

Legislative Ethics Board

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COMPLAINT 2021 – No. 9

In re Jenkins

March 30, 2022

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 using state resources to issue a press release commenting on a lawsuit in which complainant alleges the Respondent was sued in her personal capacity. The complaint alleges a violation of RCW 42.52.160 – using public resources for private gain.

II. JURISDICTION

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

III. PROCEDURAL HISTORY

Complaint 2021 – No. 9 was received on November 30, 2021 and was discussed during the Board's regularly scheduled meetings on January 17, 2022 and March 21, 2022.

IV. FINDINGS OF FACT

1. Respondent is a member of the state House of Representatives representing the 27th Legislative District. She has served in the House of Representatives since 2011 and was elected Speaker of the House in 2019.
2. On September 30, 2021, the Chief Clerk of the House sent an email to all House staff and members indicating that the Executive Rules Committee¹ had approved an update to the House interim operations plan.

¹ The Executive Rules Committee oversees administrative operations of the House of Representatives. Pursuant to House Rule 6, the Committee consists of seven members, four representing the majority caucus and three representing the minority caucus.

3. As Speaker of the House, Respondent is a member of the Executive Rules Committee.
4. The updated interim operations plan restricted access to House facilities to members and staff who had confirmed they were fully vaccinated against COVID-19 using a verification process established by the House. Any member or employee who had provided proof of vaccination prior to October 18th would continue to maintain keycard access. Under the plan, key cards would be turned off for all members and staff until proof of vaccination was received.
5. There were various legislators who opposed this plan and on November 22, 2021, several of those House members and some of their constituents filed a lawsuit naming Bernard Dean, Chief Clerk of the House and four members of the House Executive Rules Committee (Reps. Laurie Jenkins, Pat Sullivan, Monica Stonier and Lillian Ortiz-Self) as defendants.
6. The defendants were sued in their official, not individual, capacities and, as such, received legal representation from the Attorney General's Office.
7. On the date the lawsuit was filed, plaintiffs' attorney issued a press release regarding the lawsuit. Furthermore, at least one plaintiff sent an email to a media representative informing that representative of the lawsuit.
8. The media then contacted the House Democratic Caucus communications staff about the lawsuit.
9. In response to the media contact regarding the lawsuit, on November 23, 2021, Speaker Laurie Jenkins issued the following statement:

Once again, certain members of the House Republican Caucus are choosing to engage in performative stunts for media attention rather than modeling public health best practices to keep fellow lawmakers, legislative staff, and the public safe from a highly contagious virus. The House operations plans allow all members to fully represent their constituents and fulfill the duties of their office in the midst of an ongoing pandemic. We believe this lawsuit is without merit, and our focus remains on the work ahead for the 2022 session.
10. The statement was prepared for the Speaker by caucus communications staff.
11. Before it was issued, the statement language was reviewed by House Counsel, and the Attorney General's Office. House Counsel indicated that he did not see any ethics issues although he stated he reviewed it from a litigation perspective but further added he would have noticed if there were ethics concerns.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.160(1) prohibits the use of persons, property or money (often referred to as "public resources") under a legislator's official control or direction, or in his or her official custody, for the

private benefit of self or another unless that use is part of the legislator's official duties.² *In re Schmidt*, 2006 – No. 4.

There is no question that Respondent used state resources when she had the caucus communications staff write and send out the press statement at issue in this complaint. The Board has previously held that legislative staff are a public resource. See, e.g., *In re Sawyer*, 2018 – No. 4. The question is whether Respondent received a private benefit from that press statement.

The Board has previously held the following actions conferred a private benefit on a legislator: having a legislative assistant type a letter for the legislator about a private matter (*In re Jacobsen*, 1997 – No. 1); using a legislative assistant to type a letter on the legislator's behalf to the legislator's private employer (*In re Eickmeyer*, 2006 – No. 12); writing a letter on legislative letterhead in a personal dispute between constituent and another (*In re Schmidt, supra; In re Green*, 2005 – No. 7); advocating for a family member using state resources (*In re Hankins*, 2007 – 1A); sending a letter on official letterhead to school district officials complaining of coach's behavior toward respondent's child and her teammates (*In re DeVita*, 2003 – No. 1).

In each of these cases, the actions of the legislator or employee in using state resources benefitted the legislator or another in a private matter – not a matter in which the member was officially involved. In this complaint, Respondent was sued in her official capacity as a legislator not as a private individual. She responded to press inquiries as part of her official duties as a member of the House Executive Rules Committee. As such, she was entitled to use state resources to reply to a press inquiry about the lawsuit.

VI. ORDER

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



Judge Terry Lukens, ret., Chair

3/30/22

Date

² "Official duties" are 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).