Legislative Ethics Board

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COMPLAINT 2014 – N0. 2

In Re Harris

DETERMINATION OF NO REASONABLE CAUSE – ORDER OF DISMISSAL
Private Benefit or Gain
July, 2014

1. **Nature of the Complaint**

The complaint alleges that Representative Paul Harris (Respondent) used public resources, including his Legislative Assistant (LA) in an "attempt to advance Mr. Harris' personal fortune." The pertinent statute is RCW 42.52.160.

Use of persons, money or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his official custody, for the private benefit or gain of the officer, employee, or another.
(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.
(3) ...

The Board has personal and subject-matter jurisdiction.

The complaint was investigated pursuant to RCW 42.52.420 and the Board discussed the case at regularly scheduled meetings on April 15, and June 17.

2. **Determination of Reasonable Cause**

Based upon the facts known to the Board at this time, a majority of the Board concludes that reasonable cause does not exist to believe that Respondent violated the Ethics Act (Act).

3. **Determinations of Fact**

Respondent is employed as a sales representative for Quick Collect Incorporated (QCI). QCI is a collection agency headquartered in Vancouver, Washington. It is incorporated in Washington and Oregon and is licensed to perform collection activities in both states. The head of QCI, Mr. Garner, states that except for attributes of common ownership QCI Washington and QCI Oregon are separate business entities with different employees, different areas of service and separate compensation plans. Respondent has been employed by QCI Washington for 3-4 years and is paid on a commission basis for his service on behalf of existing Washington clients and his procurement of new Washington clients. His territory extends from Vancouver to Bellingham, and his clients are groups of doctors and dentists. Respondent and his employer represent that Respondent receives no compensation based upon overall company performance or the performance of QCI Oregon.

QCI does not contract with state agencies. Mr. Garner states that his experience is with groups of medical personnel, not state agencies, and he expresses no interest in altering that business approach. For approximately twenty years, OCI Oregon represented a group of doctors known as the University Medical Group (UMG). UMG consisted of several hundred doctors who worked for the Oregon Health Science University (OSHU). OSHU is a state institution. In 2010 or 2011, Oregon officials decided that UMG collection practices should be combined or subsumed into the collection process in existence for OSHU and perhaps other state agencies and institutions. That decision marked the end of the QCI contract for collection of future UMG debt. QCI Oregon represents that it has no intent or hope of regaining the UMG account for future debt.

In late November or early December 2013, QCI Oregon employees were meeting with Mr. Garner in his Vancouver office and, according to Garner, mentioned a conversation they had with a former client who had belonged to UMG. The individual expressed the feeling that his group had had a new collection practice forced upon them and that when QCI had been doing the collecting "at least we got something back."

Mr. Garner expressed his interest in knowing "what was going on down there" to make the former client so upset and what kind of data would be available regarding the success of the current collection agency on the collection of bad debt? Respondent, in the office on other business, volunteered to contact the State of Oregon and ask for the information because, he said, it should be public information and he often requested public information for constituents. Garner is a constituent of Respondent's and they have known each other for approximately twenty years. He accepted the offer because, he states, he didn't know how to get what he was interested in.

Respondent asked his LA to contact Oregon personnel, request information on their bidding process, and obtain a copy of the current collection contract. Perhaps four phone calls and eight email exchanges took place with the use of public resources. The material was provided to Respondent and, in turn, to Mr. Garner. Late in December, Respondent learned from Mr.

Garner that the material was viewed as useless and confusing and did not explain why the former client had complained.

Respondent states he was upset with the response so he sent an email from his personal account to express his frustration and, for the first time, he specifically identified what information was sought. In that email he also emphasized that his employer had represented the group of doctors in the past and had done so successfully. He states further that his frustration was the result of what he viewed as an inadequate response to a public records request as well as Oregon's practice of awarding state agency collection contracts based upon a percentage basis rather than based on the dollars returned to the client. In his view, Oregon was doing a disservice to taxpayers. Respondent says that at the time this email was sent, he was aware that QCI was not interested in trying to regain the UMG account because UMG was for all practical purposes no longer an entity QCI would contract with as they were now under a state agency collection process. Respondent also identified himself as a Washington legislator because "I thought they should know that so it would help me get this information I requested a little quicker, that I would get a better result."

