



Smith & Dietrich Law Offices

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September 1, 2017

Via Electronic Delivery

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Re: *Citizen Action Notice Against State Representative Gina McCabe*

Dear Attorney General Ferguson and County Prosecuting Attorneys Tunheim and Quesnel,

I write to notify you that there is good reason to believe violations of chapter 42.17A RCW, Washington State's campaign finance law, have been committed by State Representative Gina McCabe and the Committee to Elect Gina McCabe, a political committee (the "Respondents"), between 2015 and the present. Please note that, as provided by RCW 42.17A.765(4), if you do not initiate an action against the Respondents within the applicable statutory notice periods for this Citizen Action Notice, I intend to satisfy any applicable notice requirements and proceed with an action in the name of the State. This message is being sent to each of you at the e-mail address you have provided to the Washington State Bar Association to ensure you receive notification of these allegations as required by RCW 42.17A.765(4).

This notice details at least fifteen apparent violations of various provisions of Washington's campaign finance law by the Respondents, which took place during their campaign to elect Ms. McCabe to the Washington House of Representatives for the 14th Legislative District in 2016. The cumulative days late for the untimely reporting summarized below is 1,025 days as of today. The Respondents have apparently violated chapter 42.17A RCW as follows:

A. Personal use and unlawful transfer of candidate's authorized committee funds (up to 4 violations)

By law, a candidate may not make personal use of funds raised for campaign purposes except under certain narrow circumstances. RCW 42.17A.445. Contributions to political committees are not permitted from authorized committee funds although they may be made using surplus funds. RCW 42.17A.430(8). On December 9, 2016, the House Republican Organizational Committee reported receiving a contribution of \$20,000 from Respondent Committee to Elect Gina McCabe. On its face, this is a prohibited transfer. If indeed the Committee transferred funds directly from its campaign moneys to the HROC,

then it would appear this was a violation of the prohibition on personal use of campaign funds, and an unlawful transfer to another committee.

Contributions to charity are not permitted from authorized committee funds although they may be made using surplus funds. RCW 42.17A.430(4). On 11/30/16, the Committee reported making an expenditure of \$200 to the St. Paul Cathedral School for a “Charitable” purpose. This apparently was not a permissible campaign expenditure because campaign funds were used for the donation, violating the prohibitions on personal use of campaign funds and gifts to charity from the active campaign’s account.

B. Failure to register and report expenditures for surplus funds account (2 violations)

A candidate may use surplus funds for certain qualifying purposes provided he or she registers and reports the activity as provided by law. RCW 42.17A.430, WAC 390-16-236. On December 9, 2016, the House Republican Organizational Committee reported receiving a contribution of \$20,000 from Respondent Committee to Elect Gina McCabe. Respondents’ PDC filings do not reveal a registration or reporting for a surplus funds account to date.

If Respondents established a surplus funds account, they were required for file form C-1 and report the account’s expenditures on form C-4. At a minimum, it appears that Respondents should have registered and reported within two weeks of making a transfer to surplus from the Committee to Elect Gina McCabe on 11/29/16 in the amount of \$30,112. Reporting of the statement of organization for the surplus funds account would be due by 12/13/16 (and is currently 262 days late), and the form C-4 for the transfer would be due by 1/10/17 (and is 234 days late), but apparently no surplus funds reporting was filed to date.

C. Failure to timely report orders, debts, and obligations in Public Disclosure Commission form C-4 reports and Schedule B ("In Kind Contributions, Pledges, Orders, Debts, Obligations") (One violation)

Respondents apparently filed no Schedule B reporting of debts, obligations, or orders from 2015 to the present. This would be appropriate if no orders, debts, or obligations exceeding \$250 in value (or over \$50 in value and outstanding for over 30 days) were incurred in any given reporting period, but paid in full at a later time. RCW 42.17A.235, .240. It appears, however, that unreported activity occurred, and that at least one report of debts, orders, and obligations remains outstanding to date.

An expenditure was reported of \$1,955 to Townsquare Promos for “Radio ads” (dated 11/30/16). The transaction follows the 2016 general election. It appears likely that at least one order, obligation, or debt related to these services was likely reportable by November 1, 2016, as an order was most likely placed ahead of the general election to air these campaign advertisements. At least one required report of a debt on Schedule B would be due no later than November 1, 2016, and would be at least 304 days late as of today, and still outstanding—thus constituting an ongoing violation.

D. Failure to timely file and/or amend Public Disclosure Commission form C-3 and C-4 reports ("Summary, Full Report Receipts and Expenditures" and "Cash Receipts Monetary Contributions") (10 violations)

The Respondents filed a significant volume of late reporting of their contributions and expenditures on forms C-3 and C-4 during 2016. The below table identifies ten apparent violations of the law requiring timely reporting of contributions and expenditures during this period. RCW 42.17A.235, .240. Notably, two reports due prior to the November 2016 general election were not filed or corrected with amended disclosures until after it was over.

The apparent violations break down as follows:

<u>TOTAL DAYS LATE / REPORTS (2015-16)</u>	225
<u>TOTAL DOLLAR VALUE LATE (2015-16)</u>	\$9,171.71
<u>NUMBER OF LATE REPORTS (2015-16)</u>	10

I await your position as to whether there is reasonable cause for a civil enforcement action based on these allegations, and whether you will file such an action in the name of the State.

Sincerely,



Walter M. Smith

cc: Linda A. Dalton, Senior Counsel, Attorney General's Office (via e-mail)
Public Disclosure Commission staff (via e-mail)