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COMPLAINT 2015 – NO. 1

In Re Fagan

Personal and Campaign Use of Public Resources
June, 2015

DETERMINATION OF REASONABLE CAUSE – STIPULATION AND ORDER

I. Nature of the Complaint – Background

The Complaint (Exhibit 1) was filed with the Legislative Ethics Board (Board) on January 7, 2015. The first opportunity for the Board to commence preliminary discussions on the materials offered in support of the allegations was a regularly scheduled board meeting on February 10. An investigation was ordered and it was performed by Wilson Investigative Services.

The Complaint alleges that former Representative Susan Fagan (Respondent) committed a number of violations of the Ethics in Public Service Act (Act) through her submittal of, and payment for, travel expenses.

The Board received the investigative report (report) (Exhibit #2) at its next regularly scheduled meeting on April 21. Respondent has had private legal representation during the course of these proceedings.

Respondent resigned from the House of Representatives on May 1, 2015. Her resignation letter (Exhibit #3) referenced issues surrounding her legislative mileage reimbursement records and acknowledged some of the issues were problematic. Respondent denied that she attempted to derive personal gain through travel reimbursement and attributes the discrepancies to her careless recordkeeping.

II. Jurisdiction

The Board has personal and subject-matter jurisdiction. The statutes at issue are RCW 42.52.160 and RCW 42.52.180.

.160 provides, in pertinent part:

- (1) *No state officer or state employee may employ or use any person, money or property under the officer's or employer's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.*

...

.180 provides, in pertinent part:

- (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.*

III. Reasonable Cause

If the Board determines there is reasonable cause to believe the Act or a board rule adopted under the Act has been violated, it will hold a public hearing or it may accept a stipulated settlement (RCW 42.52.430 and Rule 1-H).

Based upon the Complaint, the records of the House of Representatives (House), the investigation and the written statements of the Respondent, the Board concludes there is reasonable cause to believe the Respondent violated the Act.

IV. Determinations of Fact

There is reasonable cause to believe that the following are among those facts pertinent to this case and which would be established during the course of a public hearing.

Facts relevant to the allegation the Respondent submitted incorrect information to the House with regard to which account should be charged, which resulted in reimbursement from the wrong account for legislative travel, include the following.

1. Respondent represented the 9th Legislative District for over five (5) years. During that time the boundaries of the district changed slightly but there are no facts to suggest that any boundary changes affected the cities of Spokane or Richland and their physical relationship with the 9th District. The two cities are not in the 9th District.
2. The House administers two different accounts to compensate legislators for their approved legislative-related expenses, including certain travel expenses. Both accounts utilize public funds.

3. One of the accounts may be referred to as the "House Account." This account is used to reimburse legislators for their in-district legislative-related travel if that travel exceeds fifty (50) miles one-way or exceeds one hundred (100) miles in one day. The Complaint describes this account as basically unlimited and most apt to be applied to travel for legislators who represent geographically large districts.
4. The second account may be referred to as the "Member Account." This account is limited in that the House provides a specific amount of money which may be used to defray certain legislative-related expenses incurred by a legislator, including legislative travel. The Member's Account must be used if the legislative travel is out of the member's legislative district, or if the travel does not meet the 50 or 100 mile criteria referred to in #3 above.
5. If a legislator has exhausted the Member's Account, but incurred travel expenses which do not qualify for reimbursement from the House Account, the House will not reimburse and the legislator remains personally liable. Respondent did not deplete this account in 2014.
6. Respondent's method of seeking reimbursement was to contact her legislative staff, advise them of the dates, locations and purposes of the previous month's travel, and direct staff to prepare the necessary paperwork for submission to House Accounting. It was not uncommon for Respondent to submit travel which the LA did not have on the legislative office calendar.
7. Respondent signed each request for reimbursement which is at issue in this case, together with the declaration that: *"I certify under penalty of perjury that this is a true and correct claim for necessary expenses incurred by me and that no payment has been received by me on account thereof."*
8. The investigation of this Complaint was limited to allegations of wrongdoing from January through September, 2014.
9. The Respondent received the Complaint and supporting materials on January 7, 2015. The Respondent advised the House by letter dated February 2, 2015 (Exhibit #4) that she *"...discovered a number of expenses that should have been reimbursed from my 2014 Member Account."*
10. In the letter of February 2, the Respondent requested a total of \$1,104.32 be transferred from her Member Account to the House Account. Respondent identified nine (9) trips which she had charged to the wrong (House) account. Three of these trips were to

Spokane, two were to Richland and three others were outside the 9th District. Respondent had claimed on her reimbursement form that she traveled to Pasco on September 10 (a portion of which is in the 9th District), and that the House Account should be charged. In her letter of February 2, she acknowledges the travel was to out-of-district Spokane.

