

August 14, 1997

**Advisory Opinion 1997 - No. 7
Constituent Home Contact**

The Board has received a request for an advisory opinion from Representative Roger Bush. Representative Bush has waived the right to confidentiality afforded to persons requesting advisory opinions.

QUESTIONS

A. Given the Board's previous opinions approving the actions of soliciting constituents' views and informing them on legislative matters, is it within the "normal and regular conduct of the office" of a legislator, and therefore permitted by the State Ethics Act, "to contact constituents in person at their homes, inquire as to any legislative issues they might be concerned about, answer questions, explain positions taken and , in the process, deliver a document or documents that have been produced using legislative staff, materials and equipment?"

B. The request also asks the Board to provide a general, working definition of "normal and regular conduct."

OPINION

In certain circumstances as described in this opinion, it may be permissible to contact constituents at home using legislative materials. In most cases, however, this activity would be considered to have the reality or the appearance of campaigning, where the use of legislative material is not permitted. Timing, selection method, and content guidelines and limitations for analysis in the event of a complaint are set forth in this opinion.

Additional guidelines to define "normal and regular conduct" are set forth in the conclusion to this opinion.

ANALYSIS

A. CONSTITUENT CONTACT

RCW 42.52.180 prohibits "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 . . ." Subsection (2)(c) exempts "activities that are part of the normal and regular conduct of the office or agency" from the general prohibition.

Advisory Opinion 1996 - No. 11, legislative press releases, includes a quote from an earlier Attorney General Opinion which concluded that soliciting constituents' views is normal and regular conduct. The opinion also included a five factor test for determining whether certain press releases would violate the provisions of RCW 42.52.180.

Complaint Opinion 1996 - No. 3, partisan agenda/newsletter, determined that a newsletter questionnaire was normal and regular conduct: "while the questionnaire does not directly fit the concept of informing the public on pertinent matters, it does indirectly inform the constituents about

matters that the legislator considers to be important legislative issues. It then provides a convenient method for the constituents to respond to the legislator with their own views of legislative issues."

The Board notes that in most cases direct door-to-door contact with constituents is for campaign purposes, which would not permit use of state resources. Even when legislators make such contacts for purely legislative purposes, the common perception is that "doorbelling" is a campaign activity. Not all legislators go door-to-door for legislative purposes, while most do "doorbelling" for campaign purposes. Therefore any personal home contacts have the appearance of a campaign context, regardless of the actual purpose. The question can then be re-stated as to whether it is ever "normal and regular conduct" for a legislator to go door-to-door to contact constituents for the purposes of presenting legislative information and obtaining constituent opinions.

The Board has previously approved the questionnaire method of obtaining constituent views. Other common methods are correspondence; telephone calls, including "hot-line" calls; and town hall meetings. Some members also use meetings with selected constituents as "focus groups." Direct contact with constituents at their residences is not unlike these other forms of contact if the purpose is legislative. Similarly, personal delivery of a newsletter with a questionnaire is analogous to mailing the same document.

The Board finds that the statutory exception for "normal and regular conduct" prevents the creation of a bright-line ruling that would say that all doorbelling is automatically a violation of the statute. The Board is not seeking to discourage member communication with constituents, which is one of the fundamental aspects of representative government. However, the Board cautions members that the use of legislative materials in the doorbelling context is likely to create confusion about the proper use of public resources. The House and Senate may wish to consider whether a stricter policy would be appropriate for the Standards of Conduct to avoid even the appearance of impropriety.

Having determined that there are limited circumstances under which door-to-door contacts using legislative materials may be permissible, the Board will use the following timing and content guidelines in assessing whether particular contacts are in violation of the statute.

1. *Timing.* If a contact is close to an election for the legislator's position, it will certainly appear to be a campaign contact. Any use of legislative material in doorbelling after June 30 of the year a member is up for election would be a violation of RCW 42.52.180. Members are also cautioned that it may appear to be a campaign contact if it occurs close to any election, regardless of whether the particular member is a candidate.

2. *Content.*

In order to qualify as a legislative contact, the legislator's remarks to the constituents would have to clearly state the purpose of the visit. The legislator cannot conduct a multiple-purpose visit, including campaign discussion or material along with the legislative business.

The opinion request states that "these documents will have already been produced for another purpose and are in use in other contexts, such as for distribution at legislative town hall meetings."

The Board finds this limitation appropriate. No material should be prepared at public expense solely for doorbelling purposes. If all other conditions are met, it is permissible to use newsletters or other previously prepared legislative material.

B. "NORMAL AND REGULAR CONDUCT" GENERALLY

The request also asks the Board to refine and expand its definition of normal and regular conduct. The Board has addressed this question in the following prior opinions, which provide a general definition for normal and regular conduct, and specifically address whether a number of actual and hypothetical examples of legislative conduct fit within the definition.

Advisory Opinion 1995 - No. 17, legislator letters, includes a concluding statement regarding the "evolution of the office of state legislator. Legislative duties today are truly expansive. Citizens expect their legislators to be ombudsmen and community leaders, as well as legislators in the strict sense." The opinion also includes a footnote which suggests that mass mailing of congratulatory letters to persons whose achievements are not extraordinary may be a violation of RCW 42.52.180. The opinion also includes specific analysis of proper legislative duties regarding several specific proposed letters.

Advisory Opinion 1995 - No. 18, ballot measure exceptions, defines "normal and regular" to mean "activities which are otherwise lawful and customary." The examples cited in the opinion are preparation of a voters' pamphlet argument and "responding to ballot proposition inquiries from the media, constituents and other persons."

Advisory Opinion 1996 - No. 2, complimentary political party event, finds that it is a "customary and accepted practice" for legislators to be requested by political parties and legislative candidates to appear at party functions and legislative fundraisers on a complimentary basis.

Advisory Opinion 1997 - No. 5, legislator initiatives, determined that the sponsorship and advocacy of an initiative to the legislature is not part of the normal and regular conduct of the office.

General guideline. In addition to the definition and examples set forth in prior opinions, the Board adds the following guidelines to assist legislators and staff in determining whether their conduct fits the exception. Contact with constituents, using state resources, which is in response to their requests for legislative information and/or assistance is generally permitted. Contact with constituents which is initiated by members and staff is subject to time, place, content, and method restrictions. For example, it is not normal and regular to initiate communication at state expense which urges particular electoral activity by the constituents. Nor is it normal and regular to initiate state-funded communication in close proximity to an election. Details of these restrictions are found in RCW 42.52.180; RCW 42.17.132; and the House and Senate Standards of Conduct.