

Legislative Ethics Board

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COMPLAINT 2016 – NO. 2

In Re Hargrove

DETERMINATION OF NO REASONABLE CAUSE – ORDER OF DISMISSAL

May, 2016

1. Nature of the Complaint

The Complaint alleges that on or about January 25, 2016 Representative Mark Hargrove (Respondent) published a Legislative Update in which he discussed several legislative topics. These included school funding, charter schools, foster care, gun rights, and transgender access to restrooms. It is this last issue, and Respondent's comment about other legislators and the Governor, which lead to this Complaint

In the Update, Respondent criticized the state Human Rights Commission for the rule it adopted on transgender access. Respondent stated that he had co-sponsored a bill during the current legislative session which would repeal the rule. His remarks on this issue conclude with the following language:

"A five-member, unelected state agency overstepped its rulemaking power, and the rule should either be amended or repealed altogether."

"Of course, the longer-term solution is to elect legislators and a governor who will not allow such inane policies in Washington state (sic)."

2. The Statute

The Complaint alleges that Respondent violated RCW 42.52.180. That statute prohibits, with some exceptions, the use of public resources for campaign purposes. Complainant asserts that Respondent's remarks called for the electoral defeat of unnamed legislators and the Governor. .180 reads, in pertinent part:

RCW 42.52.180

Use of public resources for political campaigns.

- (1) No state officer or state employee may use or authorize the use of the 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. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.
- (2) This section shall not apply to the following activities:
 - ...
 - ...
 - ...
 - (d) Activities that are part of the normal and regular conduct of the office or agency;

The Board has both personal and subject-matter jurisdiction.

3. Conclusion

Based upon a review of the Complaint, the Board's investigation and a review of prior opinions, a majority of the Board concludes there is no reasonable cause to believe that Respondent violated the prohibition on use of public resources for campaign purposes.

4. Determinations of Fact

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

- a. The House Republican Public Information Office (PIO) prepared the Update at the direction of the Respondent. The words at issue were the Respondent's and not those of staff.
- b. PIO staff reviewed the Update, which is their custom, and there was some discussion about whether the use of the word "inane" would violate a House policy against impugning the character of a legislator. Apparently, there was little or no consideration given to whether the reference to elections should be stricken.
- c. Respondent provided a Statement to the Board in response to the Complaint (attached).

5. Analysis

RCW 42.52.180 prohibits the use of the facilities of an agency to assist or oppose the election of a person to office. The prohibition does not apply to “Activities that are part of the normal and regular conduct of the office or agency.”

In Complaint 1995-No.3 (and others which followed), the Board concluded that *“(it) finds that it is normal and regular conduct of the office of a state legislator for members of the House of Representatives to report to constituents the positions they intend to take on issues they will be addressing in the legislative session. The members of the legislature are elected on a partisan basis. It is acceptable for them to express their positions on issues that they will be dealing with in the legislative session on partisan terms. In that manner, their constituents are kept informed of how they are being represented in the legislature.”*

Complaint 1996-No.7 involved a legislative mailing referred to as a Legislative Review, which discussed a just-completed legislative session. 1996 was a general election year. The Review spoke to the “political extremism of Olympia these days” and that “the Republican leadership was more concerned in making a political statement about punishment...” and, “*Hopefully, in November, we will return to common sense.*” The author, who was facing reelection in 1996, continued by criticizing Republican tax policy and promoting his tax policy and stated “*It is my intention to work next session for this legislation.*” And, “*I will work next session to put its provisions into law.*”

With regard to the partisan statements, the Board cited Complaint 1995-No.3 (above) and concluded there was no reasonable cause to believe the statements violated .180. The issue that remained was whether the legislator had called for the defeat of Republicans in the upcoming election and his own reelection. The Board concluded “*...the language could be read as an indirect appeal for campaign support, which would be prohibited. However, given the ambiguous nature of some of the statements and the minor impact such comments have on the entire document, the Board finds that, overall, the document is consistent with the statutory requirements of a newsletter.*”

