

COMPLAINT 2007 – NO. 2
In Re Roach

May, 2007

REASONABLE CAUSE DETERMINATION – ORDER OF DISMISSAL

I. Nature of the Complaint – special privileges

The Complaint was filed with the Board on March 5, 2007 and was the subject of Board discussions at regularly scheduled meetings on March 14, April 16 and May 16. The Complaint alleges, among other things, that Senator Pam Roach (Respondent) used her position as a state official to intervene with the Department of Corrections (DOC) in a successful effort to secure an improper, early release from a DOC facility for her adult son.

The statute at issue is RCW 42.52.070, which states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parent or other persons.

II. Jurisdiction

The Complaint alleges a violation of the Ethics in Public Service Act (Act) by a legislator through the use of her position as a state officer to secure special privileges for a family member. The Board concludes it has both personal and subject-matter jurisdiction.

III. Summary

The allegations suggest the Respondent intervened with field and/or supervisory personnel in the DOC in an effort to obtain favorable treatment for her son, Stephen Roach (Roach). Specifically, it is alleged this intervention was aimed at or resulted in (1) an early release from custody; (2) Roach's placement in Respondent's home absent a completed home inspection; and (3) deletion of Community Corrections Officer's (CCO's) entries in Roach's file.

The investigation discovered no facts to support a finding of reasonable cause to believe that Respondent improperly intervened with the DOC in an effort to gain special privileges for her son.

IV. Investigation

The Board's investigation included interviews with the Respondent, DOC personnel including CCO's, their supervisors and DOC Secretary, Harold Clarke. In addition, internal DOC e-mails and other DOC documents relative to the Roach case, together with the phone records of DOC personnel including the Director, were reviewed.

V. Determinations of Fact

At the outset it should be noted that the purpose of this investigation was to determine whether reasonable cause exists to believe the Act had been violated by the Respondent. The Board's jurisdiction would not encompass an investigation to determine if DOC personnel failed to follow any rules, policies or laws related to prisoner release and placement. However, in order to determine the extent of the Respondent's involvement, if any, it was necessary to review in a general way the decision-making process which resulted in Roach's release and placement. The Determinations of Fact recited herein reference DOC decisions to the extent light may be shed on the allegations the Respondent had intervened in those decisions.

1. In December, 2005 the DOC Secretary instituted a policy change relative to the classification and risk assessment of offenders due to be released from DOC facilities. In part this written change in policy, described as "Simplifying Workload," limited the documents which CCO's and prison counselors would review when evaluating an offender's criminal history.
2. Based upon the history reviewed pursuant to this policy change Roach was eligible for release from a DOC facility with a 50% credit for time served.
3. Prior to his release, and in accordance with DOC procedures, CCO's were assigned to conduct an inspection of Respondent's home to evaluate whether that residence would serve as a proper location for Roach to reside following his release.
4. A somewhat abbreviated home inspection took place on March 13, 2006. It was not as complete an inspection as the CCO's felt was required and this was due to a confrontation between the CCO's and the Respondent. At some point the Respondent became aware the CCO's had not removed their shoes. The home has white carpets and a sign or signs are apparently posted requesting visitors to remove their shoes. The CCO's have expressed shock at the "hostile" nature of the "Senator." They refused to remove their shoes. CCO's are armed at all times and can never be sure how home inspections may unfold. They cite issues with regard to personal safety and/or the safety of others if they were to conduct inspections while barefoot.
5. The Respondent's alleged behavior was viewed as offensive by the CCO's. They left the residence after supplying the name and phone number of their supervisor as requested by Respondent. Respondent immediately called this supervisor and

complained of the shoe incident. This supervisor states that Respondent identified herself as “Senator Roach.”

