

Legislative Ethics Board

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COMPLAINT 2022 – No. 16

In re Payne
February 16, 2023

NO REASONABLE CAUSE - ORDER OF DISMISSAL

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated RCW 42.52.020 because her position as Chair of the Thurston County Republican Party conflicted with her official duties as an employee of the House Republican Caucus.

II. JURISDICTION

The Board has personal and subject matter jurisdiction.

III. PROCEDURAL HISTORY

Complaint 2022 – No. 16 was received on December 16, 2022 and discussed at the Board's regularly scheduled meeting on February 7, 2023.

IV. FINDINGS OF FACT

1. Respondent is an employee of the House Republican Caucus. She began working for the House as a legislative assistant in 2013. In 2015 she moved to the communications section of the caucus as a Personal Information Officer. She is currently a Senior Information Officer.
2. Respondent served as Chair of the Thurston County Republican Party (TCRP) from December 2020 to December 2022. On December 15, 2022, Respondent was elected as the 2023-24 State Committeewoman representing the Thurston County Central Committee.
3. Respondent appointed Complainant as a Precinct Committee Officer (PCO) at the beginning of 2022. Complainant was subsequently elected as a PCO for the 2023-2024 term.
4. Respondent was not paid for her work with the TCRP. She ran for chair because the organization was fractured and she wanted to help better organize them, particularly their finances which were in disarray.

5. Before she ran for Chair of the TCRP, Respondent consulted her immediate supervisor, John Handy, as well as Ohad Lowy, House Counsel. Mr. Lowy also consulted Board Counsel to make sure the advice he provided was accurate.
6. Mr. Lowy advised Respondent that if she were elected Chair of the TCRP any work performed for it would have to be done without the use of public resources. He stated he explained to Respondent that this meant she could not use her legislative office, phone, consumables, or the legislative email system for any work she did for TCRP. In addition, she could not perform work for the TCRP during legislative work hours.
7. Respondent indicated that from 2020 to 2022, she took multiple small amounts of leave time to work on TCRP business. This statement was corroborated by Respondent's leave history.
8. According to the TCRP Bylaws, the mission of the Central Committee and Executive Board is to:
 - Lead, contribute and participate in the establishment of a Republican Party organization within Thurston County.
 - Fulfill those functions conferred upon on it by state law and the Washington State Republican Party (WSRP) rules.
 - Locate, guide, prepare and retain Republican candidates for public office.
 - Plan, organize, administer and finance the party's operations to accomplish the above stated purposes.
9. According to Respondent, the TCRP, like all county parties both Republican and Democrat, exists to raise money to fund candidates for public office.
10. The TCRP does endorse candidates for political office. Only the PCOs vote on who to endorse; the chair does not have a vote.
11. In response to an email sent on or about January 7, 2022 by Complainant to Respondent requesting information to familiarize herself with party business, Respondent indicated that the following *ad hoc* committees existed: Lincoln Day Dinner Volunteers; Election Integrity Committee; Legislative Activism Committee; and PCO Handbook Committee
12. The Legislative Activism Committee never actually formed. There was one PCO interested in it but no one else volunteered.
13. On October 18, 2022, the TCRP posted on its official Facebook page the following note: "THIS IS NOT AN ENDORSEMENT LIST – although several people have officially been ENDORSED by the local party. This is merely a list of recommendations from the chair, Kelley Payne, for those who call and ask for a list." A list of candidates then follows this statement.
14. On December 13, 2022, Complainant sent the following email to Respondent and her successor as Chair, Matt Smith, who is also legislative staff:

I know you both serve on the outgoing Board, with Kelley as chair. I know Matt is planning to run for chair at re-org. I don't know whether

Kelley is planning to run for any position on the Board for sure (although I think she said something about staying involved in some capacity other than chair --- which tends to lead to speculation).

You are both legislative staff, subject to the Ethics in Public Service Act (not to mention rules of your chamber).

