

COMPLAINT 2009 – NO. 3

In Re Roach

DETERMINATION OF NO REASONABLE CAUSE – ORDER OF DISMISSAL

September, 2009

I. Nature of the Complaint

The Complainant alleges that Senator Pam Roach (Respondent) violated RCW 42.52.070 and RCW 42.52.160 of the State Ethics Act through the use of Respondent's personal blog to advocate for grandparents involved in a dispute with the Department of Social and Health Services (DSHS) over the care and custody of a minor grandchild.

II. Jurisdiction

The Board has both personal and subject-matter jurisdiction.

III. Conclusion

The alleged facts do not constitute reasonable cause to believe that Respondent violated either statute through her advocacy on behalf of the grandparents.

IV. Determination of Facts

Complainant is a participant in the foster care program administered by DSHS. DSHS removed the minor child from the care of the birthmother and later from the care of the grandparents and placed the child with the complainant in a foster parent-adopt environment over the objections of the child's grandparents. The grandparents turned to Respondent for assistance and Respondent advocated on their behalf by publishing on her personal blog the grandparents' arguments in favor of returning the child to them. The Respondent took issue with the qualifications of the complainant and criticized the actions of individuals within DSHS associated with the case. RCW 13.34.130 expresses a preference for placement of a child with relatives if efforts to reunite the child with the birth parents prove unsuccessful

V. Determination of Violations of Law

RCW 42.52.070 (Special privileges) states:

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 herself, or his or her spouse, child, parents, or other persons.

RCW 42.52.160 (Use of persons, money, or property for private gain) states in pertinent part:

- (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 capacity, for the private benefit or gain of the officer, employee, or another.
- (2) This section does not prohibit the use of public facilities to benefit others as part of the state officer's or state employee's official duties.

Assisting constituents is an example of a legislator's discretionary authority and rendering appropriate assistance falls within a legislator's scope of employment and official duties (see, for example, **Advisory Opinion 1995 – No. 17**).

When a legislator seeks to use the legislative position and/or public resources to advocate for others there must be a tangible legislative nexus with the contemplated use of office and public resources. "When a legislator becomes an advocate for a constituent, public resources and the office of the legislator may be used on behalf of the constituent if a government official or government office is involved or if the constituent is seeking assistance on legislative issues. If either of these two conditions is met, there is a sufficient and tangible legislative nexus to conclude that the advocacy is within the scope of a legislator's employment and/or within his or her official duties (**Advisory Opinion 2006 – No. 1** and **Complaint Opinion 2008 – No. 6**).

Both of the opinions cited above note that advocacy through use of office and/or public resources is not appropriate, and falls outside a legislator's scope of employment and official duties, when the goal of such advocacy is to achieve a personal benefit such as fostering a business relationship with the state. In such a circumstance legislators must avoid the perception that "improper means" are used. Some indices of "improper means" may be persistent communications, threats and intimidation.

In the present case the grandparents were engaged in a dispute with a state agency and government officials. The dispute involved the removal of the minor child from the care of the grandparents which was in their view done in disregard of the facts of the case and of the considerations they felt entitled to pursuant to the law which expresses some degree of preference for placement with relatives. Whether or not the grandparents were qualified to provide the proper environment for the child is not a question for this Board and not relevant to the question of legislative nexus. There was a legislative nexus and advocacy was permitted under the Act.

VI. Summary

RCW 42.52.070 prohibits the use of "improper means," which is suggested by examples of threats and intimidation on the part of a legislator toward others, when the object is to achieve special privileges or exemptions for self or others. **RCW 42.52.160** prohibits a legislator from utilizing public resources for private benefit or gain. Both statutes contain exceptions when a legislator is acting within the scope of his or her employment and/or benefitting others as part of his or her official duties. Assisting others through advocacy, under circumstances where

there is a sufficient legislative nexus, is within the scope of employment and official duties of a legislator.

Complainant expresses concern that because the minor child was identified on Respondent's blog the child may in the future become aware of the blog and be upset by its contents. Complainant feels the child should be entitled to some privacy and regrets that the Respondent, perhaps with information provided by the grandparents, felt it appropriate to post pictures of the child in the foster care environment. This Board shares the concern about the pictures of the child being posted on the blog and thereby identifying the child to those not directly involved in the case. We have noted (**Complaint Opinion 2008 – No. 6**) that at some point the sharing of information in these types of cases to the public at large may pose a danger to children, their families, foster parents or government employees. We urge legislators to consider the possibility of unintended consequences through their advocacy.

IT IS HEREBY ORDERED that the Complaint is dismissed.

David R. Draper, Chair

Date: September 22, 2009