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“Keeping the Wheels Rolling in Washington State”

February 1, 2016

Via email and fax (8) pages total

Evelyn Fielding Lopez, Executive Director  
Washington State Public Disclosure Commission  
711 Capitol Way, Rm. 206  
P. O. Box 40908  
Olympia, WA 98504-0908

**RE: Request For Adoption Of Rule**

Dear Ms. Lopez:

The Automotive United Trades Organization (AUTO) is a duly filed and recognized Washington corporation that is a nonprofit trade association representing small businesses that market and distribute motor fuel in the state. In my role as Executive Director, I am the contact person for the organization.

Attached for submission is an executed form created by the Secretary of State wherein AUTO requests adoption of a rule by the Washington Public Disclosure Commission (PDC). The issue is the receipt of contributions from tribal government entities by candidates, political action committees, political parties and others involved in elections within the state. AUTO's position is the treasuries of these contributing tribal governments contain public funds created by taxes collected by the tribal governments from non-tribal citizens and transfers from state or other public treasuries through actions of the legislative or executive branches of state government. A contribution from a tribal government therefor results in the use of “public funds” for political purposes. State law prohibits use of public funds for political purposes “...whether derived through taxes, fees, penalties or any other sources...”.<sup>1</sup>

This letter is an addendum to the previously referenced form and intended to further explain AUTO's position and request. Additionally, AUTO intends to provide extensive documentation to the record during the rule making process in accordance with the procedures set forth in the Administrative Procedures Act<sup>2</sup>.

Tribal sovereignty, tribal rights under historical treaties, and the state citizen rights of tribal members are unaffected by AUTO's request for rule making. The request is directed toward receipt of campaign contributions from a tribal government by those in support or opposition of a candidate or ballot initiative during an election held within the state of Washington. The request is therefore fully within the parameters of authority and duties of the PDC.

***The magnitude of the political contributions received from tribal governments***

Review of the data base maintained by the PDC show tens of millions of dollars have flowed

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<sup>1</sup> RCW 42.17A

<sup>2</sup> RCW 34.05

out of tribal government accounts into political parties and political action committees (pacs). Recipients include pacs supporting or opposing candidates for statewide office (governor, attorney general, supreme court, etc), legislative districts, and measures appearing on the ballot. As an example, from 2004-2010 tribal governments issued political contributions approaching \$10 million. A political action committee titled “Campaign For Tribal Self Reliance” of the Washington Indian Gaming Association funded by tribal governments and managed by tribal officials provided \$382,645 in contributions during 2009-2010.<sup>3</sup>

TRIBE	2004	2005	2006	2007	2008	2009	2010
Chehalis	\$ 170,450	\$ 1,500	\$ 9,300	\$ -	\$ 7,800	\$ 1,000	\$ 11,100
Coleville	\$ 20,700	\$ 2,750	\$ 8,050	\$ 85,050	\$ 19,950	\$ 2,700	\$ 18,300
Cowlitz	\$ 500	\$ -	\$ 750	\$ -	\$ 800	\$ -	\$ -
Jamestown S'Klallam	\$ 135,025	\$ 4,100	\$ 3,325	\$ 4,345	\$ 8,600	\$ 7,850	\$ 12,452
Lummi	\$ 112,300	\$ 5,550	\$ 4,050	\$ 6,000	\$ 9,100	\$ 17,750	\$ 13,150
Hoh	\$ -	\$ -	\$ -	\$ -	\$ 3,200	\$ 3,600	\$ 2,400
Kalispel	\$ 270,753	\$ 2,668	\$ 34,618	\$ 1,194	\$ 98,499	\$ 10,205	\$ 32,636
Lower Elwha Klallam	\$ 30,162	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500
Makah	\$ 31,700	\$ 675	\$ -	\$ -	\$ 50	\$ -	\$ 500
Muckleshoot	\$ 1,722,959	\$ 20,800	\$ 146,400	\$ 77,351	\$ 299,507	\$ 78,314	\$ 201,483
Nisqually	\$ 188,506	\$ 15,450	\$ 35,175	\$ 28,300	\$ 50,540	\$ 25,890	\$ 58,789
Nooksack	\$ 10,000	\$ 5,000	\$ 950	\$ 8,800	\$ 4,500	\$ -	\$ -
Port Gamble S'Klallam	\$ 26,250	\$ -	\$ 2,150	\$ 500	\$ 9,400	\$ 5,600	\$ 9,500
Puyallup	\$ 1,793,979	\$ 58,450	\$ 149,825	\$ 69,800	\$ 143,344	\$ 1,600	\$ 121,700
Quileute	\$ 10,000	\$ -	\$ 1,700	\$ -	\$ -	\$ -	\$ 1,500
Quinault	\$ 31,685	\$ -	\$ 2,225	\$ 36	\$ 2,050	\$ -	\$ 10,250
Samish	\$ 29,150	\$ 9,100	\$ 8,075	\$ -	\$ 48,000	\$ 5,400	\$ 24,000
Sauk-Suiattle	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,500	\$ 2,000
Snoqualmie	\$ -	\$ -	\$ -	\$ -	\$ 191	\$ 547	\$ 260
Shoalwater Bay	\$ 15,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Suquamish	\$ 118,050	\$ 2,000	\$ 11,650	\$ 5,205	\$ 10,150	\$ 2,500	\$ 13,050
Skokomish	\$ -	\$ 320	\$ 5,075	\$ -	\$ 1,000	\$ -	\$ -
Spokane	\$ 500	\$ 2,000	\$ -	\$ 2,700	\$ -	\$ 200	\$ 2,120
Squaxin	\$ 108,445	\$ 3,300	\$ 9,150	\$ 4,550	\$ 5,000	\$ 250	\$ 6,100
Stillaguamish	\$ -	\$ -	\$ -	\$ 2,500	\$ -	\$ -	\$ 1,200
Swinomish	\$ 303,375	\$ -	\$ 12,725	\$ 5,250	\$ 65,450	\$ 9,100	\$ 29,820
Tulalip	\$ 1,550,951	\$ 61,866	\$ 194,117	\$ 107,605	\$ 320,539	\$ 17,443	\$ 33,600
Upper Skagit	\$ 55,850	\$ 1,350	\$ 6,200	\$ 3,000	\$ -	\$ 8,800	\$ 1,300
Yakama	\$ -	\$ -	\$ -	\$ -	\$ 4,800	\$ -	\$ 1,600
TOTAL	\$ 6,736,789	\$ 196,879	\$ 645,510	\$ 412,186	\$ 1,112,470	\$ 200,249	\$ 609,310
2004-2010 GRAND TOTAL							\$ 9,913,393