I believe that serving as chair of the TCRP (Thurston County Republican Central Committee) would likely be a conflict-of-interest with the duties of legislative staff, in violation of RCW 42.52.020. I think there are probably multiple ways this could become an conflict. To highlight a few potential issues:

- 1) Lobbying: One of the purposes of the TCRP (from preamble to Bylaws) "to work for the passage of laws, initiatives and referenda restoring individual rights, personal freedoms and prosperity for all of Thurston County." Legislative staff are prohibited from lobbying. Yet Kelley appointed (at least, as chair, she presumably made appointments) an Activism Committee. I have serious doubts over the legality of Kelley's tenure (sorry) on this issue (of lobbying-type activity) alone.*
- 2) Fundraising: Although it appears the law is unclear, there may be implications for fundraising from lobbyists and/or during session.*
- 3) Endorsements: It may be difficult for someone who works with one (or several) specific legislators to exercise independent judgement in making endorsements (for those races especially). What if the party had a primary challenger in one of those district(s)? Or a majority endorsed such a challenger? Would the staff be able to do both jobs faithfully? (This is not a comment on the qualifications of any particular legislator.)*

I'm most concerned about #1, with #2 and #3 potentially more like "gray" areas so-to-speak.

Please consider,

V. ANALYSIS AND CONCLUSIONS OF LAW

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."

Conflict of interest questions have generally followed one of two lines of analysis: *per se* or functional.¹ In a *per se* analysis, the question is whether the conflict is so severe that the interest or activity itself is a violation of the statute. See e.g., *In re Pedersen*, 2022 – No. 3; *In re Caldier*, 2018 – No. 3. In the *per se* category, lobbying and offering legislative advice or assistance would constitute conflicts of interest. *Advisory Opinion* 1998 – No. 6. The Board recently adopted the following definition of lobbying: "attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington." *In re House & Senate Staff*, 2022 – No. 11.

¹ While legislators enjoy both a statutory and constitutional recognition that they are citizen legislators who bring to bear on the legislative process their individual experience and expertise, such recognition does not extend to legislative staff. *Advisory Opinion* 1999 – No. 1.

There is no evidence that Respondent, in her position as chair of the TCRP, attempted to influence the passage or defeat of any legislation before the state legislature or offered legislative advice or assistance. It is, therefore, not a *per se* violation for Respondent to have served as chair of the TCRP.

In the functional analysis, the question is whether there are activities of the “outside” interest that could conflict with the employee’s official duties thereby requiring the employee to refrain from such duties. The general rule is that a legislator or legislative staff does not have an interest in conflict with the proper discharge of his or her legislative duties if no benefit or detriment accrues to the legislator or staff 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. *Id.*

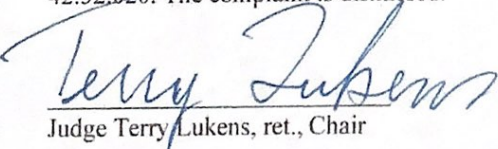
Applying the functional analysis to the facts in this matter, the question is whether Respondent accrued a benefit or detriment as chair of the TCRP to a greater extent than any other member of the TCRP. All members of the TCRP, including the chair, are unpaid volunteers. There is no evidence that Respondent, as chair of the TCRP, accrued a benefit to a greater extent than any other member of the TCRP.

The Board also considered, Board Rule 1.N.2. in determining Respondent did not violate the Act. This Rule provides: “in considering a complaint, the Board will give weight to the fact that the person charged in the complaint relied in good faith on staff advice.” Before running for chair of the TCRP, Respondent sought the advice of House Counsel and Board Counsel. The evidence indicates that Respondent followed the advice she was provided.

Although the Complaint does not allege a violation of RCW 42.52.180, the Board notes that in *Advisory Opinion 2019 – No. 4A*, it held that legislative employees may engage in campaign activity in their off hours. To the extent Respondent engaged in any campaign activity, including endorsements, in her position as chair of TCRP, the evidence indicates she did so during hours she was not working for the legislature.

VI. ORDER

IT IS HEREBY ORDERED that reasonable cause does not exist to believe Respondent violated RCW 42.52.020. The complaint is dismissed.



Judge Terry Lukens, ret., Chair

7/16/23

Date