

Legislative Ethics Board



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COMPLAINT 2022 – No. 1

In re Kuderer
April 22, 2022

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

I. NATURE OF COMPLAINT

The complaint alleges that Respondent violated Complainant's First Amendment rights and the Ethics in Public Service Act (Act) when Respondent had Complainant's Twitter account suspended. Although the complaint does not cite a specific statute to have been violated, the allegations were investigated under RCW 42.52.160 (use of public resources for personal gain).

II. JURISDICTION

The Board has personal jurisdiction over the social media allegation but lacks subject matter jurisdiction over the violation of constitutional rights allegation as well as the allegation regarding Respondent's actions regarding her personal Twitter account. RCW 42.52.320.

III. PROCEDURAL HISTORY

Complaint 2022 – No. 1 was received on January 6, 2022 and was discussed during the Board's regularly scheduled meetings on March 21, 2022 and April 18, 2022.

IV. FINDINGS OF FACT

1. Respondent is a member of the state Senate representing the 48th legislative district. She served in the House of Representatives from September of 2015 until January 2017 when she was appointed to fill the vacant Senate seat in the 48th Legislative District.
2. Complainant is not Respondent's constituent but indicated he follows her on Twitter because he disagrees with several of her policy positions.

3. Respondent believes that Respondent's Twitter account is an official account because the name assigned to her official Facebook account (senpattykuderer) is the same as the name assigned to her personal Twitter account (@senpattykuderer).
4. Respondent maintains a personal Twitter account. She does not have an official legislative Twitter account. The name of her personal Twitter account is @senpattykuderer.
5. Respondent indicated that she is aware of Complainant because he disagrees with her position on gun safety and frequently comments on her tweets. She also indicated that she has tweeted about legislation and legislative issues using her personal Twitter account.
6. Complainant had a Twitter account under the name @TimothyBurrell16.
7. On January 4, 2022, Respondent tweeted, "My polyonymous Twitter troll is suspended again." She included in the Tweet the Twitter notification that TimothyBurrell16's account had been suspended.
8. Complainant confirmed that his Twitter account under @Timothy Burrell16 had been suspended but stated that when that happens, he just creates a new account under a different name.
9. Complainant also stated that he believes Respondent made the complaints to Twitter that resulted in the suspension of his account although he indicated he has no proof of that. Respondent indicated that she did complain about Complainant's posts to Twitter. She further indicated that she reported Complainant's tweets because they were vulgar and harassing. Respondent also stated that other people also reported Complainant's tweets to Twitter
10. Both Complainant and Respondent agreed that only Twitter can suspend an account.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.160 prohibits the use of persons, property or money (public resources) under a legislator's official control or direction, or in his or her personal custody, for the private benefit of self or another unless that use is part of the legislator's official duties. *In re Schmidt*, 2006 – No. 4.

Legislators are free to establish personal social media accounts provided they do not use legislative staff to create or update them. *Advisory Opinion 2020 – No. 1*. A legislator's personal Twitter account is not a public resource under a legislator's "official control or direction" because it is not an account that was established by the Senate for Respondent's official use. *See, e.g. In re Shewmake*, 2019 – No. 4 (legislator's personal Facebook account was not a public resource). Whether or not Respondent reported Complainant's tweets to Twitter is not determinative of this issue. Because the tweets occurred between Complainant's account and Respondent's personal Twitter account over which the legislature has no control, Respondent's personal Twitter account is not a public resource.

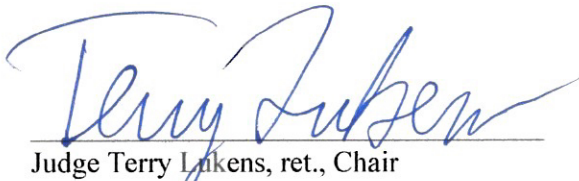
Regarding Complainant's allegation that Respondent's actions violated his First Amendment rights, the Board has previously held that the jurisdiction of the Legislative Ethics Board is limited to the enforcement of the Act and the rules adopted under it with respect to legislators and legislative staff. *In re*

Wilson, 2019 – No. 2 (citing RCW 42.52.320). As a result, the Board lacks subject matter jurisdiction to address constitutional issues. *See, e.g., In re Blake*, 2013 – No. 2; *In re Green*, 2005 – No. 3.

In *Advisory Opinion* 2020 – No. 1, the Board held that it has no authority over the names legislators assign to their personal social media pages or accounts. It further stated as follows: “to avoid public confusion, and perhaps future ethics complaints when the members use their titles in the names of their sites, the Board recommends that they add a disclaimer to the site stating that the site is not the member’s official legislative site.” Respondent should consider changing the name of her Twitter account to avoid future confusion.

VI. ORDER

IT IS HEREBY ORDERED: that reasonable cause does not exist that Respondent, Sen. Kuderer, violated RCW 42.52.160.



Judge Terry Lukens, ret., Chair

4/22/22
Date