

Legislative Ethics Board

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

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

COMPLAINT 2020 – No. 8

In re Rivers

September 8, 2020

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

I. NATURE OF COMPLAINT

The complaint alleges that Respondent, Sen. Ann Rivers, violated the Ethics in Public Service Act (Act) by requesting that Complainant donate to her campaign to solve “problems for both of them.” The complaint does not allege a specific provision of the Act that has been violated but the Board analyzed the complaint under RCW 42.52.070 (special privileges) and RCW 42.52.140 (gifts – *quid pro quo*).

II. JURISDICTION

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

III. PROCEDURAL HISTORY

The complaint was received by Board counsel on July 9, 2020 and was discussed by the Board at its regularly scheduled meetings on August 3, 2020 and August 31, 2020.

IV. FINDINGS OF FACT

1. Respondent is a member of the Senate and has represented the 18th legislative district in the Senate since 2012.
2. The Complainant is a resident of Bellevue, Washington. He is the president of the Portland-Vancouver Junction Railroad (PVJR) which has operated the Clark county-owned Chelatchie Prairie short line rail since 2004.
3. Complainant has been involved in litigation with Clark County for several years over various provisions of the long-term lease he has with the county to operate its rail line.

4. During the 2017 legislative session, then-Representative Liz Pike from the 18th legislative district introduced HB 1504. A companion bill, SB 5517, was introduced by Sen. Lynda Wilson in the Senate.
5. The bills would have amended the Growth Management Act to allow certain counties and cities to adopt development regulations to permit resource lands adjacent to short line railroads to be developed for freight rail dependent purposes subject to certain conditions.
6. Jane Smith,¹ on behalf of PVJR, testified in favor of both bills.
7. According to Ms. Smith, HB 1504 had not yet been passed by the Senate on the day of cut-off. Concerned it would not pass, Ms. Smith sought the assistance of the majority leader and the floor leader. As a result, the bill passed in time.
8. Ms. Smith posted a message on her Facebook (FB) page thanking the Senators who assisted her in getting the bill out of the Senate. Her message did not mention Respondent.
9. Ms. Smith received the following response from Respondent: "*Glad to help thanks for the shout out – please don't ask me for an appointment ever again.*"
10. Sometime shortly after the above email, Complainant says Respondent called him and asked him to fire Ms. Smith as his lobbyist. When asked if she had made this request of Complainant, Respondent stated that she had not.
11. According to both Ms. Smith and Complainant, Ms. Smith has not had any professional contact with Respondent since 2017. When asked whether there was anything specific that caused the rift in their relationship, Respondent stated she could not think of anything.
12. Complainant and Respondent also have not worked on any legislative matters since 2017.
13. On May 24, 2020, the following text messages between Complainant and Respondent occurred:

Complainant - *I just wanted to wish you the best of luck this campaign and was curious if there's anything else I can do to assist besides a donation (which I will be making). For example, I have property throughout Clark County and am happy to allow your team to place signs where they feel would be helpful. . . . Please let me know.*

Respondent – *Absolutely! Thank you so much! Best way to coordinate?*

Complainant – *Awesome – just give my cell to whomever is best in your campaign. On my end – as I commute to Clark County from Bellevue – I'll have my GM chaperone and assist your sign installation team. We have some really high traffic sites so you might want to place some larger ones.*

¹ Fictitious name

14. Complainant sent the initial text to try to repair the relationship between Respondent and his lobbyist, Ms. Smith. He did not consult Ms. Smith before reaching out to Respondent but when he later told Ms. Smith what he had done, she agreed that it was a good idea.
15. On June 24, 2020, the Clark County Republican Party Board (Party) held a virtual meeting that was open to the public. Respondent attended the meeting and her attendance is noted in the minutes from that meeting.
16. During the meeting, the pledge of \$20,000 by Complainant to the Party was discussed. From the discussion at the meeting, Respondent got the impression that some of the pledge would be used to “take her out.”
17. Respondent phoned Complainant during the meeting and asked him whether this was true. He indicated it was not and said he would call the treasurer who was a friend of his. Complainant then contacted Tom Brown,² the treasurer. Mr. Brown indicated that he took Complainant’s call during the meeting and assured Complainant that his donation was not being used to “take out” Respondent. The following text conversation between Complainant and Respondent then occurred:

Complainant - *“Called him - he has my back and he understands I have yours. If I’m double crossed please let me know immediately.”*

Respondent – *“Okay – they are spending 15K on Karen [Bowerman]. Unsure how much total u gave.”*

Complainant – *“\$20. With more promised in the general.”*
18. David Connelly,³ who also attended the virtual meeting of the Party on June 24th stated that the donation promised by Complainant was discussed at the meeting. According to Mr. Connelly, the treasurer was very clear with the Board members that Complainant, who was mentioned by name, wanted to know how the money would be spent before he made the contribution. As a result, the Party determined that \$15,000 of the promised \$20,000 donation would be spent on Karen Bowerman who was running against John Blom for a seat on the Clark County Council. Mr. Connelly also confirmed there was no mention of Respondent at the meeting.
19. According to Earl Bowerman, Chair of the Party, once a contribution is made to the Party, the contributor loses control of how the money will be spent. Mr. Connelly stated that the Party’s bylaws do not allow the Party to contribute to a campaign if there are two members of the Republican party running against each other in the primary.
20. According to Complainant, John Blom has been an outspoken critic of the lease Complainant has with Clark County. Mr. Blom indicated that the county’s outside counsel brought the lease issues to the attention of the Council. They attempted to renegotiate parts of the lease with Complainant but he refused to negotiate and filed suit against the county instead.

² Fictitious name

³ Fictitious name

21. At some point, Respondent endorsed John Blom in his re-election bid.
22. On July 1, 2020, the following text conversation occurred between Respondent and Complainant:

Respondent – *“Eric, I’d be deeply appreciative if you instructed the Clark county Republican party to give the remaining 5K to friends of Ann Rivers. This would solve a number of problems for both of us.”* (Emphasis added)

Complainant – *“Hi Ann, I wish I had the power to instruct, but would love to hear what you have in mind and what problems exist or can be solved. I’m tied up at the moment but is there a good time to call?”*

23. Complainant and Respondent spoke on the phone shortly after this text exchange. According to Complainant, during this call, he asked Respondent what she meant in the text by her reference to “problems”. He indicated that she never answered the question. Respondent, however, stated that she told Complainant that a donation to her campaign would go a long way to repairing the fractured relationship in the Party.
24. Toward the end of the conversation, Complainant claimed that Respondent mentioned Ms. Smith and how everyone should make a better effort to get along. Complainant stated that he confirmed with Respondent that she wanted Ms. Smith to call her. Complainant further stated that at the end of the call Respondent told Complainant that she would be watching him to see what he did. When asked whether she made this statement to Complainant, Respondent indicated that she had no recollection of saying that.
25. After the conversation with Respondent, Complainant stated that he asked Ms. Smith to call Respondent. Although Ms. Smith did call Respondent, Respondent never returned Ms. Smith’s call.
26. Respondent was asked whether she was aware that once a contribution to the party is made, the contributor loses control of how the money is spent. She stated that she was aware of that but said it is not unusual for the contributor to suggest how the donation should be spent.
27. After receiving the July 1st text from Respondent regarding the donation and after discussing it with Respondent on the phone, Complainant stated that he was uncomfortable with what had occurred. He indicated that he felt he was being “shaken down” by Respondent and asked to direct money to Respondent’s campaign in an amount that was in excess of what he could donate as an individual.
28. Unsure of what to do, Complainant stated he called three people to see what they would advise him to do: Ms. Smith, his lobbyist; the AG’s office; and a former Republican member of the House of Representatives. Complainant was told by one person he consulted to file a complaint with the Executive Ethics Board (EEB) (he was later told by the EEB to file the complaint with the Legislative Ethics Board) and the two other people he consulted advised him that he should file a complaint with law enforcement.

29. Complainant stated that he did try to file a complaint with law enforcement in Clark County but they did not believe a crime had been committed and took no action.
30. On July 2, 2020, Complainant issued a check to the Party in the amount of \$20,000. The check was drawn on Complainant's PVJR business account. In the memo section of the check, Complainant wrote "Primary Election 2020."
31. On July 7, 2020, the check was cashed. According to Earl Bowerman and Donald Brown, due to PDC rules that prohibit unlimited campaign contributions by corporations, they refunded \$14,500 to Complainant. Complainant then wrote a personal check to the Party for the amount that had been refunded to him. That check was cashed sometime in late July.
32. On July 8, 2020, Complainant issued a press release containing the content of the portion of the text message sent by Respondent to Complainant in which she asks him to direct \$5000 to her campaign. In this press release, Complainant stated that he had filed a complaint with the Public Disclosure Commission.
33. The PDC complaint was returned to Complainant because of technical errors. Complainant resubmitted it and issued another press release on this topic on July 31, 2020.
34. Also on July 8th Respondent received an inquiry from a reporter with CLARK COUNTY TODAY asking her about the text message she sent Complainant on July 1st. Respondent provided the following written statement to the reporter: "the problems to which my text was referring that need solving is how fractured the Republican party is in Clark County. [Complainant's] support would have helped mend some broken fences which would then free us all up – business leaders, candidates and elected officials – to be working on issues that affect our state and local government instead of spending the time we do dealing with interpersonal issues between party insiders."
35. On July 8, 2020, Herman Gage⁴ received a call from someone working for the John Ley⁵ campaign. John Ley was Respondent's Republican opponent in the primary. The person who called stated that he had a big "scoop" for Mr. Gage. The "scoop" was that Respondent had been or was about to be arrested for trying to have money moved from the Party to her campaign.
36. Mr. Gage called Respondent to ask her about whether she had been arrested. She indicated to him that this was the first she was hearing about law enforcement involvement.
37. Mr. Gage stated that Respondent acknowledged she sent the text to Complainant but that the "problems" to which she referred in her text was the fractured nature of the Party.
38. Mr. Gage indicated that he confirmed with a person involved with the Party that the Party was very fractured in Clark County – there is a very conservative side and a not so conservative side. Mr. Gage decided there was no story and did not write an article about this "scoop."

