

October 29, 1996

COMPLAINT 1996 - NO. 8, CAUCUS TALKING POINTS

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

I. Nature of the Complaint

The complaint alleges that Representative Marlin Appelwick and Rich Nafziger, Staff Director of the House Democratic Caucus, violated the State Ethics Act by directing and supervising the preparation of a document entitled *The Rest of the Story*. The complaint alleges that the document is an improper personal attack on certain members of the Legislature and violates the law against use of public facilities for campaign purposes.

II. Procedural History

Complaint 1996 - No. 8 was received on July 10, 1996. The complaint was transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because it alleges a violation of RCW 42.52.180 by a legislator.

An investigation was conducted pursuant to RCW 42.52.420. The results were submitted to the Board in an investigative report and the Board deliberated on the complaint at its regular meeting on October 10, 1996. Representative Appelwick recused himself from the Board's consideration of this complaint and was not present during the Board's review and deliberation.

III. Determination of Allegations of Fact

The document entitled *The Rest of the Story* was produced under the supervision of Rich Nafziger and at the request of Representative Appelwick. State personnel and resources were used to draft, print and distribute the document. The document does contain partisan statements attacking Republican legislative proposals and Republicans in general, as well as singling out specific Republican legislators. The document was produced early in the legislative session at a time that bills were being considered by the Legislature. It was distributed to the press and to the members of the House Democratic Caucus to use as talking points— regarding legislative proposals. It appears that the document has not been distributed since that time by Representative Appelwick or Mr. Nafziger.

No evidence was found that the document was produced to assist any person in a campaign for office, or that it has been subsequently provided for use in any campaign.

IV. Determination of Allegations of Ethics Law Violations

A. Relevant Statute

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting a campaign for election. For purposes of this complaint, the pertinent portions of RCW 42.52.180 provide:

(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 election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. 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.

B. Analysis

The Board finds that the purpose and use of the document was to assist the Democratic Caucus in partisan debate on the merits of Republican sponsored bills that were then pending before the Legislature. RCW 42.52.180 does not prohibit the use of state facilities or personnel for that purpose. As we noted in the newsletter context in **Complaint 1996 - No. 3**, it is acceptable for [legislators] to express their positions on issues that they will be dealing with in the legislative session in partisan terms.— There is no indication that the partisan material in this case was intended for other than legislative purposes.

The Board's sole jurisdictional authority is to review matters under the State Ethics Act and legislative rules issued pursuant to the act. The House and Senate are free to adopt more restrictive policies and procedures and to enforce them by administrative authority. The issue of whether the document contains improper personal attacks is not within the Board's jurisdiction.

V. Conclusion and Order

Based on a review of the complaint and the board's investigation, the Board determines that there is no reasonable cause to believe that Representative Marlin Appelwick and Richard Nafziger committed a violation of the RCW 42.52.180. The complaint is dismissed.

William Asbury, Chair
by Will Bachofner, Vice-Chair