

**ETHICS ALERT**  
February – 2012

**How far may a legislator go in support of outside employer's legislative agenda?**

The employer cannot condition employment on legislative results or pay the legislator to push or advance the employer's legislative agenda. These prohibitions are broader than voting for or against a bill. A legislator may not provide legislative advice or assistance to the employer for pay or as a condition of employment if that advice or assistance is directed toward any anticipated or pending legislative measure and is designed to assist the employer receive a favorable outcome. ***Absent facts that a legislator is engaged in any of these types of prohibited employment, the Ethics Act does not prohibit a legislator from introducing, supporting, advocating or voting for legislation which may benefit the outside employer or opposing legislation disfavored by the employer*** (Complaint Opinion 2011-No. 1 and others).

**Recommendation:** The Board recommends that legislators and their outside employers clearly and accurately set forth the legislator's duties and responsibilities. In addition, benefits are commonly viewed as part of a compensation package and the accrual of outside employment benefits during a legislative session may be based on demonstrable business reasons. However, these reasons should be reflected in the employment documents to address ethical questions about whether the benefits could be viewed as a form of compensation for legislative work.

**Board prevails in lawsuit**

The complainant in an ethics case sued the Board alleging, among other things, (1) that the Board was negligent in the manner in which it conducted the investigation; (2) that the complainant was entitled to take an active part in that investigation; and (3) that the complainant had a legal right to appeal the Board's decision to dismiss a complaint for lack of evidence. The Court ruled that the law did not support the claims and that the Board was entitled to a judgment of dismissal (*West v. Legislative Ethics Board and Michael Armstrong*, Thurston County Superior Court, Cause # 11-2-01-01385-2). The complainant did not appeal the ruling.

**Caution is called for when a legislator organizes a not-for-profit corporation**

A not-for-profit that is created by a legislator to gather ideas for potential legislation from the public does not conflict with the Ethics Act provided the organization does not transform into a legislative-lobbying entity. Non-profit fundraising may not include solicitations to lobbyists and, in most cases, may not include solicitations to lobbyist-employers. While it may be that a not-for-profit is under no obligation to disclose the names of donors to the public, the Legislature has provided that the Board has the authority (RCW 42.52.390) "...to require the production for examination of any books or papers relating to any matter under investigation or in question before the ethics board" (Complaint 2011-NO.2).

The full text of all advisory and complaint opinions since 1995, together with a summary of each, may be found on the Board's website.