

MINUTES
LEGISLATIVE ETHICS BOARD

January 17, 2002

Members present: James A. Andersen, Chair; William F. Asbury, Vice-chair; John Betrozoff; Senator Stephen Johnson; Representative Phil Rockefeller; Ruth Schroeder. Staff: Counsel, Mike O'Connell; Designated Ethics Advisers; Milt Doumit, Marty Lovinger and Tim Sekerak.

The November and December minutes were approved. Chair Andersen and Mr. Asbury reported on their attendance, at the invitation of the House Chief Clerk, at the ethics portion of the orientation held for new members of the House of Representatives. Chairman Andersen and Vice-chair Asbury were unanimously reelected as Board officers for 2002. Counsel distributed the Personal Financial Affairs Statement to the citizen members of the Board. The financial reports are to be filed with the Public Disclosure Commission by April 15, 2002. Counsel reported that the state agency contract and employment form, required of legislators and legislative staff in certain circumstances, had been redrafted and now consisted of one page, rather than two. The Board reviewed the document and was advised that it was available from Counsel as well as the Designated Ethics Advisers. Counsel informed the Board of three examples of informal advice since the January meeting. (1) A letter of support for a grant applicant, using public resources, was approved pursuant to Board precedent. (2) A legislator was advised he could continue, during an election year, to provide monthly articles using public resources to an organization which published these articles in its newsletter. The facts showed that this practice had been ongoing for some time and the content was strictly legislative in nature. Although the Board has not issued an opinion on this practice, the advice was consistent with earlier informal advice. (3) A legislator was advised that RCW 42.52.185, which places certain restrictions on mailings by legislators in an election year, does not permit the legislator to answer another legislator's mail during the restricted period, even if the two legislators are from the same legislative district.

The Board continued its discussion of legislative travel to sporting events. During the discussion the Board reviewed the 1994 report of the Commission on Ethics in Government and the ethics opinions on gifts and travel from 1978 to the present. Counsel advised that Board precedents had distinguished between "purely sporting events" and attendance at events which involved some sort of legislative purpose. Counsel pointed out that ordinarily, in the case of travel, the House and Senate administrations judged whether a proposed trip was legislative in nature because they would be asked to pay for all or a portion of it but that there was no formal process for this analysis in the case where a legislator would not be seeking state reimbursement, such as the trip to the Rose Bowl. Senator Johnson asked if a legislator was entitled to a legal presumption that a trip was appropriate if the Secretary of the Senate had decided there was a legislative purpose to the trip. Counsel responded by saying that no legal presumption would attach but that in the ordinary course of events, where state reimbursement would be sought, Board precedent indicates a certain deference to that administrative decision. Chair Andersen agreed that while an administrative decision allowing travel could be persuasive, the Board would not be foreclosed from reviewing such decisions. Senator Johnson said he felt this could be a problem and that legislators might receive an administrative decision in favor of the travel but still find themselves the subject of a subsequent complaint proceeding. Counsel acknowledged this possibility but stated the Board had provided for a degree

of protection against such an occurrence by authorizing informal advice. Mr. Brian Malarky, Executive Director of the Executive Ethics Board, briefed the Board on the stipulation agreed to between the Executive Board and the University of Washington. Mr. Malarky explained that the stipulation does address, in part, the issue of University invitations to legislators for travel and attendance at bowl games, and provides that the University may no longer invite legislators by person. The stipulation requires that any such offers be presented to the House and/or Senate for consideration and that the University must follow the directives of this Board on the issue of legislative travel. The members requested that Counsel provide them with a copy of the stipulation prior to the next meeting. Mr. Malarky also informed the Board that in a related advisory opinion, the Executive Board had identified factors which must be present before third parties could pay for executive branch officials spouses travel and that this opinion might be of interest to the Legislative Board. Representative Rockefeller suggested that this opinion could be helpful because it addresses factors which help identify when an individual would be traveling in an official capacity. The Representative stated that the Legislative Board may also have to consider an opinion which defines official capacity since one of the statutes which permits legislative travel paid for by a third party speaks to an appearance in an official capacity but does not define the term. Mr. Asbury asked if all the money spent on Rose Bowl travel by the University was provided by the Pacific 10 Conference and Mr. Malarky responded by saying no, that total expenditures were in the neighborhood of 1.4 million dollars and the Pac 10 provided approximately 1.25 million. Mr. Malarky explained that the position of the University was that the difference came from University "discretionary" funds, as opposed to state funds, but that the Executive Board viewed that money as under the control of the University and its use was still subject to scrutiny by the Executive Board. Mr. Betrozoff asked if the agreement reached between the Executive Board and the University controlled travel to all sporting events in the future, regardless of who might be paying for the trip. Mr. Malarky said no, this agreement was only between the University and the Executive Board and only related to bowl games. Mr. Betrozoff stated that he thought the issue of attendance at home football games, and most likely other sporting events, needed to be addressed by the Legislative Board. Chairman Andersen asked, in view of the relatively limited application of the stipulation, what the Board members felt the next step should be. There was general agreement expressed that the Legislative Board would, sooner or later, be asked for its opinion on other travel scenarios and that the issues surrounding such travel should be addressed by the Board. Chair Andersen asked the members to review the University stipulation before the next meeting and encouraged them to contact Counsel with their views on how the Board should proceed.

