

# Schwerin Campbell Barnard Iglitzin & Lavitt LLP

ATTORNEYS AT LAW

*Of Counsel* Lawrence Schwerin

LAURA EWAN  
ewan@workerlaw.com

*Original via US First Class Mail  
and via email to LindaD@ATG.WA.GOV*

September 15, 2017

Linda Dalton  
Senior Assistant Attorney General  
Washington Attorney General's Office  
Campaign Finance Unit  
P.O. Box 40100  
Olympia, WA 98504-0100

RE: Freedom Foundation 45-Day Letter Against Teamsters Local 117/Segregated Fund  
SCBIL File No.: 1082-3439

Dear Ms. Dalton,

We are writing in response to the Citizen Action Notice filed against Teamsters Local 117 ("Local 117") on August 3, 2017, by the Evergreen Freedom Foundation ("Foundation"). The undersigned is legal counsel for Local 117 in this matter.

For the following reasons, the allegations made against Local 117 by the Foundation that Local 117 improperly failed to register its "separate, segregated fund" ("SSF") as a political committee with the Washington State Public Disclosure Commission ("PDC"), and also failed to have that SSF report its activities to the PDC as required by the Fair Campaign Practices Act ("FCPA"), are without merit. No action should be taken on any of these allegations by the Attorney General's Office.

## ***Local 117's SSF Is Not, By Definition, A Separate "Person."***

The Foundation's allegations lack merit because they are premised on the incorrect assertion that an SSF that has been set up by a labor organization for political purposes is a "person" subject to being characterized as a political committee under RCW 42.17A.005(37) if it receives contributions or, under certain circumstances, makes expenditures in support of, or in opposition to, candidates or ballot propositions. It is not. An SSF is, by definition, not a separate "person." It is, instead, merely a separate bank account, or fund, within the total control of the labor organization that has created it. The significance of contributions made to, or expenditures made from, the SSF may be examined in the context of an assessment of the status of the labor organization itself. But an SSF that is operated and funded solely by the labor organization that has created it may not itself properly be characterized as a political committee under any circumstances.

This was made clear more than two decades ago by the PDC in a letter it sent to James Oswald, then an attorney with the firm of Davies, Roberts & Reid, on May 11, 1995. In that letter, a copy of which is enclosed as Exhibit A, the PDC confirmed that the PDC “does not believe” that a local union is required to register or report the activities of an SSF that is fully funded by the local union, even though the SSF engages in electoral political activity such as making contributions to state office candidates. The PDC wrote, in pertinent part, that “union political contributions **made from the segregated account** ... are tantamount to being made from its general fund and this activity **does not trigger registration and reporting under the Public Disclosure Law, 42.17 RCW.**” (Emphasis added.)

This conclusion is also compelled by the common and long-recognized practice of organizations such as, but by no means limited to, labor unions creating and operating SSFs in order to limit the tax consequences of their political expenditures. An SSF, by definition, has as its primary, if not sole, purpose the intent “to affect, directly or indirectly, governmental decision making by supporting or opposing candidates or ballot propositions.” Pursuant to *State ex rel. Evergreen Freedom Found. v. Wash. Educ. Ass’n*, 111 Wn. App. 586, 598-99, 49 P.3d 894 (2002), and the authority cited therein, every single SSF would therefore be an unlawfully unregistered political committee were it not the case, as urged herein, that an SSF that exists merely as a separate fund of a different entity is not treated as a “person” at all for purposes of RCW 42.17A.005(37). That would be a radical and unjustified transformation of existing law and practice under the FCPA.

Nor does the fact that Local 117’s SSF has filed an IRS Form 8871 change this analysis. The obligation to file a Form 8871 flows from federal tax law, but does not materially change the nature or status of an entity. Every SSF has applied for an Employer Identification Number, which it does in order for the SSF to obtain its own bank account and be treated as a separate taxable entity.

*Voters Educ. Committee v. Washington State Public Disclosure Com’n*, 161 Wn.2d 470, 166 P.3d 1174 (2007), is not inconsistent with this conclusion. In that case, the Supreme Court, in trying to determine whether the Voters Education Committee (“VEC”) was a political committee subject to the registration and reporting requirements of the Act, noted that it had previously registered as a Section 527 political organization under the Internal Revenue Code (*i.e.*, by filing an IRS Form 8871). The majority decision observed that “the fact that VEC registered as a ‘political organization’ under Section 527 is a persuasive fact that indicates that VEC was seeking the tax benefits of Section 527 while disingenuously seeking to avoid the disclosure requirements of the FCPA.” 161 Wn.2d at 491 n.14. But VEC was a stand-alone entity, *not* an SSF. Thus, the issue as to whether an SSF is properly analyzed as being a separate “person” subject to the registration and reporting obligations of the FCPA, or instead is examined only as one part of the organization of which it is merely a fund, was not raised.<sup>1</sup>

---

<sup>1</sup> As your office noted in its April 10, 2017, letter to Maxford Nelsen regarding the merits of a 45-day letter the Freedom Foundation filed against the Washington Federation of State Employees, a copy of which is enclosed as Exhibit B, when an alleged political committee consists of nothing more than a bank account maintained and controlled by a union, *Voters Educ. Committee* is clearly distinguishable.

In the instant situation, there is no dispute that Local 117's SSF is managed, operated, funded and directed entirely by Local 117 itself. John Searcy, Local 117's Secretary Treasurer, makes all final approvals of monies provided to and spent from the SSF. Regarding expenditures, Mr. Searcy receives requests from Local 117's Legislative Affairs Department and then decides whether certain monies should be spent. Mr. Searcy has the final say for all expenditures that are made from the SSF, as well as for all of the day-to-day expenditures involved in running Local 117 and all contributions of money from Local 117 to the SSF.

Finally, there is no basis for concluding that Local 117's SSF operated as a separate person because, for the last five years, and longer, all of Local 117's SSF's funding has come to it from Local 117. Local 117's SSF has itself, at all times pertinent hereto, been funded solely by Local 117, under Local 117's sole control. Therefore, that SSF does not meet the statutory definition of "person" so as to properly subject it to any assessment as to whether it needed to register and report as a political committee.<sup>2</sup>

***Local 117 Is Not An Unregistered Political Committee Under The "Expenditures" Prong.***

Local 117 is also not an unregistered political committee under the "expenditures" prong of the statute merely because it has expended certain amounts of money on electoral political activity, e.g., through its allocation of money to its separate segregated fund.

As was explained in detail in *Evergreen Freedom Found. v. Washington Educ. Ass'n*, 111 Wn. App. 586, 600 (2002) ("WEA"), "if electoral political activity is merely one means the organization uses to achieve its legitimate broad nonpolitical goals, electoral political activity cannot be said to be one of the organization's primary purposes." As is set forth with clarity in Local 117's Mission Statement and its vision outlined in "Looking Ahead," Local 117 strives to "build unity and power for all working people to improve lives and lift up our communities" with the aim of creating a world where "workers are united for social, political, and economic justice and our collective voice is loud."<sup>3</sup> Furthermore, as noted by the Foundation in the materials provided in the voluminous Appendix to its 45-day notice, the Local 117 bylaws set forth 11 objects of the Local:

- (A) The objects of this Local Union shall be:

---

<sup>2</sup> Local 117 notes that both the PDC and the Office of the Attorney General recently rejected allegations identical to those at issue here in their evaluation of the merits of a 45-day letter the Freedom Foundation filed against the Washington Federation of State Employees. We refer you to the March 17, 2017, Staff Memorandum in PDC Case 14266, which concluded that WFSE was not required to register and report its SSF as a political committee with the PDC because, in part, "[e]xpenditures of the WFSE - SSF appear to be equivalent to expenditures from the general fund of WFSE AFSCME Council 28," a copy of which is enclosed as Exhibit C, as well as to your office's April 10, 2017, letter to Maxford Nelsen on that same topic, Exhibit B, referenced in note 1, *supra*, reaching the same conclusions (and noting, for example, that "[i]n contrast with federal law defining a 'fund' as one species of 'political organization,' Washington law does not cite a bank account among the entities that may be considered a political committee").

<sup>3</sup> Available at <http://www.teamsters117.org/about>.

