

COMPLAINT 2011 – NO. 2

In Re Hope

DETERMINATION OF NO REASONABLE CAUSE AND ORDER OF DISMISSAL

September, 2011

1. Nature of the Complaint

The complaint was filed on April 11, 2011 and was discussed by the Board at regularly scheduled meetings on May 18, July 14 and September 14. The complaint alleges that Rep. Mike Hope (Respondent) violated one or more provisions of the Ethics in Public Service Act (Act) through his actions as founder and executive director of 100 Ideas Washington State (100Ideas), a Washington non-profit corporation. The Board has both personal and subject-matter jurisdiction.

The first allegation is that Respondent created 100Ideas to lobby the Legislature on legislation and as the executive director Respondent has a conflict of interest in violation of RCW 42.52.020.

The second allegation is that Respondent solicited and received donations from lobbyists to support the activities of 100Ideas in violation of RCW 42.52.070 (special privileges) and RCW 42.52.140 (reasonable expectation).

The third allegation is that Respondent's acceptance of the donations constituted an illegal gift in violation of RCW 42.52.150.

The fourth allegation is that Respondent used the donated funds to travel the State of Washington at the expense of 100Ideas and this use constituted a "private gain" in violation of RCW 42.52.150.

2. Conclusion

We conclude, based upon the facts presently before the Board, there is no reasonable cause to believe that 100Ideas is currently a legislative lobbying organization; that Respondent has solicited or received donations from lobbyists; that Respondent has personally received gifts or that Respondent used corporate funds for personal travel.

Accordingly, we determine there is no reasonable cause to conclude that Respondent has violated the Act.

We have included words of caution in the Summary for the Respondent and other legislators who may find themselves in a situation similar to that described in this case.

3. Determinations of Fact

1. Respondent is the founder and executive director of 100 Ideas Washington State which is a Washington non-profit corporation.
2. 100Ideas is presently engaged in gathering citizen input for ideas related to Washington's future. These ideas may be submitted during meetings held in various parts of the State or they may be submitted through the corporation's website.
3. The website and a video on that site explaining and/or promoting the goals of 100Ideas were apparently created by Lance Cargill of 100 Ideas Institute (Institute). The Institute is a different entity than 100 Ideas Washington State.
4. According to bank records provided by Respondent, Cargill and the Institute were paid a total of \$4,750 for developing the website and producing the video. Payments were made by two checks drawn on the account of 100Ideas.
5. The bank records provided by Respondent show there have been two, \$2,500 deposits of checks payable to 100Ideas. The checks were written by individuals who were not registered as Washington lobbyists.
6. The bank records show no other deposits to 100Ideas or expenditures by 100Ideas. The corporation's checking balance reflects the difference between \$5000 in deposits and \$4,750 in expenditures plus nominal interest.
7. Respondent is apparently the only member of the 100Ideas Board of Directors.
8. A 100Ideas advisory board has been formed for the avowed purpose of reviewing the ideas submitted to the corporation and selecting the best as determined by the

advisory board. Respondent represents that review and selection of the best ideas are the only functions of the advisory board and that its members will not be compensated for their services or reimbursed for any expenses.

9. The ideas selected by the advisory board may be published by 100Ideas and distributed to legislators as well as other public officials and policy makers.
10. Respondent states that the publication will not advocate for any of the ideas and 100Ideas will not lobby the Legislature on behalf of any of the ideas.

4. Conclusions of Law

Conflict of Interest – RCW 42.52.020 -Activities incompatible with public duties

“No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature that is in conflict with the proper discharge of the state officer’s or state employee’s official duties.”

The complaint alleges that a previous advisory opinion, AO 1998 – No. 6, consisted of facts similar to the facts of the present case and the Board’s conclusion in that advisory that the legislator would have a conflict of interest should control here. In that advisory opinion the Board determined that there would be a conflict of interest if (1) a legislator served as the executive director of a non-profit corporation organized to educate the public on a pending legislative issue; (2) the legislator would be reimbursed for office supplies, travel and other expenses; (3) the board of directors of the non-profit would include registered lobbyists; and (4) non-profit fundraising would include solicitations to lobbyists and lobbyist-employers.

