

LEGISLATIVE ETHICS BOARD MINUTES

January 22, 2004

Members and staff present: Paul Aldinger; James A. Andersen, Chair; William F. Asbury, Vice-Chair; John Betrozoff; Representative Ed Murray; Senator Debbie Regala; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover, Tim Sekerak and Martin Lovinger, Designated Ethics Advisers.

The October and December minutes were approved.

Jean Wilkinson, Assistant Attorney General, briefed the Board on the recent state Supreme Court decision in Washington Education Assoc. v. Washington State Public Disclosure Commission, et.al. Chair Andersen explained that the Board's interest in this case stemmed from a Superior Court ruling which limited the enforcement powers of the PDC relative to the use of school facilities for campaign purposes. The Legislative Ethics Board is charged with enforcing similar restrictions in the legislative environment. Ms. Wilkinson explained that even though the Superior Court ruling was overturned, the Supreme Court did not rule on the substantive issue of the enforcement authority of the PDC and she predicted there would be further litigation if and when the PDC sought to enforce restrictions on school employee use of public facilities. Following discussion the Board thanked Ms. Wilkinson for attending the meeting and providing the members with the update.

The Board reviewed recent news articles on legislative conflict-of-interest and acknowledged the presence of the author of those articles, Ms. Angela Galloway of the Seattle Post-Intelligencer. Following discussion of the articles the Chair asked Board members if the Board should in some way reopen the question of conflict-of-interest and the citizen-legislator concept. Ms. Schroeder stated she did not feel the question of whether the citizen-legislature should be abandoned or altered was a proper topic for the Board. Mr. Betrozoff agreed. Mr. Aldinger stated that he personally favored a fulltime legislature and that with a fulltime legislature most of the conflict-of-interest issues would be resolved by the prohibition of "outside" employment, as is the case in some other states. Mr. Aldinger said that notwithstanding his personal view, the question of fulltime vs. part time legislators was not an ethics issue. The Board agreed to carry this conversation forward on next month's agenda to ensure that all members have an opportunity to consider the question and comment if they wish.

Counsel advised on the status of the Board's budget through the first six months of fiscal year 04 and reported that overall expenditures were approximately \$9,000 under budget.

Counsel provided background on two requests for informal advice involving newsletters. The first dealt with the requirement that newsletters be "identical" in an election year less they be counted as multiple newsletters and the second dealt with a request to include a voter registration form in a newsletter. Following discussion the Board appointed Mr. Betrozoff and Mr. Aldinger as a subcommittee to work with Counsel on preparing a memorandum to the Board on the issues involved together with recommendations, if any. The Chair called for public comment and there was none. The citizen members unanimously reelected Mr. Andersen and Mr. Asbury as Chair and Vice-Chair, respectively. There was no further business and the Board adjourned.



James A. Andersen, Chair

LEGISLATIVE ETHICS BOARD MINUTES

February 19, 2004

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

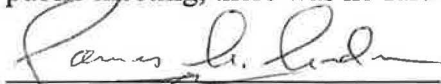
The January minutes were approved.

Mr. Betrozoff and Mr. Aldinger reported that their subcommittee work was continuing and that they contemplated a written report to the Board by the March meeting. The issues assigned to them are (1) a legislator's proposed mailing of voter registration forms to constituents and (2) the statutory requirement that newsletters in a single mailing during the restricted mailing period be "identical as to content."

The Board continued its general discussion on the topic of conflict of interest and the application of the Ethics Act to conflicts issues. The Board noted that conflict issues usually involve a discussion of the citizen-legislator concept and the citizen legislature has constitutional underpinnings, a fact specifically noted in the Ethics Act. The Board concluded that any changes to the citizen legislature concept would require legislative action, not Board action. Board members expressed a collective judgement that there exists a long line of Board precedents to guide the Board and the legislators when conflicts issues presented themselves and concluded that the Board had no recommendations for changing current law.

Counsel reported that he had informally advised that the value of a gift to a legislator was the value of the gift absent the costs attributed to delivery of the gift. Counsel reported that some legislators may be interested in placing legislative materials, prepared for them for use on their legislative web sites, on their non-campaign, personal web sites. Counsel stated he felt there could be issues of first impression for the Board involved in this inquiry and was hesitant to render informal advice. Mr. Sekerak stated that he may be asked to prepare a request for an advisory opinion on the issue. Chair Andersen and Senator Regala said they felt the Board would benefit from further discussion on the issue and reminded the members that the Board could decide to initiate its own opinion. The discussion will be continued at the next meeting.

The Chair called for public comment and there was none. The Board convened in executive session to discuss preliminary matters associated with Complaint 2004 - No. 1. The Board resumed the public meeting, there was no further business and the Board adjourned.


James A. Andersen, Chair

LEGISLATIVE ETHICS BOARD MINUTES

March 18, 2004

Members and staff present: Paul Aldinger; James A. Andersen, Chair; William F. Asbury, Vice-Chair; Representative Ed Murray; Senator Debbie Regala; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover, Martin Lovinger, and Tim Sekerak, Designated Ethics Advisers.