Oregon responded to this last request, advised there could be charges for the provision of the requested records, and provided a public records contact. Respondent states this was the first time anyone had mentioned charges or a particular office to contact. In his view, this appeared to be a delay tactic.

An Oregon employee who works for procurement services filed this complaint. The Complainant alleges that the sequence of events "appears to suggest that using his (Respondent's) company would yield greater results and that the use of public resources was designed "to advance Mr. Harris' personal fortune. Respondent counters by pointing out he knew his company wasn't going to get UMG back but that Oregon should listen to what he had to say with regard to using a different system of collection and that "yes," the system used by his company was a superior one and Oregon should follow it out of fairness to Oregon taxpayers. Mr. Garner states that Respondent's ability or inability to get the requested information would not affect Respondent's employment. He is a Washington, commissioned salesperson; his position and compensation at QCI is based upon his performance in that capacity, not whether he is successful as a legislator in a records request. At this time, Mr. Garner states that he probably is not interested in pursuing the records request. He had a business person's curiosity and appreciated Respondent's offer to help because "he knew nothing about how to pursue public records."

4. **Analysis**

1. The perception of the Complainant that Respondent was promoting his employer in an effort to gain the collection business of former client UMG is understandable. Respondent's personal email, read in isolation, supports that perception. However, the investigation reveals facts which, assuming their validity, lead a majority of the Board to

the conclusion that there is no reasonable cause to believe that Respondent violated the prohibition against the use of public resources for private gain.

2. This conclusion is based upon three determinations of fact: (1) Respondent would not personally benefit if QCI did reenter the UMG collection market, nor did he suffer a personal detriment when QCI lost the UMG contract – in other words, there are no facts to suggest that QCI Oregon's activities impacted Respondent; (2) Respondent's belief, supported by his employer, that QCI Oregon was not in competition for this contract with an Oregon state agency leads to the conclusion that public resources were not used to improperly benefit Mr. Garner or QCI; (3) absent any facts to the contrary, it may be concluded that Respondent's QCI job security is not affected by this flap over public records.

3. Respondent proposes that because Mr. Garner is a constituent, as is QCI (see e.g. Advisory Opinion 2006 – No. 1), he may perform as a legislator on their behalf in the same fashion and to the same extent as he may assist any other constituent. The present case illustrates that this proposition is too broad. The facts of each case, alleging improper assistance to a constituent, must be examined - especially when that constituent is also the legislator's employer. The potential for improper private benefit or gain is naturally greater when a legislator's own employer is involved.

4. The Board has recognized that legislators have discretionary as well as non-discretionary legislative duties (Advisory Opinion 1995 – No. 17), and that public resources may be used to perform these discretionary duties when a constituent needs assistance in gathering facts when that constituent has an issue with a public agency so that the legislator may fully understand the issue to see if the constituent can be helped (Advisory Opinion 2006 – No. 1). The procurement of public records for a constituent may be viewed as fact-finding; however, when that constituent is also the employer of the legislator those efforts may cross the ethics line if the legislator stands to gain financially or if his or her job security is demonstrably affected by those legislative efforts.

5. The Board strongly recommends that legislators exercise more thoughtfulness when performing this type of legislative service for a constituent who is also the legislator's own employer. In this case, had the Respondent used public resources to acquire the Oregon public record contact information and provided that to QCI, Mr. Garner could have framed the request himself and corresponded with Oregon on his own, without further involvement of Respondent. The probable result of that course of action would have been to avoid this complaint process as well as the perception that some type of unethical conduct was taking place. The Board feels it would be both wise and appropriate at this time to let Mr. Garner decide whether or not to pursue the information he seeks on his own. Mr. Garner is now able to do so because Respondent has identified who to ask and how to go about it.