11. During the time covered by the scope of the Complaint, approximately nine (9) months, legislators were reimbursed at the rate of .56 cents per mile for legislative travel. The \$1,104.32, acknowledged by Respondent as owed by her Member Account, translates to approximately 1,972 miles which were submitted for payment from the incorrect account.

Facts relevant to the allegation Respondent submitted requests for reimbursement and received reimbursement for travel which did not take place, or for travel to events which did not take place, include the following.

12. On January 16, 2015, after this Complaint was filed on January 7, 2015, Respondent offered to reimburse the House for all or part of travel expenses for seven (7) trips between January and the end of September, 2014 because *"...I have discovered the following expenses require reimbursement or partial reimbursement to the House for various reasons (Exhibit #5)."* Accompanying the letter was Respondent's personal reimbursement check payable to the House in the amount of \$545.40.
13. In the January 16, letter the Respondent noted that the reimbursements were due the House because either: (a) a portion of the trip was canceled; (b) the trip never occurred; (c) she was unable to attend; (d) there was no meeting; or (e) the trip was to a different location and out-of-district.
14. In addition to the 7 trips for which reimbursement was offered, the investigation revealed no evidence of any legislative trip taken by the Respondent on August 19, 2014 for which she billed the House Account and received \$71.68 (report, page 1). The Respondent maintained she attended a Clarkston Chamber of Commerce meeting on this date but she was not present. Respondent also claimed she visited the Pomeroy Grain Growers facility earlier in the day but no one at the facility was found that remembered her presence nor was her signature found in the visitor's log book. Respondent contends that these trips did occur and the reimbursements are in order but acknowledges that lack of a record could lead a tribunal to believe otherwise.
15. Further, in addition to the 7 trips for which reimbursement was offered, the Respondent billed the House Account, and received \$114.49, for travel to a funeral in Othello and/or attendance at a celebration of life service in Connell, on September 8, 2014. Both Othello and Connell are in the 9th District. The Respondent's position on this claim for expenses

is two-fold; she attended in her role as an elected official and she conducted legislative business at one or the other, or both, events. Respondent has represented that she discussed legislative business with the sons of the deceased and legislative matters with a field staff person for Congresswoman Cathy McMorris Rodgers at either the funeral or the celebration of life. The staff person does not remember her presence at either event and therefore does not support the claim of a discussion of legislative matters. The sons of the deceased have a business in the 9th District. According to the anticipated testimony of the Respondent's Legislative Assistant (LA), the Respondent stated one of the sons used to work on her farm before she was elected to the House.

Facts relevant to the allegation that on two occasions the Respondent used the pretext of legislative-related travel, which did not occur, to reimburse her for travel related to the elections of members of her political party and herself.

16. Respondent was a candidate for reelection to the House in 2014.

17. Respondent claimed and received from the House Account the sum of \$104.72 for travel to a fair in Ritzville on August 29, 2014 for an "In-District" event. Ritzville is in the 9th District. On April 13, 2015 the Respondent notified the House by letter that she did not attend the Fair on the 29th and offered full reimbursement. She states that she did attend the Fair on the 30th, and "*Activities of the day...were intermixed with non-legislative business.*" She claimed no legislative expenses for the 30th.

18. The "non-legislative business" was an appearance in the parade in her personal vehicle with a sign on the car which read "Elect Susan Fagan for State Representative." The non-legislative business also included the receipt of a campaign contribution check for her reelection efforts. The hand-over of the check had been arranged in advance between the donor and the Respondent.

19. On August 20, 2014 the Respondent left her home in Pullman in the early evening for a trip to Pasco. She submitted a request for travel reimbursement from the House Account for an in-district trip in excess of 100 miles and was reimbursed. On her reimbursement request form she stated the trip was for the purpose of attending a meeting of the Pasco Chamber of Commerce. The Respondent had a legislative tour outside the 9th District on the 21st and attended the tour after driving from Pasco early on that day.

20. It can take two and one-half hours, or longer, to travel by car from Pullman to Pasco. Phone conversations between the LA and the Respondent on the evening on the 20th place the Respondent in Pullman later than 5PM. The LA questioned how the Respondent could timely arrive in Pasco for a Chamber meeting and later she would contact the Chamber to verify the meeting.

21. The LA inquiry and the report establish there was no Pasco Chamber meeting and none had been scheduled by the Chamber.
22. Instead of a Pasco Chamber meeting the evening of the 20th, the Respondent was scheduled to help staff a Republican Central Committee booth at the Benton/Franklin Fair. A co-staffer that evening has confirmed that he worked alongside the Respondent on the 20th and their efforts were directed at discussing Republican Party issues with fair attendees.
23. In her letter to the House dated January 16, 2015 (Exhibit #5), the Respondent offered partial reimbursement for the August 20, trip to Pasco because "*...there was no chamber meeting.*" (The partial reimbursement was apparently based on a computation that not all the mileage to Pasco needed to be repaid due to the out-of-district legislative tour scheduled for the next morning).

V. Conclusions of Law

1. Respondent violated RCW 42.52.160 (unlawful private benefit or gain) when she used her LA and other House personnel to submit and process several claims for travel reimbursement which she knew, or should have known, the claims were wrongfully charged to the House Account. The effect of such a pattern was to protect the Member Account from depletion because once that account was depleted, the Respondent would be personally liable for the expense of out-of-district travel or travel that fell short of the 50 or 100 mile standards for in-district legislative travel.
2. Respondent violated RCW 42.52.160 (unlawful private benefit or gain) when she used her LA and other House personnel to submit and process several claims for travel which did not take place, or travel to events which did not take place.
3. Respondent violated RCW 42.52.180 (direct or indirect use of public resources for campaigns prohibited) when she used her LA and other House personnel to submit reimbursement for travel to a non-existent event while in fact working as a volunteer in a political party campaign booth on the evening in question. The acceptance of the reimbursement was also a use of public resources.
4. Respondent violated RCW 42.52.180 (direct or indirect use of public resources for campaigns prohibited) when she used her LA and other House personnel to apply for reimbursement for travel on August 29. She did not travel on August 29, but did travel the next day to the same location on behalf of her campaign for reelection to accept a

check at a pre-arranged meeting and to advertise her candidacy in a parade. She was in effect paid for the campaign travel with public funds.

VI. Summary

The Complaint was limited to allegations of wrongdoing over a period of nine months in 2014. During that time at least eighteen (18) incorrect reimbursement claims were submitted. Nine (9) of these resulted in checks payable to the Respondent for trips that did not take place or trips to events that did not take place. Included in the eighteen are expenses for two trips for campaign purposes which were paid by the House. The prohibition against the use of public resources, which includes legislative staff as well as public funds, is strictly construed and there are no de minimis exceptions (citations omitted).

In addition to actual damages, the Board has authority to assess civil penalties up to \$5,000 per violation or three times the economic value of the improper reimbursements. However, the Board is aware that the Respondent has resigned her elective office as a member of the House of Representatives and this significant occurrence is a factor in the Board's decision to accept a Stipulation which addresses actual damages.

VII. Order

It is hereby ORDERED, ADJUDGED AND DECREED that Respondent reimburse the House of Representatives the amount of Eight Hundred Thirty Six Dollars and twenty nine cents (\$836.29). This amount includes the reimbursements offered to the House by the Respondent on January 16, and April 13, 2015 which total \$650.12.

It is further ORDERED, ADJUDGED AND DECREED that Respondent contribute to the Board's investigative costs incurred in this case in the amount of Four Thousand Seven Hundred Eighty Two Dollars (\$4,782.00).

The total amount owed must, in accordance with RCW 42.52.480 and Board Rule 6, be paid within 45 days of the date of this Stipulation and Order unless an extension is granted by the Board.

VIII. Stipulation

On January 7, 2015 I received the Complaint and supporting materials alleging thirty-five (35) different incorrect reimbursements. I immediately initiated a complete review of my 2014 reimbursement records. During the course of this review I determined that nearly half of these alleged incorrect reimbursements were in fact proper and came from the correct account. However, I also determined that six (6) mileage expenses alleged to be incorrectly reimbursed to me from the Member Account were in fact incorrect. Nine (9) days after receiving the Complaint, and well before any action on this Complaint was before the Legislative Ethics Board, I

reimbursed the House for these six reimbursements plus an additional incorrect reimbursement that I discovered but which was not part of the Complaint (Exhibit #4, May 21, 2014 travel reimbursement for \$100.24). In addition, on February 2, 2015 and again before the Legislative Ethics Board considered this matter, I asked the House to reallocate nine (9) expenses incorrectly submitted to the House Account to the Member Account instead.

While I do not agree with the assertion in the investigative report that I engaged in a pattern of untruthfulness, as I had no intent to violate the Ethics Act, I do recognize that those reimbursements found to be incorrect were caused by me and me alone, and I accept full responsibility for my actions. I further acknowledge that sufficient evidence exists for the alleged offenses to be prosecuted and that a tribunal could be convinced the Ethics Act was violated.

I certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing it with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; and agree to sign it as a resolution of this matter and have voluntarily signed.


Susan Fagan
Date: June 9, 2015

Having reviewed the proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.


Dr. Kristine F. Hoover, Chair
Date: 6/16/2015