

August 14, 1997

**COMPLAINT 1997 - No. 1
Senator Ken Jacobsen, Respondent**

**REASONABLE CAUSE DETERMINATION
AND ORDER**

I. Nature of the Complaint

The complaint alleges that Senator Ken Jacobsen violated the prohibition against the use of state resources for personal purposes contained in the State Ethics Act. It alleges that a document, prepared by the Senator using state resources, concerns a personal rather than a legislative matter, in violation of RCW 42.52.160. A copy of the complaint, and attachments thereto, is attached as Exhibit A.

II. Procedural History

The letter which is the subject of this complaint was submitted to the Board by Senator Jacobsen on June 9, 1997. The letter was reviewed by the Board at its meeting on July 10, 1997. A preliminary staff report was also presented at that time.

On August 14, 1997, a stipulation, proposed by Senator Jacobsen, was presented to the Board. A copy of the proposed stipulation is attached as Exhibit B.

Representative Marlin Appelwick recused himself from consideration of this complaint.

III. Acceptance of Stipulation as to Facts

The Board's procedural rules provide that a complaint may be settled either by stipulation of facts or by stipulation of facts, conclusions and penalty. Board Rule 1(A)(8). The stipulation proposed by Senator Jacobsen stipulates only to the facts.

The Board accepts the respondent's stipulation of facts as follows:

I wrote to the [Wedgwood Pool] Association at the request of another member to raise concerns regarding senior membership at the Wedgwood Pool. I wrote out the letter at home and my Assistant typed the letter and printed it on Senate letterhead in our district office. I then hand delivered the letter.

IV. Determination of Violation of Law

A. Relevant Statute

RCW 42.52.160 states:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain 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 public duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

B. Analysis

(1) In this situation, the use of state resources occurs through the use of Senate letterhead stationery and the use of the legislative assistant's working time. There is a private benefit because the topic of the letter is a personal concern of the senator's with no apparent legislative purpose.

(2) The Board set forth guidelines for legislative correspondence in **Advisory Opinion 1995 - No. 17**. The opinion states that "generally, we will interpret the exception for 'duties' broadly to encompass a legislator's discretionary and nondiscretionary authority." The opinion also includes this statement: "Citizens expect their legislators to be ombudsmen and community leaders, as well as legislators in the strict sense." However, the opinion also concludes that some letters are beyond even that broad concept of legislative duty.

The letter described in this opinion request is personal to the senator. Although other residents in the area are also affected by the pool association's policies, this is not a situation involving a state agency or possible legislation. Where the member has a strong personal interest and benefit, the Board will carefully examine the possible "ombudsman" role. In such situations, it would only be appropriate if some governmental action or legislation were involved.

(3) Ethics Rule 3 defines the circumstances of limited exceptions to the prohibition on private use of state resources:

If there is no actual cost to the state or the cost is de minimis, if there is a public benefit, and if the use does not interfere with the performance of official duties, then infrequent and incidental use of state resources for private benefit may be permissible.

(i) The cost to the state is de minimis if the actual expenditure of state funds is so small as to be insignificant or negligible.

(ii) A public benefit under this rule may be direct or indirect, such as improving employee morale or activities that improve the work-related job skills of a legislator or employee.

Although the conduct described in the request may fit these criteria, the rule also includes in subsection (4)(c), the following specific limitation: "A legislator or legislative employee may not make private use of any state property which is consumable such as paper, envelopes or

spare parts, even if the actual cost to the state is de minimis." In this case the cost of the letterhead stationery is de minimis, but it is clearly a consumable as described.

Further, the Board may look more critically at the use of time by a person under control or direction. A few moments on a personal matter during the work day may be dismissed as de minimis. However, it is not appropriate for a person in a supervisory position to require a subordinate to spend even a short time on the supervisor's personal issues,

V. Determination of Penalty

The Board determines that the nature and extent of the violation do not justify imposition of a monetary penalty. By this order the Board is issuing a letter of correction to Senator Jacobsen, which clarifies that this conduct is a violation of the ethics law and directs that such activity not be repeated.

VI. Order

It appearing from the stipulation as to facts and the conclusions of the Board that Senator Jacobsen has violated RCW 42.52.160 and Legislative Ethics Board Rule 3,

Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, by causing the preparation of a personal letter using legislative letterhead and staff time, the respondent, Senator Ken Jacobsen, has violated RCW 42.52.160 and Legislative Ethics Board Rule 3.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that respondent, having himself directed this matter to the attention of the Board, shall be penalized by a letter of correction; and that this order be served on the respondent as the letter of correction.

Will Bachofner, Chair
Determined by the Board: August 14, 1997