

Legislative Ethics Board

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COMPLAINTS 2018 – NO. 5, NO. 6 & NO. 7

In re Kraft
In re Buys
April 1, 2019

ORDER OF DISMISSAL: LACK OF REASONABLE CAUSE

I. Nature of the Complaints

The Complaints allege similar facts and identical violations of the law. RCW 42.52.180 prohibits the use of facilities of an agency to assist a campaign.

Complaint 2018 - No. 5 alleges that an electioneering ad for Rep. Vincent Buys, posted on Instagram, redirected viewers to his legislative website in violation of RCW 42.52.180. This complaint was received by the Board on November 6, 2018.

Complaint 2018 – No. 6 alleges that an electioneering ad for Rep. Kraft posted on the online newspaper, THE REFLECTOR, redirected viewers to her legislative website in violation of RCW 42.52.180. This complaint was received by the Board on November 6, 2018.

Complaint 2018 – No. 7 alleges that an electioneering ad for Rep. Vincent Buys, posted on the on-line version of THE BELLINGHAM HERALD, redirected viewers to his legislative website in violation of RCW 42.52.180. This complaint was received by the Board on November 15, 2018.

Board counsel conducted an investigation pursuant to RCW 42.52.420 and the Board discussed the complaint at regularly scheduled meetings on February 4, 2019 and March 25, 2019.

RCW 42.52.180 provides in pertinent part as follows:

- (1) 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 the election of a person to an office or for the promotion of or opposition to a ballot proposition . . . 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 the agency, and clientele lists of persons served by the agency. . . (emphasis added)

The Board has joined the three complaints so that one opinion may be issued.

II. Jurisdiction

The Board has personal and subject matter jurisdiction.

III. Findings of Fact

A. *General Facts Pertaining to Rep. Buys & Rep. Kraft*

1. Respondent, Rep. Kraft, is a member of the Washington State House of Representatives representing the 17th Legislative District in southwestern Washington. She was a candidate for re-election in 2018.
2. Respondent, Rep. Buys was a member of the Washington State House of Representatives representing the 42nd Legislative District from January 2011 to January 2019. He was a candidate for re-election in 2018.

B. *Facts Pertaining to Complaint 2018 – No. 5 (Instagram)(Buys)*

3. On November 3, 2018, a campaign ad promoting Respondent Rep. Buys' reelection to the House appeared on Instagram.
4. The video provided to the Board of the Instagram posting appears to be an ad paid for by Rep. Buys' campaign but the ad appears on the Instagram account of one Hanna Bogle.
5. The ad was not posted on Rep. Buys' Instagram account, nor had he ever placed any campaign related information on his account. The Board was unable to confirm whether or why a campaign ad for Rep. Buys was posted on Hanna Bogle's Instagram account.

C. *Facts Pertaining to Complaint 2018 – No. 7 (Buys)*

6. On November 2, 2018, two campaign ads to re-elect Rep. Vincent Buys appeared on the same page in the online version of THE BELLINGHAM HERALD.
7. McClatchy Newspapers owns THE BELLINGHAM HERALD.
8. The ads contained a picture of Rep. Buys and stated "Re-Elect Vincent Buys – State Representative – GOP" and "Vote by November 6!"
9. When the reader clicked on the ad, the reader was taken to Rep. Buys' member page on the House Republican Caucus (HRC) legislative website:
"vincentbuys.houserepublicans.wa.gov." Included on the first page of the member page is Rep. Buys' legislative phone number and his legislative e mail address.

10. Rep. Buys worked through Kate Smith, a strategic media consultant for McClatchy Newspapers, to place his ad with THE BELLINGHAM HERALD.
11. The materials Ms. Smith submitted to THE HERALD to place the ad included Rep. Buys' campaign website address, not his legislative website address.
12. It is common practice by newspapers to include a link with an ad so that if readers want more information, they can click on the link to obtain that additional information.
13. Ms. Smith works with a team in Sacramento to place campaign ads. Rep. Buys interviewed once with that team and directed them to his legislative website to obtain personal information about him. Apparently, according to Ms. Smith, the Sacramento team confused Rep. Buys' legislative URL with the campaign URL and listed the legislative URL rather than the campaign URL.

D. Facts Pertaining to Complaint 2018 – No. 6 (Kraft)

14. On November 1, 2018, a campaign ad for Rep. Kraft, called a slider¹, appeared in the on-line version of THE REFLECTOR, a weekly newspaper located in Battle Ground, Washington.
15. The ad contained a picture of Rep. Kraft along with the following statement: "I will never forget that I work for you. I ask for your vote." "THANK YOU"
16. The bottom of the ad contained a statement that the ad was paid for by the campaign to Elect Vicki Kraft.
17. At the top of the page on which the ad appeared was the following website: <http://vickikraft.housepublications.wa.gov/>. Clicking on this link took the reader to Rep. Kraft's member page on the HRC legislative website. Included on the first page of the member page is Rep. Kraft's legislative phone number and her legislative e mail address.
18. Brian Minnich was Rep. Kraft's political consultant during her reelection campaign in 2018.
19. Mr. Minnich had a heart attack on 10/15/18 and bypass surgery in early November towards the end of Rep. Kraft's campaign.
20. The ad posted in THE REFLECTOR was designed by a graphic artist based upon instructions by Mr. Minnich. After the ad was completed and approved by Rep. Kraft, it was forwarded by Kimberly Stromberg, the graphic artist, to Mr. Minnich.
21. After he approved the ad, Mr. Minnich forwarded it to THE REFLECTOR without any instructions. Mr. Minnich's normal practice would have been to instruct the newspaper to include a link to Rep. Kraft's campaign website, but because he was having surgery and