Legislators in attendance indicated they would have to leave the meeting to attend to other legislative duties and with the concurrence of all the members the Board moved to executive session to consider a pending complaint. During this session, the Board approved a resolution of Complaint 2001 - No. 4, and directed the Chair to approve the final draft on behalf of the Board and after review with the Vice-chair and Counsel.

The public portion of the meeting resumed and the Chair called for public comment. There was no public comment and no further business. The meeting was adjourned.


James A. Andersen, Chair

**MINUTES
LEGISLATIVE ETHICS BOARD**

April 25, 2002 - 12 p.m.

Members and staff present: James A. Andersen, Chair; Paul Aldinger; William F. Asbury, Vice-chair; John Betrozoff; Rep. Doug Ericksen; Senator Debbie Regala; Rep. Phil Rockefeller; Counsel, Mike O'Connell; Designated Ethics Advisers Milt Doumit, Marty Lovinger and Tim Sekerak.

The February minutes were approved. There were no March minutes as that meeting consisted solely of an executive session to discuss the preliminary stages of pending complaints. The Board reviewed a draft of the 2002 Ethics Manual and approved its publication. Counsel presented an update of the Board's budget and distributed a Detailed Expenditure Report. Following discussion, the Board directed a letter be sent to the House and Senate informing them that the Board was cooperating with other state agencies in efforts to control spending and thanking the House and Senate for their support of the Board's activities. Counsel gave three examples of informal advice offered since the last meeting. (1) The mailing restrictions found in RCW 42.52.185 are not applicable to a legislator after the applicable filing periods have passed and the legislator is not a candidate for election. (2) Proposed payments by a trade association for legislators travel and lodging to attend the association's annual social event were subject to the gift restrictions because the legislator's would attend as social guests only. The gift exemptions of RCW 42.52.010(10), permitting payment of reasonable expenses for performing a legislative duty or attending a seminar or educational program were not applicable. (3) RCW 42.52.185 does not prohibit legislators from mailing individualized responses to constituents who sign and submit a petition to the legislator expressing or requesting a point of view on a legislative issue.

Designated Ethics Adviser Marty Lovinger informed the Board that the Senate had amended its printing and publication policy to permit Senators to distribute legislative materials to the new portions of their legislative districts following redistricting.

The Chair called for public comment and there was none. The Board convened in executive session at 1:30 p.m. to discuss preliminary matters related to two pending complaints - Complaint 2001 - No. 5 and 2002 - No.1.

The Board reconvened in public session at 2:30 p.m.. Proposed meeting dates for the remainder of the year were approved. There was no further business and the Board adjourned.



James A. Andersen, Chair

MINUTES

LEGISLATIVE ETHICS BOARD

June 6, 2002 - 12 p.m.

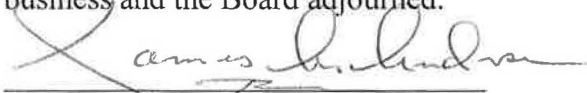
Members and staff present: James A. Andersen, Chair; Paul Aldinger; William F. Asbury, Vice-chair; John Betrozoff; Rep. Doug Ericksen; Senator Stephen Johnson; Senator Debbie Regala; Rep. Phil Rockefeller; Ruth Schroeder; Counsel, Mike O'Connell; Designated Advisers Milt Doumit, Marty Lovinger and Tim Sekerak.

The April minutes were approved. Counsel presented two examples of informal advice offered since the last meeting. (1) A legislator's use, outside the legislative office, of a personally owned laptop computer for both campaign and legislative use does not violate RCW 42.52.180 because no "facilities of an agency" are involved. (2) A lobbyist's offer to upgrade a legislator's air travel from "coach" to "business" is subject to the Ethic Act's gift analysis.

The Board reviewed newspaper articles reporting on a lawsuit brought by the Washington Education Association against the Public Disclosure Commission. Counsel was directed to provide a copy of the court's order, when available, to the Board members.

The Board continued its deliberations on draft Advisory Opinion 2002 - No. 1, legislative travel. Following extensive discussion the Board directed counsel to prepare a draft limited to the gift exemption for "an appearance made in an official capacity" (RCW 42.52.010(10)(d)) for consideration at the next meeting.

The Chair called for public comment and there was none. The Board convened in executive session at 1:50 p.m. to discuss Complaint 2001 - No. 5. The Board reconvened in public session at 2:45 p.m.. The Chair renewed his request for public comment and there was none. There was no further business and the Board adjourned.



James A. Andersen, Chair

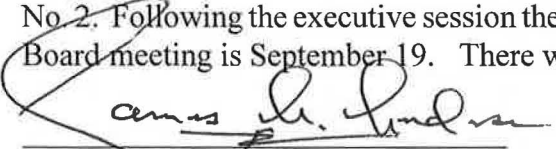
MINUTES
LEGISLATIVE ETHICS BOARD
August 8, 2002

Members and staff present: James A. Andersen, Chair; Paul Aldinger; William F. Asbury, Vice-chair; John Betrozoff; Representative Doug Ericksen; Senator Stephen Johnson; Senator Debbie Regala; Representative Phil Rockefeller; Ruth Schroeder; Mike O'Connell, Counsel; Milt Doumit, Marty Lovinger and Tim Sekerak, Designated Ethics Advisers.

The June minutes were approved. Counsel presented several examples of informal advice offered since the June meeting and two of these elicited Board discussion. (1) Counsel advised a legislator that his legislative assistant could leave a recorded message on a legislative district office phone which advised the caller that the phone was limited to legislative business and, that if the call was campaign-related, the message could direct the caller to the campaign office phone number. (2) Prior to the Board's decision in Complaint 2001 - No. 5 (Marine), legislators had received informal advice that a campaign mailing could contain legislative addresses or phone numbers provided they included a statement or disclaimer which attempted to make clear that these public resources could only be used for legislative business. In the Marine case, involving a campaign mailer which did not include such a statement or disclaimer, the Board found that the use of the legislative toll-free hotline number in the campaign piece would, in the future, constitute an impermissible campaign use of public facilities. Counsel sought direction on the question of whether the opinion in Marine would have been different on this issue had the campaign mailer included a statement that the hotline was reserved for legislative business. Following discussion, it was the consensus of the Board that future informal advice should be that legislators may not use legislative phone numbers or addresses in their campaign literature, notwithstanding inclusion of disclaimer language.

The Board approved all members' attendance at the 2002 Washington State Ethics Conference on December 3, at the Double Tree Hotel, Seattle Airport. Mr. Asbury and Counsel were approved to attend the annual conference of the Council on Government Ethics Laws (COGEL) in Ottawa in late September.

The Board, after discussion and adoption of amendments, unanimously approved Advisory Opinion 2002 - No. 1, which establishes criteria for the applicability of the gift exemption for legislative travel in an official capacity. Following a brief discussion of published news reports, Counsel was directed to continue monitoring the lawsuit instituted by the Washington Education Association against the State Public Disclosure Commission and to keep the Board advised on any developments. The Chair then called for public comment and there was none. The Chair announced that the Board would next convene in executive session to discuss preliminary matters related to Complaint 2002 - No. 2. Following the executive session the Board reconvened in public session. The next scheduled Board meeting is September 19. There was no further business and the Board adjourned.


James A. Andersen, Chair

MINUTES
LEGISLATIVE ETHICS BOARD
September 19, 2002

Members and staff present: James A. Andersen, Chair; Paul Aldinger; William F. Asbury, Vice-chair; John Betrozoff; Representative Doug Ericksen; Senator Debbie Regala; Representative Phil Rockefeller; Ruth Schroeder; Mike O'Connell, Counsel; Milt Doumit, Marty Lovinger and Tim Sekerak, Designated Ethics Advisers.

