

April 18, 1996

COMPLAINT 1996 - NO. 3

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

I. Nature of the Complaint

The complainant alleges that Representatives Duane Sommers and Jean Silver violated RCW 42.52.180 by including the House of Representatives' Republican legislative agenda in their joint legislative newsletter. The complaint further alleges that inclusion of such material results in the use of state facilities to directly or indirectly influence elections.

II. Procedural History

Complaint 1996 - No. 3 was received on March 7, 1996. The complaint was transmitted to the Office of the Attorney General for staff assistance on March 11, 1996, pursuant to RCW 42.52.450, because it alleges a violation of RCW 42.52.180 by a legislator.

An investigation was conducted pursuant to RCW 42.52.420. The results were submitted to the Board in an investigative report on March 19, 1996.

III. Determination of Allegations of Fact

The document entitled "1996 Sommers - Silver Report," with the sub-heading "Mid-session Newsletter - Questionnaire" was mailed on February 1, 1996 to 40,947 addresses. The cost and timing of the mailing were within the statutory and House of Representatives requirements.

The first page of the document contains a picture of Representatives Silver and Sommers and a letter from each to their constituents. Page 2 contains a message from both of them entitled "Our Commitment to you" and a statement set out in a bordered section entitled "Republican Commitment To The People." The third page is entitled "1996 Mid-Session Report." That page contains two parts: one entitled "state budget has \$661 surplus" which discusses the representatives and the Republican position on the state budget, and a part entitled "Republicans cut bureaucracy -- not Medicare," which discusses federal budget cuts, the Congressional Republicans' position with respect to those cuts, and how those cuts should be treated by the legislature. The fourth page is entitled "1996 Sommers - Silver Legislative Questionnaire," and consists of six questions about upcoming issues facing the legislature. The fifth page is a continuation of the "1996 Mid-Session Report" and consists of two parts entitled "Handling youth crime" and "Education initiatives before legislature." The last page explains the

requirements of RCW 42.17.132 and also contains an invitation for the recipient to attend two Town Hall Meetings. This page also has a printed postage mark indicating that the postage cost was paid for by the state.

IV. Determination of Allegations of Ethics Law Violations

A. Relevant Statutes

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting a campaign for election. For purposes of this complaint, the pertinent portions of RCW 42.52.180 provide:

(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:

. . .

(c) Activities that are part of the normal and regular conduct of the office or agency; . . .

In addition to RCW 42.52.180, there is another statute that is relevant to this complaint. RCW 42.17.132 places certain restrictions on mailings by incumbent legislators during most of the last year of their term of office. A violation of this statute would also be a violation of RCW 42.52.180. RCW 42.17.132 provides as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

The legislator may mail one mailing no later than thirty days after the start of a regular legislative session and one mailing no later than sixty days after the end of a regular legislative session of identical newsletters to constituents.

The legislator may mail an individual letter to an individual constituent who (1) has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; or (2) holds a governmental office with jurisdiction over the subject matter of the letter.

A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings, including but not limited to production costs, printing costs, and postage.

B. Analysis

One of the factors specified in RCW 42.52.180 in determining whether it has been violated is whether the activity is part of the "normal and regular conduct" of the office. RCW 42.17.132 places additional specific restrictions on mailings within the legislator's last year of office. By the terms of the statute, violations of RCW 42.17.132 are also violations of RCW 42.52.180.

The only issues under those statutes which are raised by this complaint are whether the mailing in question constitutes a "newsletter," and, if it is a newsletter, whether its contents are consistent with normal and regular conduct for the position of legislator.

1. Newsletter. RCW 42.17.132 prohibits any legislator during the 1996 Session from mailing a "letter, newsletter, brochure, or other piece of literature" to constituents, except for the limited circumstances set forth. The only exception which allows unsolicited mailings to constituents are two mailings of "identical newsletters to constituents" within the time limits set forth in the statute. If the mailing in question is a "newsletter," there is no violation. If it is a "brochure" or "other piece of literature" it is not permitted.

The term "newsletter" is not defined in the statute. Therefore, the ordinary meaning of the term should apply. "Newsletter" is defined in Webster's New World Dictionary, College Edition, as a "report issued by a firm, governmental agency, etc. to keep employees or the public informed of pertinent matters." Most of the mailing in question consists of a report to constituents on pertinent legislative matters. However, the document also includes a one page questionnaire.

Does the questionnaire render the document something other than a newsletter? If so, then RCW 42.17.132 and RCW 42.52.180 would be violated. 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 therefore finds that a questionnaire may be included in a newsletter, without changing its classification as a newsletter.

2. Partisan statements. The page of the newsletter in question which is most challenged by the complainant is the second page, with the heading "REPUBLICAN COMMITMENT TO THE PEOPLE: *Making government responsible and accountable to its citizens.*" The introduction to this "commitment" includes this language: "House Republicans have developed a Republican Commitment to the People with several legislative proposals . . ." This qualification makes it clear that the partisan reference is to Republican members of the House of Representatives, not the state or national party. Further, the "commitment" is specifically directed at the legislative agenda which Representatives Sommers and Silver propose to follow during the 1996 session.

The board finds that it is normal and regular conduct of the office of a state legislator for members of the House of Representatives to report to constituents the positions they intend to take on issues they will be addressing in the legislative session. The members of the legislature are elected on a partisan basis. It is acceptable for them to express their positions on issues that they will be dealing with in the legislative session in partisan terms. In that manner, their constituents are kept informed of how they are being represented in the legislature.

A further partisan statement is found on the third page in the section headed "Republicans cut bureaucracy - not Medicare." The first part of this section is devoted to a discussion of the programs proposed by "Congressional Republicans." If this were the sole content, it might raise some concern. However, the section ties this back to issues before the 1996 legislature and Representative Silver's expected role in dealing with those issues. Therefore this information is also acceptable as normal and regular conduct.

V. Conclusion and Order

Based on a review of the complaint and the board's investigation, the board determines that there is no reasonable cause to believe that Representatives Sommers and Silver committed a violation of the State Ethics Act. The complaint is dismissed.