

MEMORANDUM

DATE: September 30, 2009

TO: Steve Swan, Vice President for University Relations
Sherry Burkey, Associate Vice President for University Relations and
Director, Legislative Relations

FROM: Wendy Bohlke, Senior Counsel

SUBJECT: **Lobbying**
A. Reporting Requirements For Lobbying
**B. Ethics Issues Associated with Political Campaigns and
Ballot Propositions**

This memorandum responds to your request for information on laws regarding lobbying by university staff.¹

A. Reporting Requirements for Lobbying:

Some lobbying activities must be reported to the Public Disclosure Commission (“PDC”)² The terms lobbying, legislation, and agency are broadly defined by the legislature.³ Essentially, all in-person lobbying activities on behalf of the University by any of its officers and employees must be reported.⁴ The reporting requirement applies when an agency lobbies a legislator or legislators’ staff more than four days, or parts thereof, per calendar quarter.

Public service ethics laws also prohibit public agency officers and employees from engaging in certain activities associated with campaigns and ballot propositions, as outlined below.⁵

¹ This memorandum incorporates materials from earlier memoranda written by AGO colleagues Cheryl Bateman, Jack Johnson, Sarah Coats, Howard Fischer, and Michael Shinn. The laws cited are accurate as of September 30, 2009.

² See also the PDC Manual for Public Agency Lobbying at www.pdc.wa.gov.

³ See definitions in RCW 42.17.020.

⁴ RCW 42.17.190; WAC 390-20-052. A sample “L-5” form for reporting lobbying activity is attached to this memorandum.

⁵ RCW 42.52.180; RCW 42.17.128; RCW 42.17.130.

1. Public Agency Lobbying:

Lobbying means attempting to influence the passage or defeat of legislation by the state legislature or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the Administrative Procedure Act.⁶

The PDC further outlines that in-person lobbying includes activity that is attempting to influence the passage or defeat of legislation, such as testifying at public hearings, but does not include activity which is not intended to influence legislation, such as attending a hearing to monitor or observe testimony and debate.⁷

University officers and employees should report all in-person lobbying to the President or designee, including information about any bill discussed, expenditures for lobbying, and the dates of all lobbying activity.

In addition, public funds may not be used directly or indirectly for lobbying **except** that public funds may be expended to: (a) communicate on matters pertaining to official university business; or (b) advocate the official position of the university to any elected official or officer or employee of any agency.⁸ Public funds may not be expended as a direct or indirect gift or campaign contribution to an elected official, agency officer, or employee.

2. Non-Reportable Agency Lobbying:

The legislature specifically excluded certain activities from the term “lobbying.” Those activities are, therefore, excluded from lobbying reporting requirements, and include:

- Requests for appropriations by a state agency to the Office of Financial Management for appropriations under RCW Chapter 43.88;
- Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency or institution on a particular subject;
- Official reports including recommendations submitted to the legislature annually or biennially by a state agency or institution as required by law;
- Requests, recommendations, or other communications between or within state agencies, institutions or local agencies; and

⁶ RCW 42.17.020(1). The Administrative Procedure Act is found at RCW 34.05.

⁷ WAC 390-20-052(1).

⁸ RCW 42.17.190(3).

- Any other lobbying to the extent that it includes:
 - (a) Telephone conversations or preparation of written correspondence;⁹
 - (b) Preparation or adoption of policy positions within an agency or institution, or group of agencies or institutions. (NOTE: Further action to advocate that policy position may constitute lobbying.);
 - (c) Attempts to influence federal or local legislation; and
 - (d) In-person lobbying on behalf of an agency or institution of no more than four days or parts thereof during a calendar quarter by officers or employees of that agency or institution, PROVIDED that the total aggregate expenditure of **non-public** funds does not exceed fifteen dollars.¹⁰

The above “four-day-three-month” rule, which provides that in-person lobbying totaling no more than four days or parts thereof during any calendar quarter is not reportable, applies to the aggregate of the institution’s lobbying activity by all employees and officers. Otherwise, reportable individual lobbying activity should not be disregarded because an individual’s lobbying activity may fall below the four-day-three-month rule.

B. Ethics in Public Service:

1. Use of facilities to assist a campaign for elective office or stance on ballot proposition prohibited.

In addition to lobbying reporting obligations, public officers and employees are subject to public service ethics laws that prohibit certain political activities associated with campaigns and ballot propositions. It is a violation of the public service ethics laws for any state officer or employee to use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition.¹¹

Facilities include, but are not limited to, use of stationery, postage, machines, and equipment; use of employees during working hours; vehicles; office space; publications of the agency; and clientele lists of persons served by the agency.¹² In addition, public funds from any source shall not be used to finance any political campaign for state or local office.¹³

⁹ This includes e-mail correspondence.

¹⁰ RCW 42.17.190(5)(d); WAC 390-20-052(5)(d).

¹¹ RCW 42.52.180; *see also* AGO opinion @www.atg.wa.gov/pubs/publicfundsmemo062800.htm.

¹² RCW 42.52.180(1).

¹³ RCW 42.17.128.

While public employees do not forfeit their rights to engage in political activity because of their employment, public officials and employees need to make it clear that any participation in political activity is personal rather than officially sponsored, and must occur during non-work hours. Any individual political expression must not involve the use of any public funds or use of any facilities of a public agency.¹⁴ Employees can wear buttons to work, but they cannot affix campaign materials to university facilities.

2. Propositions may be discussed at meetings, but the Board of Trustees may not legally take action to support or oppose such measures.

Agencies and institutions may discuss the impact of an initiative as it may affect the agency, but may not promote or oppose the initiative. This means that the Board of Trustees may discuss such matters in open session, but the Board may not take a collective position by vote to support or oppose such measures.

3. The Executive Ethics Board enforces these restrictions as to state officers and employees.

The Executive Ethics Board is responsible for enforcement of these campaign restrictions as they apply to state officers and employees.

I trust this will be of assistance to you in future legislative sessions. Please do not hesitate to contact me at (360) 650-2040 if I can be of further assistance.

Attachment

¹⁴ WAC 390-05-271(1); RCW 42.17.128.