

Legislative Ethics Board



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ADVISORY OPINION 2019 – No. 1

Solicitation of Lobbyists

June 2019

This Advisory Opinion is submitted on the Board’s own motion pursuant to RCW 42.52.320 and Board Rule 1.K.

BACKGROUND

Legislators are occasionally asked to speak at fundraising events sponsored by charitable or non-profit organizations. Many times they speak at the event on a topic of interest to both them and the organization. In some cases, legislators are also asked to request that attendees make donations to the sponsoring organization. Occasionally, there will be lobbyists in attendance at the event, although in most cases, they will constitute only a minor portion of the attendees. When asked whether, without the use of state resources, requesting donations under this scenario could violate the Ethics in Public Service Act (Act), legislative ethics advisers advised legislators that if there are lobbyists in the audience, the legislator should not solicit donations as doing so may violate the Act. This advice was based upon the prior Board opinions discussed below.

QUESTION

Is it a violation of the Act for a legislator, without the use of state resources, to appear at a fund raising event held by a charitable or non-profit organization attended by many people, the majority of whom are not lobbyists or lobbyist employers, and solicit donations for the sponsoring organization?

OPINION

In its prior opinions dealing with solicitation¹, the Board has applied two provisions of the Act to determine whether such conduct would violate the Act: RCW 42.52.070 (special privileges) and RCW 42.52.140 (“reasonable expectation” rule).

¹ *In re van Luven*, 2001 – No. 4 dealt with the solicitation of sports tickets from lobbyists by a member. The Board found that this action violated the Act and stated, “the solicitation of lobbyists tends to significantly reduce public respect for and confidence in state officials and state government because of the perception of personal gain and special privilege.” This opinion is inapplicable to the question presented in this opinion.

In *Ethics Alert* – April 2019, the Board recommended that any legislator or legislative staff who solicits a charitable donation on an electronic platform include a message with the solicitation asking any lobbyist or lobbyist employer who receives the request to disregard it.

RCW 42.52.070 provides as follows:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

RCW 42.52.140 provides as follows:

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, anything of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

We begin our analysis with the first opinion in which we addressed solicitation – *Advisory Opinion 1995 – No. 17*. This opinion dealt with the use of public resources to solicit funds to be paid to a non-profit corporation. The non-profit corporation would then apply those funds to pay for a legislators’ travel expenses and registration fees to enable them to attend an educational conference on legislative issues. The Board determined that most if not all of those solicited would be lobbyists and that such solicitation would violate both RCW 42.52.070 and RCW 42.52.160.

In the question presented in this opinion, the solicitation is of a large group of people most of whom are not lobbyists. In addition, the solicitation is not for the benefit of the legislator making the request but is done on behalf of a charitable or non-profit organization and no state resources were used in making the solicitation. As a result, because public funds were not used and the solicitation was not for the legislator’s benefit, *Advisory Opinion 1995 – No. 17* is not applicable to the factual situation presented in this opinion.

In *Advisory Opinion 1996 – No. 1*, we were asked whether it would violate the Act for a legislator to solicit funds to pay for the attendance of legislators at an educational conference on legislative issues. No public funds would be used in the solicitation and some or all of those solicited would be lobbyists or involved in lobbying activities before the legislature. In holding that such a solicitation would violate the Act, the Board applied the reasonable expectation rule (RCW 42.52.140) to reach this conclusion.

RCW 42.52.140 prohibits legislators from soliciting or accepting anything of value, whether a gift or not a gift, if the circumstances are such that “it could reasonably be expected” that the thing of value would influence the legislator’s official judgment or was a reward for official conduct.

In the factual matter presented in this opinion, the member is soliciting donations on behalf of a charitable or non-profit organization from event attendees, only some of whom are lobbyists. Contrary to the request in *Advisory Opinion – 1996 – No. 1*, the donation request is not for the legislator and is made to a large audience that may include some lobbyists but the request is not solely directed to lobbyists. The Board cannot find that the legislator’s donation request to a large group of people that happens to include some lobbyists constitutes circumstances in which the legislator’s official judgment would be influenced or was a reward for official conduct.

In our third opinion dealing with solicitation, *Advisory Opinion 1998 – No. 5*, we were asked whether it violated the Act for a legislator or legislative staff person to accept or solicit contributions from lobbyists for legislative “events,” such as member and/or staff meetings or retreats; end of session “appreciation” events; and member gifts on the occasion of a first floor speech. The Board determined that “by soliciting such assistance from those who have a direct interest in legislative action, there would be a use of official position to obtain ‘special privileges’ in violation of the statute.”

The Board continued by stating that such a solicitation creates a clear impression of a relationship with mutual obligations which is in violation of the “reasonable expectation” statute. “Although it is highly unlikely that any member would in fact be influenced in ‘vote, action, or judgment’ in such circumstances, there is definitely an appearance of reasonable expectation to the outside observer. Further, from the standpoint of the person being solicited, there could be a concern that refusal to participate could have negative consequences in terms of access and good will.”

It does not appear to the Board that the question presented in this opinion is one in which the reasonable expectation rule would be implicated. The legislator is soliciting donations on behalf of a charity or non-profit and not for herself or himself but more importantly, the majority of persons being solicited are not lobbyists or lobbyist employers.

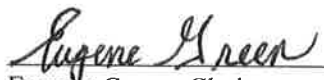
In *Advisory Opinion 2000 – No. 1*, we were asked whether a legislator, without using state resources, could raise funds for community-based charities and, if yes, whether it mattered from whom such donations are solicited. We determined that the Act does not prohibit a legislator, acting without use of state resources, from supporting community-based charities. Such support may include fund-raising, provided the legislator does not “specifically solicit lobbyists or lobbyist-employers.” In this opinion, the Board provided examples of non-specific solicitations which are incidental and would not violate the Act: (1) where a legislator sits on a board of directors of a non-profit charity and his or her name is included on the letterhead of the charity but the legislator does not sign a fund-raising letter; and (2) where a legislator is a member of a local sportsman’s group and is asked to sign a fund-raising letter which is sent to a list of sportsmen compiled by the group and the list contains a few individuals who are registered as lobbyists.

In the matter presented in this opinion, the Board believes that the factual situation presented constitutes a non-specific solicitation. The Board likens it to the example provided in subsection (2) above because although the solicitation (or in this matter the request for donations) may include some lobbyists or lobbyist employers, the bulk of the persons solicited are not lobbyists or lobbyist employers.

CONCLUSION

The Board concludes that when a legislator, acting without the use of state resources, requests donations at a fundraising event for a charitable or non-profit organization, and the audience comprises many people, most of whom are not lobbyists or lobbyist employers, such a donation request constitutes a non-specific solicitation, is considered incidental and would not violate the Act.

On behalf of the Legislative Ethics Board, this opinion is signed on the 17 of June, 2019.


Eugene Green, Chair