6. Determinations of Law

- a. Respondent’s Update, prepared with the assistance of legislative staff at his direction and published with the use of the facilities of the House, is a public resource and subject to the limitations imposed by RCW 42.52.180.
- b. It is “normal and regular conduct” for a legislator to report to constituents the positions the legislator intends to take on issues in a legislative session and to do so in partisan terms.
- c. The complained-of language, when considered in context with the Governor’s policy and the policy of unnamed legislators and which is directed at a pending legislative issue, is rather ambiguous with regard to a campaign inference.

7. Summary and Order

Legislators invite ethics complaints when their publications stray from commentary on policy and refer to elections.

A majority concludes there is no reasonable cause to believe Respondent committed a violation of RCW 42.52.180. The Complaint is dismissed.


Kenny Pittman, Chair

Date: 5/6/2016

STATE REPRESENTATIVE
47th LEGISLATIVE DISTRICT
MARK HARGROVE

State of
Washington
House of
Representatives

TRANSPORTATION
ASSISTANT RANKING MEMBER
EDUCATION
HIGHER EDUCATION



March 9, 2016

Hand-Delivered

Legislative Ethics Board
John A. Cherberg Building, Room 425

Re: Response to Complaint from Mina Mercer

Dear Chairwoman Hoover & Honorable Board Members:

Thank you for providing me with a copy of the Ethics Complaint filed by Mina Mercer and dated February 8, 2016. I have had an opportunity to review this Complaint and the attached materials, and I have also had an opportunity to consult with Mike Hoover, a designated ethics advisor for the House of Representatives. Please consider this letter my answer and response to that Complaint. Please also know that I stand ready to cooperate fully with the Board as it considers this matter. If there is any further information you need, or if you wish to speak with me directly, please do not hesitate to contact me.

The Complaint focuses on lines from my late January legislative update related to the Human Rights Commission's recent transgender bathroom guidelines. Ironically, the Complaint helps to explain the context of the alleged violation in the language quoted:

A five-member, unelected state agency overstepped its rulemaking power, and the rule should either be amended or repealed altogether.

Of course, the longer-term solution is to elect legislators and a governor who will not allow such inane policies in Washington state.

The Complaint alleges that it is the second sentence which is a violation of the Ethics in Public Service Act's prohibition on using state resources to assist a campaign. I believe, however, that, properly viewed in context with the first sentence, the true purpose of this language is clear: to explain to my constituents that it is an unelected board which made these rules, not any legislative activity taken by me or the Legislature.

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March 7, 2016

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It is important to understand that my office, as is common for a legislator, receives hundreds of contacts annually from constituents who are unhappy with agency actions. I believe, philosophically, that unelected agency personnel have too much power, and I work to expose and explain just how much of the law complained of by the average person has nothing to do with bills passed in the legislature and everything to do with rules promulgated by agencies. I find that many members of the public are unaware that agencies can enact such major policy changes without any direct legislation, such as the transgender bathroom policies enacted by the Human Rights Commission. The language in my newsletter is most properly understood as an attempt to explain that it was an agency, not me, who made these rules, and also that I lack much practical ability to change the rules. If my constituents do not like the rules that these agencies enact, they need to change the people appointing the agency personnel and setting up these agencies in the first place. I am trying to get people to understand that they need to hold other members' of government accountable for the actions of which they complain, because it was not me or anyone in a recent legislative session who made this agency's policy. I could have been clearer in making this point, but it certainly was not intended as a campaign remark. No specific candidate or campaign is referenced or intended by my remarks, and I apologize for any confusion.

I hope that this explains my position with respect to the newsletter in question. Thank you for your consideration. If I may provide any additional information or answer any questions, please do not hesitate to contact me.

Very truly yours,



Mark Hargrove
Representative, 47th Legislative District