

Legislative Ethics Board

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ADVISORY OPINION 2019 – No. 5

Status, Qualifications and Political Activities of Citizen Member of the Legislative Ethics Board
April ____, 2020

The Board has received a request for an advisory opinion from Rebecca Faust, who has waived confidentiality. Ms. Faust has requested the Board’s opinion regarding several questions relating to the status, qualifications and political activities of citizen members of the Board. Each of the questions will be answered separately.

Introduction

The Legislative Ethics Board has nine members. Four of the members are current legislators appointed by the four caucuses. Legislative members serve 2-year terms and can be reappointed. Five of the members are citizen members. Four of the five are appointed by the Governor from a list of three persons nominated by each caucus. The fifth citizen member is selected by the other four citizen members. Citizen members serve five-year terms and cannot be reappointed. Only a citizen member can chair the Board. RCW 42.52.310. All members of the Board serve until a successor can be appointed.¹

Although the Board will respond to some of the questions posed in this Advisory Opinion, the Board believes it is important to state the following rule applicable to all citizen members of the Board and inherent in the answers to all questions below: any citizen member involved in any political campaign other than a campaign for state legislative office, which is strictly prohibited, should not make reference to the member’s affiliation with the Board or act in any way that may indicate support for the candidate or ballot measure by the Board. The Board would encourage any current or future citizen Board member to seek the advice of Board counsel before becoming involved in any of the activities addressed in this opinion.

Question 1

Are citizen members of the Legislative Ethics Board state employees and/or officers, within the meaning of the Ethics Act? Are they subject to all the provisions of the Ethics Act for employees/officers, or only to the provisions of the Ethics Act specific to ethics board members?

Citizen members of the Legislative Ethics Board (LEB) are considered state officers. “State officer” is defined as including “[m]embers of boards, commissions, or committees with authority over one or

¹ If a citizen member has served more than 5 years, his or her successor will nevertheless have a 5-year term. See Board Minutes, December 3, 2018.

more state agencies or institutions . . .” RCW 42.52.010(19). As state officers, citizen members of the LEB would be subject to all the applicable provisions of the Ethics in Public Service Act (Act).

Question 2

A) Are there restrictions on the outside/additional political activities of citizen members of the Legislative Ethics Board beyond those contained in RCW 42.52.380(2) & (3)?

RCW 42.52.380 addresses the permitted political activities of citizen board members. It provides in pertinent part as follows:

(2) No citizen member of the legislative ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17A RCW, other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW 42.17A.610, from lobbyist registration and reporting.

(3) No citizen member of the legislative ethics board may hold or campaign for a seat in the state house of representatives or the state senate within two years of serving on the board if the citizen member opposes an incumbent who has been the respondent in a complaint before the board. (emphasis added)

The provisions of RCW 42.52.380 prohibit certain political activities of citizen members of the Board. Because citizen members are considered “state officers” under the Act, they should be cognizant of other prohibitions in the Act with regard to political activities. If, for example, the citizen member wanted to become involved in the campaign for a ballot measure, that member would have to ensure that such involvement would not violate RCW 42.52.020 which prohibits a state officer from having involvement that would be a conflict with the member’s proper discharge of his or her duties as a citizen member of the Board. Typically, most citizen members shy away from political activity during their service as citizen members of the Board.

B) May citizen members of the Board endorse, donate, and/or volunteer in support of an initiative or referendum provided they do not serve in the role of officers of the campaign committee?

Yes, provided this action does not otherwise violate any other provision of the Act.

C) May citizen members vote in legislative races in the public elections (or does that violate the prohibition on supporting legislative candidates)?

Yes. Citizen members are free to vote in any election for any candidate, ballot measure, referendum, etc.

D) May citizen members endorse or donate to candidates (including Congressional candidates) other than those for the Washington state legislature?

There are no provisions of the Act that specifically limit citizen members from endorsing or donating to candidates other than those for the state legislature. However, members of the Board must remain objective in their deliberations on complaints before them; therefore, if an endorsement or donation to a candidate would impede that objectivity, or appear to cloud the objectivity of the member, then the Board would recommend the citizen member refrain from providing an endorsement.

E) May citizen members volunteer in support of campaigns for candidates, other than those for Washington state legislator, in capacities other than officers of the campaign committee? For example: sign waving, phone banking, office work?

Please see the response to Question D) above.

F) May citizen members engage in lobbying which does not require registration?

RCW 42.52.380 states that citizen members may not “engage in lobbying² in the legislative branch under circumstances not exempt, under RCW 42.17A.610, from lobbyist registration and reporting.”

RCW 42.17A.610 provides in pertinent part as follows:

The following persons and activities are exempt from registration and reporting under RCW 42.17A.600, 42.17A.615, and 42.17A.640:

(1) Persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public hearings of state agencies;

...

(4) Persons who lobby without compensation or other consideration for acting as a lobbyist, if the person makes no expenditure for or on behalf of any member of the legislature or elected official or public officer or employee of the state of Washington in connection with such lobbying. The exemption contained in this subsection is intended to permit and encourage citizens of this state to lobby any legislator, public official, or state agency without incurring any registration or reporting obligation provided they do not exceed the limits stated above. Any person exempt under this subsection (4) may at the person's option register and report under this chapter;

*(5) Persons who restrict their lobbying activities to no more than four days or parts of four days during any three-month period and whose total expenditures during such three-month period for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington in connection with such lobbying do not exceed *twenty-five dollars. The commission shall adopt rules to require disclosure by persons exempt under this subsection or their employers or entities which sponsor or coordinate the lobbying activities of such persons if it determines that such regulations are necessary to prevent frustration of the purposes of this chapter. Any person exempt under this subsection (5) may at the person's option register and report under this chapter;*

...

² “Lobby” and “lobbying” each mean attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate or any other legislative enactment of any state agency under the state administrative act, chapter 34.05 RCW. RCW 42.17A.005(13).

While the Act appears to allow a citizen member to lobby in the situations described in RCW 42..17A.610 which do not require that the person register as a lobbyist, the Board would caution any member to remember that objectivity in ethics deliberations is critical and the appearance of a citizen member advocating a position on a piece of legislation may cause others to question that objectivity.

G. May citizen members engage in grassroots lobbying?

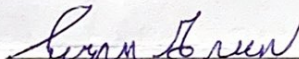
The Public Disclosure Commission defines “grass roots lobbying” as a program addressed to the general public, a substantial portion of which is intended, designed or calculated primarily to influence state legislation. Typical grass roots lobbying expenditures include the following: 1) newspaper advertisements to support proposed legislation; 2) hiring a person to organize public meetings in order to influence action on issues being considered by the legislature; 3) creating or maintaining websites, purchasing e-mail lists, or hiring someone to conduct other online activities; and 4) hiring signature gatherers to circulate petitions for an initiative to the legislature.

While the Act does not appear to prohibit a citizen member from being involved in grass roots lobbying, the Board would offer the same caution to potential citizen members that it did in the answer to the previous question.

H. May a citizen member do business with, contribute to, enforce, promote and/or advertise, and/or be a member, employee, manager or official of an organization which has an associated PAC, or which makes contributions to a PAC? E.G. A for-profit business which supports and/or runs a PAC? A labor union which engages in political activities? Or a charity which is more or less affiliated with a PAC (as a semi-separate entity)?

The Board believes that the answer to this question would depend on the facts of particular cases and that it is not helpful to answer an inquiry at this level of generality.

On behalf of the Legislative Ethics Board, this opinion is signed on the 15 day of April, 2020.



Eugene Green, Chair