

Executive Summary and Staff Analysis

Jay Inslee for Washington - 2016 Campaign

PDC Case No. 15-065

This summary highlights staff's findings, conclusions, and recommendations regarding the allegations contained in PDC Case No. 15-065, a 45-Day Citizen Action Complaint (Complaint) filed on May 27, 2015 by Susan Hutchison, Chair, Washington State Republican Party (WSRP) against Jay Inslee for Washington – 2016 Campaign.

Background

The Citizen Action Complaint was filed with the Washington Attorney General's Office and referred to the PDC for investigation and possible action on June 2, 2015. On June 24, 2015, staff received an addendum to the complaint from Caleb Heimlich, Executive Director of WSRP, alleging additional violations by Jay Inslee for Washington. Staff included the allegations in the addendum in its investigation.

Allegations

The Citizen Action Complaint alleged that the Inslee campaign spent funds to conduct a personal grass roots lobbying campaign on behalf of Governor Inslee, and that such use was a personal use of campaign funds by the governor not directly related to his reelection campaign, an alleged violation of RCW 42.17A.445, as supported by WAC 390-16-238. The complaint further alleged that Governor Inslee failed to report his grass roots lobbying campaign on PDC form L-6, an alleged violation of RCW 42.17A.640. The addendum to the complaint cited four additional occasions where similar alleged personal use of campaign funds for grass roots lobbying occurred.

Investigative Findings

Staff's investigation concerned seven emails sent by the Inslee campaign, predominantly to Governor Inslee's email list, between December 2014 and May 2015. The emails were sent on December 7, 2014, December 16, 2014, December 18, 2014, January 27, 2015, February 16, 2015, March 5, 2015, and May 7, 2015.

The emails described the governor's position on several issues under consideration by the 2015 legislature, including at least one piece of legislation identified by bill number: HB 1314, the Carbon Pollution Accountability Act, which was requested by the governor. The emails urged the reader to support the legislation, and the governor's priorities for education, transportation, and the state budget. They directed the reader to click on links to visit pages on the Inslee campaign's Web site. (Unlike the emails sent by the campaign, the Web pages they linked to were publically accessible.)

PDC staff found that the content of the Inslee campaign's emails and connected Web pages gave the appearance of grass roots lobbying. Staff looked for additional indications that the communications were sponsored primarily for the purpose of influencing the passage of legislation, and found the evidence less conclusive. As discussed above, while all of the emails and Web pages concerned matters before the legislature, only one identified particular legislation. Further, in contrast with a typical

grass roots lobbying campaign, none of the Inslee campaign's emails or connected Web pages facilitated direct contact with members of the legislature, for example by providing the legislative hotline telephone number, or specific legislator contact information. Rather, the Web pages afforded the reader the opportunity to express the reader's views on issues of interest to the governor, by filling out a contact form that returned data to the Inslee campaign. Staff's review of the linked Web forms indicates that only the visitor's email address and zip code were required information on the Web forms; the visitor's first and last name were optional.

Staff investigated the uses that the Inslee campaign made of responses to its emails and Web pages. The campaign stated that the information provided through the Web forms was entered into the campaign's campaign contact database. The campaign stated that it did not use the responses to present a petition or similar message to state legislators, that none of the names of the responding individuals were presented to state legislative officials, and that state legislative officials were not informed of the responses in any other way. Despite the fact that petitions were mentioned in the emails, no evidence was found that petitions were created or delivered to any legislative members or their staff.

