

January 29, 1998

**Advisory Opinion Request 1997 - No. 12
Committee mailings**

The Board has received a request for an advisory opinion from Representative Don Carlson, Chair of the Joint Committee on Pension Policy. Representative Carlson waived confidentiality with respect to this request.

QUESTION

The request asks for the Board's opinion on committee mailings as follows:

Would the mailing restrictions in RCW 42.52.185 apply to a mailing by a statutory committee to a list of persons potentially affected by legislation under consideration by the committee? Does it make a difference to the answer whether the letter has been authorized by the full committee or only the chair?

OPINION

Mailings which are authorized by a joint bipartisan legislative committee are not subject to the restrictions in RCW 42.52.185. Such mailings may be subject to the general prohibition on use of public facilities to assist campaigns, RCW 42.52.180. This opinion provides guidelines which help to determine if the general prohibition applies.

ANALYSIS

The relevant portion of the mailing restriction statute reads as follows:

(1) During the twelve-month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

...

(4) The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings. Those costs include, but are not limited to, production costs, printing costs, and postage costs. The limits imposed under this subsection apply only to the total expenditures on mailings per member and not to any categorical cost within the total.

(5) For purposes of this section, persons residing outside the legislative district represented by the legislator are not considered to be constituents, but students, military personnel, or others temporarily employed outside of the district who normally reside in the district are considered to be constituents.

The other statute which applies to this question is the general prohibition on use of public facilities to assist an election campaign. That statute reads, in 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. 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; . . .

A. MAILING RESTRICTIONS

The language of the statute focuses on mailings by a "state legislator." Further, the budget limits in subsection (4) are applied on a "per member" basis. Thus it could be argued that the statute does not apply to any mailing which is issued by a legislative committee. However, the Board has stated in previous opinions that it will look to the intent of the section "to reduce the advantage in elections that incumbent legislators previously enjoyed through mailings at public expense during the last year of their terms" (**Advisory Opinion 1995 - No. 19**).

It is possible that a committee mailing could be used as a substitute for a mailing by an individual legislator, especially if the mailing were designed to promote or emphasize the activities of a particular member or members of the committee. The Board notes that the Senate and House of Representatives currently prohibit committee mailings other than meeting notices for standing committees within their respective bodies, except by special permission. Apparently imposed for budgetary reasons, this policy also provides an opportunity for review to ensure that such mailings are not being used to provide unfair advantage.

However, the Board also notes that not all legislative committees are similarly constituted. The Joint Committee on Pension Policy, given as an example in this opinion request, is made up of an equal number of senators and representatives, on an equal bipartisan basis. The Board finds that in such cases, significant checks and balances would exist to ensure that a proposed mailing was needed for legitimate committee business rather than as a pretext to evade the mailing restrictions.

In this opinion, the Board interprets the exemption from the mailing restriction statute to apply to joint House/Senate committees with an even partisan balance, which have been established by statute or concurrent resolution. There may be circumstances in which a standing committee of the Senate or House of Representatives could send such a mailing, but this opinion request does not present that question.

B. COMMITTEE AUTHORIZATION

The request also asks whether committee authorization makes a difference in the Board's determination. The Board believes that correspondence which is sent by the chair without authority of the members is simply personal correspondence on different letterhead. As such, it would still be subject to the mailing restrictions.

It is up to the committee to decide whether or not to authorize correspondence and whom to designate to sign it. The proper person or persons to sign a committee letter is the person or persons designated by the committee.

C. OTHER LIMITING FACTORS

The Board has previously determined that legislative material which is exempt from the mailing restrictions could be a violation of the prohibition on assisting a campaign in RCW 42.52.180, depending on timing and content. **Complaint Opinion 1996 - No. 10**, caucus Internet page, and **Advisory Opinion 1997 - No. 2**, use of public resources for electronic communications, deal with the placement of information on a caucus "homepage." The material was made available by the caucus as a whole, rather than any individual legislator. The Board determined that even though such activity would not be a violation of the mailing restrictions in RCW 42.52.132 (now codified as RCW 42.52.185), it is limited by the statute prohibiting use of public resources for campaign purposes. The Board cited a similar analysis in determining that "the substance and timing of the communication could render prohibited an otherwise permissible document" (**Advisory Opinion 1996 - No. 11**, legislative press releases).

Consistent with the press release and homepage opinions, the following factors will be used to determine when a committee mailing is appropriate: timeliness; proximity to an election; relevance; the source of the initial statement (for responsive communications); and tone and tenor of the content. Using the guidelines established by the House and Senate, this would mean that committee letters after June 30 of an election year will be subject to "heightened scrutiny." This approach is also consistent with the Board's opinion on constituent home contacts, **Advisory Opinion 1997 - No. 7**.