

IN RE WEST
Complaint 2003 - No. 3
August 21, 2003

JURISDICTION DETERMINATION - ORDER OF DISMISSAL

I. Nature of the Complaint

The complaint alleges the following conduct violated the Ethics in Public Service Act (Act).

1. Senator West failed to discipline the staff "in order to avoid political embarrassment."
2. Senator West failed to comply with the complainant's public records request for copies of legislative employee's electronic mail.
3. Senator West used his position as Senate Majority Leader to retaliate against Senate staff person Kelly Hinton, and Senator Pam Roach, and to intimidate other Senators.
4. Senator West threatened a Senator and a lobbyist.

II. Jurisdiction

The authority of the Board is defined in **RCW 42.52.320(1)**.

The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

III. Issue

Do the allegations present issues subject to the Board's jurisdiction?

IV. Answer

No. We conclude the following.

1. There is no provision of the Act which addresses a legislator's failure to discipline an employee for improper e-mail use which does not involve either the employee's use of public resources for political campaigns or the improper receipt or delivery of anything of economic value.
2. The Superior Court is the proper forum for appealing Senate decisions denying or restricting access to records requested by an individual under the Public Records Act.
3. Under the alleged facts, claims of retaliation and intimidation are workplace issues not within the jurisdiction of the Board.

Allegation # 1

Two provisions of the Act relate to conduct which could involve the complicity or acquiescence of a legislator or legislative employee who have knowledge or reason to believe that certain conduct would violate the Act.

RCW 42.52.180 - Use of Public Resources for political campaigns

Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section (in pertinent part).

RCW 42.52.170 - Giving, paying, loaning, etc., any thing of economic value to state employees

No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150.

(.040 - assisting in transactions and sharing compensation; .110 - receiving compensation for performing or omitting or deferring the performance of an official duty except as authorized by law; .120 - limitations on compensation for outside activities; .140 - receipt of gifts with reasonable expectation of influence or as a reward; .150 - limitations on gifts).

Analysis

The complainant requests the Board to characterize the avoidance of "political embarrassment" as an ethics issue. It is not. The Act does not address "political embarrassment." The conduct prohibited in either RCW 42.52.170 or .180 is not in question according to the alleged facts.

Allegation #2

In 1972, the voters adopted Initiative 276 that was codified as Chapter 42.17, which includes provisions regarding public access to the records held by public agencies. RCW 42.17.250 et seq. The public records portion of the law is not administered by the Public Disclosure Commission or any other agency. If a state agency has denied access, the requester may ask the Attorney General to provide a written opinion on whether the record is exempt. RCW 42.17.325. Attorney General opinions are not binding on the courts or agencies. *Washington Administrative Law Practice Manual*, 2002 Edition, Chapter 4, Public Records. Any person denied access to a record by an agency may bring an action in superior court for review of the agency decision.

RCW 42.17.340 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

RCW 42.17.341 - Application of RCW 42.17.340. The procedures in RCW 42.17.340 govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives.

Analysis

The law on public records provides for appeal in the appropriate court for any person who has been denied an opportunity to inspect or copy a public record. The legislature has removed any doubt as to the applicability of these court procedures to appeals from decisions of the Secretary of the Senate or the Chief Clerk of the House of Representatives with the enactment of RCW 42.17.341.

In accord with the decision of the Board in **Complaint 2003 - No. 2**, an appeal from a decision of the Secretary of the Senate to deny access to records should first be made to the appropriate court.

In addition, no evidence of the complainant's request for public records was discovered in either the House or the Senate. The complainant was notified of this apparent lack of substantiation for this claim and was requested to respond with evidence, if any, of his request. The complainant did not respond.

Allegations #3 and #4

Analysis

RCW 42.52.320 limits the enforcement authority of the Board (previously cited).

No provision of the Act governs the political or personal relationships between legislators or the exercise of the political influence or prerogatives of legislators chosen by their peers to exercise leadership responsibilities.

Claims of retaliation and intimidation most often present workplace issues related to the employer-employee relationship. These relationships are defined in the common law, federal and state statutes which specifically address the rights and responsibilities of employers and employees, the federal and state constitutions, and the *Senate Policy and Personnel Reference Manual*, 2003 edition. The Ethics Act confers no jurisdiction on the Board to adjudicate these particular allegations.

V. Order

Complaint 2003 - No. 3 is dismissed for lack of jurisdiction.

James A. Andersen, Chair