

Legislative Ethics Board

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COMPLAINT 2019 – No. 5

In re Matthew Shea

January 21, 2021

I. NATURE OF COMPLAINT

The complaint was made by a resident of Respondent's district at the time the complaint was filed. The complaint alleges that Respondent violated the Ethics in Public Service Act (Act) by: 1) participating in activities that are in conflict with his official duties; 2) funneling campaign contributions to far right non-profit groups in Colorado and Arizona; 3) speaking at various alt-right conventions as a representative of the state; 4) perpetuating violence toward those with a different opinion than his; 5) traveling to a foreign country as a state representative and stepping out of the line dividing church and state; 6) misrepresenting the actual political party he is part of – Libertarian vs. Republican; 7) pulling a gun in a road rage incident; and 8) slandering local law enforcement officers.

The complaint lists three provisions of the Ethics in Public Service Act (Act) that have allegedly been violated by Respondent: RCW 42.52.020, which prohibits a legislator from participating in a business or other professional activities that would conflict with the proper discharge of the member's duties; RCW 42.52.030, which prohibits a legislator from being involved in certain financial transactions; and RCW 42.52.120, which prohibits the member from accepting compensation for outside employment or activities unless certain requirements are met.

II. BACKGROUND

The Board received Complaint 2019 – No. 5 on May 7, 2019 and has discussed it at several regularly scheduled meetings. In September 2019, the Board suspended the investigation pending the outcome of the separate investigation initiated by the House and conducted by the Rampart Group. Many of the allegations in the House-initiated investigation mirror those in this ethics complaint.

As a result of the investigative findings by the Rampart Group, the Respondent was suspended from the House Republican caucus, removed from all standing committees, lost access to House Republican Caucus staff and was restricted in his use of non-partisan staff. Respondent was also relocated to a former conference room on the first floor of the Legislative Building from the John L. O'Brien Building where many Republican House members are located.

On February 20, 2020, a letter addressed to the Speaker of the House, Laurie Jenkins, and Minority Leader, J.T. Wilcox, requested that the House Executive Rules Committee take the necessary steps to bring the question of the Respondent's expulsion from the House to the full body. The letter was signed by every House Democrat although no House Republicans signed it. A two-thirds majority is required to expel a House member and since no Republican signed the letter, the issue of Respondent's expulsion was never brought before the full body.

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III. JURISDICTION

The Board has personal jurisdiction over (former) Rep. Matt Shea, the Respondent, who was a member of the House of Representatives at the time the complaint was filed. RCW 42.52.320; *see also In re Reykdal*, 2016 – No. 14. The Board lacks subject matter jurisdiction over the allegations in this complaint.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. General Background

Respondent represented the 4th Legislative District at the time this complaint was filed. He did not run for reelection in 2020. Complainant is a constituent of Respondent's.

Complainant's evidence of Respondent's ethics violations consists of various newspaper articles, podcasts, videos, and blog posts. By her own admission, she has no direct knowledge of the complaint allegations.

B. Allegation 1 – Participating in Activities that are in Conflict with his Official Duties

The Complainant alleges that the organizations with which Respondent identifies and the activities (rallies, speeches etc.) in which he has participated on behalf of some of these groups conflicts with his official duties in violation of RCW 42.52.020.

The language of .020 is broad and was no doubt intended to provide the Board with authority to consider a variety of conditions affecting part-time legislators.¹ *In re Ericksen*, 2017 – Nos. 12, 13, 14.

RCW 42.52.020 provides as follows:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

The Act also established boundaries for Board action. In considering the application of RCW 42.52.020, the Board is also required to address RCW 42.52.330:

By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle.

¹ "No conflict of interest statute can anticipate and address each and every private activity of a public officer or employee that would be incompatible with his or her official duties. A general prohibition against activities incompatible with the performance of public duties in the public interest will help ensure that the ethics code is appropriately comprehensive in this respect." Report of Commission on Ethics in Government and Campaign Practices, January 6, 1994.