⁴ Fictitious name

39. On July 13, 2020, Complainant posted to the PVJR FB page a copy of the letter sent to him by this Board indicating that it had received the complaint he filed against Respondent with a title that read “Legislative Ethics Board Opens Investigation into Senator Rivers.”
40. On July 16, 2020, CLARK COUNTY TODAY published an article in which Respondent’s text to Complainant is discussed. Complainant is quoted as saying the reference to “problems” in Respondent’s text refers to helping smooth over ongoing legal disputes with the county in exchange for financial support.
41. On July 21, 2020, Complainant appeared on the Lars Larson radio talk show to discuss his ethics and PDC complaints he filed against Respondent and John Blom.
42. On July 28th, Complainant posted to the PVJR FB page a letter to the editor that he wrote that was published in THE REFLECTOR, a local newspaper. This letter complains about Clark County politicians and mentions Respondent.
43. On July 31st, Complainant posted to the PVJR FB page a recording of his interview on the Lars Larson radio show that occurred on July 21, 2020. In this interview, Complainant stated that he believed the “problems” to which Respondent referred in her text to him was assistance with industrial development along the railroad, which development is a factor in the lawsuit he has against Clark County.
44. As part of this investigation, Board counsel asked Complainant to put in writing his understanding of what Respondent meant in her text to him. He indicated that what he believed Respondent meant was that she would allow Ms. Smith back in her office if Complainant would direct the Party to donate \$5000 to her campaign.
45. On August 7, 2020, the PDC dismissed Complainant’s complaint against Respondent.

CONCLUSIONS OF LAW AND ANALYSIS

A. RCW 42.52.140 (Quid Pro Quo)

This statute provides as follows:

No state officer or state employee may receive, accept, take, seek, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity or favor would influence the vote, action or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

In analyzing .140, the Board is primarily looking for conduct which offers or appears to offer something specific in exchange for something specific. *In re Van Luven*, 2002 – No. 1. The offer of a vote on a specific bill in exchange for money is an obvious example of a violation of the *quid pro quo* prohibition. See *Senate Ethics Board Complaint 1975* – No. 1; *In re Scott*, 1995 – No. 4. Although campaign contributions are not gifts for purposes of analyzing the gift statute (RCW 42.52.150) such

contributions still must withstand scrutiny under RCW 42.52.140. “The *quid pro quo* prohibition of .140 would be applicable to campaign contributions if such contributions were solicited or accepted under circumstances where it could reasonably be expected a vote is being influenced or a reward is being accepted.” *In re Mielke & Pennington*, 1999 – Nos. 1 & 2.

The question then becomes whether the \$5000 Respondent asked the Complainant to have the Party direct to her campaign was a solicitation which would be rewarded if it was made. According to Complainant’s text to Respondent on July 1st, once the contribution is made, the contributor loses control of how the money is to be spent. Furthermore, in this case there are differing accounts of the meaning of the term “problems.” Complainant believes he was being “shaken down” and Respondent states she was trying to mend the fractured nature of the Party.

One could argue that this text does not violate the statute because although the \$5000 is a specific ask, the “problems” to which Respondent refers is vague and not specific. Was Complainant reasonable in his belief that if he asked the Party to direct \$5000 to Respondent’s campaign he would somehow be rewarded for his action? To answer this question, the credibility of the Complainant and Respondent must be weighed.