6. On or about the next day the Respondent phoned DOC Secretary Clarke and complained about the CCO’s entering her home while wearing their shoes. Respondent states she also complained about the CCO’s threatening her that Roach “doesn’t have to live her” – an inference, according to Respondent, that if the home inspection didn’t take place on the CCO’s terms (while wearing shoes) her son would not be able to live at home. Respondent suggested that DOC require and provide booties for their CCO’s to wear during home inspections.
7. Clarke states he listened to Respondent’s complaints over the phone but said little. He later delegated the question whether booties were a viable option for DOC to an assistant. It appears from the investigation that the use of booties is now an option for DOC personnel.
8. Following the home inspection one of the involved CCO’s revisited Roach’s criminal history. His review went beyond the documents described in the Director’s new policy and as a result of his investigation he concluded that Roach’s offender score should be higher – in other words Roach had not been properly classified and should not be released until approximately 100 days beyond the scheduled release date.
9. This information was included in the CCO’s case notes, which are available to other DOC personnel. Eventually the CCO’s supervisors would maintain they thought this information would be automatically available to others who were responsible for making the reclassification decision. The CCO’s are skeptical of this claim and maintain a supervisor told them to not share the information. The supervisor has denied giving such an order.
10. The CCO’s who attempted the home inspection refused to approve the home placement but their supervisors did sign off on the placement. The CCO who had revisited the Roach criminal history was ordered to amend his notes by deleting the reference to “Senator” and the references to her “hostile” behavior. The CCO’s do not feel they have been adequately supported by their supervisors in the matter of Roach.
11. The case notes relative to the new computation of the Roach criminal score remained in the file.
12. DOC supervisory personnel claim that poor internal communication resulted in the information on Roach’s new criminal score and possible longer confinement not being passed on to the appropriate decision-makers. Others take the view that these supervisors knew of the mistake in classification and chose to ignore it, perhaps because they didn’t want to fight with the Respondent.

13. Wherever the truth lies on the motives, if any, of supervisory personnel there no known witnesses, documents or records to indicate that the Respondent was involved in asserting influence into the decision-making processes relative to the reclassification of her son or his placement.
14. There are no facts to support the allegation that the Respondent was aware of the issue of the case notes entered by the CCO or the subsequent orders to amend them.
15. There was no second home inspection. The CCO's supervisor, and her supervisor, determined they had the authority to sign off on the home inspection even though in the eyes of the CCO's the inspection had not been completed. These supervisors assert that there are no "absolutes" involved in a home inspection but rather that the home needed to be visited. Secretary Clarke states that he would have had no knowledge of the details of the reclassification issue or the home inspection decisions as those were field decisions and not of the type resolved in his office. His Deputy Secretary did gather information on these issues from field personnel but the investigation suggests this was done in case the Director had questions in the future. The Deputy Secretary did contact the Respondent about booties but there is no record that she or the Secretary spoke with the Respondent other than that brief period when booties were being discussed.

VI. Determinations of Law

RCW 42.52.070 (special privileges) states that the Act has been violated if a legislator "...use(s) his or her position to secure special privileges or exemptions..."

There are no facts or reasonable inferences there from to support a conclusion that Respondent improperly used her legislative position to influence substantive DOC decisions about her son. A singular instance of using her title, "Senator," in her phone call to the CCO's supervisor on March 13 to complain that shoes were not removed does not suggest a use of office to secure special privileges. Her actions, as evidenced by a follow-up call to the Director, demonstrate not only her personal concern but a suggestion that it would be sound DOC policy to consider the use of booties when entering any one's home when an objection was lodged.

VII. Conclusion and Order

DOC supervisory personnel may have based their decisions, in part at least, on their desire to avoid conflict with a state legislator. These supervisory personnel may have viewed the CCO's revisiting of Roach's criminal history as a violation of then-existing DOC policy or there may be a number of other factors involved.

However, Respondent cannot be held accountable under the Act for subjective determinations reached by DOC supervisors which may have been based in whole or in

part on Respondent's status as a legislator under circumstances where there are no facts which suggest the Respondent used her position to benefit her son, whether the issue be early release, placement or the amendment of case notes.

Based on a review of the Complaint and the Board's investigation, the Board determines there is no reasonable cause to believe that Senator Roach violated RCW 42.52.070. The Complaint is dismissed.

Wayne Ehlers, Chair

Date: