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COMPLAINT 2023 – No. 10

In re Senn
July 18, 2023

NO REASONABLE CAUSE – ORDER OF DISMISSAL

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated RCW 42.52.020 by serving as a member of the Board of Directors of the non-profit organization Hopelink.

II. JURISDICTION

The Board has personal and subject matter jurisdiction.

III. PROCEDURAL HISTORY

Complaint 2023 – No. 10 was received on April 24, 2023, and discussed at the Board's regularly scheduled meeting on July 10, 2023.

IV. FINDINGS OF FACT

1. Respondent is a member of the House of Representatives representing the 41st legislative district. She was appointed to the House in 2013, was elected in 2014 and re-elected several times most recently in 2022.
2. Respondent served on the Hopelink Board of Directors for six years from 2016 to 2022.
3. Hopelink serves homeless and low-income families, children, seniors and people with disabilities in north and east King County by promoting self-sufficiency for all members of the community and helping people make lasting change. Hopelink assists people with meeting their needs for food, shelter, homelessness prevention, family development and stabilization, transportation and adult literacy skills.
4. Hopelink is a Community Action Agency (CAA).
5. CAAs are local private and public non-profit organizations that carry out the Community Action Program established in federal law.

6. CAAs are intended to promote self-sufficiency and they depend heavily on volunteer work, especially from the low-income community. The Community Services Block Grant is the agencies' core federal funding. CAAs also operate on a variety of grants that come from other federal, state and local sources.
7. Federal law (42 USC § 9910) requires that a CAA be governed by a board of directors consisting of one-third low-income community members, one-third elected public officials, and one-third officials or members of business, industry, labor, religious, law enforcement, education or other groups in the community served.
8. While the Hopelink Board of Directors does receive a post-session report from the Hopelink lobbyist, it has no oversight responsibilities over the lobbyist or the legislative agenda.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.020 provides that “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.”

The analysis used to determine whether a legislator has a conflict with outside employment is equally applicable in analyzing the situation when a legislator is a member of the Board of Directors for a non-profit organization. *In re Dhingra*, 2022 – No. 4. In determining whether a legislator’s membership on Board of Directors membership presents a conflict of interest with the legislator’s official duties, the Board has historically used two tests: *per se* and functional. *See, e.g., In re Berry*, 2023 – No. 11; *In re Pedersen*, 2022 – No. 3.

The *per se* test asks whether a legislator’s Board membership presents such a direct conflict with his or her official duties that the membership itself would violate .020. The functional test asks whether there are any activities of the Board membership that would conflict with a member’s legislative duties, thereby requiring the legislator to refrain from such duties or refrain from the Board membership. *In re Berry*, 2023 – No. 11.

The general rule is that a legislator does not have an interest in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator 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. *Advisory Opinion 95-1* (adopting the provisions of Joint Rule 2 of the former Code of Legislative Ethics).

Using the *per se* test, the question is whether membership on a board of directors of an organization presents such a direct conflict with a legislator’s official duties that the member cannot sit on the board while serving as an elected official. If the organization’s major purpose or mission is grass roots lobbying or providing the state legislature with policy recommendations on a particular issue, the legislator’s membership on the organization’s board of directors could constitute a *per se* conflict of

interest. *See Advisory Opinion* 1998 – No. 6 (Board equated an organization’s purpose of “public education” to grass roots lobbying which it indicated was a *per se* conflict under .020).

Under the functional test, which is the applicable test in this matter, the question is whether the Respondent’s board membership accords her a “benefit or detriment . . . 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.” The Board finds no evidence of a benefit or detriment that accrued to Respondent because of her membership on the board of directors of Hopelink. Further, the federal law governing this organization requires that one-third of the Board members are elected officials.

Respondent donated her time to the board; she was not paid as a board member. The application of the functional test to this complaint’s set of facts indicates that there was no violation of RCW 42.52.020 resulting from Respondent’s board membership. Furthermore, as we recently stated in the *Berry* opinion, the employment of a lobbyist by a non-profit organization does not automatically make a legislator’s membership on the Board of Directors a violation of RCW 42.52.020, especially when the Board does not oversee the work of the lobbyist.

VI. ORDER

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



Tom Hoemann, Chair

7/18/23

Date