

May 19, 2004

WASHINGTON STATE LABOR COUNCIL
ATTN: DIANE MCDANIEL
314 FIRST AVENUE WEST
SEATTLE WA 98119

Subject: Complaint filed against Building Industry Association of Washington --PDC
Case No. 04-300

Dear Ms. McDaniel:

The Public Disclosure Commission staff has completed its investigation of your complaint received October 28, 2003, alleging that the Building Industry Association of Washington (BIAW) violated RCW 42.17 by making in-kind contributions to a statewide initiative committee that were not reported.

Your complaint was reviewed in light of the following statutes:

RCW 42.17.170 requires lobbyists registered with the PDC to file frequent and detailed reports of lobbying activities, including monetary and in-kind contributions made to candidates, political party organizations, and political committees, including statewide initiative committees.

RCW 42.17.105 prohibits any person from making, or a candidate or political committee from accepting from any one person, contributions that in the aggregate exceed more than \$5,000 during the 21 days before a general election.

RCW 42.17.020(14) states that a contribution does not include a contribution that is returned within five business days of receipt. In addition, it further states that messages in the form of reader boards, billboards, banners, or yard or window signs displayed on a person's own property are not considered contributions if no rent or other fees are normally charged for the use of the billboard.

You alleged that BIAW violated RCW 42.17 by making in-kind contributions that exceeded \$5,000 to Workers Against Job Killing Rules (WAJKR), a political committee supporting Initiative 841, during the 21-day period prior to the general election. You also alleged that BIAW violated RCW 42.17 by making in-kind contributions to WAJKR that when combined with contributions from affiliated local builder associations exceeded \$5,000 during the 21-day period prior to the general election. Finally, you alleged that BIAW failed to report all of the in-kind contributions it made in the form of staff time to WAJKR.

We found that:

- Elliot Swaney, Political Director and a registered lobbyist for BIAW, submitted a declaration along with the BIAW response addressing the \$5,000 limitation during the 21-day period preceding the general election. In his declaration, Mr. Swaney stated that BIAW did not pledge to make in-kind contributions of staff time in support of I-841 during the 21-day period preceding the general election. Mr. Swaney stated that BIAW had no idea of the actual amount that would be contributed during the 21-day period, but said they did not anticipate that all contributions, including staff time, would exceed \$5,000.
- Mr. Swaney filed Monthly Lobbyist Expense Reports (PDC Form L-2) listing BIAW as his employer, and disclosing \$816,380 for monetary and in-kind contributions from BIAW to WAJKR covering the period March-November, 2003, all in support of I-841. Mr. Swaney timely filed all of his monthly L-2 reports for the timeframe in question, disclosing all but \$2,000 of the contributions made by BIAW to WAJKR in support of I-841. BIAW lobbyist Trent Matson timely reported the remaining \$2,000 contribution.
- WAJKR reported receiving three separate in-kind contributions totaling \$9,560 from BIAW for staff time, wages and miscellaneous expenses in September, October and November 2003.
- Mr. Swaney reported \$2,760 on his September 2003 L-2 report showing in-kind contributions to WAJKR for BIAW staff time, wages and miscellaneous expenses. Trent Matson reported an additional \$2,000 on his September L-2, to total \$4,760 for in-kind contributions reported by WAJKR from BIAW. Mr. Swaney also reported \$4,800 on his October 2003 L-2 report for in-kind contributions to WAJKR for BIAW staff time, wages and miscellaneous expenses. The \$4,800 reported by Mr. Swaney was listed as having been made on October 31, 2003. WAJKR reported receiving in-kind contributions of \$500 and \$4,300 on October 26 and November 29, 2003 respectively.
- Mr. Swaney stated that the majority of BIAW staff time spent in support of I-841 was spent educating BIAW members and on internal political communication with those members. Mr. Swaney stated that BIAW was the primary organization and contributor behind I-841, and its members' volunteer activities and contributions were a part of the success of I-841.
- A \$5,000 contribution was received by WAJKR from the Master Builders Association of King and Snohomish County (a local affiliate of the BIAW) on October 21, 2003, and deposited and reported on a C-3 report on October 27, 2003. However, the \$5,000 contribution was promptly refunded by WAJKR on October 28, 2003, and BIAW stated that they realized it would leave no room for contributions from other local builder affiliates or for BIAW to make last minute contributions. Contributions refunded or returned within five business days of receipt are not considered contributions in accordance with RCW 42.17.020(14).

- The Home Builders Association of Kitsap County (HBAKC), also a local affiliate of BIAW, is the sole owner of an electronic billboard that is located on its property. During the 2003 election, the HBAKC billboard contained a “Yes on 841” message. The HBAKC stated in a declaration provided to the PDC that the billboard is used exclusively by the HBAKC and that it is used to post messages relevant to its members and issues, and that no rent is charged for its use. Since no rent is normally charged for the use of the billboard located on the property of the HBAKC, the message in support of Initiative 841 was not a contribution in accordance with RCW 42.17.020(14).

Therefore, no entity with whom BIAW shared a limit was found to have made a contribution to WAJKR during the 21-day period preceding the 2003 general election.

BIAW did not maintain documentation to substantiate its in-kind contributions reported by WAJKR. However, there was no evidence provided by you that BIAW’s in-kind contributions were not accurately reported, and our investigation did not reveal any evidence that the information reported was not accurate.

BIAW will be cautioned to accurately document its in-kind contributions that support or oppose ballot propositions or candidates running for public office during future election campaigns.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Vice Chair of the Public Disclosure Commission, acting on behalf of the Chair, I am dismissing your complaint against the Building Industry Association of Washington.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: Tim Harris, Building Industry Association of Washington