

ELLIS, LI & MCKINSTRY PLLC
ATTORNEYS AT LAW

August 11, 2000

FILE COPY

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Certified Mail, Return Receipt

RECEIVED EFF

AUG 15 2000

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Washington State County Prosecutors (See attached list.)

Re: Notice of Violation of Public Disclosure Act (RCW 42.17) by WA
School Districts and WEA

Dear Ms. Gregoire and County Prosecutors:

Our office represents the Evergreen Freedom Foundation (EFF) and public school employees. On their behalf, we hereby notify you that there is reason to believe that all public school employers have been, are and will continue to violate the Public Disclosure Act, RCW 42.17, and in particular RCW 42.17.680 and .760, by withholding dues and fees from their employees' wages that are used by the Washington Education Association (WEA) and National Education Association (NEA) for contributions to political campaigns. There is also reason to believe the WEA is violating RCW 42.17.760 by using the agency fees for contributions and expenditures without the affirmative authorization of non-members.

Interpreting RCW 42.17.680(3), the Washington Supreme court recently ruled that "[W]hen an **employer** has notice that the funds deducted [from employee wages] are for the use of a political committee or candidate, **the employer may not then make that deduction without specific annual authorization.**" *State of Washington ex rel, Evergreen Freedom Foundation, et al., v. Washington Education Association, et al.* 140 Wn.2d 615, 999 P.2d 602 (2000).

In a concurring opinion, Justice Alexander wrote that when a district has been informed that "withheld money is being used for the benefit of political candidates or committees," then "the district has actual notice, or that, at the very least, it must assume a burden to make further inquiries." Employers have an affirmative duty to protect employees from the unauthorized use of their (employees) wages or salaries for political contributions. We concur with Justice Alexander's opinion that to conclude otherwise, "would be rendering the statute, which was passed by the people, a nullity, and would be placing too great a premium on the district's right to turn a blind eye to

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information it receives from an employee who claims he or she is affected by the deduction.”

Similarly, Justice Madsen, in a separate opinion concurring in the result but dissenting to the majority's affirmation of the employer's duty, wrote:

The majority says that where the employer has notice that the deducted funds are for the use of a political committee or candidate, the *employer must have the employee's written annual consent.*

In a separate opinion, Justice Sanders states the obvious- that WEA has, is and will continue to use members' dues for political purposes:

Now, if not then, (1996 election cycle) it is patently obvious to anyone of educable age that the WEA will continue to use dues money for political purposes in the future just as it has in the past. Therefore future unauthorized deductions from employee salaries for political use cannot be justified under the pretense that the employer did not know what was going on, at least short of some overt change in WEA policy.

Enclosed herewith are documents delivered by our client to each and every public school employer in the state (see attached list of employers) by first class and certified mail. The documents constitute actual notice to public school employers that the WEA is using member dues and the fees of most non-objecting agency fee payers for political contributions:

Letter dated June 27, 2000 sent to Public School Employers.

Attachment A: *Action* Newsletter articles, WEA President Lee Ann Prielipp speech to the May 2000 address to the Representative Assembly and other WEA documents regarding political expenditures.

Attachment B: Campaign Finance Reports filed with the Public Disclosure Commission (PDC) for Initiatives 708 and 732 Citizens for Quality Educators.

Attachment C: Campaign Finance Reports filed with the PDC for Initiative 728 K-12 2000.

Attachment D: L3C Reports filed by the WEA as a lobbyist employer with the PDC.

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Attachment E: L3 reports filed by WEA (lobbyist employer summary).

Attachment F: Documents showing agency fees used for political contributions unless non-members object (in violation of RCW 42.17.760).

These documents establish that the WEA is using general dues and the fees of non-members to make contributions to ballot-issue political committees and WEA-PAC, a political committee which contributes most of its funds to candidates. In addition to the political contributions discussed in the attached letter to the school districts, the WEA has contributed more than \$125,000 to political committees using dues and fees.

In the case of non-members, only those non-members paying agency fees who affirmatively *object*, obtain a refund from WEA. RCW 42.17.760 requires the affirmative *authorization* of non-members before their agency fees may be used for contributions or expenditures.

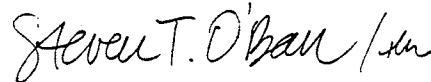
Please contact us immediately if it would assist you to meet with us to discuss this information.

There is no indication that public school employers have taken any steps toward obtaining the written authorizations required by RCW 42.17.680(3) and .760. Accordingly, with each payroll, public school employers are violating RCW 42.17.680(3) and assisting the WEA in the violation of .760.

We request that one or more of you immediately commence an action in the courts to address these apparent violations and protect the paychecks of public school employees. If you do not do so, our clients will seek appropriate legal and equitable relief pursuant to RCW 42.17.

Very truly yours,

ELLIS, LI & MCKINSTRY PLLC



Steven T. O'Ban

Enclosures

cc: Clients