

Legislative Ethics Board

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451 JOHN A. CHERBERG BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
FAX: 360-786-1553
www.leg.wa.gov/leb

KEITH BUCHHOLZ - COUNSEL
Keith.Buchholz@leg.wa.gov

COMPLAINT 2016 – No. 15

In Re MacEwen
March 23, 2017

[Link to Legislative Material](#)

DETERMINATION OF REASONABLE CAUSE AND ORDER OF DISMISSAL

I. Nature of the Complaint

The complaint alleges that Rep. MacEwen improperly posted a photograph of legislative correspondence to his Facebook campaign site. The complaint describes two possible violations of the Ethics in Public Service Act: that the correspondence itself did not address a legislative issue (but rather a campaign issue), and that the posting of a photograph of the letter on a campaign website violated the Board's rules on linking to legislative materials from a campaign site.

II. Background

On May 25, 2016, the Board's released opinions on the question of links between campaign sites and legislative materials. Complaint Opinion 2016 – Nos. 1 and 5. In part those opinions stated:

RCW 42.52.180 allows a legislator to create a link from a site used for campaign purposes to a legislative video and other legislative materials. 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.

The opinions were distributed to all legislators. In a joint email to all members of the House, counsel for the Speaker and Minority Leader stated:

While the board was specifically considering the use of videos, it is important to note that this reasoning applies to any legislatively prepared materials, including items like press releases and photos. You may link to the material, but you may not post the material.

III. Jurisdiction

The Board has personal and subject-matter jurisdiction. RCW 42.52.320.

IV. Findings of Fact

1. Rep. Drew MacEwen is a member of the Washington House of Representatives. He was a candidate for re-election in 2016. He maintains a social media page with mixed content, including legislative materials, personal materials, and campaign actions.
2. In October 2016, candidates for an open Senate seat disputed the actions of the Public Disclosure Commission (PDC). One candidate asked the executive director of the PDC (Lopez) for clarification of the PDC's actions.
3. Lopez responded to the candidate's inquiry, using state resources to do so. Shortly thereafter, the chair of the Washington State Republican party (WSRP) and two legislative leaders filed a complaint against Lopez. The complaint alleged that Lopez should not have used state resources to respond to an election-related dispute, and called for her resignation.
4. Rep. MacEwen stated that he learned of the WSRP letter either from a Facebook post or traditional media. He shared the concerns of the WSRP, and drafted his own letter to Lopez. In part the letter stated:
 - a. Rep. MacEwen was the ranking member of the House General Government committee;
 - b. He viewed the actions of Lopez as a violation of RCW 42.52.180 and WAC 390-12-200 for using state resources to address a factual dispute in a campaign; and
 - c. He called for the resignation of Lopez.
5. Rep. MacEwen keeps official state letterhead (stationery) at his home, for legislative use during the interim between sessions. He drafted his own letter to Lopez, signed it, photographed it with his personal device, and sent a copy to his legislative assistant for mailing to Lopez. It was mailed to Lopez at the PDC by legislative staff.
6. Rep. MacEwen then posted his photograph of the letter on his social media page. The photograph was posted directly on the social media website without use of a link.

7. At the time the letter was written and mailed, Rep. MacEwen was barred from publicizing his actions through traditional means of legislative communication. He could not post a copy of the letter on his legislative website (RCW 42.52.185). He could not have his political caucus post a copy of the letter on its caucus website as House practice prohibits caucuses from posting materials that publicize the actions of members who are candidates. He could not distribute a press release without complying with the Election Year Activity (EYA) approval process that the legislature follows.
8. Rep. MacEwen acknowledged that he posted the letter in order to publicize having written it, that it was intended to be viewed by his constituents, and was aware of the limitations in the preceding paragraph. He did not seek approval to publicize the letter through the EYA process.
9. Official letterhead is a facility of an agency. RCW 42.52.180: "Facilities of an agency include....use of stationery."
10. Rep. MacEwen subsequently deleted the social media post containing the photograph of the letter. He stated to the Board, "I am much more aware of how a social media site can be considered a campaign site. I am now very careful to avoid any cross-over, but that did happen in this case...."

V. Conclusions of Law

Drafting and mailing the letter to the PDC director

1. RCW 42.52.185 restricts allowable communications by legislators when the legislator is seeking re-election to office. However, communication with another governmental official is permitted on a limited basis even when the official is a constituent of the legislator. RCW 42.52.185.
2. Even if Lopez were a constituent of Rep. MacEwen, Rep. MacEwen's letter to Lopez addressed a subject within Lopez's governmental authority, the actions taken by the PDC in response to a dispute between candidates. RCW 42.52.185 (1) (b) (ii).
3. No reasonable cause exists to believe that the creation and mailing of the letter constitutes a violation of the Ethics in Public Service Act. Although the subject of the letter was a dispute arising out of a campaign, the PDC used state resources to respond to the complaint, and the MacEwen letter was an official-to-official communication.

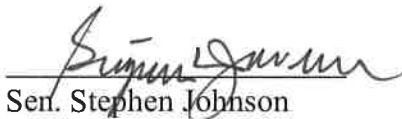
Posting a photograph of the letter on a social media website.

1. After June 30 in an election year, legislators face significant restrictions in communicating with constituents, as most communications are presumed to be campaign related under the Election Year Activity protocol. By statute, websites may not be altered; by House practice, caucus web pages may not publicize candidate-members. Rep. MacEwen posted the image of the letter with full knowledge of those restrictions. He intended to publicize a legislative action that he viewed as appropriate, and used a social media website containing campaign content to do so.
2. The photograph contained an image of official legislative stationery, which constitutes the “facilities of an agency.” Legislators may not use the facilities of an agency in campaigns for public office. RCW 42.52.180.
3. Reasonable cause exists to believe that posting of an image of the letter containing state letterhead constitutes a violation of the Ethics in Public Service Act.
4. The Board has discretion to dismiss complaints after considering all of the circumstances, including actions taken to cure the violation. RCW 42.52.425 (1) (c). Further proceedings would not serve the purposes of Chapter 42.52.

VI. Order of Dismissal

Having considered all the circumstances, the Board concludes that any violation that has occurred does not constitute a material violation because it has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter, therefore:

It is hereby ORDERED that Complaint 2016 – No. 15 is dismissed.



Sen. Stephen Johnson
Chair