The August minutes were approved. Counsel advised the Board that the Public Disclosure Commission had characterized a lobbyist's payment of a legislator's attendance at a fund raiser for a congressional candidate as an "in-kind" contribution to the legislator and, therefore, the payment was not a gift. The reasoning was based on the fact that the legislator solicited and received funds for his own campaign from attendees at the event. RCW 42.52.010(10)(h) exempts campaign contributions reported to the Commission from the definition of "gift" in the Ethics Act. Counsel next informed the Board that he had informally advised a member of the legislative staff that travel to a conference, proposed to be paid by a government agency, was appropriate under the Act and in accord with the Board's recent advisory opinion on travel expenses paid by a third party (Advisory Opinion 2002 - No. 1). The senate had determined that the travel was related to legislative duties and had approved the travel request and determined that the expenses of travel would have been be a proper expenditure of senate funds. The legislative purpose of the trip was substantive as evidenced by a review of the conference agenda.

A review of the Board's budget for fiscal year 2001-2002 showed that the Board had achieved savings in excess of the Governor's directive to executive agencies. Counsel advised the Board that a portion of agency savings are available for training purposes pursuant to the provisions of the Savings Incentive Account legislation. An updated ethics training video would be a useful tool and more information on this will be supplied to the Board at a future meeting. The Board discussed Board Rule 1.L, the informal advice procedure. After extensive discussion the Board expressed satisfaction with the way the rule was being implemented and with the quality of the informal advice given by the Designated Advisers and Counsel. Chair Andersen appointed Mr. Betrozoff and Representative Ericksen as a subcommittee to report to the Board on possible changes to the Ethics Act relative to the investigation of complaints. Counsel advised that at some time in the future a representative of the Office of the Attorney General may request that the Board consider joining in a legal brief (an amicus brief) in the matter of the Washington Education Association v. the Public Disclosure Commission. The Board took no action on this issue as it was presented as informational only.

The Chair called for public comment and there was none. The site of the October meeting was changed from SeaTac to Olympia and that meeting was scheduled for 12 p.m. on October 10. There was no further business and the Board adjourned.


James A. Andersen - Chair

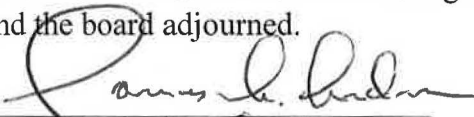
MINUTES
LEGISLATIVE ETHICS BOARD
October 10, 2002

Members and staff present: James A. Andersen, Chair; Paul Aldinger; William F. Asbury, Vice-chair; John Betrozoff; Representative Doug Ericksen; Senator Debbie Regala; Representative Phil Rockefeller; Ruth Schroeder; Mike O'Connell, Counsel; Milt Doumit, Marty Lovinger and Tim Sekerak, Designated Ethics Advisers.

The September minutes were approved. Counsel presented two examples of informal advice given since the last meeting. (1) An association was not, simply by virtue of being organized as a non-profit, entitled to a statutory presumption that the dollar limitations in the gift statute were not applicable to the costs associated with inviting legislators to the association's golf tournament. (2) A legislator who was offered a Washington college teaching position, after others had declined, was involved in an "open and competitive" employment process for the purposes of the filing requirements enumerated in RCW 42.52.120. Accordingly, the requirements of that statute would be met if the legislator filed the contract with the Board within thirty days of its execution, rather than submitting the contract to the Board prior to accepting the teaching position.

The Board approved payment of expenses and registration for any of its members who elected to attend the Washington State Ethics Conference on December 3 in Seattle. Following a discussion of the Board's budget, a motion was approved to request a legislative appropriation of \$342,000 for the 2004-2005 biennium. The request is in accord with advice from the Board's legislative accountant and reflects an upward adjustment of \$3,000 per fiscal year.