- (1) To unite into one labor organization all workers eligible for membership, regardless of religion, race, creed, color, national origin, age, physical disability, sex, or sexual orientation;
- (2) To engage in organizing workers to provide the benefit of unionism to all workers and to protect and preserve the benefits obtained for members of this organization; and to provide services to those who are organized;
- (3) To secure improved wages, hours, working conditions and other economic advantages through organization, negotiations and collective bargaining, through legal and economic means, and other lawful methods;
- (4) To provide educational advancement and training for employees, members and officers;
- (5) To safeguard, advance, and promote the principle of free collective bargaining, the rights of workers, farmers and consumers, and the security and welfare of all the people by political, educational and other community activity;
- (6) To engage in cultural, civic, legislative, political, fraternal, educational, charitable, welfare, social, and other activities which further the interest of this organization and its membership, directly or indirectly;
- (7) To provide financial and moral assistance to other labor organizations or other bodies having purposes and objectives in whole or in part similar or related to those of this organization;
- (8) To engage in community activities which will advance the interests of this organization and its members in the community and in the nation, directly or indirectly;
- (9) To protect and preserve the Union as an institution and to perform its legal and contractual obligations;
- (10) To carry out the objectives of the International Union as an affiliate thereof and its duties as such an affiliate;
- (11) To receive, manage, invest, expend or otherwise use the funds and property of its organization to carry out the duties and to achieve the objectives set forth in these Bylaws and the International Constitution and for such additional purposes and objects not inconsistent therewith as will further the interests of this organization and its members, directly or indirectly.

(Appendix Pgs. 426-27).

We recognize that, as stated in *WEA*, an organization's stated goals are not necessarily dispositive of the issue of whether electoral political activity is one of its primary political purposes. An organization could "merely restate[] its primary political purpose in broad nonpolitical terms." *WEA*, 111 Wn. App. at 600. However, there is absolutely no evidence that this exception applies to Local 117. No one even slightly familiar with the work done by Local

117 can doubt that its stated goals, set forth above, are its true goals, and that the electoral political activity it engages in at times through its separate segregated fund is nothing more than one of the means by which the Local 117 seeks to accomplish those goals. *WEA* is therefore dispositive on this issue.

The Freedom Foundation did not allege that any substantial portion of Local 117's annual expenditures were spent, directly or indirectly, on electoral political activity. Certainly, there is no evidence that anything close to "a majority" of Local 117's expenditures were spent on such activity, which is "considered an important part of the balancing of factors" prescribed by the court in *WEA*, as has repeatedly been stated by the PDC (see, e.g., the March 17, 2017, Staff Memorandum in PDC Case 14266, Exhibit C, discussed in note 2, *supra*; the Executive Summary and Staff Analysis in PDC Case 15-070, a copy of which is enclosed as Exhibit D; and the February 1, 2017, Staff Memorandum in PDC Case 12270, a copy of which is enclosed as Exhibit E).

Nor does the Foundation's detailed recitation of Local 117-written communications from its website—directed explicitly at its members, and communicated over a period of six years—change any part of the foregoing analysis. 42.17A.005(13)(b)(v) specifically *excludes* "internal political communication[s] primarily limited to ... the members of a labor organization..." from the definition of contributions. Likewise, WAC 390-16-313 specifically exempts such communications from the definition of "independent expenditures." In other words, such communications are not reportable under any circumstances, and therefore do not have any bearing regarding whether the union making such communications is a political committee. At a minimum, absent evidence that the creation or sending of these communications required or reflected significant expenditures of money on electoral activity—and there is no such evidence—the 64 posts directed at members have absolutely no probative value regarding any issue or argument related to this matter.

Because no other evidence exists to support any allegation that Local 117 is an unregistered political committee pursuant to the "expenditures" prong of the test, even had the Foundation made such an allegation, which it did not, the AG's office should not so conclude in this investigation.

### ***Conclusion***

Local 117's SSF is not a separate person subject to any reporting or disclosure requirements under the FCPA. Local 117 itself is not a political committee. The Citizen Action Notice is legally frivolous and no follow-up action regarding it should be taken by the Office of the Attorney General.

If you have any follow-up questions on this matter, please do not hesitate to contact the undersigned.

Linda Dalton  
September 15, 2017  
Page 6 of 6

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Ewan". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Ewan".

Laura Ewan  
Dmitri Iglitzin  
*Counsel for Local 117*

Enclosures

cc: Marie Duarte  
Tony Perkins