All data downloaded from WA State Public Disclosure Commission website and current as of 1/6/2011

As additional examples of the continuous flow of tribal government contributions, in 2013-2014 contributions to Governor Jay R. Inslee exceeded \$42,000. Attorney General Robert W. Ferguson received \$21,400 and Representative Derek C Stanford received \$9,250. As the legislature was set to convene, the Washington State Democratic Central Committee received \$50,000 from the Puyallup Tribe and \$25,000 from the Muckleshoot Tribe. The Harry S Truman Fund (House Democrats) received \$105,000 from different tribal governments. The Kennedy Fund (Senate Democrats) received \$155,500. In 2014, the Senate Republican Campaign Committee received \$950 from the Nisqually and \$500 from the Swinomish.

### **Political contributions from tribal governments utilize taxes and other public funds**

A tribal government receives its funding in numerous fashions. First, in the form of taxes passed by tribal government and collected primarily from non-tribal citizens (many tribes exempt their members from paying tribal taxes). Similar to a visitor to Seattle attending a

<sup>3</sup> <https://www.pdc.wa.gov/rptimg/default.aspx?batchnumber=100586792>

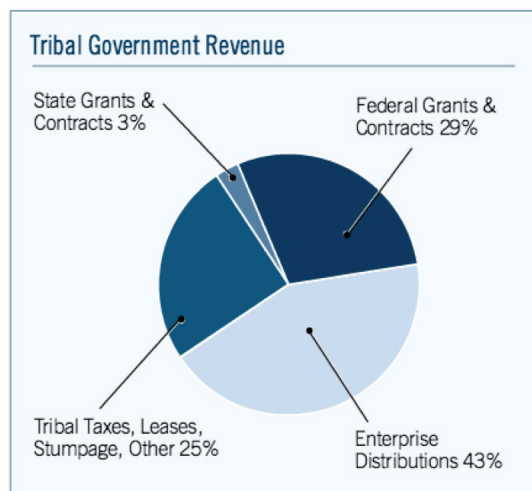
Seahawks game, non-tribal citizens pay taxes to tribal government enterprises located on a reservation operated directly by a tribal government or under a license agreement with the tribe. As an example, the visitor staying at the lodging facility near a casino will often see a “motel/hotel” tax on the bill. Same with a visit to a convenience store or restaurant. While many citizens assume the label of “tax” means it is a Washington state or city tax, the amount on the billing is typically a tax imposed by the tribal government.

