

Legislative Ethics Board

101 LEGISLATIVE BUILDING
PO BOX 40600
OLYMPIA, WA 98504-0482
360-786-7540
FAX: 360-786-1553
www.leg.wa.gov/eb

MIKE O'CONNELL - COUNSEL
Mike.Oconnell@leg.wa.gov

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COMPLAINT 2013 – NO. 2

In Re Blake

DETERMINATION OF NO REASONABLE CAUSE, NO JURISDICTION AND ORDER OF DISMISSAL

October, 2013

I. Background and Nature of the Complaint

Complaints were received in late July and early August, 2013. The complaints allege that Representative Brian Blake (Respondent) violated the Ethics in Public Service Act (Act) when, in his capacity as Chair of a House committee, he cut-off citizen testimony and was rude and interruptive. The Complainants conclude that these actions showed favoritism to supporters of the bill under consideration, violated their rights to freedom of speech and violated a rule of the House. No provisions of the Act are cited in support of the claims of unethical behavior.

Because the multiple complaints address the same committee hearing and allege the same facts, the Board will treat them as one complaint. A video recording of the committee was reviewed.

II. Conclusions

1. There is no reasonable cause to believe that in this case the turning off of the microphone or the cutting short of testimony constitutes a violation of the Act. The Act contains no provisions which would make either action in this case an ethics violation.
2. There is no reasonable cause to believe that in this case the interruption of the testimony of opponents of the bill while allowing supporters of the bill to testify uninterrupted constitutes a violation of the Act. The Act contains no provisions which would make this alleged unequal treatment on this bill an ethics violation.
3. The Act does not confer jurisdiction on the Board to adjudicate a constitutional claim that Complainant's rights to freedom of speech were violated.

4. There is no reasonable cause to believe that in this case the alleged violation of a House rule which encourages committees to conduct public hearings in a balanced fashion constitutes a violation of the Act.

III. Determinations of Fact

There is reasonable cause to believe the following are the pertinent facts of the case.

1. On February 20, 2013 the Respondent chaired a hearing of the House Committee on Agriculture and Natural Resources. One of the bills under consideration at that meeting was House Bill 1894. This bill attracted public testimony for and against and three of the individuals who testified against the bill filed an ethics complaint.
2. Respondent turned off the microphone of one of the Complainants before three minutes expired. The Respondent had announced that three minutes would be allotted to each person who wished to testify on the bill.
3. Respondent interrupted the testimony of the other Complainants.
4. House Rule 24(11) relates to testimony in committees and reads as follows.

Insofar as practicable, testimony in public hearings should be balanced between those in support of and in opposition to proposed legislation, with consideration given to providing an opportunity for members of the public to testify within available time.

IV. Determinations of Law

1. The Act does not address the issue of whether the House must provide a specified time for individual testimony. Accordingly, the Respondent's actions in curtailing an announced period of time available for testimony does not create reasonable cause to believe the Act was violated.
2. The Act does not address the interruption of testimony on this bill or the issue of whether those in favor of the bill were allowed to testify without interruption. There is no reasonable cause to believe that Respondent's actions in this regard constitute a violation of the Act.
3. The Act does not grant the Board jurisdiction to adjudicate constitutional issues (citations omitted). The claim that a constitutional right to freedom of speech was violated in this case is dismissed for lack of subject-matter jurisdiction.

4. There is no reasonable cause to believe that in this case a violation of the House rule which encourages committees to conduct public hearings in a balanced fashion constitutes a violation of the Act.

Discussion – Determination of Law #4.

In certain circumstances the Board will opine on legislative committee meetings and it may also review an internal rule of the Legislature if that rule relates to the Act. The Board does not dismiss on jurisdictional grounds the allegation in this case that a committee hearing was unfair or was conducted in violation of a rule.

The Act provides that the House may adopt rules, consistent with the Act, for its internal use to protect against violations of the Act (RCW 42.52.200) and it follows that an alleged violation of this type of rule could be the subject of an ethics inquiry.

The Board has also issued opinions on legislative committee procedures related to committee meetings (Advisory Opinion 1997 – No. 9 – Board will assert jurisdiction when asked if and under what conditions a committee can hold a hearing on a pending ballot measure) and committee mailings (Advisory Opinion 1997 – No. 12 – letters sent by a committee chair on committee stationery without the authority or approval of committee members are subject to the rules on mailing restrictions in an election year).

In this case the House Rule on preferred committee witness procedures does not relate to or invoke the protections or sanctions provided for in the Act.

V. Order

It is HEREBY ORDERED, ADJUDGED AND DECREED that the allegation that Respondent violated a constitutional right to freedom of speech is dismissed for lack of jurisdiction, and that the remaining allegations are dismissed for lack of reasonable cause to believe the Act was violated.



Kristine F. Hoover, Chair

Date: *10/10/2013*