¹ Slider ads (also called floating ads or catfish ads) are banner ads that slide in or fade in at the bottom of a page. The slider ad moves along with the page as the user scrolls up or down and stays visible unless the user closes it through the closing button.

- needed to complete a number of tasks beforehand, he did not include any instructions with the ad.
22. Mr. Minnich would have had the newspaper correct the link that appeared with the ad if he had not been out of commission as the result of his surgery.
 23. According to Tara Meek, the general manager of THE REFLECTOR, when the newspaper schedules an online ad for a client, as a matter of course, it adds a click-through link to a website. Since a link was not provided with the ad, THE REFLECTOR'S graphic artist added one he thought was appropriate – the link to Rep. Kraft's home page on the HRC legislative website.

IV. Conclusions of Law

Over the years, the Board has addressed ethics issues involving links from non-legislative web sites to legislative web sites. Many of these efforts have involved the reconciliation of two expressions of public policy that on occasion seem to be in conflict: (1) the Public Records Act, RCW 42.56, which is designed to guarantee that the public has access to public records of government bodies; and (2) the Ethics in Public Service Act, RCW 42.52, which, among other things, prohibits the use of agency facilities to assist a campaign. *Advisory Opinion*, 2000 – No. 2. It is well-settled that a legislator may create a link from a site used for campaign purposes to a video and other materials created or developed using the facilities of an agency. This link must take the user out of the campaign webpage or campaign social media site, or any site which is involved in campaign activity, and redirect the user to the original, legislative approved hosting site. *In re Rodne & In re Hickel*, 2016 – Nos. 1 and 5. If the legislative video or other legislative materials can be viewed on a campaign site without leaving that site, the materials have been “posted.” Posted materials are not permitted under RCW 42.52.180. *In re Kochmar*, 2016 – No. 7.

In this matter, the links that appeared in THE REFLECTOR, THE HERALD and on Instagram were all associated with a campaign ad to re-elect either Rep. Buys or Rep. Kraft. No legislative materials associated with the campaign ads were posted or embedded in the newspaper sites or on the Instagram account. The question then becomes whether these links to member pages on the HRC legislative website are prohibited under the Ethics Act.

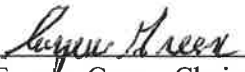
To address this question, the Board relies on *In re Hargrove*, 2012 – No. 3. In that case, Rep. Hargrove door belled and handed out a campaign brochure containing the following legislative website – “www.HouseRepublicans.wa.gov/Members” in addition to his campaign website. That legislative link took the user to the House Republican Caucus page; from there the user could easily scroll through and find information on the various members of that caucus. The question in that case was whether reference to the legislative website on campaign materials violated RCW 42.52.180. The Board held that the inclusion of the legislature's website addresses may be provided in printed campaign materials. It did further opine that no campaign materials or campaign websites may include the following information: the legislative toll-free hotline number; legislative phone numbers; legislative e email addresses or legislative mailing addresses.

In this matter, the links that appeared with the ads in THE BELLINGHAM HERALD, THE REFLECTOR and on the Instagram account took the user directly to either Rep. Buys' or Rep. Kraft's home page on the HRC website. In the *Hargrove* case, the link contained on the brochure took the user to the main page of the HRC website. Whether a link takes the user directly to the HRC home page or the member's home page on the HRC website is a distinction without a difference. The materials contained on a member's home page are in the public domain, accessible by any person with a computer, and have been placed there only after a determination they are appropriate and related to legislative issues. *Advisory Opinion, 2015 – No. 2.*

The inclusion of the links from the campaign ads to Rep. Buys' or Rep. Kraft's member pages on the HRC website was made by employees of either THE BELLINGHAM HERALD, McClatchy newspapers or THE REFLECTOR. It is unclear who posted the Instagram campaign ad on Ms. Bogle's account. Nevertheless, determining the responsibility for including those links does not affect the outcome since those inclusions in either the newspapers or the Instagram account did not violate RCW 42.52.180 because they were not posted or embedded in either of the newspapers or on the Instagram account; rather, the links included in the campaign ads took the user out of the website on which the link appeared and into the legislative website, which is permitted.

V. Order of Dismissal

IT IS HEREBY ORDERED: that Complaints 2018 – Nos. 5, 6, and 7 are dismissed.



Eugene Green, Chair

Date: 4-1-2019