“While individual Indians clearly pay taxes, tribes do not; they are governments. Tribes levy taxes. For example, the Squaxin Island Tribe charges a 10% tax on its hotel patrons.” *washingtonindiangaming.org*

Additional revenue sources for tribal governments are the contribution to the tribal governments by the state and federal governments. As an example, under compacts entered into with the Department of Licensing, a tribal government operating a retail motor fuel outlet receives a contribution equal to 75% of the state tax rate collected from the motor fuel supplier prior to the delivery to a tribal station location<sup>4</sup>. Since 2005, tribal governments have received approximately \$275 million dollars from the Motor Vehicle Fund where the state fuel taxes and vehicle license fees are deposited. The latest fuel tax rate increase passed by the Legislature in 2015 will increase the payments to the tribal governments in accordance with 75% of rate component in the compacts. Former State Auditor Brian Sonntag estimated the flow of public funds from the Motor Vehicle Fund to tribal governments will rise to over \$40 million dollars per year and could reach or exceed \$354 million over the next decade.<sup>5</sup> Sonntag earlier reviewed the compacts and determined the state has no ability to independently verify where these tens of millions of public funds were spent.<sup>6</sup>

A third source is proceeds derived from enterprises operated directly by tribal governments. Revenue from a tribe’s gaming or other type enterprise is taxation that flows public funds into the tribal government similar to the Washington State Lotto. The tribal governments do not pay federal income taxes on “net profits” of tribal enterprises though the tribal governments reimburse state and federal government for regulatory services provided to its gaming enterprises. *“Every dollar earned from tribal gaming is invested in public purposes – to improve people’s lives, Indian and non-Indian alike, in communities throughout Washington. Gaming revenue is tax revenue for tribal governments.”*<sup>7</sup>

When one recognizes all reported revenue streams flowing into a tribal government rise to the definition of public funds, the source into the tribal government is somewhat irrelevant. Receipt of a contribution from a tribal government is contrary to the intent and expressed language of the state statute forbidding use of public funds for political purposes.



Source: <http://www.washingtonindiangaming.org>

4 <http://www.dol.wa.gov/about/docs/2014-11-tribal-fuel-tax-rpt.pdf>

5 “Fuel Tax Update.PDF” (Sonntag, July 23, 2015)

6 Sonntag Compacts Report, March 18, 2014 ([http://autowa.org/pdf/2014/Sonntag\\_Compacts\\_Report.pdf](http://autowa.org/pdf/2014/Sonntag_Compacts_Report.pdf))

7 <http://www.washingtonindiangaming.org/images/content/FINAL%20CIR%20WEB%20VERSION.pdf>

**Tribal governments are considered similarly to a city or county government with the notable exception of utilizing public funds to providing political contributions**

An example of the recognition that tribal governments are considered in the same fashion as a city or county is the ability of a tribal government to enter into interlocal government agreements<sup>8</sup>. RCW 39.34 grants a “public agency” the ability to enter into said agreements.

*(1) “Public agency” means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (underline added for emphasis).*

Tribal governments have sought out and received authority to act as an agent of the state in similar fashion to a city or county. One example is tribal law enforcement officers can seek out and arrest non-tribal citizens for violations of state law.<sup>9</sup>

*(1) Tribal police officers under subsection (2) of this section shall be recognized and authorized to act as general authority Washington peace officers. A tribal police officer recognized and authorized to act as a general authority Washington peace officer under this section has the same powers as any other general authority Washington peace officer to enforce state laws in Washington, including the power to make arrests for violations of state laws.*

The prohibition against using public funds in elections is clearly intended to prevent a government with taxing authority and control of a treasury from utilizing its treasury to provide political contributions. The statute does not exclude a tribal government. Neither is the prohibition limited in application to just the state or its subdivisions. The intent and purpose of the statute creates a prohibition applicable to a tribal government in the same manner the PDC would view a contribution from the state of Oregon or the City of Portland.

**Tribal governments do not hold an expressed right to influence non-tribal state or local elections**

The federal government “recognizes” the sovereign treaty rights of certain tribes that have adopted constitutions and forms of governmental in accordance with federal guidelines<sup>10</sup>. Tribal sovereignty effectively prevents state or local government from influencing elections held by a tribal governments. AUTO could locate no authority or right under federal or state statute or any provision set forth in a historical treaty that grants tribal governments in Washington an affirmative right to influence the elections of non-tribal governments. While citizens who are also a member of a tribe do hold this affirmative same as all other citizens of the state, such is not the case for a tribal government holding public funds.

**A tribal government is considered similar to a state under federal policies**

While some tribal and non-tribal citizens consider an “Indian Nation” to be similar to a

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8 <http://www.cityofanacortes.org/docs/Contracts/SamishMOU.pdf>

9 RCW 10.92.020

10 US Code: 25-INDIANS

foreign nation, the federal government and our system of laws do not. The US Constitution recognizes four sovereigns, the federal government, state governments, tribal governments, and foreign governments.