The apparent facts of the present complaint are that (1) 100Ideas is an idea-gathering entity and is not conducting outreach education on a pending legislative issue; (2) Respondent has not been reimbursed for travel and other expenses; (3) registered lobbyists do not sit on 100Ideas board of directors; and (4) non-profit fundraising has not included solicitations to lobbyists or lobbyist employers.

There is no reasonable cause to believe Respondent has violated RCW 42.52.020.

Special Privileges and Reasonable Expectations (Gifts)

RCW 42.52.070 – Special privileges

“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 himself or herself, or his or her spouse, child, parents, or other persons.”

RCW 42.52.140 – Gifts

“No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee or be considered as part of a reward for action or inaction.”

The allegation that Respondent violated one or both of these statutes is based upon the assertion that he has solicited and accepted donations from lobbyists on behalf of 100Ideas. This allegation is not supported by the apparent facts of the case. Therefore, there is no reasonable cause to believe either statute has been violated.

Gifts

RCW 42.52.150 limits most gifts to legislators valued at more than fifty dollars in a calendar year whether from a single source or multiple sources.

According to corporate banking records 100 Ideas received donations from two sources totaling \$5,000. These were deposited in the corporate bank account and most of the money was spent by the corporation for web-related services performed for 100Ideas. Since a registered Washington non-profit corporation was the recipient of the donations there is no reasonable cause to believe Respondent violated RCW 42.52.150.

Use of persons, money, or property for private gain

RCW 42.52.160 reads 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 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 official 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.

The allegation that Respondent violated this statute fails on two counts. First, there is no evidence that Respondent has been reimbursed by the non-profit for travel expenses. Second, we read the statute as directed at state officers and state employees who misuse persons, property or money under their “official control” as state officers or state employees (section 1). Section 2 affords an exemption to the prohibition if “public resources” are used to benefit others as part of official duties. The scope of this statute does not encompass the use of these corporate funds to reimburse its executive director for travel under the facts of this case. There is no reasonable cause to believe that Respondent has violated RCW 42.52.160.

5. Summary

Although we dismiss the allegations against Respondent for lack of reasonable cause, we do not intend by this opinion to suggest that the activities of 100Ideas remain free from ethical concerns. At this point the non-profit appears to be an idea-gathering entity with no plans to transform into a legislative-lobbying organization or to include lobbyists in its corporate structure. As executive director of 100Ideas, Respondent would have conflict of interest issues if these facts were to change.

We have received copies of emails which suggest the Respondent made some use of legislative staff and legislative computers to recruit and organize the 100Ideas advisory board. In his voluntary and unsworn response to the complaint, Respondent stated no state resources had been used to organize the corporation. Whether state resources were or were not used is not germane to our determination to dismiss for lack of reasonable cause because at this time the facts before us are that 100Ideas has limited its activities to collecting ideas from citizens.

Additional materials provided to the Board indicate that Respondent, as executive director of 100Ideas, announced that the advisory board would be selecting the best ideas submitted by students for the possible award of academic scholarships. If these scholarships are awarded, the use of public resources to assist the corporation becomes problematic. The Ethics Act prohibits the use of legislative position to secure special privileges for others and prohibits the use of public resources for the private benefit or gain of others.

We have also received copies of correspondence which suggest that Respondent requested the advisory board members not respond to a public records request from the Complainant and advised them they were not legally obligated to respond. Even if Respondent made this request to conceal his use of public resources in support of 100Ideas, this use of public

resources is not an ethics violation – subject to our caveat about turning 100Ideas into a lobbying or scholarship entity.

In addition, while we have no evidence that Respondent has solicited or received donations to 100Ideas from lobbyists, the possibility of this happening in the future would be an ethics concern. This concern over the involvement of lobbyists extends to the proposed publication and dissemination of a book containing the best of the ideas gathered by the non-profit. Lobbyists should not be solicited for support of this effort nor should contributions be accepted from them.

Finally, we note that Respondent’s initial position was that 100Ideas was under no obligation to disclose the names of the donors to the nonprofit. Respondent did, however, voluntarily provide those names and this allowed the Board to fulfill its obligation to determine whether lobbyists had made contributions. Legislators are advised that the Ethics Act grants the Board general authority “...to require the production for examination of any books or papers relating to any matter under investigation or in question before the ethics board (RCW 42.52.390).”

6. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the complaint is dismissed for lack of reasonable cause to believe the Ethics Act was violated.

David R. Draper, Chair
Date:

