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“Keeping the Wheels Rolling in Washington State”

August 16, 2016

Via email including referenced Exhibits

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The Automotive United Trades Organization (AUTO) is a duly registered Washington nonprofit corporation. This correspondence constitutes the 45-day notice requirement for the Office of Attorney General and the Executive Ethics Board as set forth in RCW 42.52.460.

AUTO believes violation of numerous state statutes occurred recently when actions were taken by Executive Director Lopez and the Members of the Public Disclosure Commission before, during, and after the regular meeting of the PDC held on May 26, 2016. The statutes violated include the Open Meeting Act (Chapter 42.30 RCW), Administrative Procedure Act (Chapter 34.05 RCW) and the Ethics in Public Service Act (RCW 42.52.160).

The actions taken that resulted in the violations center around a 14-page letter dated June 17, 2016 transmitted by Lopez on PDC stationary. The letter contains numerous questionable legal opinions of the Commission related to the acceptance of campaign contributions from tribal governments by the political action committee “Friends of Bob Ferguson”. The opinions were adopted inappropriately out of the view of the public and contrary to state statutes.

### **Chronology Of Events**

On February 4, 2016, AUTO filed a request to the PDC to open a rule making process regarding campaigns accepting contributions of public funds from tribal governments (Exhibit A). Citing concerns over budget constraints and authority limitations of the Commission, the staff recommended rejecting our request (Exhibit B). The Commission declined our request on March 24, 2016 (Exhibit C).

On May 2, 2016, AUTO’s counsel Phil Talmadge transmitted a 45-day advance notice of a citizen action against Friends of Bob Ferguson to the Attorney General and the King County Prosecutor as required by RCW 41.17A.765 (4) (Exhibit D). On May 16, 2016, the Attorney General recused himself and all the AGO staff (Exhibit E). King County Prosecutor declined to take action (Exhibit F). On June 20, 2016, Talmadge transmitted the required 10-day notice (Exhibit G). The King

County Prosecutor responded reconfirming his office intended no action (Exhibit H).

It is relevant to point out, at this point in time, the PDC had no duty, responsibility, authorization or role whatsoever relating to AUTO's citizen complaint. Neither the Attorney General or the County Prosecutor have the ability to defer any action back to the PDC. The appropriate action for the PDC was to simply take no action at all. The action that was taken by the Commission was not in the course of normal and regular conduct and contrary to WAC 390-05-273 which states:

*No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.*

In her May Report to the Commission dated May 19, 2016, Lopez explains how the PDC has no role in AUTO's citizen action yet references "options" that they would discuss at the upcoming meeting on May 26, 2016 (Exhibit M).

The report of the Executive Director shows she and all the Commissioners were aware that an action item was coming up regarding AUTO's citizen action more than a week before the regular meeting was held. Even so, the agenda posted on the PDC website makes no mention of this fact denying AUTO and others in the public any ability to recognize what was about to occur (Exhibit I).

Executive Director Lopez is a former Assistant Attorney General. The Office of Attorney General has a manual on the open meeting act and addresses the issue of agendas:

*A 2014 amendment to the OPMA requires agencies with governing bodies to make the agenda of regular meetings available online at least 24 hours in advance of the meeting. RCW 42.30.077.*

Further, RCW 42.30.060 states:

*No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.*

Review of the minutes from the meeting on May 26, 2016 shows Lopez discussed AUTO's anticipated citizen action with Commissioners Asay, Levinson, Bridges, and Johnson (Exhibit J). Lopez incorrectly asserted that the Commission has previously interpreted that the contributions from a tribal government were legal and therefore, Friends of Bob Ferguson had not breached any laws. The Commission authorized her to send out a letter (Exhibit K).

Lopez successfully inserted the notion that the rule making process initiated by AUTO had some how resulted in an "interpretation" by the Commission that tribal contributions were legal. Such was not the case. To the contrary, the Commission declined to go to rule making on the grounds of an interpretive ruling should come from the Legislature. No interpretation whatsoever was adopted.<sup>1</sup>

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<sup>1</sup> Exhibit C

The actual letter sent out under Lopez's signature is telling. The letter's single subject matter was cited as follows:

*Re: Citizen Action Complaint-Friends of Bob Ferguson  
Alleged Violations of RCW 42.17A.550 and 42.17A555.*

The letter is 14 pages long. The letter has numerous legal opinions issued by Lopez under the guise of an official determination by the PDC. As back up for these opinions, she attaches 8 pages of comments received by the PDC from tribal governments in opposition to AUTO's earlier request for a rule. All of the data, evidence, and exhibits provided by AUTO during that same period were not referenced in any fashion. The result is a reader is left with the impression AUTO's citizen action was flawed and without merit. AUTO believes the letter was purposely drafted for this effect.

