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COMPLAINT 2012 – NO. 3

In Re Hargrove

DETERMINATION OF NO REASONABLE CAUSE AND ORDER OF DISMISSAL

October, 2012

1. Nature of the Complaint

The complaint was filed on August 29, 2012. It alleges that Rep. Mark Hargrove violated the Ethics in Public Service (Act) when he included a legislative website address in his campaign material. The applicable statute is RCW 42.52.180, which prohibits the direct or indirect use of legislative facilities to assist the campaign of a person for elective office.

The Board has determined that it has both personal and subject-matter jurisdiction.

2. Conclusion

The Act does not prohibit the inclusion of legislative website addresses in printed campaign materials or on a campaign website. We determine there is no reasonable cause to conclude that Rep. Hargrove violated the Act.

3. Determinations of Fact

Rep. Hargrove is a candidate for reelection in 2012, and has doorbelled with a campaign handout which contains the legislative website address of the Republican members of the House of Representatives. Prior to door belling with this handout, he received informal advice from the House designated ethics adviser that the inclusion of this website address would not violate the Act.

4. Determinations of Law

Board opinions identify a narrow class of legislative contact points which may not be advertised in campaign materials.

- i) In Complaint Opinion 2001 – No. 5 (Marine), the question was whether a legislator could use the legislative toll-free hotline number by including that number in a campaign handout while door belling. The Board determined the practice was not permitted by the Act because the hotline system is a facility of an agency (public resource) and may not be used to assist a campaign, pursuant to RCW 42.52.180. The Board concluded that the use of the number inferred that people could use this public resource to respond to campaign overtures.
- ii) A similar question was presented in Complaint Opinion 2002 – No. 2 (West). In this case the campaign material contained, in addition to the legislative hotline number, the senator's legislative phone number and his legislative mailing address and the legislative phone number and address of his Legislative Assistant. The material also included government website addresses but the Board focused on the phone numbers and personal addresses. The Board determined that RCW 42.52.180 does not permit the use of the legislative toll-free hotline number, or personal legislative addresses or telephone numbers in a campaign document "*...because of the inference that incumbent legislators running for reelection are inviting people to use these public resources for campaign purposes.*" The prohibition on the use of these legislative contact points was upheld in Complaint Opinion 2009 – No. 9 (Short).

The West opinion also rejected the idea that the campaign use of the toll number and the personal legislative contact points would not violate the Act if the campaign material contained a warning that their use was limited to legislative purposes.

The law on links from campaign websites to legislative websites is analogous to the Board opinions controlling the present complaint. Legislative websites have become, and are viewed, as important sources of legislative information. Rep. Hargrove could have used his campaign website to provide the same legislative website address complained of here, and could have provided a direct link to that site.

- i) In 2000, the Board issued its first opinion on campaign website links to legislative resources. The Board was trying to balance the two competing public policies of liberal access to public records and the prohibition against the use of public resources for campaign purposes. The Board concluded that a single link was permitted but that certain discretionary materials must be removed from legislative websites by June 30, in an election year. Newsletters, press releases, and audio and video clips were identified as examples of discretionary materials (Advisory Opinion 2000 – No. 2).

- ii) The question in 2004, was whether these discretionary materials could be posted on a legislator's private, non-campaign website. The answer was "yes," provided they were removed by June 30, in an election year. The Board also concluded that copies of legislative materials could never be posted on campaign websites – *"It is equally clear that the legislator's campaign website may not post these discretionary materials at any time as that use would constitute a direct use of public resources in support of a political campaign"* (Advisory Opinion 2004 – No. 1).

The prohibition on posting discretionary materials on campaign websites was upheld in Complaint Opinion 2006 – No. 5 (Nixon) and Complaint Opinion 2006 – No. 7 (Schmidt). These opinions also reaffirmed the then-existing requirement that discretionary materials be removed from legislative websites after June 30, in an election year.

- iii) In Advisory Opinion 2009 – No. 1, the Board overturned the single-link limitation from campaign to legislative websites. The Board reasoned the limitation did not serve the purposes of RCW 42.52.180, especially since a legislator's discretionary materials such as newsletters, press releases, and audio and visual clips were removed from the legislative sites by June 30, in the legislator's election year.
- iv) A legislative amendment to RCW 42.52.180 in 2010, (2010 c 185 sec.1) added an exception which states that .180 shall not apply to the following activity:

...
...

(c) The maintenance of official legislative websites throughout the year, regardless of pending elections. The websites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative websites of legislators seeking reelection shall not be altered between June 30th and November 15th of the election year. The website shall not be used for campaign purposes.

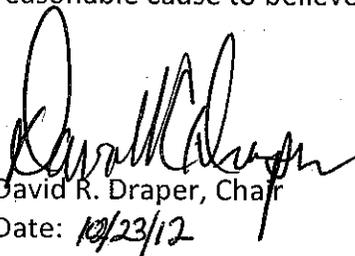
5. Summation

- i) The Legislature's website addresses may be provided in printed campaign materials.
- ii) Neither printed campaign materials nor campaign websites may include the legislative toll-free hotline number, legislative phone numbers, legislative email addresses, or legislative mailing addresses. This practice is not permitted even if the campaign included an admonishment or warning that the use of these contact points was limited to legislative purposes.

- iii) Discretionary legislative materials may not be posted on campaign websites.
- iv) Campaign websites may be linked to legislative websites with no limit on the number of links.
- v) Legislative websites may contain discretionary materials, including newsletters and press release, regardless of pending elections. The websites of legislators seeking reelection may not be altered between June 30th and November 15th of the election year.

6. Order

It is HEREBY ORDERED, ADJUDGED AND DECREED that the complaint is dismissed for lack of reasonable cause to believe that the Ethics in Public Service Act was violated.


David R. Draper, Chair
Date: 10/23/12