

ADVISORY OPINION 2005 - NO. 1

Congratulatory Letters
January 20, 2005

Background

Several legislators have requested the Board revisit the issue of the use of public resources to send congratulatory letters to constituents. The request was discussed by the Board at a public hearing on August 19, 2004, and a subcommittee was appointed to study the issue and report its findings and recommendations to the Board. The subcommittee conducted a survey of legislators, legislative staff, and the public. The results of the survey, together with the subcommittee report, were received by the Board and discussed at a second public hearing on October 21, 2004.

The Board unanimously agreed to issue this advisory opinion on its own motion in the hope it will assist legislators and legislative staff in determining whether a proposed congratulatory letter is permitted by the Legislative Ethics Act (Act).

Question #1

Presently, under what circumstances may a legislator use public facilities to mail a congratulatory letter to a constituent?

Answer

Both RCW 42.52.180 (which prohibits use of public facilities to assist an election but provides an exception for activities that are part of the "normal and regular conduct of the office or agency") and RCW 42.52.185 (which limits mailings from December 1st of the year before a general election through November 30th immediately after the general election) place restrictions on sending congratulatory letters with the use of public facilities. Presently, legislators may use public facilities to send a congratulatory letter to a constituent who has received an extraordinary award, honor or civic distinction.

Question #2

Are the standards for sending a congratulatory letter during a non-election year different or less than the standards for sending the same letter during an election year?

Answer

No, the standards are the same. In 1997, the Legislature amended the mailing restrictions found in RCW 42.52.185 by eliminating the requirement that a constituent request a

congratulatory letter. In addition, the Legislature adopted illustrative examples of what types of honors or awards would be noteworthy enough to permit a congratulatory letter at public expense. In doing so, it appears the Legislature adopted those illustrative examples found in Board Advisory Opinions 1995 - No. 17 and 1996 - No. 7. In these opinions the Board was interpreting the "normal and regular conduct" exemption in RCW 42.52.180. The Board concluded, in Advisory Opinion 2001-No. 5 that in its 1997 amendment the Legislature had extended the ability of legislators to send congratulatory letters during an election year to the same extent they could send congratulatory letters in a non-election year.

Question #3

Are the criteria, or standards, for the award or honor which would permit sending a congratulatory letter at public expense, identified in Board opinions and RCW 42.52.185, exclusive?

Answer

No. The Board, in its opinions, and the Legislature in its amendment to the mailing statute, have recognized that some flexibility in this area is appropriate. Factors to consider are (1) the level of the award (national, state, or local; (2) frequency or number of recipients; (3) whether it is an "outside" award or simply an employment incentive recognition.

Question #4

Other than a somewhat flexible approach to identifying an "extraordinary" award or honor, are there any other conditions precedent which must be present before sending a congratulatory letter?

Answer

Yes. The Legislature has required that a constituent must already have "received" the award or honor before a congratulatory letter may issue. Board opinions are consistent with this requirement.

Examples of awards and honors

The Board is aware that it is not possible to compile a list of all honors and awards which do, or do not, achieve the standards required by the Act. However, as a result of the subcommittee research of examples of informal advice, the findings of the subcommittee survey, and the discussion by the Board of those sources together with the formal Board opinions and the mailing statute as amended by the Legislature, the Board offers the following non-exclusive examples to assist legislators and legislative staff in recognizing ". . . an award or honor of extraordinary distinction of a type *that is sufficiently infrequent* to be noteworthy to a reasonable

person, *including but not limited to . . .*" (RCW 42.52.185, emphasis added).

1. international or national award such as the Nobel or Pulitzer prize
2. a state award such as Washington Scholar
3. Eagle Scout
4. Medal of Honor
5. WIAA Winter athletic-scholars
6. state champion debate team coach
7. Washington Teacher of the Year
8. an individual who had been honored as the oldest, working education employee in the state
9. The National Educator Award
10. one of twelve citizens statewide who received an outstanding care-giver award
11. six, annual county-wide awards for Women of Achievement awarded by YWCA
12. student who placed first in intra-county academic competition
13. coaches of high school athletic, academic and debate teams which competed in state tournament
14. recipient of annual community award for outstanding volunteer service
15. two county police officers selected as TOP COPS in an annual, nationwide award program
16. Jefferson award to five Washington residents for extraordinary community accomplishments
17. Washington Award for Excellence in Education to five teachers in each Congressional District
18. Washington student selected for People to People Ambassador program - to travel abroad
19. National Spelling Bee finalist
20. Coach of little league team which qualified for Little League World Series
21. recipient of Medal of Merit
22. Wohelo Award (Camp Fire Girls)
23. Gold Medal Award (Girl Scouts)
24. \$100 birthday and \$50 wedding anniversary
25. Valedictorian/Salutatorian - "top ten" academic list in high school graduating class
26. National Board Certification for a teacher

Examples of non-extraordinary awards and honors

1. most birthdays and anniversaries
2. members of a high school choir for a good performance
3. constituent generally known in the community to be a good volunteer
4. each student in school district or class who completed DARE
5. each 4th grade student in school district who made significant improvements in their test scores
6. all graduates of a high school
7. mass mailings

Conclusion

The Act does not define the "normal and regular conduct" exemption to RCW 42.52.180 and the Board has had to define that term on a case-by-case basis. The Board has concluded that "normal and regular conduct" does not include sending congratulatory letters at public expense for awards, honors, or civic distinctions which are not extraordinary and which have not been previously awarded or recognized by others. The Board opined in Advisory Opinion 2001 - No. 5, that it appeared that the Legislature had adopted this test in its 1997 amendment to the mailing statute for election year mailings so that legislators have the same ability to send a congratulatory letter in an election year that they have to send the same letter during the non-election years. If the Legislature concludes that a different test, or tests, should apply for congratulatory letters it is, of course, its prerogative to amend the law.