

# Legislative Ethics Board

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101 LEGISLATIVE BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
www.leg.wa.gov/lcb

JENNIFER STRUS - COUNSEL  
Jennifer.Strus@leg.wa.gov

COMPLAINT 2018 – No. 3

In re Caldier

July 10, 2018

## ORDER OF DISMISSAL: LACK OF REASONABLE CAUSE AND NO JURISDICTION

### I. Nature of Complaint

The complaint alleges facts that, if proved, could support a violation of the following provisions of the Ethics in Public Service Act (Act):

RCW 42.52.020 (Conflict of Interest): *“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.”*

RCW 42.52.070 (Special Privileges): *“...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 42.52.160 (Personal Gain): *“(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.”*

The complaint further alleges violations of House Rule 19 and Article II, § 30 of the Washington State Constitution.

During the 2015 legislative session, Rep. Caldier co-sponsored HB 1221 which would have created a passenger only ferry from Bremerton to Seattle. During the 2016 legislative session, Rep. Caldier requested a capital budget appropriation for repairs to the Turner Joy ship. The complaint alleged that Chris Tibbs, Rep. Caldier’s fiancé, was the lobbyist for both of these items. During the 2017 legislative session, Rep. Caldier requested a capital budget appropriation for repairs to the main building owned by the ARC of the Peninsulas. Chris Tibbs, the CEO of the ARC, requested that appropriation through Rep. Caldier.

The complaint alleges that Rep. Caldier used her position as a legislator to benefit herself and her fiancé, Chris Tibbs.

## II. Background

Complaint 2018 - No. 3 was filed in February 18, 2018.

## III. Jurisdiction

The Board has personal and subject matter jurisdiction over the alleged violations of the Act. RCW 42.52.320. The Board has no jurisdiction to adjudicate a constitutional claim, but can review an internal rule of the legislature if that rule relates to the Act. Complaint Opinion – *In re Blake*, 2013 – No. 2.

## IV. Findings of Fact

1. Rep. Caldier is a member of the Washington state House of Representatives representing the 26<sup>th</sup> legislative district.

2. Rep. Caldier and Chris Tibbs have been engaged to be married since November 2014. They do not now nor have they ever cohabitated.

3. Chris Tibbs was the registered agent for a lobbying firm called Westsound Strategic Partners from 2015-2016. In this capacity, his clients were Mason County and the Bremerton Historic Ships Association. He never lobbied for Kitsap Transit. The reports Chris Tibbs filed with the Public Disclosure Commission confirm that Kitsap Transit was never a client of Westsound Strategic Partners.

4. During Rep. Caldier's first legislative session, she co-sponsored HB 1221 at the request of the prime sponsor. The bill would have created a passenger ferry service from Bremerton to Seattle. The bill was heard in the House Transportation and Finance Committees. The executive director of Kitsap Transit testified in favor of the bill. Rep. Caldier is not a member of either of these committees. HB 1221 was never voted on by the entire House chamber.

5. During the 2016 legislative session, Rep. Caldier made a capital budget request of \$1.2 M to provide funds to the Bremerton Historic Ships Association for the purpose of repairing the Turner Joy ship which sits in the Bremerton Harbor and acts as the breakwater to the Harbor. Reps. Hansen, Griffey, Appleton, MacEwen and Young joined Rep. Caldier in requesting the capital funds. According to John Hansen, President of the Bremerton Historic Ships Association, although Chris Tibbs did lobby on the Association's behalf for the capital budget appropriation, he was not paid for his lobbying efforts. The final 2016 supplemental capital budget appropriated \$300,000 for repairs to the Turner Joy.

6. In January 2017, Chris Tibbs was hired as the Executive Director of the ARC of Kitsap and Jefferson counties (now called the ARC of the Peninsulas) which is located in the 23<sup>rd</sup> legislative district. On January 20, 2017, Chris Tibbs sent Rep. Caldier an e mail; attached to the email was the completed budget request form for the ARC capital project in the amount of \$80,855. Rep. Caldier first heard about the project from the Bremerton mayor who wanted to use a portion of the ARC facility as an emergency cooling/heating center. However, without HVAC upgrades to the facility, it could not be used as an emergency center. Rep. Caldier submitted the budget request she received from Chris Tibbs to the House capital budget chair.

Board staff asked Rep. Caldier why she made a capital budget request for a facility not located in her district. She stated that even though the facility is not located in her district, it nevertheless serves people who reside in her district.

This budget item was included in the capital budget that passed in January 2018. (There was no capital budget passed during the 2017 legislative session so the request Rep. Caldier made in 2017 carried over into the 2018 session). Rep. Caldier voted in favor of the capital budget when it was brought to the floor for final passage.

Chris Tibbs received no benefit from this capital budget appropriation; he did not receive a salary increase or a bonus as a result. As of June 30, 2018, the ARC of the Peninsulas had not yet received the appropriation.

## V. Conclusions of Law

### A. Jurisdiction

The Board has personal jurisdiction over Rep. Caldier; it has subject matter jurisdiction over the allegations of violations of the Act. It does not have subject matter jurisdiction over allegations of violations of the State Constitution. It may exercise subject matter jurisdiction over internal legislative rule violations but only as they may relate to the Act.

