

**COMPLAINT 2004 No. 3**  
**Al O'Brien, Respondent**  
Reasonable Cause Determination  
January 20, 2005

**I. NATURE OF THE COMPLAINT**

The Complaint alleges that Representative Al O'Brien used his state legislative email address in a Seattle Times candidate profile dated October 15, 2004, as his personal contact. The Complaint alleges that this is a violation of RCW 42.52.180.

**II. CONCLUSION**

RCW 42.52.420 and Board Rule 1:D direct the Board, following investigation, to determine whether there is reasonable cause to believe a violation of the Ethics in Public Service Law has occurred. We find that the Seattle Times candidate profile was related to Representative O'Brien's campaign, and there is reasonable cause to believe he used a legislative facility, his legislative email address, to support his campaign in violation of RCW 42.52.180(1), when he supplied his legislative email address as a campaign contact for posting on the Seattle Times candidate profile.

However, we conclude that the action complained of was inadvertent and minor, and further proceedings would not serve the purposes of the Ethics in Public Service Law, Chapter 42.52 RCW.

In reaching this conclusion, it is significant that the campaign related materials were not produced by the legislator, but rather appeared on a newspaper's website that did not expressly state that the legislative email address was a campaign contact. It is also significant that Representative O'Brien's use of his legislative email as a campaign contact was inadvertent. The fact that the questionnaire requested both a private and a public email address, and that he did not submit his legislative telephone in response to the request for a "public" telephone number, support the conclusion that this was an inadvertent mistake.

The Legislature may wish to consider whether the Board should have the authority to dismiss a complaint, following the investigation but before the reasonable cause determination, if the complaint is inadvertent and minor.

**III. PROCEDURAL HISTORY**

Complaint 2004 No. 1 was received by Board Counsel on October 26, 2004. The Complaint was transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because it alleged a violation of RCW 42.52.180 by a legislator. The results of the investigation were submitted to the Board on December 2, 2004.

**IV. DETERMINATIONS OF ALLEGATIONS OF FACT**

The Seattle Times produces an on-line candidate profile called "The Booth," on which it posts information regarding candidates for public office. When inviting candidates to submit information, the Seattle Times describes the website as "a public service the Seattle Times is providing to its readers, to give voters the most complete information possible about the candidates . . ." In order to

participate, a candidate puts information into an on-line form questionnaire provided by the Seattle Times. The questionnaire has numerous sections. The section at issue in this Complaint has the caption "Campaign Contact Information" and requests addresses, telephone numbers, land email and website addresses. The questionnaire requests two phone and email addresses, a "Public" and a "Private."

Representative O'Brien personally prepared his responses to the questionnaire. In the space for "Public" email, he submitted his legislative email address. In the space for "Public" telephone, he submitted the number he uses for his campaign.

The Seattle Times posted Representative O'Brien's candidate profile on October 15, 2004. It contained several sections related to his experience, endorsements, campaign theme, and positions on legislative issues. The section at issue in this Complaint stated:

**Contact**

22208 48 Ave West PO Box 198

MOUNTLAKE TERRACE, WA 98043

(425)771-2141

obrien\_al@leg.wa.gov

**Campaign Web site:**

www.alobrien.com

In this investigation, Representative O'Brien stated that it was a "mistake" to submit his legislative email address when filling out the questionnaire. He pointed out that the questionnaire requested two email addresses.

His legislative assistant stated there was no noticeable increase in the number of emails received in the Representative's legislative email account after the profile was posted on the Seattle Times website.

**V. DETERMINATIONS OF LAW**

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting a campaign for election. The pertinent portion of the statute provides as follows:

42.52.180 Use of public resources for political campaigns. (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. 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. Facilities of an agency include, but are not limited to, use of stationary, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

In the Reasonable Cause Determinations and Orders for Complaints 2001 - No. 5 and 2002 - No. 2, the Board has concluded that legislative contact information is a "facility of the Legislature"; and that RCW 42.52.180 prohibits use of the legislative contact information in campaign materials. Legislative contact information includes the legislative hotline telephone and regular telephone numbers, and mailing and email addresses. In Complaint 2001 - No. 5, the campaign materials were response cards used while door belling for campaign purposes during the three-month period preceding the election. In Complaint 2002 - No. 2, the materials were newsletters regarding the legislator, printed at campaign expense and mailed to voters who were not in the legislator's current district boundaries, but who had been recently placed in the legislator's district for future elections.

The purpose of the Seattle Times candidate profile was to provide voters with information about candidates in the upcoming election. The questionnaire requested "Campaign" contact information. The candidate profile was therefore campaign related. Representative O'Brien acknowledges it was a mistake to use his legislative email address when he responded to the Seattle Times.

On the other hand, the website does not state that the legislative email address is a "campaign contact," only that it was "contact" information. Therefore, from the perspective of the public, the connection between the legislative email address and the campaign was implicit only, given that the website related to candidates. The website did not expressly communicate to the public that the legislative email was campaign contact for the Representative.

## **VI. ORDER**

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that no further proceedings are warranted in this case.

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James A. Andersen, Chair