Representative Ericksen joined the meeting via speaker phone for the discussion of Senator Karen Keiser's proposed mailing of voter registration forms. Mr. Aldinger and counsel reported on the subcommittee's recommendation on the mailing issue as well as the recommendations on the question of identical newsletters. Chair Andersen recognized Senator Keiser and invited her to address the committee on her request. Following the Senator's remarks the Board discussed the proposed mailing and posed questions to the Senator and the staff. The discussion was carried forward to the next meeting and counsel was directed to prepare materials for further consideration.

The February minutes were approved. Counsel distributed Personal Financial Affairs Statements to the citizen members and reminded them of the April 15 reporting deadline. Counsel advised on two examples of informal advice. (1) Based on previous Board cases, counsel advised that a legislator who is subject to the election year mailing restrictions may respond once to a constituent who requested information on a general topic in response to the legislator's questionnaire. If several constituents have requested general information, a legislator can avoid having the responses characterized as a newsletter if they are sent as individual responses. A letter may be individualized by using the constituent's personal address, referring to the individual by name in the salutation, and by addressing the topic indicated by the constituent. (2) Legislators were advised that if they are invited to bring a guest while they are attending, on a complimentary basis, an event sponsored by or in conjunction with a civic, charitable, governmental, or community organization, the cost of admission, food and beverage supplied to their guest on a complimentary basis is subject to the \$50 gift limit because of the attribution statute.

Tim Sekerak presented a request for an advisory opinion on behalf of the House of Representatives. The request seeks guidance on the use of legislative materials, identified as public records, by legislators on personal, non-campaign web sites. Following extensive discussion counsel was directed to draft an outline of issues and Board precedents for consideration at the next meeting. The Chair called for public comment and there was none.

There was no further business and the Board adjourned.



James A. Andersen - Chair

LEGISLATIVE ETHICS BOARD MINUTES

April 15, 2004

Members and staff present: Paul Aldinger; James A. Andersen, Chair; William F. Asbury, Vice-Chair; John Betrozoff; Senator Stephen Johnson; Senator Debbie Regala; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover, Martin Lovinger and Tim Sekerak, Designated Ethics Advisers.

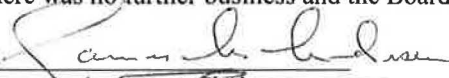
The March minutes were approved

Counsel introduced Sarah Scott, Director of House Video Services. Ms. Scott demonstrated a video recording depicting a legislative update delivered by a House member during the past legislative session. The video was representative of the type of materials House Video Services produces on behalf of the Representatives. The demonstration was provided as background information relative to Advisory Opinion request 2004 – No. 1, which presents issues relative to the use of such materials by legislators on non-legislative web sites. Ms. Scott answered a number of questions from Board members and the Board proceeded to discuss the pending request. Mr. Betrozoff asked Counsel that if these materials are public records, may they be used for any purpose once they are in the public domain. Counsel stated that the Board does not have hands on control of personal and campaign web sites but the Board does have jurisdiction over the documents produced at public expense when the question involves their campaign use by a legislator or staff person.

Tim Sekerak, House Counsel who had presented the hypothetical to the Board, stated that there is always concern and questions about public documents being used in campaigns. He said that the House has an interest in members using documents for their own purposes, not campaign purposes, for discussion of public policy issues and some members see the question as involving issues beyond what just happens in Olympia. Mr. Asbury noted that it is hard to deny the impact and forcefulness of these videos and that some might characterize them as per se campaigning. Chair Andersen questioned where these types of projects might lead and how expansive an effort might develop in creating these materials. They do have some educational value, he said, but also tend to focus on the individual legislator.

After extensive discussion of applicable Board precedent Counsel was directed to draft a response to the request which would incorporate the June 30 cutoff date for private use of these materials, along the lines of the campaign-computer linkage case, AO 2000 – No. 2.

The next issue to come before the Board was Advisory Opinion request 2004 – No. 2. Senator Keiser requested direction on her proposed unsolicited mailing to constituents of voter registration forms together with a cover letter urging them to register as absentee voters. This topic had been the subject of a subcommittee report which had recommended against the mailing. Senator Johnson inquired about the status of informal advice on the issue and Counsel responded that absent further direction from the Board the advice would be consistent with the subcommittee proposal. Mr. Asbury said that he believed anything a legislator could do to encourage voting should be viewed as a logical function of the legislator and an important one. Mr. Asbury further stated that most all of us are alarmed when we read about the small numbers of people voting. Mr. Aldinger questioned whether small turnouts were because people didn't know how or where to register or, as he believed, were because people register and vote when issues are personal to them or get their attention. Mr. Betrozoff said that voter registration activity has become more of a campaign activity and Senator Johnson stated that the issue is not whether it is a good idea to urge people to vote but whether partisan legislators should be using public resources to increase the vote. It was moved and seconded that Counsel draft an opinion for future consideration which would advise that the mailing not go forward as described. The motion passed. Mr. Asbury dissented. The Board then approved the draft of Advisory Opinion 2004 – No.3 – Identical Newsletters. The Chair called for public comment and there was none. The Chair recessed the public meeting and the Board convened in executive session to discuss preliminary matters relative to a pending complaint. The Chair reconvened the public meeting. There was no further business and the Board adjourned.


