

COMPLAINT 2006 – NO. 9

In Re Nixon and Japhet

September, 2006

Order of Dismissal

I. Nature of the Complaint -- Use of Public Facilities to Assist Campaign

The Senate Democratic Campaign Committee (SDCC) alleges that Rep. Toby Nixon, R-45th Legislative District, and Rebecca Japhet, Communications Director for the Senate Republican Caucus, utilized public facilities to assist Rep. Nixon's campaign for the State Senate in violation of RCW 42.52.180. The SDCC alleges that Ms. Japhet wrote a campaign press release for Rep. Nixon using public facilities and/or identified herself as a legislative employee and provided legislative contact information if any one wished further information about the release or Rep. Nixon's candidacy. The complaint infers that Rep. Nixon authorized or utilized the involvement of Ms. Japhet. RCW 42.52.180 provides in pertinent part:

- a. 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 an agency, and clientele lists of persons served by the agency.

II. Jurisdiction

The complaint alleges a violation of RCW 4.52.180 by a legislator and a legislative employee. The Board has both personal and subject matter jurisdiction (RCW 42.52.320).

III. Results of Investigation -- Determination of Facts

The Board conducted an investigation pursuant to RCW 42.52.420 and determines the following.

1. The complaint was received by the Board on August 31, 2006. Attached to the complaint was a copy of an apparent press release dated April 27, 2006 which announced Rep. Nixon's candidacy for the State Senate and at the end of the release

appears a partial reference to Ms. Japhet as follows:

aphet(360)786-7516 or Japhet.Rebecca@leg.wa.gov

The phone number is Ms. Japhet's legislative phone number and the email address is her legislative email address. In previous cases the Board has concluded that legislative phones and email are public facilities within the context of RCW 42.52.180.

2. The campaign release was printed on page 8 of the May, 2006 newsletter publication of the Woodinville Chamber of Commerce (Chamber) which is titled "off the vine." The City of Woodinville is located in Rep. Nixon's legislative district -- the 45th.
3. Printed on page 7 of the same Chamber newsletter is a press release announcing that Senator Bill Finkbeiner will not be a candidate for reelection in the 45th Legislative District. This press release was written by Ms. Japhet as part of her legislative duties as the writer assigned to Senator Finkbeiner and at the end of this release appears the following:

For more information contact Rebecca Japhet(360)786-7516 or Japhet.Rebecca@leg.wa.gov

4. On the morning of April 27, political consultant Stan Shore, Rep. Nixon and Nixon for Senate campaign manager Eric Rohrbach, drafted a campaign press release announcing Rep. Nixon's candidacy for the seat to be vacated by Senator Finkbeiner. Neither Mr. Shore nor Mr. Rohrbach is a legislative employee.
5. The original draft, prepared by Mr. Shore, was shared by email with Rep. Nixon and Mr. Rohrbach and after editing and discussion of distribution methods, which also took place with email, the three agreed on the final version. There is no allegation or evidence that legislative equipment was used in this process.
6. The agreed-upon campaign press release is the same campaign press release published on page 8 of the Chamber newsletter with the following exceptions:
 - a. The original release says "Toby Nixon Announces for State Senate." The Chamber version says "Toby Nixon for State Senate."
 - b. The Chamber version uses bold type in the header and the original release does not.
 - c. The fonts are different.
 - d. At the bottom of the original release the following is found: "Paid for by Friends of Toby Nixon-GOP-12113 NE 141st Street-Kirkland, WA 98034

–www.tobynixon.com http://www.tobynixon.com." At the bottom of the Chamber version is the partial attribution to Ms. Japhet which forms the basis for this complaint.

7. The text of the original campaign release and the Chamber version is the same.
8. Ms. Susanne Rollins is Chief of Staff for the Chamber and her duties include the production of the Chamber's newsletter, including the May, 2006 edition. Ms. Rollins advises that she received the Finkbeiner legislative news release from Rebecca Japhet and the Nixon campaign announcement from someone, she isn't sure who, on Rep. Nixon's campaign staff. She expresses no doubts that Ms. Japhet did not provide the Nixon release.
9. Ms. Rollins states it is her responsibility to organize all materials for the Chamber newsletter and that necessarily includes the right to edit. In reference to her records she further states that she made the editing changes which resulted in the differences between the campaign release as received from the Nixon campaign and the release as published by the Chamber with regard to the word "Announces" in the title, the use of bold type, the font, and the attribution to the campaign committee. She then sent all materials to a publisher/printer. The publisher/printer then seeks to adjust the materials to his template where the materials are again moved about and manipulated for formatting purposes. The draft newsletter was returned to her for approval before publishing.
10. Ms. Rollins characterizes the partial attribution to Ms. Japhet on the campaign news release as a "formatting" error and that the error was missed. She states it would not have been the type of mistake she would normally look for and that it was overlooked.
11. On September 19, the Board received a request by FAX from the SDCC which requested the complaint be withdrawn with respect to Ms. Japhet because "After further investigation, we are satisfied that Ms. Japhet had no role in her name appearing on Rep. Nixon's press release in the May 2006 edition of the Woodinville Chamber of Commerce publication Off the Vine."
12. The SDCC did not request the complaint be withdrawn with respect to Rep. Nixon.

IV. Conclusion and Order

Based upon a review of the complaint and the Board's investigation, we find there are no facts or reasonable inferences there from which support the allegations that Rep. Nixon or Rebecca Japhet utilized public resources with respect to the Nixon campaign release.

On its face the campaign release which appeared in the Chamber newsletter would appear to provide a reasonable belief on which to base this complaint. However, the complainant

"After further investigation . . .," declared Ms. Japhet was free from wrongdoing. If that is true, and we conclude today after investigation there is no evidence to the contrary, the complainant seems to be left with only the inference that Rep. Nixon or his campaign staff would for some reason intentionally place a partial attribution to this legislative employee on the campaign release. That inference is nonsensical as well as unsupported by any facts.

IT IS HEREBY ORDERED, pursuant to RCW 42.52.425, which grants the Board the authority to dismiss a complaint after investigation if it finds that the complaint is unfounded, that Complaint 2006-No. 9 is DISMISSED.

Wayne Ehlers, Chair
Date: