

# Legislative Ethics Board



**BOARD MEMBERS:**  
REP. LAURIE DOLAN  
EUGENE GREEN  
SEN. JIM HONEYFORD  
JUDGE TERRY LUKENS (ret.)  
PAMELA MADSON  
DAN McDONALD  
SEN. JAMIE PEDERSEN  
DEBBIE REGALA  
REP. LUANNE VAN WERVEN

101 LEGISLATIVE BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
[www.leg.wa.gov/leb](http://www.leg.wa.gov/leb)  
JENNIFER STRUS - COUNSEL  
[Jennifer.Strus@leg.wa.gov](mailto:Jennifer.Strus@leg.wa.gov)

## ADVISORY OPINION 2019 – No. 2

Use of state resources to film video identifying a business  
August 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 use various methods to inform constituents about the work of the legislature and the impact that work may have on those constituents. This opinion addresses specifically the use of videos to convey this information.

The following hypothetical was presented to the Board for consideration: the communications staff from one of the legislative caucuses travels to a legislator's district to film the legislator either standing in front of a business or walking through the business. The focus of the video is to discuss the impact on that business or on other businesses in that legislator's district of action taken or contemplated by the legislature. The name of the business could be shown in the video or it might be recognizable by viewers because it is a well-known business in the district.

### QUESTION

Is it a violation of the Act for a legislator to use public resources to film a video, in his or her district, in which the name of a local business might be seen or in which the member might be filmed walking through the business, when the focus of the video is the impact the legislature's actions have had or will have on that business or other businesses in the member's district?

### OPINION

It is not a violation of the Ethics Act for a legislator to use public resources to create a video which may display the name of or an actual business in the background of the video if the purpose of the video is to inform constituents about the actual or potential impact of the legislature's actions on constituents, including the owners or employees of businesses located in the member's district.

## ANALYSIS

In answering this question, the Board believes the question must be analyzed under RCW 42.52.160 (private gain). RCW 42.52.160 provides in pertinent part as follows:

- (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's control or direction, or in his or her official custody for the private benefit of the officer, employee, or another.
- (2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

The term "another" as used in section (1) of the statute is not defined in the Act but the Board has previously stated that it believes the definition in RCW 42.52.070 is sufficient. RCW 42.52.070 defines "another" as "any individual, partnership, association, corporation, institution, or other entity, whether or not operated for profit." *In re Eickmeyer*, 2006 – No. 1.

The use of caucus communications staff to create a video featuring a member would clearly constitute the use of public resources. The question then becomes whether the use is for the personal benefit of another, e.g. the businesses that appear in the video. The Board believes that if the purpose of the video is to demonstrate the potential impact on a business or businesses in the member's district of actions taken by the legislature during the previous session and is not being used to promote the business itself, the video would not violate RCW 42.52.160(1). *See, e.g. In re Hankins*, 2007 – No. 1A (Board found violation of RCW 42.52.160 when member used her legislative position and public resources to promote a family business.)

Furthermore, subsection (2) of RCW 42.52.160 provides an exception to the general prohibition on the use of public resources: if the use of public resources is used to benefit others as part of the state officer's "official duties" then the use of public resources does not violate the Act. "Official duty" is defined as "those duties within the specific scope of employment of the state officer . . . as defined by the officer's . . . agency or by statute or the state constitution." RCW 42.52.010(12).

Legislators have duties beyond those enumerated in Article II of the Constitution. These duties, referred to in Board opinions as discretionary in nature, include "providing legislative advice or legislative assistance such as assisting constituents in understanding how the legislative process works, how to get a bill introduced, how to testify before committees, etc." *Advisory Opinion* 2006 – No. 1.

It is the Board's opinion that a video, made using public resources, of a member explaining the impact on constituents, including local businesses, of legislative actions taken or contemplated constitutes the use of public resources to benefit others as provided in subsection (2) of RCW 42.52.160. This is true even if an impacted business building or name appears in the background. Legislators have a duty to explain to their constituents the impact of legislative action on them. That such explanation is done through a video in which a business appears in the background does not defeat the exception.


Those sections of the Act which speak to the proper and improper uses of public resources demonstrate that the legislature did not intend that these resources be unlimited. The question is whether there is a tangible legislative nexus with the contemplated use of public resources or whether that nexus is negligible. *In re Roach*, 2008 – No. 6; *In re Schmidt*, 2006 – No. 4; *Advisory Opinion* 2006 – No. 1. In the

hypothetical presented in this opinion, there is a tangible and sufficient legislative nexus – the legislator is explaining to constituents the potential impact of legislative actions on businesses in the community in which they reside.

#### CONCLUSION

A legislator may make a video using public resources to inform constituents, including local businesses, about the impact on them of legislative action. The video may include images of local businesses, including business names, in the background of the video, as long as the legislator featured in the video in no way promotes the business, the video is produced for the purpose of informing constituents about legislative action (benefit others) and there is a tangible legislative nexus between the content of the video and legislative work.

On behalf of the Legislative Ethics Board, this opinion is signed on the 13 day of August, 2019.

  
Eugene Green, Chair