A tribal government is an entity that is aligned similar to a state. Federal laws apply to a tribal government but state laws are not enforceable on tribal land same as WA law is not enforceable in the state of OR or ID.

The same holds if one incorrectly considers a tribal government to be a

“sovereign nation” outside of US jurisdiction. *“The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.”*<sup>11</sup>

### ***The WA State Auditor’s Office can not typically detect an improper use of public funds by a tribal government***

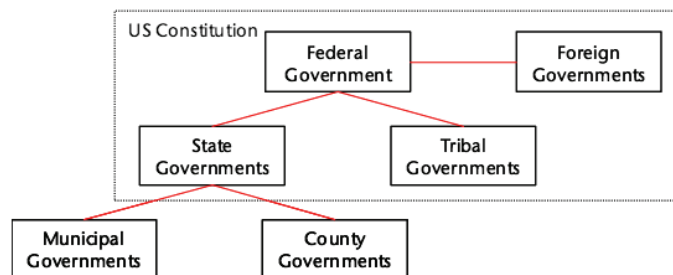
It is noteworthy to point out that cities, counties, or other local government entities are subjected to audits by the state Auditor’s Office. An improper campaign contribution by these entities would likely surface during the regular audits that are conducted. No political contributions by the local governments could be found in a review of the reports filed with the PDC.

Due to the sovereignty of tribal governments, tribal accounts holding public funds controlled and dispensed by tribal governments are not subject to similar audits by the Auditor’s Office. Therefore, the public is typically reliant upon the PDC to insure candidates, parties, and pacs honor the prohibition of using public funds for political purposes. While the PDC does not have control over the behavior of tribal governments operating on trust land within a reservation, the Commission clearly has authority over those receiving contributions intended for use in elections held within the state of Washington.

The prohibition on use of public funds insures that the City of Portland or the state of Oregon does not use its power of taxation to influence the elections across the Columbia River in Vancouver, Washington. In a similar fashion, the prohibition prevents the City of Seattle using its tax base to unfairly compete with a smaller city for legislative attention or even worse, determining the outcome of the city council races in a nearby city such as Auburn.

Another purpose of the prohibition was the concern that elected officials would exercise control over public treasuries and divert public funds to complement their own candidacy or affiliated political parties. Diverting public funds to a tribal government that returns a portion back to campaigns or parties of those controlling the diversion in the first place *“will not pass the smell test”*. Public funds do not somehow ripen into non-public funds upon receipt

Figure 2  
The US Constitution Explicitly Recognizes Four Sovereigns



Spilde, et al. (2002), 14.

11 [http://www.fec.gov/pages/brochures/statefed.shtml#When\\_Federal\\_Law](http://www.fec.gov/pages/brochures/statefed.shtml#When_Federal_Law)

by tribal governments that are also providing campaign contributions intended to benefit the same elected officials making decisions that result in the transfer public funds out of the state treasury over to the accounts of contributing tribal governments.

***Expedient action by the PDC is warranted and necessary to restore confidence of the public during the 2016 election cycle***

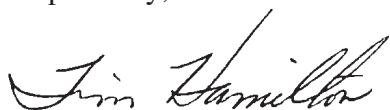
The intent, purpose, and effectiveness of the prohibition on using of public funds was severely negated when tribal governments decided to invest tens of millions in contributions into the non-tribal elections of the state over the last decade. Contributions for which there exists no apparent “common sense” explanation other than a desire by tribal governments to influence elections and the subsequent decisions of those elected to offices in non-tribal governments. Many citizens, including many AUTO members, believe a quid pro quo system has evolved wherein tribal governments use public funds to contribute with the full expectation of receiving a “good return on the investment” in the form of additional transfers out of the public coffers and legislative support for other matters of importance to the contributing tribal governments.

The fact that this activity has been ignored for a decade does not make the practice of accepting contributions of public funds by a tribal government allowable under state law in 2016. No “grandfather clause” exists in the prohibition statute. Further, for a tribal government to hold an exemption to the prohibition would require the law to be revised by the Legislature.

AUTO recognizes that the role of the PDC is oversight of election processes to insure public transparency and contributions are conducted in accordance with state statutes while leaving the decision of who is in office up to the voters. However, a simple legislative bill search on proposals effecting tribal governments currently under consideration in Olympia is telling. Especially, when one views the data bases at the PDC for the history of tribal contributions going out to sponsors and supporters.

Since the 2016 election cycle is underway, AUTO believes an expedient action by the PDC is in the public’s best interest to allow tribal governments and those who are actively seeking out contributions from a tribal government the clarification needed to maintain the public faith in Washington’s elections.

Respectfully,

A handwritten signature in cursive script that reads "Tim Hamilton". The signature is written in black ink and is positioned above the printed name and title.

Tim Hamilton  
Executive Director