

COMPLAINT 2000 - NO. 4 - CONFLICT OF INTEREST

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

1. Nature of the Complaint

The complaint apparently alleges that Representative Tokuda had a conflict of interest because of his employment with King County. The complaint is severely lacking in facts which would assist this Board in determining what, exactly, the alleged conflict appears to be. In addition, it is alleged that the Representative failed to file the information regarding his King County employment with this Board for preview; that he violated the law prohibiting certain outside financial interests; and that he apparently used his legislative office for personal gain or private advantage. We say "apparently" because the complainant basically asks this Board to conduct an investigation because: "Depending on the specifics of Tokuda's arrangement with the (sic) King County, he may be in violation of RCW 42.52.900."

II. Procedural History

Complaint 2000 - No. 3 was received on April 5, 2000. A factual investigation was conducted pursuant to RCW 42.52.420. The Board deliberated on the complaint at its regular meeting on May 11, 2000.

III. Determination of Allegations of Fact

Representative Tokuda was appointed by the Governor in 1986, as Executive Director of the Washington Council for Prevention of Child Abuse and Neglect and served in that capacity until his election to the legislature in 1994. He worked in a temporary, full-time position for King County from August 20, 1997 until December 31, 1997, when he terminated employment to devote his full-time attention to the 1998 legislative session. He competed for an advertised position of employment with King County in early 1998, and was hired as the King County Jobs Initiative Coordinator in the Office of Budget and Strategic Planning. These two positions are the subject of the allegations in the complaint. Representative Tokuda was to begin work as the Jobs Initiative Coordinator on March 2, 1998, but because the 1998 legislative session did not adjourn until March 12, he did not report to work until March 16. Representative Tokuda resigned his position in December, 1998, in anticipation of the 1999 legislative session.

IV. Determination of Allegations of Ethics Law Violations

a. Conflict of interest - **RCW 42.52.020**

We recently reaffirmed the citizen-legislator concept, based upon the constitutional principle of a part time legislature (**Complaint 1999 - No. 5**). This principle establishes a presumption in favor of employment outside the legislature, for legislators. Lobbying and offering legislative advice for compensation would be examples of "per se" conflicts of interest (**Advisory Opinion 1969 - No. 1** and **Advisory Opinion 1995 - No. 1**). Here there are no facts which support a reasonable belief that such a "per se" conflict of interest exists. A conflict of interest can also occur if a legislator accrues a benefit as a member of a business, profession, occupation, or group to a greater extent than other members of the particular class while discharging his or her legislative duties (**Advisory Opinion 1995 - No. 1** - and numerous other references). There are no facts here which create a reasonable belief that any such conflict of interest existed.

b. Filing requirements - **RCW 42.52.120**

In certain circumstances the State Ethics Act requires that contracts with state agencies, including employment situations, be submitted to the Legislative Ethics Board for a conflict of interest analysis before the contract or employment becomes operative. "Agency" is defined in **RCW 42.52.010(1)** as follows:

"Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

King County is not a state agency. This allegation is dismissed for lack of jurisdiction.

c. No outside compensation unless certain conditions are satisfied - **RCW 42.52.120**

The pertinent part of this statute prohibits a legislator from receiving any thing of economic value outside his or her official legislative duties unless certain conditions are met.

1. The contract must be bona fide and actually performed;
2. The performance of the contract must not be within the course of the official duties or under the individual's official supervision;
3. The performance of the contract must not require unauthorized disclosure of confidential information; and
4. The contract cannot have been expressly created or authorized by the officer or employee in his or her official capacity.

No reasonable cause exists to believe that any of these conditions have not been met.

d. **RCW 42.52.900** - the intent section of the State Ethics Act

The complaint alleges that the intent section of the State Ethics Act has been violated. The Complainant misreads the law. There are substantive sections of the Act which address the issue of improper personal gain or private advantage. The intent section is basically a statement of values and serves as a guide to the interpretation of the substantive sections but it is not self-executing. Moreover, there are no facts alleged or discovered which would indicate there is any reasonable cause for believing that Representative Tokuda acted improperly for gain or advantage.

V. Conclusion and Order

This Board determines that this is a fishing expedition and barely, if at all, alleges conduct sufficient to investigate. There are no facts alleged or discovered which even approach the reasonable cause standard we must find before proceeding with the complaint process. The complaint is dismissed.

James A. Andersen, Chair

Date