

Legislative Ethics Board



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101 LEGISLATIVE BUILDING
PO BOX 40482
OLYMPIA, WA 98504-0482
360-786-7343
www.leg.wa.gov/leb

JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2020 – No. 7

In re Caldier

August 10, 2020

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE – LACK OF SUBJECT MATTER JURISDICTION

I. NATURE OF COMPLAINT

The complaint alleges that Respondent violated the Ethics in Public Service Act (Act) by assaulting a constituent at a political function on multiple occasions, following up the assaults by intimidating the constituent at work and sending an email, using her official legislative title, to her primary opponent requesting that she remove a campaign sign from land that Respondent does not own. Although the Complaint does not cite a provision of the Act alleged to have been violated by Respondent, the Board has analyzed the complaint as alleging violations of RCW 42.52.070 (special privileges) and RCW 42.52.160 (private gain).

II. JURISDICTION

The Board has personal and subject matter jurisdiction over the Respondent.

III. PROCEDURAL HISTORY

The complaint was received by Board counsel on June 9, 2020 and was discussed by the Board at its regularly scheduled meetings on June 22, 2020 and August 3, 2020.

IV. FINDINGS OF FACT

There is reasonable cause to believe the following are the pertinent facts of the case:

A. General Information

1. Respondent is a member of the House of Representatives and has represented the 26th legislative district since 2015.
2. The Complainant is a resident of the 26th legislative district in Gig Harbor, WA.

B. Campaign Sign Allegation

3. Sometime in May 2020, the owner of private property on which Respondent's campaign signs had previously been placed, called Respondent to ask why her primary opponent's campaign sign was on his land.
4. As a result of this phone call, on May 26, 2020, Respondent sent an email from her campaign email address to her primary opponent and her opponent's campaign manager. The email stated, "I just spoke with the owner of the property on Sedgewick next to McDonald's and he reports he did not give permission for your campaign to place a sign on his property and he would like you to remove it." Respondent signed the email "State Representative Michelle Caldier, 26th Legislative District."
5. The campaign manager indicated that the sign had been mistakenly placed in the wrong spot; it should have been placed in another location down the street. He added that the sign was removed as soon as Respondent let him know.
6. The Complainant alleges that Respondent's use of her title in this email was improper.

C. Alleged Assaults

7. On December 15, 2018, during the Kitsap County Republican Party (KCRP) Biennial Organizational Meeting, Ms. Jones¹ was called to the podium to facilitate the election of the temporary chair of the meeting. As she was heading to the podium, Ms. Jones alleges Respondent threw her leg out in front of Ms. Jones intending to trip her.
8. On the same date, at the same meeting, Ms. Jones walked behind Respondent's row to retrieve her voting card from the table and alleges that Respondent pushed her chair back pinning Ms. Jones between the table and Respondent's chair.
9. Ms. Jones did not suffer any injuries as a result of these alleged incidents.
10. Complainant encouraged Ms. Jones to report these incidents to the Bremerton Police Department. On January 1, 2019, Ms. Jones made a police report. She did not wish the police to pursue a criminal investigation or discuss these incidents with Respondent; Ms. Jones made the report because she wanted there to be a record of these incidents.
11. Respondent had no recollection of either of these incidents and did not know that a police report had been filed until a year after the alleged events occurred.

D. Alleged Intimidation

12. Sometime prior to the 2018 primary (August 7, 2018), the KCRP performed endorsement interviews of the candidates in the 26th LD. Ms. Jones, who was then an officer of the KCRP, was chosen to interview Respondent. This interview occurred sometime before the 2018 primary and occurred the day after Respondent had undergone several eye surgeries. Respondent was annoyed with the date that was chosen to conduct the interview and she terminated the meeting early because she believed no matter how she responded to the endorsement questions, the KCRP would not endorse her.
13. Shortly after the general election in November 2018, Respondent contacted Mr. Garby, the manager of the bank where Ms. Jones was employed. Respondent asked Mr. Garby whether the bank had a policy regarding employees discussing political or campaign issues at work. She had received several

¹ The names used in this opinion are fictitious.

constituent complaints that, on more than one occasion, Ms. Jones had proclaimed her support for Respondent's opponent to these constituents which made them feel uncomfortable.

14. Mr. Garby responded that the bank had no such policy but that he would investigate the allegations regarding Ms. Jones's conduct. He requested that Respondent provide the names of the constituents who had complained to her so that he could follow-up with them.
15. Following the call from Respondent, Mr. Garby and Ms. Jones's direct supervisor spoke to Ms. Jones about the allegations. Ms. Jones denied that she had ever had political conversations at work and Mr. Garby stated that he and Ms. Jones's direct supervisor believed her.
16. Respondent provided Mr. Garby with the name and contact information for one person who had witnessed Ms. Jones's conduct. Mr. Garby contacted this person but never heard back from him despite several attempts.
17. Mr. Garby has not had contact with Respondent about these issues since November 2018.
18. Mr. Garby indicated that Respondent never asked that Ms. Jones be terminated from her job or disciplined but he stated it was very clear from their conversation that Respondent was upset about the meeting Ms. Jones had had with Respondent the day after the Respondent had undergone eye surgery.

V. CONCLUSIONS OF LAW AND ANALYSIS

A. Special Privileges and Private Gain

There are two rules in the Act that pertain to this complaint.

RCW 42.52.070 (special privileges) provides in pertinent part as follows:

(1) Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

....