Review of the minutes of the Commission wherein the action was taken shows Lopez exceeded her authority and both the Executive Director and the Commission members processed the letter in a manner contrary to WAC 390-12-200 (5). The Executive Director may "*Research, develop, and draft policy positions, administrative rules, interpretations and advisory options for presentation to the commission.*" The Commission authorized Lopez to create the letter on May 26, 2016. No record could be found wherein the content of the letter was actually approved by the members of the Commission in a public meeting. AUTO can find no statutory authority for the Commission to delegate its authority to adopt interpretive statements down to the Executive Director.

Additionally, the Administrative Procedure Act<sup>2</sup> sets forth the procedure for adopting a interpretive statement. Director Lopez and the members of the Commission did not follow the legal procedure required to adopt an interpretive statement when creating and transmitting the letter from Lopez.

The letter ends with "*Therefore, the Friends of Bob Ferguson campaign did not violate campaign finance laws when it accepted contributions from the Muckleshoot Tribe in October 2014, or from the Snoqualmie Tribe in November 2015. The PDC does not plan to commence an action pursuant to RCW.17A.765 (4).*"

As for the interpretive ruling contained in the letter that Friends of Bob Ferguson did not violate law, the PDC again failed to follow the legally required process for such a determination and in doing so, again denied the public the ability to participate. RCW 42.17A.755 (2) states:

*The commission, in cases where it chooses to determine whether an actual violation has occurred, shall hold a hearing pursuant to the administrative procedure act, chapter 34.05 RCW, to make a determination.*

The last sentence wherein Lopez states the PDC "*.... does not plan to commence an action pursuant to RCW 17A.765 (4)*" is worthy of noting on its own. This statement leaves the reader with the impression the PDC had some role and therefore some legitimate duty or authority to send the letter. RCW 17A.765 (4) cited by Lopez does not allow the PDC to take any action whatsoever. Again, Lopez and all the Commissioners were fully aware prior to the drafting of the letter that the statute Lopez cited did not provide any role or duty for the PDC and the action taken was not in

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2 RCW 34.05.230 Interpretive and policy statements.

the PDC's official duties.

AUTO's citizen action is clearly identified as the sole subject of the lengthy 14-page letter. Further, all parties addressed on the letter were also fully aware the PDC could take no action long before the letter was created and transmitted. The only purpose for transmitting the letter was an attempt to inappropriately use PDC resources to intervene in the citizen action by providing a document that would be politically or legally valuable to the Friends of Bob Ferguson. The fact Lopez carbon-copied the letter to Ferguson's political action committee and subsequently transmitted the letter via email to representatives of tribal governments shows the true intended purpose. The action taken is therefore a violation of RCW.52.160 which states:

*No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.*

When all the facts are considered, the letter was clearly not "*.....part of a state officer's or state employees official duties.*" Neither was it a de minimis use of state resources as the effort involved extensive use of computers and significant staff time in researching and drafting the 14-page document. Most importantly, AUTO believes the actions taken by the PDC to create the letter were intended for the private benefit or gain of another.

AUTO further believes the letter is also contrary to WSR 16-03-052 adopted by the Executive Ethics Board and effective April 1, 2016. Limited use of state resources is allowable under certain instances with the notable exception: *(vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.* Friends of Bob Ferguson, other political action committees and tribal governments are outside organizations or groups.

In summary of our major points, AUTO believes 1) the Commission had no authority to act; 2) the letter sent out by Director Lopez was not approved by the Commission in a legal fashion; 3) the action was taken contrary to the Open Meeting Act; and 4) the only purpose for the action was an attempt by the PDC to provide value to the Friends of Bob Ferguson or others.

This 45-day notice is intended to comply with the requirements of RCW 42.52.460 regarding the violation of RCW 42.52.160. AUTO does not surrender any rights of action under any other state statute.

Respectfully,



Tim Hamilton  
Executive Director

cc: The Washington Public Disclosure Commission (Executive Director Lopez)  
AUTO's Interested Parties List