

# Legislative Ethics Board

**BOARD MEMBERS:**  
REP. LAURIE DOLAN  
EUGENE GREEN  
SEN. JIM HONEYFORD  
STEPHEN L. JOHNSON  
JUDGE TERRY LUKENS (ret.)  
SEN. JAMIE PEDERSEN  
KENNY PITTMAN  
DEBBIE REGALA  
REP. BRANDON VICK



451 JOHN A. CHERBERG BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
[www.leg.wa.gov/lcb](http://www.leg.wa.gov/lcb)

KEITH BUCHHOLZ - COUNSEL  
[Keith.Buchholz@leg.wa.gov](mailto:Keith.Buchholz@leg.wa.gov)

## ADVISORY OPINION 2017 – No. 1

Fundraising to Pay Private Debts

June 30, 2017

This request for an advisory opinion was received from Rep. Melanie Stambaugh, asking whether a legislator may engage in fundraising activities, or whether such activities may be undertaken on her behalf, in order to pay ethics fines and penalties, and legal fees arising from ethics proceedings. This opinion strives to answer her questions, as well as addressing the question of whether such activities may easily be characterized as bona fide employment.

The ability of a legislator to lawfully receive gifted funds from third parties is governed by two statutes, RCW 42.52.010 and RCW 42.52.150. The most significant portion of those two statutes provides:

*(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.*

RCW 42.52.150.

The question is phrased as follows: May a community member, business, organization, or family member give a gift of \$50 or less to a legislator? Ultimately, however, the question before

this Board may be reduced to this: do current ethics laws prevent a politician, who incurs expenses in defending herself against charges of unethical behavior, from shifting those expenses onto third parties who support the politician's actions? In answering the questions, the Board must determine whether a legislator *may* take such action; it does not answer the question of whether she *should*.

With the notable exception of RCW 42.52.140, which prohibits the acceptance of any gift that would influence a legislator's actions, gifts of under \$50 are allowed. However, the circumstances surrounding the legislator's question clearly indicate that she (or others acting on her behalf) would seek gifts of \$50 or less from multiple sources. The manner in which the individual gifts could be acquired is addressed in the questions below, also suggested by Rep. Stambaugh.

1. May a community member, business, organization, or family member solicit gifts of \$50 or less without the involvement of a legislator?

RCW 42.52.150 (1) states: "No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars."

Although the question is broadly phrased, it is clear from the legislator's description of her need for funds and her intended use of those funds serves a single purpose: to pay her legal fees arising from ethics complaints filed against her. As a result, multiple gifts of less than \$50 would be combined to produce a single result, elimination of her debt.

Accordingly, regardless of the legislator's direct involvement, the process would culminate in the legislator receiving "a single gift from multiple sources" in violation of the statute.

2. May these solicited gifts of \$50 or less be given to a legislator?

If the total amount contributed to the legislator exceeds \$50, no, nor may such funds be contributed to the legislator's creditors. The statute explicitly addresses the situation present here: a single gift in excess of \$50 is prohibited, as is a single gift with multiple sources that exceeds \$50. At some point in this process (solicitation, receipt of funds, payment of debt), individual gifts donated to achieve a single result will be combined, either by or on behalf of the legislator, and the "multiple source" prohibition is triggered.

Regardless of the legislator's participation in a fundraising effort, the result of such solicitation and fundraising is to provide the legislator with a single financial benefit, and this benefit is the same whether the legislator receives a single sum of money from multiple sources, a series of separate contributions made to satisfy a personal debt of the legislator, or receives debt relief by payment of the legislator's personal debt by a third party. The "multiple source"

language in .150 prohibits actions that result in a benefit to a legislator that exceeds \$50. This result is the same whether or not the legislator participates in the solicitation process.

3. Do the gifts need to be presented in their separate \$50 gift amounts, or may the gifts be combined into one aggregate amount?

Either approach would violate RCW 42.52.150. The statute explicitly prohibits a combined gift in excess of \$50. Separate gifts, aimed at achieving a specific result to the benefit of a legislator, reach the same result.

4. May the gifts be used to pay LEB fines and penalties?

No. Board Rule 6 requires that payment of “any monetary penalty” is the individual responsibility of the person against whom the penalty is assessed. Fundraising to pay a penalty or fine would violate that rule by shifting that responsibility onto a third party.

5. May the gifts be used to pay legal fees and services?

Yes, so long as the funds raised do not exceed a combined total of \$50. Otherwise, for the reasons set forth under question (2), the receipt of individual gifts that reach a combined total that exceeds \$50 violates RCW 42.52.150, and such funds should be neither accepted nor used.

The public discussion of the advisory opinion request also touched on a legislator’s ability to earn outside income to pay legal expenses, fines and penalties. Accordingly, the Board finds it important to address the limitations that could arise, as these are not reflected in the Board’s earlier opinions.

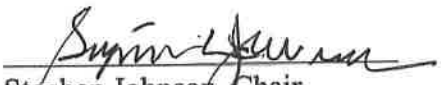
Washington benefits from having a citizen legislature. Legislators’ outside employment brings a diversity of experience and knowledge to the legislature and such actions to date have been consistently supported by the Board’s rulings on legislators’ outside employment. In each complaint, the job held by a legislator was a legitimate job in which a legislator was compensated for the performance of bona fide work.

The Board has considered outside employment by legislators on several occasions. Complaint Opinion 1999 – No. 5; Complaint Opinion 2005 – No. 6; Complaint Opinion 2011 – No. 1. On each such occasion, the outside employment was assumed to be bona fide gainful employment. There was never a suggestion that the outside employment was invalid, else the Board would have considered it under a traditional gift analysis.

This history should be viewed in proper context. Non-legislative employment can often overlap with legislative work, and legislators must be cautious to ensure that the non-legislative employment does not provide compensation for the performance of legislative activities.

However, even without any overlap between legislative and non-legislative functions, the outside employment must be bona fide employment. This concept is particularly acute when the legislator represents to the Board that she has been offered gifts of funds to pay her personal debts by a variety of persons, and is openly and publicly seeking a valid way to accept them. An act of labelling an activity "employment" could be valid, based upon a legislator's history and experience. However, simply calling an activity "employment" is not sufficient to entirely overcome the prohibitions on gifts. With the contacts that legislators develop, and the power inherent in the office, a legislator may not avoid the gift limitations by deciding to call a particular activity "employment."

In an advisory opinion on fundraising, it is not appropriate for the Board to set forth a complete test on what constitutes bona fide employment, but several factors would be important in making such an assessment. At a minimum these would include: the legislator's prior experience in receiving compensation for the activity (or having job experience relevant to the activity), whether the legislator is properly licensed and/or registered, whether the compensation received is representative for the industry and activity, whether the premises on which the work is performed is appropriate for the activity, and whether the legislator properly and completely paid all applicable taxes. To suggest that any form of activity could be re-labeled "employment" and therefore not subject to the limitations on gifts to legislators would carve out an exception large enough to render most of the gifting statutes meaningless. Altering an otherwise prohibited activity by calling it "employment" does not render that activity immune from appropriate ethics restrictions.

  
Stephen Johnson, Chair  
Date: June 30, 2017