### B. Conflict of Interest

RCW 42.52.020 (Conflict of Interest) provides: "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."

Board opinions have consistently reaffirmed the citizen-legislator concept based upon the constitutional principle of a part-time legislature. By Constitutional design, the legislature consists of citizen legislators who bring to bear on the legislative process their individual experience and expertise. RCW 42.52.330.

Conflict of interest questions have generally followed one of two lines of analysis: per se or functional. In a per se analysis, the question is whether the conflict is so severe that the employment itself is a violation of the statute. Complaint Opinion – *In re Eickmeyer*, 2006 No. 3. In this matter there is no allegation that Rep. Caldier was engaged in outside employment.

In a functional analysis, the question is whether the legislator should refrain from being involved in an issue in his or her legislative capacity. The general rule is that a legislator does not have an interest which is in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the member as a member of a business, profession, occupation or group, to a greater extent than to any other member of such business, profession, occupation or group. Complaint Opinion – *In re Tim Sheldon*, 2005- No. 6.

The facts of this case do not support a finding that Rep. Caldier's sponsorship of HB 1221 or her requests for capital budget appropriations for the Turner Joy or the ARC projects constituted a conflict of interest. Although her fiancé may have lobbied for the Turner Joy appropriation and requested that she submit the ARC capital budget request, there is no evidence that she personally benefitted from these actions.

### C. Special Privileges

RCW 42.52.070 (Special Privileges) provides in pertinent part: "...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." The Board has applied this provision to several past complaints.

Prior Board decisions have applied the Special Privileges statute to find violations when a legislator-attorney wrote to his private clients and appeared to offer special access to legislators (Complaint Opinion – *In re Quigley*, 1995 No. 1); when a legislator solicited tickets to a sporting event from lobbyists (Complaint Opinion – *In re Van Luven*, 2001 No. 4); and when a legislator pressured a state agency to take actions favorable to a private business owned by family members (Complaint Opinion – *In re Haler & Hankins*, 2007 No. 1). In each example, a legislator took specific action intended to provide a specific benefit to a specific person or persons.

Introducing and lobbying for the passage of legislation is the heart of legislative activity; it is the essence of "normal and regular" conduct of a legislator. Every piece of legislation passed into law affects the actions or opportunities of Washington residents. Complaint Opinion – *In re Reykdal*, 2016 No. 14.

No reasonable basis exists to conclude that Rep. Caldier violated RCW 42.52.070 (Special Privileges) by co-sponsoring HB 1221 or requesting capital budget appropriations for either the Turner Joy or the ARC of the Peninsulas. The statute requires affirmative action by the legislator; no facts were present to support a conclusion that Rep. Caldier used her position to support her fiancé.

### D. Use of Persons, Money or Property for Private Gain or Benefit

RCW 42.52.160 (Personal Gain) provides: "(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."

The Board has recognized that legislators have discretionary as well as non-discretionary legislative duties. Advisory Opinion 1995 No. 17. Public resources may be used to perform these discretionary duties when a constituent needs assistance. However, those efforts may cross a line if the legislator stands to gain financially. Complaint Opinion - *In re Harris*, 2014 No. 2. In prior opinions, the Board has read the statute to be 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. And as stated previously, introducing and lobbying for the passage of legislation is the heart of legislative activity; it is the essence of "normal and regular" conduct of a legislator.

The complaint alleges that Rep. Caldier used her position as a legislator to financially benefit herself and her fiancé. There are no facts to support this allegation. Rep. Caldier is not married to Chris Tibbs and they do not cohabit and never have. The ARC funding will be used strictly for capital expenses; Chris Tibbs will not see a salary increase or bonus as a result of the capital appropriation. Although the complaint alleged that Rep. Caldier and Chris Tibbs were cohabitating and, as a result, assumed a benefit to Chris Tibbs would be a benefit to Rep. Caldier, this assumption is without merit. Rep. Caldier's actions appear to be those encompassing the "heart of legislative activity" for which she did not receive any private financial gain.

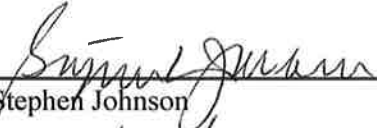
E. House Rule 19 & Article II § 30 of the Washington State Constitution

The complaint alleges that Rep. Caldier's actions violated House Rule 19D and Article II § 30 of the State Constitution. The Ethics Act does not confer jurisdiction on the Board to adjudicate a constitutional claim. Complaint Opinion – *In re Blake*, 2013 No. 2.

The Board may review an internal rule of the legislature if that rule relates to the Act. The Act provides the House may adopt rules, consistent with the Act, for its internal use to protect against violations of the Act (RCW 42.52.200) and it follows that an alleged violation of this type of rule could be the subject of an ethics inquiry. The Board does not need to determine whether this Rule relates to the Act because there is no evidence that Rep. Caldier financially benefitted from her actions.

VI. Order of Dismissal

IT IS HEREBY ORDERED: that Complaint 2018 – No. 3 is hereby dismissed.

  
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Sen. Stephen Johnson

Date:

7/10/18