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COMPLAINT 2009 – NO. 2

In Re Keiser

DETERMINATION OF NO REASONABLE CAUSE – ORDER OF DISMISSAL

June, 2009

I. Nature of the Complaint

The complaint alleges that Senator Keiser (Respondent) violated **RCW 42.52.160** and **RCW 42.52.180** of the Ethics Act (Act) when she used her legislative website blog for “private purposes that did not advance the public interest” and that this use of public resources “seems to have been motivated by private or campaign considerations.” The Board has both personal and subject-matter jurisdiction.

II. Conclusion

Based upon a review of the Complaint and the Board’s investigation, the Board concludes that Respondent’s use of the legislative website blog was an expression of her opinion on a bill pending before the Legislature and did not constitute impermissible personal or campaign use of public resources.

III. Determination of Facts

Senate policy permits the use of public resources to create and update legislative blogs. Respondent utilized her blog to comment favorably on a bill pending before the Legislature. Her support for the bill was also evidenced by her blog remarks criticizing the Building Industry Association of Washington (BIAW) which would have been affected by the bill. Respondent referred to the BIAW as “nasty, bullying and partisan.” The bill would have required retro programs, including BIAW, to refund or pay-back certain monies to the State and Respondent’s remarks included the work “payback.” Complainant alleges that Respondent’s remarks were motivated by campaign considerations because BIAW “often opposed” candidates from Respondent’s political party.

IV. Determinations of Law

1. A legislative website created and updated with the use of legislative staff and legislative equipment is a public resource.
2. **RCW 42.52.180** prohibits the direct or indirect use of public resources to assist elections of persons to office or to promote or oppose a ballot proposition. One of the exceptions to the restrictions found in .180 is (c) Activities that are part of the normal and regular conduct of the office or agency.
3. **RCW 42.52.160** prohibits the use of public resources for private benefit or gain for self or others. The statute exempts from this prohibition those uses of public resources which are part of a legislator's official duties.
4. Several prior opinions of this Board have firmly established that legislators may use public resources to express their positions on legislative issues and they may do so in a partisan manner.

For example: In **Complaint Opinion 1996 – No. 3** it was alleged that a legislative newsletter was designed to directly or indirectly influence elections through statements such as “Our Commitment to you,” the “Republican Commitment To The People” and “Republicans cut bureaucracy.” We disagreed and concluded it is normal and regular conduct for a state legislator to report to constituents the positions they intend to take on issues they will be addressing in the legislative session. *“The members of the legislature are elected on a partisan basis. It is acceptable for them to express their positions on issues that they will be dealing with in the legislative session in partisan terms. In that matter, their constituents are kept informed of how they are being represented in the legislature”*(at page 4, emphasis added).

Complaint Opinion 1996 – No. 7 also involved highly partisan newsletter language such as “These failures reflect the political extremism of Olympia these days. Our leaders seem more interested in making political statements rather than passing public policy...Both juvenile sentencing reform and welfare reform were achievable...But the Republican leadership was more concerned in making a political statement about punishment and family caps.” The Board cited CO 1996 – No. 3 as authority for dismissing the charge that the statements violated the Act because they were partisan.

In **Complaint Opinions 1998 – No's 4 and 5**, the Board determined that a legislative mailing which praised the accomplishments of the Republicans in the House and criticized Democrats and the Governor did not violate the Act because the mailing was about legislative issues.

Complaint Opinion 2005 – No. 8 alleged that a legislative newsletter violated the Act because the newsletter insulted the opposition party, stretched the truth, and “was a political tool, barely used to actually inform.” The Board concluded that this end-of-session newsletter

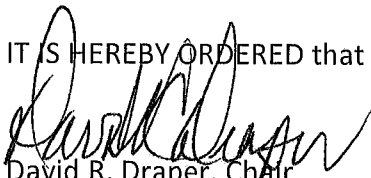
contained the legislator's opinion on a number of legislative issues debated in the just concluded legislative session.

5. All materials published and/or distributed for public consumption with the use of public resources are subject to requirements of timeliness, proximity to election, relevance, source of initial statement (if the materials are responsive in nature) and tone and tenor. See, for example, **Advisory Opinions 1996 – No's 10 and 11**. In the present case the legislative blog comments were timely, not close to an election and in most part relevant to the issue before the legislature.
6. Tone and tenor requirements recognize that debate can be partisan without being disrespectful, **Advisory Opinion 2000 – No. 4**. In **Complaint 1998 – No. 3** a document had been prepared with the use of public resources by two legislators for the purpose of responding to their opponents on the merits of a ballot issue, the subject of which had been an issue before the previous legislature. The legislators accused those opponents as involved in "a" or "the big lie." On page 4 of that opinion the Board stated *"To the extent that the language used in legislative responses ventures into objectionable tone and tenor, such responses will appear to be less for legitimate legislative purposes and more for personal and campaign purposes."* Later in that opinion the Board stated that pejorative language used in reference to members or groups of members *"...will be given some weight in balance with other factors"* (emphasis added).

V. Summary and Order

On balance, and in the context of present and ongoing debate on a bill, Respondent's use of public resources was neither a campaign nor a personal use of those resources.

IT IS HEREBY ORDERED that the complaint is dismissed.


David R. Draper, Chair
Date; 6/22/09