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This is a mandatory facet of the Board's deliberative process. "Although many provisions of the Act are not affected by the citizen-legislator concept, other provisions are clearly impacted." *In re Erickson*, 2017 – Nos. 12, 13, 14. When the Board is asked to review whether a particular non-legislative "business, transaction or professional activity" presents evidence of "activities incompatible with public duties," it also must consider how that provision is to be applied in light of the citizen-legislator concept.

Under the "citizen-legislator" exception, a legislator "does not have ... [an] interest which is in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator as a member of a business, profession, occupation, or group, to a greater extent than to any other member of such business, profession, occupation or group." *Advisory Opinion* 1995 – No. 1.

Past cases in which the Board has examined the conflict of interest statute have typically concerned a legislator's outside employment and whether that employment or some portion thereof conflicts with the legislator's official duties. *See e.g., Advisory Opinion* 1995 – No. 6 (impact of legislator's employer's project proposal with state agency); *In re Eickmeyer*, 2006 – No. 3 & *In re Armstrong*, 2011 – No. 1 (legislator's support for a bill that benefited employer not a violation); *In re McCoy*, 2005 – No. 5 (position as manager of tribe not a violation).

Previous Board decisions generally fell into two categories. In the first, the *per se* cases, the Board examined whether the overlap between a legislator's official actions and his or her compensated non-legislative job was so great that the outside job was a violation of .020. In the second category, the functional cases, the Board examined the member's legislative activity to determine if the legislator possibly violated that portion of .020 prohibiting a legislator from having an interest that was in conflict with the performance of official duties. *See Advisory Opinion* 2020 – No. 2.

This case presents an issue of first impression. Do Respondent's affiliations with outside groups that advocate actions that could be considered violent conflict with his official legislative duties? To answer this question, the Board must first determine whether Respondent's actions, as alleged in the complaint, constitute a "business, transaction or professional activity"? Since none of these terms is defined in the Act, the Board will look to the dictionary for common definitions.

"Business" is defined as "a usually commercial or mercantile activity engaged in as a means of livelihood." "Transaction" is defined as "an act, process, or instance of transacting." To transact means "to carry to completion." MERRIAM WEBSTER DICTIONARY. "Professional activity" is defined as an activity in which a person utilizes their knowledge, skills or other abilities in the service of another and for which a person receives compensation either monetary or in the form of other tangible benefits. LAWINSIDER.COM.

There is no evidence that Respondent's actions in speaking at rallies of right-wing groups or advocating the virtues of the "Biblical Basis of War" were done as a means of supporting himself. Therefore, Respondent's actions would not be considered a "business" under .020. Likewise, Respondent's activities would probably not be considered a "transaction" as it does not appear that Respondent's activities as alleged in the complaint were carried to completion as that term is defined above. Respondent's activities, as supported by the documentary evidence, also do not seem to indicate that Respondent was engaged in a professional activity as that term is defined above because there is no evidence he was compensated or received other tangible benefits for his advocacy.

Even if Respondent was involved in a "business, transaction or professional activity," if that activity does not conflict with the proper discharge of his official duties then those activities would not be

considered a violation of .020. The question then becomes what are Respondent's official duties? "Official duty" is defined as "those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution." RCW 42.52.010(12). The constitution does not define the duties of a legislator, nor does any other Washington statute assist in this definition.

The Board has addressed a legislator's duties in prior opinions albeit not when analyzing .020. Nevertheless, past discussions may prove helpful in determining what is meant by "official duty." In an early advisory opinion request, the Board was asked whether a legislator's authority is limited to carrying out legislative functions that fall within a strict reading of the state Constitution's legislative article, Article II, or does it also include the community or public purpose functions that legislators increasingly exercise, but that are not mentioned in the legislative article? In its response, the Board determined that legislators do possess expansive authority to carry out these community or public purpose functions for several reasons. "First, we believe that the public expects legislators to exercise these functions. Second, we believe these functions bring citizens in touch with their government and can increase trust in government, especially in the legislative branch. Third and most important, we believe these functions have been firmly established by historical custom and practice within the legislative branch." *Advisory Opinion 1995 – No. 17*, page 2.