6. As stated in No. 1 above, Complainant's perception was reasonable. The Board believes that had the facts been slightly different the determination of no reasonable cause may have been different as well. This determination is based significantly on the fact that Respondent would not benefit from the activities of QCI Oregon. The facts also show that there would be a substantially greater possibility that Respondent would benefit if these efforts were on behalf of QCI Washington. Respondent is paid on the basis of his procurement of new collection clients and his services to existing clients in Washington. If public agencies in Washington were to make a business decision at odds with QCI Washington collection practices, and Respondent began using public resources to argue with them about that decision while promoting his employer's own collection methods, the possibility of personal benefit is present and the perception of wrongdoing is magnified. The Board strongly advises Respondent that he refrain from using public resources or the influence of his office in a fashion that could be perceived as promotion of his Washington employer or that employer's collection practices.

7. Respondent's identification of himself in his email to Oregon personnel as a Washington legislator does not constitute an improper use of the legislative position (RCW 42.52.070). "Improper use of legislative position has never been characterized by the Board as simply involving the reference to one being a Representative or a Senator (Complaint Opinion 2007 – No. 4)."

8. **Order**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint be dismissed for lack of reasonable cause to believe Respondent committed a violation of the State Ethics Act.

Kenny Pittman, Vice-Chair

July 11, 2014

COMPLAINT 2014 – NO. 2

In Re Harris

Concurring Opinion – Dr. Kristine F. Hoover

Because of the Board's precedents, I concur with the majority decision to dismiss the complaint for lack of reasonable cause. As stated in the opinion of the Board, although legislators may perform legislative duties on behalf of their employer/constituent, "the present case demonstrates that this proposition is too broad." I am concerned that this opinion does not go far enough in that it lacks a sense of direction for the future conduct of legislators when the issue is the use of public resources, or the use of the legislative office, when the legislator's employer is involved. My focus is on the definition of "benefit" as well as legislators' judicious judgment to determine appropriate behaviors that encourage public trust.

Regarding the definition of the term "benefit," my view is that the analysis in cases involving RCW 42.52.160 should not be confined to whether the legislator derives a financial benefit. I suggest there is more involved with the term "benefit" than monetary compensation. A legislator's efforts to assist his or her employer can lead to a higher evaluation of the employee's abilities and talents and enhance the employer's view of the employee's loyalty and trustworthiness. Such efforts may in fact strengthen the employee's position within a business and confer benefits not measured by a paycheck. I believe recognition of private benefits and gains such as these is worthy of consideration in the future.

In addition, it is my opinion that when considering carrying out legislative duties in service to their own employers, legislators would be well served to avoid the appearance of unethical behaviors. Explicitly, legislators could discern in advance the potential for public perceptions of unethical use of public resources when serving their employer/constituent. These efforts could also include identification and analysis of alternative courses of action. Legislators could document that other avenues of meeting the needs of the employer/constituent have been exhausted prior to engaging in activities using public resources that could understandably encourage perceptions of private benefit or gain. Earning and maintain the public trust should be more important to legislators than assisting their employers.

I feel that in this case the majority missed an opportunity to speak to these points and draw a brighter line between what be viewed as routine and acceptable legislative assistance to most who request it, and legislative assistance on behalf of the legislator's employer. I would raise the bar when a legislator's employer is involved, suggesting that "benefits" beyond compensation and financial gain should be considered in the analysis of cases involving RCW 42.52.160, and also that legislators should be highly cautious of service to their employer/constituent than on its face may not maintain and support the public trust.

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Dissenting Opinion – Senator Jamie Pedersen

I believe that there was reasonable cause to determine that Respondent violated RCW 42.52.160 by using state resources (1) that were "under [Respondent's] official control or direction... for the private benefit or gain of [Respondent] or another" (2) in a way that was outside of the scope of Respondent's "official duties". I therefore respectfully dissent from the majority's decision in this case.

