

Legislative Ethics Board

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COMPLAINT 2021 – No. 7

In re McEntire

~~January 2~~, 2022
February

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

I. NATURE OF COMPLAINT

The complaint alleges that Respondent violated the Ethics in Public Service Act (Act) by posting on his Facebook Page, several responses to his email updates with which he disagrees. Although the complaint does not cite a specific statute to have been violated, the allegations were investigated under RCW 42.52.160 (use of public resources for personal gain).

II. JURISDICTION

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

III. PROCEDURAL HISTORY

Complaint 2021 – No. 7 was received on September 9, 2021 and was discussed during the Board's regularly scheduled meetings on December 3, 2021, and January 17, 2022.

IV. FINDINGS OF FACT

1. Respondent is a member of the state House of Representatives representing the 19th Legislative District. He has served in the House of Representatives since 2021.
2. As part of his legislative duties, Respondent emails periodic legislative updates to the persons on his email distribution list.
3. Respondent emailed an update on August 16, 2021. The update addressed several issues: his opposition to the Governor issued mask mandate, police reform and the CARES Act.
4. This update drew several negative responses, two of which are at issue in this complaint.

5. The first response was sent to Respondent's official email account. It reads as follows:

What are you, an idiot!!! You unvaccinated fools who won't wear a mask are infacting other people!!! When your mother, father wife or child contract (sic) the COVID and Die, let us know how you feel then or will you just say as mgt said, "we are human and must die sometime." What do you say to the 600,000+ dead from COVID. I'll bet they wish they had a chance to have a vaccine. I sincerely hope you and yours has (sic) a chance to get COVID and experience the COVID. Wake up and smell the roses!!! If you still have ½ a brain left, take me off your email list.

6. The second response was also sent to Respondent's official email account. It reads as follows:

I'm not the guy you thought you were contacting, but I feel it's necessary to respond to your unbelievably irresponsible thoughts. Avoiding any vaccine is clearly and purely reckless endangerment of everyone you will ever have contact with, including yourself. If that isn't criminal behavior then there's no such thing. I wish that morons like you could be put in concentration camps where you would infect each other and endure solitary and miserable deaths. I pray for that outcome.

7. Respondent maintains a personal Facebook page with mixed content, including legislative materials, personal materials, and campaign actions.
8. Respondent, using his personal phone, photographed the first response email (number 5 above) he received on his legislative email account and on August 23, 2021, posted that photograph on his Facebook page under the caption "This is the Winner of the Day."
9. On September 6, 2021, Respondent posted the photo he took of the email he received on his official legislative email (number 6 above) and posted it on his Facebook page under the caption: "Today's winner of left-wing compassion."

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.160(1) prohibits a state officer from using any person, money, or property under his or her official control or direction, or in his or her official custody, for the private benefit or gain of the officer or another. Subsection (4) states as follows: "the appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost, and value, if the activity does not result in interference with the proper performance of public duties."

The Board adopted rules providing exceptions to RCW 42.52.160(1). Board Rule 3(4) under the heading "Special Qualifications and Limits" provides as follows:

"A legislator or legislative employee may not make private use of state computers or other equipment to access a computer network or other database for personal use unless there is no cost to the state and the use does not interfere with the performance of the legislator's or employee's official duties. Legislative electronic

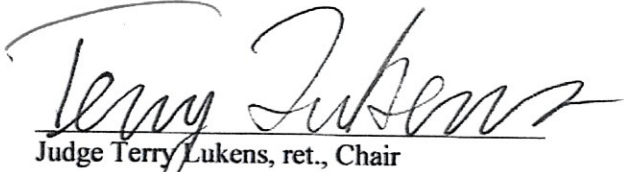
mail and internet use which do not incur charges are examples of uses which meet the no-cost test."

While the Board believes Respondent's actions in ridiculing persons who have disagreed with him was ill-advised, such actions do not necessarily violate the Act. Clearly, the Board, in its rules, determined that the use of the state computer system is of no cost to the state. As a result, when Respondent photographed the emails he received on his official email account, he did not violate the Act because there was no cost to the state.

Although, under this set of facts, the Board finds no violation, the Board cautions members about using public resources to "capture" legislative emails for subsequent personal use -- for example, by personally using legislative technology to capture (e.g., a "screenshot") or forward legislative emails for subsequent personal or campaign use, or by using or directing legislative staff to do so.

VI. ORDER

IT IS HEREBY ORDERED: that reasonable cause does not exist that Respondent, Rep. McEntire, violated RCW 42.52.160.



Terry Lukens
Judge Terry Lukens, ret., Chair

2/2/22
Date