Legislative Ethics Board

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COMPLAINT 2025 – NO. 4
In re Zahn
April 10, 2025

LACK OF SUBJECT MATTER JURISDICTION – NO REASONABLE CAUSE – ORDER OF DISMISSAL

I. NATURE OF COMPLAINT

The Complaint alleges that Respondent violated RCW 42.52.020 (conflict of interest) and the judicial doctrine of incompatible offices because she is both a Bellevue City Council member as well as a member of the House of Representatives.

II. BACKGROUND

Complaint 2025 – No. 4 was received on February 17, 2025, and discussed at the Board's regularly scheduled meeting on March 31, 2025.

III. JURISDICTION

The Board has personal jurisdiction and subject matter jurisdiction over the conflict of interest allegation, but lacks subject matter jurisdiction over the allegation of incompatible offices. RCW 42.52.320.

IV. FINDINGS OF FACT

1. Respondent is a member of the House of Representatives representing the 41st legislative district. She was appointed to the seat and took office on January 21, 2025.

2. Respondent was elected to the Bellevue City Council in November 2017 and remains in that position. Respondent has indicated that she will retain her city council seat for the time being.

3. Respondent is currently a member of the following House committees: Capital Budget; Housing; Local Government; and Transportation. She is also the House Assistant Majority Whip.

4. Complainant is one of Respondent's constituents.

5. Complainant believes that Respondent holding two elected offices along with her House leadership position and her committee assignments could lead to "conflicts of interest and concentration of power." The Complainant is also concerned that the situation raises public policy concerns about the proper representation of constituents and the potential for one office to have power over the other.

V. ANALYSIS AND CONCLUSIONS OF LAW

1. Doctrine of Incompatible Offices

The doctrine of incompatible offices is a common law doctrine established through judicial opinions and implemented and enforced by the courts. In *In re Sheldon*, 2005-No. 6, the Board was asked to determine whether Senator Sheldon held incompatible offices by serving as both a county commissioner and a state Senator. In holding that it lacked subject matter jurisdiction under RCW 42.52.320[1] to make this determination, the Board cited an opinion of the Attorney General (AG) in which the AG concluded that the offices of state representative and public utility district commissioner were not incompatible under the common law doctrine. *AGO* 61-62 No. 177. *See also In re Armstrong*, 2011- No. 1.

In a later opinion by the Attorney General, the office was asked whether county legislative bodies could appoint one of their sitting members to a vacant legislative seat. The opinion states that Washington case law has strongly trended in favor of eligibility for office, not restriction and that eligibility to an office in the state is to be presumed rather than be denied. *AGO* 2019 – No. 6 (citing *Gerberding v. Munro*, 134 Wn.2d 188 (1998)). The opinion concludes that a county legislative body can appoint one of its sitting members to a vacant legislative seat.

2. Conflict of Interest

This complaint also alleges that it is a conflict of interest for Respondent to hold two elected offices.

The Board has frequently dealt with the issue of the outside employment of legislators. In determining this issue, the Board has analyzed it by applying two statutes: RCW 42.52.020 (activities incompatible with public duties) and RCW 42.52.330 (citizen legislator).

The concept of the citizen-legislator is based in the Washington State Constitution. Other than the civil office prohibition in Article 2, Section 14, the constitution does not limit a legislator's ability to hold outside employment. The only other written limits on legislators' non-legislative jobs arise within the Ethics Act itself through provisions such as RCW 42.52.020.

The language of RCW 42.52.020 is very broad and 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.

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[1] RCW 42.52.320 provides as follows: "The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature."

The Board, in considering the application of RCW 42.52.020, must also address RCW 42.52.330 which provides as follows:

By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle.

These statutes mean that when the Board is reviewing whether a particular non-legislative job presents evidence of "activities incompatible with the member's official duties," it must consider how that provision is to be applied in light of the citizen-legislator concept.

Very few non-legislative jobs are prohibited outright. When looking at whether a non-legislative job presents a conflict of interest with the legislator's official duties, the Board has used two tests: *per se* and functional. The *per se* test looks at whether the legislator's non-legislative employment presents such a direct conflict with his or her official duties that the employment itself would violate .020. Being employed as a lobbyist and serving as executive director of a non-profit engaged in lobbying an issue before the Legislature have been found to be *per se* conflicts of interest.[2] *See, e.g. Advisory Opinion* 1998 – No. 6; *Advisory Opinion* 1999 – No. 5.

The functional test applies to specific legislative actions – votes – and the degree to which a particular legislator stands to gain from those votes. The process requires a review of the legislator's non-legislative activities for his or her employer but also requires consideration of that outside employment and the extent to which the legislator will personally benefit from specific legislative action.

In a functional analysis of conflict of interest, the Board would inquire whether there are instances when Respondent should refrain from being involved in an issue in her legislative capacity while she is a Bellevue City Council member.

The general rule is that the outside employer cannot condition employment on legislative results or pay the legislator to push or advance the employer's legislative agenda or to oppose legislation disfavored by the employer. Absent facts indicating that the legislator is engaged in any of these types of prohibited employment, the Ethics Act does not prohibit a legislator from supporting legislation favored by the outside employer or opposing legislation disfavored by the outside employer. *In re Armstrong*, 2011 – No. 1. Under the functional approach to analyzing conflicts, the Board has stated that areas of potential conflict may be reduced or removed by restructuring certain outside employment responsibilities. *Advisory Opinion* 1999 – No.1.

The Board, in *In re Sheldon*, was asked whether being a state Senator as well as a county commissioner presented a conflict of interest pursuant to RCW 42.52.020. The Board held that there was no reasonable cause to believe the Senator had a conflict of interest with the proper discharge of his legislative duties solely because he also served as a county official.

So too, in this case, there is no evidence that Respondent has a conflict of interest with her legislative duties solely because she holds two elected positions. The Board has previously stated that that fact alone

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[2] Some might argue that "true" employment cases should be viewed differently than the present one, where a legislator is elected to another office, but the Board has held no such distinction in the Act in a *per se* conflicts analysis. *In re Sheldon*, 2005-No. 6, p. 3.

does not present a conflict of interest. Furthermore, as past Board opinions have demonstrated, Respondent can support or oppose legislation that the City of Bellevue may support or oppose without violating the Act.

VI. ORDER

IT IS HEREBY ORDERED that: the Board lacks subject matter jurisdiction over the incompatible offices allegation and finds no reasonable cause to believe Respondent violated RCW 42.52.020, and the complaint is dismissed.

Larry Hoff, Chair

4/10/2025
Date