In another case determining whether the use of public facilities violated the Act, the Board stated that public "duties" are to be broadly interpreted to encompass a legislator's discretionary and nondiscretionary duties when legislative correspondence is involved. "Citizens expect their legislators to be ombudsmen and community leaders, as well as legislators in the strict sense. However, where the member has a strong personal interest and benefit, the Board will carefully examine the possible 'ombudsman' role." *In re DeBolt*, 2003 – No. 10 (legislator violated .160 by writing a letter on legislative letterhead challenging the actions of a local school district).

This complaint is about the people and groups with which Respondent associates. There is no specific act or performance of a duty that is alleged to have violated the Act. Furthermore, there is no allegation that what he was doing affected how he voted or what bills he introduced. In addition, none of his activities as alleged in this complaint constituted the kind of personal benefit contemplated by the statute. Based upon the statute as written and the prior cases interpreting the conflict statute, the Board, while not condoning Respondent's activities, believes it does not have subject matter jurisdiction in this matter. The Board recognizes that the legislature, in the past, has provided definitions and statutory clarifications that this Board has enforced. Since the legislature has provided clear standards in other areas of the Act, it may wish to do so regarding whether and when a member's outside activities, other than outside employment, may constitute a conflict with his or her legislative duties.

C. Allegation 2 – Funneling Campaign Contributions to Far-Right Non-Profit Groups in Colorado and Arizona

In 2018, Respondent made a \$3500 donation from his surplus campaign account to Americans for America of Centennial, Ohio. Also, in 2018, Respondent donated \$2000 from his surplus campaign account to Citizens for Free Speech of Mesa, Arizona. Two complaints were filed with the Public Disclosure Commission (PDC) over these donations. The PDC has jurisdiction over campaign expenditures and fined Respondent \$750 for several violations, to which he admitted.

Although Complainant alleges these donations violate RCW 42.52.030, the Board lacks subject matter jurisdiction over the expenditure of campaign funds. That jurisdiction lies with the PDC. *See In re Roach*, 2009 – 04; *In re Sutherland*, 1995 – 03.

D. Allegation 3 – Speaking at Various Alt-Right Conventions as a Representative of the State

The Complainant included in her allegations a reference to Respondent’s appearance at a John Birch Society conference. On October 6, 2018, Respondent spoke at the John Birch Society’s 60th Anniversary celebration in Appleton, Wisconsin. Complainant alleges that JBS is known as a radical right and far right organization. Respondent did speak at the JBS event in Appleton but was not paid to do so nor did he receive travel reimbursement by JBS. No state resources were used in traveling to Wisconsin for this speaking engagement.

Complainant alleges this activity violated RCW 42.52.120; however, the Board lacks jurisdiction over Respondent’s activities that are private in nature and not paid for with state dollars unless those activities present a conflict of interest in violation of RCW 42.52.020. The Board has previously held it has not.

E. Allegation 4 – Perpetuating Violence Toward Those with a Different Opinion Than His

To support this allegation, Complainant attached a copy of *The Biblical Basis of War* along with various newspaper articles discussing this document. According to the investigation conducted by The Rampart Group, in October 2018, Respondent acknowledged that he wrote and distributed a 4-page document entitled *The Biblical Basis for War*– document metadata confirmed that Respondent was the author. The document advocated “killing all males” who did not yield to stopping all abortions, supported same sex marriage and did not obey Biblical law. Respondent, at a meeting in which he presented this document, advocated that “assassination to remove tyrants is just, not murder.” This document was followed by the presentation of a document entitled “Restoration” that outlined the replacement of the US government with theocracy elements.

When legislators are elected to office, they take an oath of office. The oath they take states as follows:

I, _____, do hereby affirm that I will uphold the Constitution and laws of the United States of America, the Constitution and laws of the State of Washington, and that I will faithfully and impartially discharge the duties of the office of a Washington State Representative to the best of my ability.

Respondent would have taken this oath of office at the beginning of the legislative session each time he was elected. By espousing violence and potential overthrow of the government, Respondent has potentially violated his oath of office.

In a former Attorney General Opinion, several legislators asked whether a legislator violated his oath of office by being absent during floor action without being excused. The opinion states that one of the recourses faced by the absent legislator could be punishment pursuant to the rules of the chamber of which he is a member or he could be subject to a recall petition.

