

COMPLAINT 2006 – NO. 12
In Re Eickmeyer

REASONABLE CAUSE DETERMINATION, STIPULATION AND ORDER

February, 2007

I. Nature of the Complaint

The Complaint, filed by the Board on its own motion pursuant to RCW 42.52.410(2), alleges that Representative William Eickmeyer (Respondent) directed or authorized his Legislative Assistant to use the facilities of an agency, commonly referred to as public resources, for the private benefit or gain of himself or another. It is alleged that these activities on behalf of the Respondent and his employer, the Sound Institute of Family and Children's Services (Institute), violated RCW 42.52.160.

The Complaint was filed on December 14, 2006. The Board concluded it had both personal and subject matter jurisdiction. The Complaint is based on facts discovered during the investigation of the Respondent's assistant and described in the findings of fact in the Order issued by the Board in that case – Complaint 2006 – No. 8.

II. Conclusion

The Board concludes there is reasonable cause to believe that Respondent violated RCW 42.52.160.

III. Findings of Fact

1. Respondent was, during all times pertinent to this complaint, a member of the House of Representatives representing the 35th Legislative District and employed as the Executive Director of the Institute. During this time his Legislative Assistant was Jean McMilian.

2. On at least five occasions, Respondent impliedly or explicitly directed his assistant to use her state phone to place calls to the Institute on behalf of the Institute and/or on behalf of the Respondent in his role as Executive Director.
3. The State's SCAN system was used to place these long distance calls. The calls were not the result of mistakes or confusion about whether they were personal or legislative-related.
4. The following personal calls were identified:
 - a. On February 15, 2005 at 12 PM the assistant received a voice-mail message asking the Respondent to call the Institute regarding the attorney representing the Institute's former bookkeeper who had been charged with embezzlement. At 1:12 on the same day the assistant returned the call.
 - b. On March 9, 2005 at 10:04 AM the assistant received a voice-mail message from the Institute asking the Respondent to call regarding issues concerning the Institute's parking lot. At 1:28 PM the same day the assistant returned the call to the Institute.
 - c. On January 18, 2006 at 11:22 AM the assistant received a voice-mail message from the Institute regarding the Institute's bingo manager. At 11:59 AM the same day the assistant returned the call.
 - d. On February 7, 2006 at 11:15 AM the assistant received a voice-mail message from the Institute asking the Respondent to call about the sale of an espresso machine owned by the Institute and at 1:31 PM the same day the assistant returned the call.
 - e. On February 17, 2006 at 1:54 PM the assistant received a voice-mail message from the Institute concerning snow tires and she returned the phone call that day at 1:58 PM.
5. Numerous other calls were made from Respondent's legislative office to the Institute but the nature of these calls is uncertain.
6. Three documents were prepared by the assistant, in her legislative office, on behalf of Respondent in his capacity as Executive Director and/or on behalf of the Institute. These documents were prepared at the request or direction of the Respondent.
 - a. Letter dated April 9, 2003 regarding Respondent's proposal to alleviate the Institute's ingress and egress problems associated with a Department of Transportation project.
 - b. Letter dated October 28, 2003 sent to an unsuccessful applicant for a job with the Institute and which explained the circumstances surrounding the selection process for the position.
 - c. Letter to Institute staff dated February 3, 2006 concerning personnel-related issues.

IV. Conclusions of Law

The pertinent statute is RCW 42.52.160, which prohibits personal use of staff, money or property under a legislator's or legislative employee's official control or direction for private benefit or gain unless the use of public resources is to benefit others as part of official duties.

This statute permits the Board to adopt rules providing for exceptions to the prohibition in limited circumstances (sub 3). The Board has, in Board Rule 3, provided for limited exceptions. Absent the Board's exercise of this discretionary authority to craft exceptions to the ban on personal use of state resources outside official duties all such personal use would be prohibited. However, the Board has recognized limited, common-sense exceptions to the ban including; local phone calls to make sure an employee's child has arrived home safely from school; business phone calls by a citizen-legislator using a state telephone which are local or, if long-distance, paid for with a personal credit card; and an unintentional, returned, long distance personal phone call in a situation where the name and phone number of the caller who left the message was not recognized and the legislative employee reimburses the legislature pursuant to Senate and House of Representative's telephone-use policies.

None of the exceptions permit the personal use of public resources by a legislator to assist him or her in carrying out the duties and responsibilities of private employment by authorizing or directing staff to use the legislature's SCAN line or office equipment in furtherance of the duties and responsibilities associated with that private employment. Personal use of consumables such as paper and envelopes is never permitted, regardless of the cost to the state (Legislative Ethics Manual, 2007 edition, pages 85-89).

The use of public facilities to assist the Institute and/or the Respondent under the facts of this case is a violation of RCW 42.52.160 (see, most recently, Complaint 2005 – No. 1 and Complaint 2006 – No. 8).

V. Order

The Board concludes that Respondent violated RCW 42.52.160 when (1) he authorized or directed his Legislative Assistant to place long distance phone calls at state expense on behalf of himself as an employee of the Institute and on behalf of the Institute, and (2) when he authorized or directed his Legislative Assistant to use the public resources to prepare certain correspondence on behalf of himself as an employee of the Institute and on behalf of the Institute.

Board Rule 1(H) provides that a complaint may be settled by a stipulation.

Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Respondent has violated RCW 42.52.160 and shall be penalized by a Letter of Instruction and that this Order shall constitute the Letter of Instruction. In addition, within fifteen (15) days of the date this Order is entered the Respondent shall undergo one-on-one ethics training with House Counsel with an emphasis on issues related to personal use of public resources. House Counsel's verification of training together with materials describing the agenda of such training will be submitted to the Board and shall constitute part of the public record of this case.

Wayne Ehlers, Chair

Date:

I, William Eickmeyer, hereby certify that I have read this Reasonable Cause Determination, Stipulation and Order in its entirety; that I stipulate to facts, conclusions of law and penalties; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel and fully understand its legal significance and consequence. I agree to sign it as a resolution of this matter and have voluntarily signed.

William Eickmeyer

Date:

Board member Donna L. McKereghan dissents on the grounds that the proposed sanction is not proportional in relation to the sanctions imposed in Complaint 2006 – No. 8, In Re McMilian, because the Respondent in his supervisory role directed his staff to use public resources on behalf of Sound Institute.