RCW 42.52.160 provides in pertinent part as follows:

- (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another*
- (2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.*

Subject to the exception for "official duties," RCW 42.52.070 prohibits legislators from using their official positions to "secure special privileges" for themselves or others and RCW 42.52.160 prohibits legislators from using public resources for the "private benefit or gain" of themselves or any other persons.

Legislators have duties beyond those laid out in the constitution. These are discretionary in nature and include community and public purpose functions and have been firmly established by historical custom and practice. *Advisory Opinion 2006 – No. 1*. These duties involve assisting constituents with governmental officials and offices. These duties may result in the legislator becoming an advocate for the constituent. *In re Armstrong, Condotta, Parlette, 2005 – No. 9*.

Generally, the Board interprets the exception for official duties broadly to encompass a legislator's discretionary² and nondiscretionary authority. *Advisory Opinion* 1995 – No. 17. However, the legislative duty exception does not apply when improper means are used to influence a state agency or others.³ *Advisory Opinion* 1995 – No. 1. If improper means are not used to influence an agency, the legislative duty exception found in .070 (use of official position) and .160 (use of public resources) relate to both the discretionary and nondiscretionary authority legislators may exercise within the scope of their employment. *Id.*

The Board has found the following types of communications to constitute improper means:

- Communications which another reasonably might perceive as threatening;
- Persistent communications by legislators on behalf of a constituent or other party; or
- Communications stressing that favorable agency action is important to the legislator or that the legislator will be disappointed if a favorable decision is not made; communications to state and local agencies that seek special favors or privileges, or which agency officials or employees might reasonably perceive as threatening. *In re Kretz*, 2017 – No. 42; *Advisory Opinion* 2006 – No. 1; *Advisory Opinion* 1995 – No. 17.

1. *Use of Title*

The Complaint alleges that Respondent violated the Act by using her title when communicating with her opponent about improper sign placement. There have been two cases in which the Board has discussed the use of a legislative title. The Board has previously opined that a legislator is free to use his or her title regardless of whether he or she is using state resources. *Advisory Opinion* 1998 – No. 4. In an earlier case by the former House Board of Ethics, adopted as precedent by the Board in *Advisory Opinion* 1995 – No. 1, the Board cautioned the member requesting advice not to use his title in business contacts with state agencies. *House Board of Legislative Ethics*, 1982 - No. 2.

In this matter, Respondent sent the email in question from her campaign email account. As she was a current legislator running for reelection, it was not an ethics violation to sign the email using her current legislative title. Furthermore, there is no indication that she used state resources in sending the email or otherwise notifying her opponent about the placement of a campaign sign and this was not a personal business transaction in which Respondent should be cautious about how she uses her title.

2. *Intimidation*

The Complaint alleges that Respondent was trying to cause Ms. Jones work issues by calling the bank manager and alleging that Ms. Jones was advocating for Respondent's campaign opponent to bank customers some of whom were Respondent's constituents. Respondent has stated that her purpose in calling Mr. Garby was to determine whether the bank had a policy on its employees sharing political views at work and to alert Mr. Garby about the complaints she had received from constituents about Ms. Jones's conduct.

It is within Respondent's discretionary legislative authority to bring constituent concerns to the attention of a business. That appears to be what the Respondent was doing when she contacted Mr. Garby. The next question is whether she used improper means in communicating the concerns to Mr. Garby. The Board does not believe she did. While Ms. Jones may have felt Respondent's allegations somewhat threatening, as Mr. Garby stated, Respondent did not ask that Ms. Jones be terminated or disciplined; rather, she inquired whether the bank had a policy about employees discussing political views at work. Furthermore, Respondent did not engage in persistent communications on this matter. She contacted Mr. Garby twice, once to alert him to her constituents' complaints and second to provide him with information about a potential witness. Respondent has had no further contact with Mr. Garby since 2018.

² Discretionary duties can involve assisting constituents to obtain facts or facilitating or mediating a dispute between a constituent and a governmental agency. *Advisory Opinion* 2006 – No. 1.

³ See *In re Schmidt*, 2006 – No. 4 (the application of RCW 42.52.070 is not limited to those instances where a legislator intervenes with a state agency, board or commission on behalf of a third party.)

B. Subject Matter Jurisdiction

RCW 42.52.320 limits the jurisdiction of the Board to the enforcement of chapter 42.52.RCW, the Ethics in Public Service Act and states in pertinent part as follows: The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

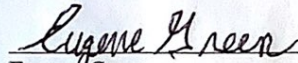
In a number of cases, the Board has determined it did not have subject matter jurisdiction over a complaint. See e.g., *In re Haigh*, 2000 – No. 8 (no jurisdiction over constitutional allegations involving a person's property); *In re Roach*, 2003 – No. 2 (no jurisdiction over allegations involving the Public Records Act); *In re West*, 2003 – No. 3 (no jurisdiction over personnel matters); *In re Sims*, 2005 – No. 4 (no jurisdiction over allegation alleging a crime); *In re Cody*, 2014 – No. 01 (no jurisdiction over alleged violation of various laws).

The Complainant alleges that Ms. Jones was assaulted by Respondent. Assault is a criminal action enforceable only by a court of competent jurisdiction. As a result, the Board lacks subject matter jurisdiction over the allegations of assault.

VI. CONCLUSION AND ORDER

The Board finds no reasonable cause to believe the Respondent violated any provisions of the Act as alleged in this Complaint. The Board lacks subject matter jurisdiction over the assault allegations.

IT IS HEREBY ORDERED that this complaint be dismissed.



Eugene Green
Chair

DATE: 8-10-2020