Whether or not Respondent violated his oath of office by his actions in writing the “Biblical Basis of War” is not within the subject matter jurisdiction of the Board. Further, the Board lacks subject matter jurisdiction over either House rules or a recall petition process. Finally, the Board notes that Respondent chose not to stand for re-election.

F. Allegation 5 – Traveling to a Foreign Country as a State Representative and Stepping Out of Line Dividing Church and State

According to investigative information, Respondent did appear with Polish representatives and discussed Christianity in the United States. There is no evidence that Respondent traveled to Poland and Respondent states that he has never been to Poland. The reimbursement he sought from the House during this period does not indicate that he sought reimbursement for this speech or travel.

The Board lacks jurisdiction over whether Respondent violated the constitutional principle separating church and state. *In re Haigh*, 2000 – No. 8.

G. Allegation 6 – Misrepresenting the Actual Political Party he is Part Of – Libertarian v. Republican

Respondent has introduced legislation to create a 51st state called Liberty and has advocated for it with far right groups. This fact along with speeches given by Respondent have convinced some people that he is more Libertarian than Republican. When he has run for office, he has always run as a Republican.

The Board lacks subject matter jurisdiction over Respondent’s choice of political party with which to align.

H. Allegation 7 - Pulled a Gun in a Road Rage Incident Allegation

In December 2012, Respondent was charged with a single misdemeanor count of having a loaded handgun in a vehicle without a valid permit. In January 2013, the city agreed to a "stipulated order of continuance" on the permit charge for a year. The order of continuance provided that if Respondent had no criminal violations in the meantime, the charge would be dismissed. Respondent paid a \$75 fee and agreed that the information in the police report was correct.

The Board lacks subject matter jurisdiction over allegations of a criminal offense. *In re Hurst*, 2014 – No. 7; *In re Sims*, 2005 – No. 4. Furthermore, pursuant to RCW 42.52.540, actions on ethics complaints must be commenced within five years from the date of the violation. This violation occurred in December 2012; this complaint was filed in April 2019, 6 years and 4 months after the violation occurred.

I. Allegation 8 - Slandering a Law Enforcement Officer Allegation

The complaint alleges that Respondent “launched a slanderous campaign against our local law enforcement by spreading lies and conspiracy theories.” Respondent published a podcast on August 16, 2016 in which he stated the following:

“Roy Murry was arrested for a triple homicide – that triple homicide occurred in north Spokane. Now, that investigation has been going on for a

while. There were rumors that Roy Murry was somehow connected to Ozzie Knezovich and the Sheriff's Department. Well, it was reported by a source that Deputy Travis Pendell, when they ran the firearm that Roy Murry had, that firearm came back to Deputy Travis Pendell, who has a federal firearms license and is now the subject of an investigation because apparently when asked where the gun was he didn't know, and he didn't know how it got where it got.

"That is unbelievable, folks. Somebody that's in jail right now charged with a triple homicide, the gun traces back to a sheriff's deputy and substantiating at least some of the rumors anyway that there is a connection between Ozzie Knezovich, the Sheriff's Department and Roy Murry. So we are going to continue to follow this as the facts come out on it, but my goodness, I mean, an investigation is the least that needs to be done there – there needs to be some serious review. Um. Yikes."

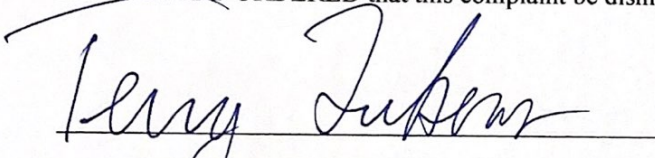
Subsequently, the allegations made by Respondent turned out to be inaccurate.

The Board lacks subject matter jurisdiction over claims of slander or defamation made by a legislator.
In re Morgan, 2020 – No. 3.

IV. CONCLUSION AND ORDER

The Board lacks subject matter jurisdiction over the allegations contained in this complaint.

IT IS HEREBY ORDERED that this complaint be dismissed.



Judge Terry Lukens, ret., Chair

DATE: 1/21/21