Mr. Betrozoff and Representative Ericksen, appointed to serve as a subcommittee on proposed changes to the ethics law, reported that they recommended language which would change the current law relative to certain ethics investigations conducted by the Attorney General. The proposal would permit, but not require, the Attorney General to conduct the investigations. A copy of the amendment was given to Assistant Attorney General Jean Wilkinson who was present at the meeting. Counsel was instructed to forward a copy to the Executive Ethics Board. The chair called for public comment and there was none. The Board then convened in executive session to discuss preliminary matters relative to Complaint 2002 - No. 2. Upon reconvening the public meeting the Chair again called for any public comment and there was none. No meeting was scheduled for November and the December meeting was set for the 5th, in Olympia. There was no further business and the board adjourned.


James A. Andersen - Chair

MINUTES
LEGISLATIVE ETHICS BOARD
December 5, 2002

Members and staff present: Paul Aldinger; William F. Asbury, Vice-chair; John Betrozoff; Representative Doug Ericksen; Senator Stephen Johnson; Senator Debbie Regala; Representative Phil Rockefeller; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover and Tim Sekerak, Designated Ethics Advisers.

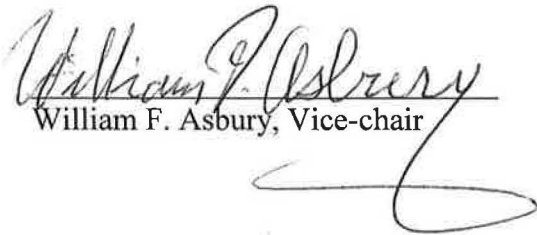
The October minutes were approved (the Board did not meet in November). Former ethics adviser and Secretary of the Senate designee, Milt Doumit, introduced Mike Hoover as the new Senate ethics adviser. Mr. Asbury reported on his trip to the annual meeting of COGEL and participation, with Mr. Andersen and counsel, at the annual orientation of new members of the House of Representatives. Counsel presented two examples of informal advice given since the last meeting. (1) Legislative district maps should not be used to advertise identified private businesses in the district because of the restrictions on use of state resources for private benefit. (2) Discretionary materials removed from the legislative web sites of incumbent legislators facing reelection may be reintroduced to those sites after the election, notwithstanding the provisions of RCW 42.52.185 - Restrictions on mailings by legislators.

The next order of business was a discussion of a memorandum received from officials at the University of Washington. The memorandum suggested the Board amend Advisory Opinion 2002 - No. 1 - Appearance in an Official Capacity - the Gift Exemption, or if the Board chose not to adopt the amendments the University requested it be permitted to address the Board relative to the suggestions contained in the memorandum. Mr. Aldinger stated that the memorandum presented no new issues for the Board to consider and he did not feel there was any need to revisit the opinion. He noted that the Board has never denied anyone the opportunity to appear before it and that the University should be advised that it was welcome to attend a public meeting on any matter of concern. Mr. Betrozoff said he agreed that the issues were thoroughly discussed and debated by the Board in a number of public meetings and a great deal of effort resulted in an opinion which, he felt, clarified the law on legislative travel and drew an appropriate balance between the responsibilities of the Board and the Legislature. Representative Rockefeller noted that the opinion is not restricted to travel to sporting events but that the issue of legislative travel to football bowl games was the catalyst for the advisory opinion. He felt it was not necessary for the Board to start over on the issue and that the advisory opinion represents the unanimous view of the Board reached just a few months ago. He further noted that the Legislature could consider changes to the law in this area if it chose to do so. Vice-chair Asbury, sitting as chair in the absence of Mr. Andersen, summarized the position of the Board as indicating no interest in amending the opinion but that spokespersons for the University should be invited to attend a public meeting of the Board. Counsel was directed to extend the invitation.

The Board approved the submission of a bill, as agency request legislation, to both the Senate and the House. The bill would amend the statute which requires all investigations of alleged violations of RCW 42.52.180 - use of public resources for political campaigns, be automatically referred to the

Attorney General. Counsel was instructed to seek the sponsorship of the chair and ranking minority member of the appropriate committees in each house. The Board discussed whether it should suggest changes to the dollar limitation on permissible gifts established in RCW 42.52.150. The consensus of the Board was that the gift level did not seem to be leading to complaints being filed nor was there confusion about the limits. The Board took no further action.

Vice-chair Asbury called for public comment and there was none. Mr. Asbury recessed the public portion of the meeting and the Board convened in executive session to review materials it had received relative to the initial stages of a potential complaint. The Board reconvened in public session and agreed to schedule future regular meetings on the third Thursday of the month. There was no further business and the meeting was adjourned.


William F. Asbury, Vice-chair