

Legislative Ethics Board

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COMPLAINT 2020 – No. 10

In re Doglio

October 30, 2020

REASONABLE CAUSE DETERMINATION AND STIPULATION

I. NATURE OF COMPLAINT

The Complaint was filed by the Board on its own motion after being notified by the Chief Clerk of the House of Representatives of its investigation into this matter. The complaint alleges that Respondent violated RCW 42.52.180 (use of state resources to affect a campaign) by using photographs produced by Legislative Support Services (LSS) without purchasing them first and using a video clip taken by LSS in a campaign ad.

II. JURISDICTION

The Board has personal and subject matter jurisdiction over the Respondent. RCW 42.52.320.

III. PROCEDURAL HISTORY

Complaint 2020 – No. 10 was opened on August 31, 2020 after the Board meeting that day and was discussed at the regularly scheduled meetings on August 31, 2020 and October 12, 2020.

IV. FINDINGS OF FACT

1. Respondent is a member of the House of Representatives and has represented the 22nd legislative district since 2017.
2. On July 14, 2020, a videographer employed by Legislative Support Services (LSS) was watching television and saw a campaign ad supporting Respondent's run for Congress. He believed that the campaign ad featured several shots that were taken from video footage created by LSS.
3. On July 15, 2020, the videographer searched the internet to find the ad he had seen on TV. He could not find that specific ad but in his search discovered a YouTube video on Respondent's campaign site that contained some of the same footage he had seen on the TV ad. He compared the YouTube footage to the video footage on the LSS server and discovered that the ad featured

footage he had shot. He produced a screen grab from the show that LSS produced for Respondent on January 17, 2020 and a screen grab from Respondent's campaign ad on YouTube. They contained some of the same footage.

4. The videographer informed his supervisor of this issue on July 15, 2020. The supervisor, in turn, notified House Counsel of this issue.
5. The videographer stated that he knew the footage used in the YouTube video was footage he had shot because he was the only person shooting footage of Respondent that day.
6. It was also discovered that some of the YouTube video included photos taken by LSS that had not been purchased. According to Respondent's campaign manager, she told the media consultant who produced the ad that if they used LSS produced photos, they must first be purchased.
7. Once Respondent was informed that some of the photos used in the ad had not been purchased, they were purchased on July 24, 2020.
8. After LSS shoots a video, it places that video on four different servers (one for each House R and D caucus communications and one for each Senate R and D communications) to which all communications staff has access. The videographer believes that because of the graininess of the clip in the campaign ad, that it was most likely taken from a YouTube video produced by legislative caucus communications staff and placed on Respondent's official legislative or social media account.
9. LSS videos are not available for purchase the way photographs are because of the likelihood the videos would be used for campaign purposes.
10. The media consultant indicated that, at his request, the campaign provided the clips to him and his company took that information and produced the campaign ad. He indicated that his company assumes that the material provided by a campaign is legitimate and not violative of any state laws.
11. Respondent believed the footage was taken from a TVW clip. She believed that her campaign staff researched the footage that was used and determined that it could be used because it originated with TVW.
12. The footage did not come from TVW. TVW records directly through the cameras it has installed in the legislative hearing rooms and on the floors of both the House and the Senate.
13. Respondent's campaign manager sent the video clips to the media consultant for use in the development of campaign ads for Respondent. The campaign manager did a quick search for videos on her phone and emailed them to the media consultant. She indicated that she did not check the source of the clips before she sent them.
14. Once it was brought to Respondent's attention that the campaign ad included LSS filmed shots, Respondent indicated that she instructed the campaign staff to remove the ad from YouTube, Facebook and anywhere else it was located.

15. As of September 11, 2020, when the videographer was interviewed, the ad was still online.
16. Respondent happened to discover that the ad with the legislatively produced stills was still available online sometime after September 11th. Apparently, the campaign staff removed the ad from everywhere but the campaign's YouTube page.
17. The video has since been removed.

V. CONCLUSIONS OF LAW AND ANALYSIS

RCW 42.52.180 prohibits a state officer from using or authorizing the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion or opposition to a ballot proposition. The Board's rules provide further that "[a] legislator or legislative employee may not make private use of state resources for any campaign related activity." Board Rule Number 3(D)(1).

RCW 42.52.180(1) provides a nonexclusive list of what comprises "facilities of an agency." Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

Although the phrase "publications of the agency" is somewhat vague, because the photos and videos are items produced and disseminated by legislative staff, and therefore published, they meet this definition. Furthermore, the use of legislative staff to take the photos and produce the videos in question constitutes the "use of state employees of the agency during working hours." The photos and videos themselves constitute the type of equipment or other property which is contemplated by the definition. *In re Stambaugh*, 2016 – No. 8.

The photos and video of the Respondent used by the media consultant in the development of campaign ads for Respondent were taken and produced by LSS staff. As the Board held in the *Stambaugh* case, these items clearly meet the definition of "facilities of an agency."

RCW 42.52.180 exempts "activities that are part of the normal and regular conduct of the office or agency." The creation of the photos and videos constitutes normal and regular conduct by legislative staff. Whether legislative materials were properly created at public expense in the first place is not determinative. Rather it is the use to which the materials are later put which determines whether RCW 42.52.180 has been violated. *In re Hargrove*, 2012 – No. 1. Both RCW 42.52.180 and Board Rule 3(D)(1) do not allow for any campaign related personal use of legislative facilities.

Although Respondent had incorrect information about the videos and photos used and was unaware that the photos had not been purchased or that the genesis of the videos sent to the media consultant had not been carefully checked, that does not excuse Respondent's campaign's use of the material. "Members are ultimately responsible for their publications." *In re Schmidt & Huff*, 1998 – No. 3.

VI. ORDER AND STIPULATION

IT IS HEREBY ORDERED: that reasonable cause exists that Rep. Doglio violated RCW 42.52.180 and that she pay a civil penalty of Two Hundred Fifty dollars (\$250), payable to the Washington State Treasurer.

Eugene Green
Eugene Green, Chair

10-30-20
Date

I, Beth Doglio, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, and agree to personally sign it as a resolution of this matter and have voluntarily signed this Stipulation and Order.

Rep. Beth Doglio
Rep. Beth Doglio

Date: 10/28/2020

Having reviewed the proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.

Eugene Green
Eugene Green, Chair