

Legislative Ethics Board

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COMPLAINTS 2016 NO. 1 AND NO. 5

In Re Rodne
In Re Hickel

DISMISSAL OF COMPLAINTS AND PROSPECTIVE RULING
Links to Legislative Materials
May, 2016

I. Nature of the Cases

The Complaints allege similar facts and identical violations of law. RCW 42.52.180 prohibits the use of public resources to assist a campaign, with certain exceptions not applicable to these complaints. The alleged facts are that Representatives Jay Rodne and Teri Hickel have placed or posted legislative videos on their campaign sites. The Board has joined the two complaints so that one opinion may be issued.

II. Background

Over many years and in several opinions the Board has addressed ethics issues associated with changes in technology. Many of these efforts have involved the reconciliation of two expressions of public policy that on occasion seem to be in conflict: (1) The Public Records Act, Chapter 42.56 RCW, which is designed to guarantee that the public has access to public records of government bodies; and (2) the Ethics in Public Service Act, Chapter 42.52 RCW, which among things prohibits the use of public resources to assist a campaign.

It is well settled that sites used for campaign activity may link to legislative materials that have been developed and produced at public expense (citations omitted). There have been differences in the facts involved in the Board's decisions on links but one "fact" has been assumed, if not clearly identified in the decisions: a user of a link would be taken, moved, or transported to a legislative site. A link has been viewed by the Board as fundamentally different from a "post" or a "posting." Links and posts may be yesterday's language, technology-wise, but for the purposes of this opinion they will serve as guideposts for future activity in this area.

III. The Present Complaints

In these cases the Board has found that a visitor to either Respondent's campaign site is presented with the opportunity to access a legislative video. This is accomplished by clicking on a notice, of sorts, calling the visitor's attention to the video – some may refer to this notice as a window. The Board does not feel it is crucial what this mechanism is called – it is the operation of the notice or the window which is important to an understanding of the constraints imposed by .180 on the use of public resources.

Some may argue that a "click" on a notice or window operates as a link. That position misses the point the Board felt was implicit in earlier opinions. In those opinions it was assumed the user was moving off the campaign site. That movement was viewed as striking a reasonable balance between the two public policies of access to public records and the prohibition on the use of public resources to campaign, and leaving the campaign site would create an appropriate separation between the campaign and the legislative materials.

This separation has been required in a number of earlier board opinions that involved legislative materials that were not electronically stored. We may draw the analogy between those opinions, which involved newsletters and a legislative chart, and the present case, which involves legislative videos.

Advisory Opinion 1997 – No. 7, addressed the question of when, if at all, a legislator could hand out his legislative newsletter when he doorbelled his constituents. This use of the newsletters would violate the law if the legislator was campaigning, said the Board, and since doorbelling is perceived as campaign activity certain rules must be followed so that public resources are not used to campaign. The request for this opinion stated "...that these documents will already have been produced for another purpose and are in use in other contexts, such as distribution at town hall meetings."

The Board responded: "The Board finds this limitation appropriate (newsletters had been prepared for other purposes). No material should be prepared at public expense solely for doorbelling purposes." In addition, said the Board, because doorbelling is most often viewed as a campaign activity, any doorbelling with legislative materials must cease during the election season (the Board adopted the House and Senate date of June 30, for cessation of most uses of public resources on behalf of legislators seeking election). Later, the Legislature amended RCW 42.52.180 to prohibit additional legislative materials to be placed on legislative websites after June 30, for legislators seeking election - .180 (2)(c). The Board views this legislative action as an effort to avoid the inappropriate use by campaigns of public resources as the election draws closer. The date applies to legislative videos as well as other legislative materials so that no additional videos for candidates may be added to legislative websites after that date.

Complaint Opinion 2012 – No. 1, involved the production of a campaign video which featured a budget chart produced at public expense, and the Board determined this was a violation of .180 because it constituted the use of public resources to assist the campaign. The Board found that the chart was not prepared for the video but was produced by legislative staff for the legislative purpose of illustrating state budget information. This opinion is analogous to the present complaints. The Board stated:

“Whether legislative materials were properly created at public expense in the first place is not determinative. Rather, it is the use to which the materials are put which determines whether the statute (RCW 42.52.180) had been violated” (emphasis added).

Technology, and the practical operation of many social media sites such as Facebook and Twitter, have blurred the lines between terms such as posting, hosting, embedding and linking. However, the issue is what actually happens when these public resources are advertised and accessed.

The Complaints have identified a situation that requires clarification. All legislators have now been advised of the need to adjust sites used for campaign purposes so that any access to legislative materials is accomplished as described in this opinion. Respondents have made these adjustments, either by the removal of all access to legislative materials, which is not required, or by the implementation of what may be referred to as a “true” link.

Accordingly, the Board will exercise the authority granted to it by RCW 42.52.425(1)(c), and dismiss both complaints, because the Board finds:

“Any violation that may have occurred does not constitute a material violation because it...has been cured, and after consideration of all the circumstances, further proceedings would not serve the purposes of this chapter.

IV. Prospective Ruling

1. RCW 42.52.180 allows a legislator to create a link from a site used for campaign purposes to a legislative video and other legislative materials. This link must take the user out of the campaign webpage, or campaign social media site, or any site which is involved in campaign activity, and redirect the user to the original, legislative-approved hosting site.
2. If the video or other legislative materials can be viewed on a campaign site without leaving that site, it has been “posted.” Posted materials are not permitted due to the application of RCW 42.52.180.
3. Legislators must be mindful that their notice or window on a campaign site which permits the access to legislative materials is limited to basic descriptive information. This issue was part of the discussion which lead to the adoption of Advisory Opinion 2015 – No. 2. In that opinion the Board determined that the notice could contain a description of the

document, the date of the document or the date of the link, and “...a brief description of the topic of the new material, free from editorial content...”

Notices or windows which contain information in excess of what is described above are viewed as more campaign-related rather than as an aid to visitors who are interested in access to public records.

V. Summary and Order

IT IS HEREBY ORDERED that:

1. Complaints 2016 No. 1 and No. 5 are dismissed.
2. A link from a site used for campaign activity to legislative materials must take the user off the campaign site or page so that the materials may be viewed on a legislative site.
3. The notice, or window, on the campaign site which informs the user that access to legislative materials is available, may be utilized to the extent the descriptive information is brief, factual, and free from editorial comment.


Kenny Pittman, Chair
Date: 5/25/2016