I. Facts

The undisputed facts indicate that Respondent used his legislative assistant's services and the state computer system on multiple occasions to assist a constituent to request information from an Oregon state agency.[1]

II. Law

I believe that there are two important questions in this case. First, was Respondent's advocacy properly part of his "official duties"? Second, was the purpose of Respondent's advocacy "the "private benefit or gain of [Respondent] or another"?

A. Official Duties

The Board's leading opinions regarding the meaning of "official duties" require that there be a nexus between the use of state resources and Washington state legislative business. Complaint Opinion 2005-No. 7, *In Re Green* found that Representative Tami Green had violated RCW 42.52.160 by using state letterhead to advocate for employees in a labor dispute that was purely private and did not involve her official duties. After several legislators questioned this outcome, the Board clarified that a legislator's "official duties" could include advocacy for constituents, but only when there was a connection between the matter at issue and the state government.

> When a legislator becomes an advocate for a constituent, public resources and the office of the legislator may be used on behalf of that constituent if a government official or government office is involved or if the constituent is seeking assistance on legislative issues. If either of these two conditions is met, there is a sufficient and tangible legislative nexus to conclude that the advocacy is within the scope of a legislator's employment and/or within his or her official duties.

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[1] The Board has previously determined that both individuals (such as Mr. Garner) and business entities (such as Quick Collect, Inc.) may be considered constituents. *Advisory Opinion 2006 – No. 1* at 2.

Advisory Opinion 2006 – No. 1 at 6.

Because the inquiry is framed as being about "nexus" – the connection between the issue and the official duties – I understand the Board to have been speaking primarily about Washington state government officials or offices, and perhaps about instrumentalities of the state of Washington (such as a city or county government or s school district). I do not believe that the Board intended its advisory opinion to extend to the governments of other states or foreign countries, with respect to which a legislator has no authority or responsibility. In my view, there is NO nexus between the issue on which Respondent was advocating and Washington state legislative business. Therefore, the exception set forth in RCW 42.52.160(2) does not apply.

B. Private Benefit or Gain

The remaining legal question, then, is whether Respondent's purpose in deploying state resources was the "private benefit or gain" of Respondent; Quick Collect, Inc.; or Mr. Garner. I believe that the majority's definition of "private benefit or gain" – which focuses exclusively on the words "benefit" and "gain" and apparently requires a direct financial benefit for the employee or the business – is far too limited. *See Majority Opinion* at 3-4. The majority incorrectly analyzes only whether, with the benefit of hindsight, anything was actually gained personally by Respondent (or his constituent) through the use of state resources. Instead, the focus should be on whether the benefit of the use of state resources was primarily *public* or *private*.

In my opinion, there is little question that the beneficiary of the use of taxpayer-funded resources in this case was *private*, not *public*. We do not, of course, know what Respondent, his private employer, or its controlling shareholder thought might be the outcome of the contact with the state of Oregon. Could a case be made to win the collection business back? Could the knowledge about the competitor's services assist them in pricing or other business development? Would success in gaining the information help enhance Respondent's stature or reputation with his boss? Some or all of these things may have been on their minds; but I think that it is fair to say that the primary beneficiaries were uniformly private. There is no suggestion that there was any general public benefit for the taxpayers of the 17th legislative district or the taxpayers of the state of Washington.

III. Conclusion

Washington through its history has used the model of a citizen legislature in which many legislators have other employment. I believe that there are many benefits from this system, including the breadth of perspective that people bring to the legislative process and substantive knowledge and expertise in a wide variety of businesses and professions. But there are pitfalls as well, including the possibility of conflicts of interest or competing duties.

Although I appreciate the numerous warnings embedded in the majority opinion about the greater potential for "improper" private benefit or gain when a legislator's employer is involved, I am concerned that the majority's finding of no violation in this case appears to bless

the use of state computer facilities and the time of a legislative assistant to advance the private interests of a legislator's outside employer.

I fear that this decision will invite more ethically and legally questionable use of state resources. In my judgment, we should draw a much brighter and firmer line for legislators to avoid using the power and resources of their offices to benefit the business of their outside employers. I therefore dissent from the majority's opinion.