The Inslee campaign stated that the expenses connected to its emails and Web pages were directly related to the governor's reelection campaign, and that if not for his campaign, the governor would not have incurred them. The campaign stated that the purpose of the emails was to maintain and build Governor Inslee's supporter base in preparation for the 2016 election. The campaign stated that an incumbent running for reelection faces a basic challenge of maintaining the supporter base that helped him get elected, and that an obvious means of maintaining that support is to demonstrate that the candidate is using his time in office to pursue the goals of the candidate and his supporters. They stated that the communications at issue built connections between the governor and his supporters, and that by soliciting action from these supporters, the campaign was able to gather information as to who on its email list replied or took action. They stated that gathering information about the accuracy of a campaign's email list is a critical piece of the preparation that goes into preparing for an election year. Citing the Commission's rule WAC 390-16-238, they contrasted this activity and the related expenses with the use of campaign funds by "unscrupulous candidates...to defray personal expenses unconnected to politics." They stated that the Inslee campaign's political communications were not the sort of personal expenses that RCW 42.17A.445 prohibits.

The Inslee campaign stated that it included Washington Conservation Voters in the campaign's January 27, 2015 email and connected Web page because of the organization's support for the governor's position on the issue of carbon pollution. The campaign stated that the January 27, 2015 email was sent to a list of contacts originating from both the Inslee campaign and Washington Conservation Voters, and that both received data concerning the individuals who responded. The Inslee campaign stated, and Washington Conservation Voters confirmed, that the provision of

this information to Washington Conservations Voters did not lead to any individuals' names or contact information being communicated to state officials.

Staff found that all expenses associated with sending the emails and creating the related Web pages were sponsored by the Inslee campaign, and reported in the campaign's monthly PDC reports. The emails and the Inslee campaign's Web site identify the campaign as their sponsor. The campaign stated that it used two vendors to produce the emails and Web pages, Newman Partners and Trilogy Interactive. Both firms are paid a regular monthly fee for ongoing campaign work. The email and Web site work cited in the complaint was completed by these vendors as part of their monthly work, and there was no additional billing or payments related to that work.

Conclusion

Based on the factors identified in staff's investigation and described here, the Commission may determine that the Jay Inslee for Washington – 2016 Campaign sponsored email and Web communications for the purpose, among other purposes, of influencing the passage of legislation. However, staff found evidence that the communications were directly related to the governor's reelection campaign, and that but for that campaign, the Inslee campaign would not have incurred the related expenses. Under the Commission's rules, this is the standard for an expense permissible under the personal use prohibition of RCW 42.17A.445. Finally, staff found that the campaign reported the expenses on C-4 summary reports required under RCW 42.17A.235 and .240, and that by virtue of this reporting, no disclosure on form L-6 was required under RCW 42.17A.640. For these reasons, staff concludes there is insufficient evidence to establish a violation by Governor Inslee or his campaign of RCW 42.17A.445 or of RCW 42.17A.640.

Recommendation

For the reasons described above, staff recommends that the Commission recommend to the Attorney General that no further action be taken on the Citizen Action Complaint.

Applicable Statutes, Rules, and Interpretations

RCW 42.17A.445

Contributions received and reported in accordance with RCW [42.17A.220](#) through [42.17A.240](#) and [42.17A.425](#) may only be paid to a candidate, or a treasurer or other individual or expended for such individual's personal use under the following circumstances (Excerpts of each of the qualifying forms of reimbursement):

(1) Reimbursement for or payments to cover lost earnings incurred as a result of campaigning or services performed for the political committee.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual.

(3) Repayment of loans made by the individual to political committees shall be reported pursuant to RCW [42.17A.240](#).

RCW 42.17A.640

Any person who has made expenditures, not reported by a registered lobbyist under RCW [42.17A.615](#) or by a candidate or political committee under RCW [42.17A.225](#) or [42.17A.235](#), exceeding *one thousand dollars in the aggregate within any three-month period or exceeding *five hundred dollars in the aggregate within any one-month period in presenting a program to the public, a substantial portion of which is intended, designed, or calculated primarily to influence legislation shall register and report, as provided in subsection (2) of this section, as a sponsor of a grass roots lobbying campaign.

WAC 390-16-238 (Excerpts from the WAC)

(1) Except as specifically allowed by chapter [42.17A](#) 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 [42.17A.445](#).

(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. ...

(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).