

April 18, 1996
Advisory Opinion 1996 - No. 4

QUESTION

In January of 1996, a legislator mailed a newsletter, at public expense, to "registered voter households" within her legislative district. The newsletter included a legislative issues questionnaire and a box which recipients could check if they wanted to receive the results of the questionnaire. From the more than 2000 persons who returned questionnaires to her, 1,552 checked the box. The legislator now asks for the Board's advice on the following question: Would she "jeopardize" her opportunity to mail a session-end newsletter if she mails the questionnaire results, at public expense and within the twelve month period specified in RCW 42.17.132, to these persons who have requested them?

OPINION

Subject to the qualifications discussed in this opinion, the legislator may mail the questionnaire results in the form of "individual letters" without the mailing jeopardizing her opportunity to mail her session-end newsletter.

The answer to this question is determined by RCW 42.17.132, which provides as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

The legislator may mail one mailing no later than thirty days after the start of a regular legislative session and one mailing no later than sixty days after the end of a regular legislative session of identical newsletters to constituents.

The legislator may mail an individual letter to an individual constituent who (1) has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; or (2) holds a governmental office with jurisdiction over the subject matter of the letter.

A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180. . . .

This law applies during the twelve-month period preceding certification of the 1996 legislative elections. Within that period, the legislator would be permitted to mail the

questionnaire results at public expense only if the items mailed would be considered a "newsletter" or "individual letters" to constituents who have contacted her regarding the subject matter of the mailing, i.e., the questionnaire results.

The law permits a legislator to make two mailings of "newsletters." With her January mailing, the legislator has already made one of these mailings. She therefore has one "newsletter" mailing left. If the mailing of the questionnaire results would be considered a "newsletter," then her session-end "newsletter" would not be permitted.

We believe that the mailing of the questionnaire results may very well be considered a "newsletter" mailing if in appearance the items mailed resemble a "newsletter." If the items mailed would be identical pieces portraying the results of the questionnaire, we would consider them to be a "newsletter." If on the other hand, the items would be in the form of individualized letters with a named individual in the address and in the salutation (such as "Dear Mr. Smith"), then we would consider them as authorized "individual letters" responding to a constituent contact.

The appearance test we adopt here to distinguish between large mailings of "newsletters" and "individual letters" may appear somewhat artificial in that individualizing the letters does not require changes in the portrayal of the questionnaire results, the substance of the letters. However, in a large mailing situation like this one, appearances are important. Members of the public will be inclined to view the items mailed as a "newsletter" if the items have the appearance of a "newsletter." Our appearance test is consistent with the public's perception.

Finally, we provide this note of caution. To not jeopardize her opportunity to mail her session-end newsletter, the legislator, we assume, will want to mail "individual letters" containing the questionnaire results. We advise that any such "individual letters" should be limited to a depiction of the questionnaire results. Under RCW 42.17.132, an "individual letter" must relate to the "subject matter" on which a constituent has contacted the legislator. Here, the "subject matter" is the questionnaire results. To the extent that the legislator's "individual letters" would deal with other "subject matter," there is a risk that her mailing them at public expense would violate the law.

¹ We have previously interpreted RCW 42.17.132 as authorizing the inclusion of a questionnaire in a legislative newsletter. See: **Complaint 1996 - No. 3**, disposition order.