

TO: Floyd L. Newland ~~5017~~ 5017  
FROM: Barbara J. Brady  
DATE: August 6, 1998  
RE: Port Ludlow Village Council  
Participation in Political Activities

### FACTS

Port Ludlow Village Council ("Port Ludlow") is a Washington nonprofit corporation. It would like to engage in political activities and to lobby, directly or indirectly, for the benefit of the community.

### ISSUES

1. Is Port Ludlow permitted to engage in political activity?
2. Is Port Ludlow permitted to lobby?
3. Are there any registration requirements with the State?
4. Is a community organization such as Port Ludlow entitled to tax exempt status under 26 U.S.C. § 501(c)(3).

### DISCUSSION

#### A. Port Ludlow Village Council is Not Prohibited From Engaging in Political Activity.

There is nothing in Washington's Nonprofit Corporation Act, Chapter 24.03 RCW ("the Act") which prohibits nonprofit corporations from engaging in political activity or from lobbying. The Act defines "nonprofit corporation" as "a corporation no part of the income of which is distributable to its members, directors or officers." RCW 24.03.005(3). RCW ~~24.03.030~~ sets forth the limitations applicable to nonprofit corporations. Participation in political activities or lobbying is not among the prohibitions listed.

Political activities are not addressed in RCW 24.03.035, the section which describes the general powers of nonprofit corporations. This section authorizes nonprofit corporations

to "have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized." RCW 24.03.035(20).

A review of the Port Ludlow Articles of Incorporation reveals that one of the purposes of Port Ludlow is to "engage in lawful political and/or lobbying activities." Article III, paragraph 1, subsection (e). Presumably RCW 24.03.035 would imbue Port Ludlow with the powers necessary to carry out this purpose.

There is no readily identifiable Washington case law which addresses the propriety of nonprofit corporations engaging in political activity. However, there are numerous Washington cases incidentally involving nonprofit corporations which do engage in political activities.

One caveat. If membership in Port Ludlow Village Council is mandatory for any group (such as homeowners) there could be First Amendment problems. There is a constitutionally protected right not to associate. Thus, if any member disagrees with Port Ludlow Village's political views, he or she cannot be forced to belong to the group which espouses those views. See Good v. Associated Students of the U of W, 86 WN. 2d 94, 100, 542 P.2d 762 (1975).

B. Port Ludlow Village Council is Not Prohibited From Engaging in Lobbying Activities; However, it May Need to Register with the Public Disclosure Commission.

Port Ludlow Village Council is not prohibited from engaging in lobbying activities. However, lobbying appears to be strictly regulated by chapter 82.04 RCW. All persons (including nonprofit corporations) lobbying for compensation must register with the Public Disclosure Commission and make period reports. RCW 42.17.150.

There is an exemption from registration for persons who lobby without compensation (presumably Port Ludlow Village) or other consideration provided that the person makes no expenditure for or on behalf of any member of the legislature, elected official, or public officer in connection with the lobbying. RCW 42.160(4).

There are other exemptions from registration for persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public hearings of states agencies, RCW 42.17.160(1); and for those who restrict their lobbying activities to no more than four days during any three-month period and whose total expenditures during this period do not exceed \$25. RCW 42.17.160(5).

If Port Ludlow Village intends to solicit contributions for candidates for office, it ~~may~~ <sup>must</sup> ~~need to~~ register as a "political committee" under RCW 42.17.040.

If Port Ludlow Village plans on contributing more than \$500 in any three-month period, or two hundred dollars within any one-month period to influence legislation, it may be

classified as a "grass roots lobbying campaign" and be required to register with the Public Disclosure Commission under RCW 42.17.200.

C. Tax Exempt Status.

1. Washington State Excise Tax Exemption.

It is unknown if Port Ludlow Village pays any excise taxes. However, if it does, it may be able to obtain an exemption. The legislature recently enacted a new law which provides a limited excise tax exemption for fund-raising activities for some nonprofit organizations. See Senate Bill 6599. This amendment to Chapter 82.04 RCW provides an excise tax exemption to nonprofit corporations whose activities "do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office." Senate Bill 6599 Section 1. Accordingly, this exemption may apply if Port Ludlow Village will not engage in a substantial amount of political activity.

2. Federal Income Tax Exemptions.

Port Ludlow Village Council may be able to obtain federal income tax exempt status if it does not intend to engage in substantial lobbying. The Internal Revenue Code, 26 U.S.C. § 501(c) exempts organizations from the payment of income taxes if they meet certain criteria. In pertinent part, this section provides an exemption for "civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare." 26 U.S.C. § 501(c)(4). The exemption does not apply however, if the organization engages in lobbying beyond designated parameters. 26 U.S.C. § 501(h).

Under this statute, "civic" means pertaining to citizens, city, borough, municipality, or citizenship." C.I.R. v. Lake Forest, Inc., 305 F.2d 814 (4th Cir. 1962). Under this section, a "civil league or organization" embodies the idea of citizens of a community co-operating to promote common good and general welfare of people of the community. U.S. v. Pickwick Elec. Membership Corp., 158 F.2d 272 (C.A. Tenn. 1947). "Social welfare" means concerned with or interested in the constitution of society and the problems presented thereby. U.S. v. Pickwick Elec. Membership Corp., *supra*.

A review of the Port Ludlow Articles of Incorporation demonstrates that the corporation was formed to "be a unifying force in the Port Ludlow community and work toward building consensus among the residents, merchants, property owners and others having an interest in the Port Ludlow Community." Thus, it appears that Port Ludlow Village might be able to obtain 501(c)(4) status as a civic league or organization if it does not engage in lobbying efforts beyond those prescribed by federal law.