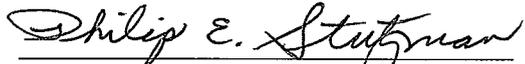
(3) If an activity or expenditure is both personal and campaign related, the campaign may pay no more than the fair market value of its share of the activity or expenditure. For example, if a candidate uses a personal vehicle for campaign purposes, the campaign may reimburse the candidate for:

- (a) The prorated share of documented gasoline, maintenance and insurance costs directly related to the campaign's usage of the vehicle; or
- (b) The standard mileage rate established by the Internal Revenue Service for those documented miles directly related to the campaign's usage.
- (4) Examples of expenditures presumed to be for personal use include, but are not limited to:
 - (a) Mortgage, rent, utility or maintenance expenses for personal living accommodations;
 - (b) Clothing purchases and maintenance expenses not related to the campaign;
 - (c) Automobile expenses not related to the campaign;
 - (d) Travel expenses not related to the campaign;
 - (e) Household food items;
 - (f) Restaurant expenses except for in-person fund-raising or campaign organizational activities;
 - (g) Tuition payments not related to the campaign;
 - (h) Admission to sporting events, concerts, theaters, or other forms of entertainment unless the event is primarily related to the candidate's campaign;
 - (i) Country club membership fees, dues and payments;
 - (j) Health club or recreational facility membership fees, dues and payments;
 - (k) Social, civic, fraternal, or professional membership dues, fees and payments unless the expenditure occurs during an election year and membership is required to gain access to the organization's mailing list for campaign purposes or other facilities for the candidate's campaign;
 - (l) Home or business internet service provider costs;
 - (m) Home or business newspaper and periodical subscriptions;
 - (n) Greeting cards to persons who would customarily receive such cards (e.g., family, friends and business associates).

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RCW 42.17.080 and 090 require candidates to file timely, accurate reports of contributions and expenditures, including in-kind contributions. Under the full reporting option, until five months before the general election, C-4 reports are required monthly when contributions or expenditures exceed \$200 since the last report. C-4 reports are also required 21 and 7 days before each election, and in the month following the election, regardless of the level of activity. Contribution deposits made during this same time period must be disclosed on the Monday following the date of deposit.

RESPECTFULLY SUBMITTED this 28th day of November 2011.


Philip E. Stutzman
Philip E. Stutzman, Director of Compliance