In weighing the credibility of the Complainant and Respondent, the factors provided in the Equal Employment Opportunity Commission’s (EEOC) Guidance on Credibility offer a good guide: (1) the inherent plausibility of the witness’s statements; (2) the witness’s motive to give false statements; (3) whether the Respondent had a history of similar behavior to that which was alleged; (4) whether the testimony of the Complainant and Respondent is corroborated by documents, or by others who saw or heard about the alleged incidents around the same time they occurred; and (5) the witness’s demeanor while testifying. As the EEOC notes, “none of the above factors are determinative as to credibility.”⁶

Inherent Plausibility of Witnesses Statements

Complainant and Respondent disagree on what was meant by the reference to “problems” in the July 1st text. Complainant believes he was being asked to do something illegal – get the Party to give Respondent’s campaign more money than he, as an individual, could give her under PDC rules and law. He believed that if he did Respondent would reward him in some fashion. Complainant, in response to the Respondent’s text told her that he could not direct the Party how to spend the money; however, at the June 24th meeting of the Party, Mr. Connelly stated that it was very clear from the discussion about Complainant’s potential donation that Complainant would not make the donation unless the Party spent the money the way he wanted them to. Therefore, it was not unreasonable for Respondent, who attended the meeting and heard the discussion regarding Complainant’s potential donation to request that he ask the Party to donate to her campaign. Furthermore, Complainant stated that the “problems” to which Respondent referred included various things at different times: assistance in his litigation against the County; assistance with industrial development and mending the relationship with his lobbyist, Ms. Smith. Respondent, on the other hand has consistently stated that the “problems” to which she referred was mending the fractured relationship within the Clark County Republican Party.

⁶ EEOC Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors), EEOC No. 915.002.

Witnesses Motivation to Give False Statements

One could argue Respondent had motivation to provide false statements because she is running for re-election and the public revelation of her text to Complainant could impair her chances of winning re-election. On the other hand, Complainant's business could be harmed and "his life would be hell in Olympia" by the filing of this complaint so one could argue, as a result, that he lacks motivation to provide false statements. However, when responding to an email from Board counsel asking him whether he paid Lars Larson to interview him, Complainant indicated that he did not pay Lars Larson to interview him and stated, "Ann is not a turn the other cheek type of person as you can tell from her blacklisting [Ms. Smith] for over three years for asking a routine question. I want Ann Rivers to lose re-election." This statement could be viewed as motivation for Complainant's various explanations of the meaning of the "problems" phrase in the July 1st text.

Whether the Respondent had a history of similar behavior to that which was alleged

There is no evidence that Respondent, in her 10 years in the Senate, had ever been accused of participating in a *quid pro quo* matter.

Whether the testimony of the Complainant and Respondent is corroborated by documents, or by others who saw or heard about the alleged incidents around the same time they occurred.

Respondent does not deny that she sent the text at issue. What is in contention is the interpretation of the meaning behind the text. Complainant believes Respondent was "shaking him down" and Respondent asserts she was not. No one else was privy to the conversation between the two of them after the text had been sent. The only other evidence about the interpretation of the text is what the Respondent and Complainant have stated to the media. Respondent's explanation has been consistent; Complainant's has varied.

The witness's demeanor while testifying

As stated previously in this report, counsel interviewed Complainant and Respondent multiple times. Both were cordial and respectful during the interviews. Both seemed to be forthright when answering the questions asked.

The Board believes that the statement Complainant made in his email to Board counsel that he wanted Ann Rivers to lose her reelection bid is a strong indication he could be motivated to not be entirely truthful in his statements. This coupled with his various versions of what the term "problems" meant in the text message from Respondent while Respondent's explanation has been consistent would seem to indicate that Complainant has changed his statements depending on the circumstances.

Suffice it to say that for this text to constitute a *quid pro quo*, the ask must be specific (which it was) and the reward must be specific (it was not). As a result, the Board believes it more likely than not that the text from Respondent to Complainant on July 1st did not violate RCW 42.52.140.

B. Special Privileges

This statute 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. . . .*

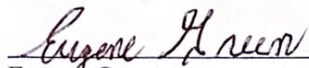
Prior Board decisions have applied the special privileges statute to find violations when a legislator – attorney wrote to his private clients and appeared to offer special access to legislators (*In re Quigley*, 1995 – No. 1), when a legislator solicited tickets to a sporting event from lobbyists (*In re Van Luven*, 2001 – No. 4), and when a legislator pressured a state agency to take actions favorable to a private business owned by family members (*In re Hankins*, 2007 – No. 1B). In each example, a legislator took specific action intended to provide a specific benefit to a specific person or persons. *See also In re Reykdal*, 2016 – No. 14.

In this matter, although Respondent took a specific action to ask Complainant to request the Party to direct a donation to her campaign, it is not clear what specific benefit to Complainant there would have been had he made the ask. Furthermore, it is not an ethics violation for Respondent to request a campaign donation.

V. CONCLUSION AND ORDER

The Board finds no reasonable cause to believe the Respondent violated any provisions of the Act as alleged in this Complaint.

IT IS HEREBY ORDERED that this complaint be dismissed.



Eugene Green
Chair

DATE: 9-8-2020