James A. Andersen, Chair

LEGISLATIVE ETHICS BOARD MINUTES

June 17, 2004

Members and staff present: James A. Andersen, Chair; William F. Asbury, Vice-Chair; John Betrozoff; Wayne Ehlers; Senator Stephen Johnson; Senator Debbie Regala; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover, Martin Lovinger and Tim Sekerak, Designated Ethics Advisers.

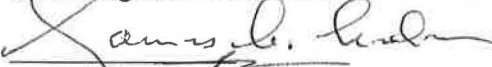
Wayne Ehlers was welcomed as a new Board member. Mr. Ehlers was appointed by the Governor to succeed Paul Aldinger.

The 2004 COGEL convention will be held in San Francisco, approximately the first week in December. When COGEL provides more details the information will be passed on to the Board members.

Counsel reported on the Board's budget, through May of the 2003-2004 fiscal year. Presently, the budget reflects a positive balance of approximately \$20,000. Expenses yet to be paid from current operating funds include the printing costs for the 2004-2005 ethics manual and the purchase of office supplies and equipment associated with the relocation of the Board's office to the Legislative Building. That move is scheduled for November/December. One-half of the remaining fiscal year ending balance is, by statute, placed in a nonappropriated Savings Incentive Account. The Chair and Vice-Chair are reviewing with Counsel the plans for the Board's office and the implementation of the relocation. The office space, provided by the Senate, should be sufficient to allow for a Board meeting, provided there is not a large public turnout, so a conference table and chairs are part of the design.

The Chair called for public comment and recognized Representative Ross Hunter. Representative Hunter discussed some of the difficulties he had encountered in communicating with his constituents during an election year due to the limitations imposed by the Ethics Act. He advised the Board that electronic mail was the dominant method of contact from his constituents yet there were barriers to electronically responding to their concerns and interests because of the restrictions on election year newsletters. Among the several points raised by the Representative was his desire to be able to send an unsolicited e-mail newsletter and not have it counted as one of the two newsletters permitted during the restrictive period. Mr. Ehlers and Mr. Betrozoff questioned whether this might not require a change in the law. Mr. Asbury indicated that questions about mailings have, over the years, presented the Board with some of its most challenging issues. Following further discussion, the Board encouraged the Representative to work with his colleagues from both parties in both the House and the Senate to identify perceived problems with mailings and to continue this dialogue with the Board. Representative Hunter agreed and said he would get back to the Board, perhaps later in the year. The Chair expressed the Board's appreciation for the Representative's attendance and input.

There was no further public comment, the Chair recessed the public hearing and the Board convened in executive session to discuss the investigative phase of Complaint 2004 – No.2. Following that discussion the Board reconvened in public session. The Chair announced that Mr. and Mrs. Aldinger had arrived and the Board members were invited to remain after the meeting to have lunch with the Aldingers and honor Paul for his many years of service on the House Ethics Board, the Joint Legislative Ethics Board, and the current Legislative Ethics Board. There was no further business and the Board adjourned.


James A. Andersen, Chair

LEGISLATIVE ETHICS BOARD MINUTES

August 19, 2004

Members and Staff Present: James A. Andersen, Chair; John Betrozoff; Wayne Ehlers; Representative Doug Ericksen; Senator Stephen Johnson; Senator Debbie Regala; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover and Tim Sekerak, Designated Ethics Advisers.

The June minutes were approved (no meeting in July).

Counsel reported the Board had been served with a subpoena, in conjunction with a civil suit pertaining to janitorial services provided to state agencies, for any records in the Board's possession which related to any of those services which may have been performed on behalf of the Board. Counsel advised that the Board had no records as described in the subpoena and had responded accordingly to the attorney who had issued the subpoena.

The Board was shown examples of summaries of ballot issues prepared by the Senate Committee Services and the House Office of Program Research. Both entities respond to requests from members and staff for this information and use a similar format which explains that the materials are not provided as an expression for or against any ballot measure.

Next, the Board reviewed its budget figures for the end of fiscal year 2004, and expenditures associated with the move of the Board's office from its temporary location in the Cherberg Building to the Legislative Building. The Board was also informed that the 2004-2005 Legislative Ethics Manual had been printed and distributed to all members and legislative staff. A number of manuals have been reserved for session-employee orientation and other requests received throughout the year.

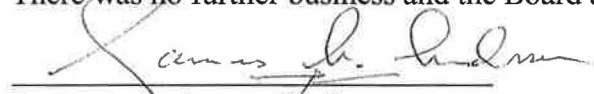
Counsel presented four examples of informal advice given since the last meeting. (1) A legislator's proposed letter soliciting funds on behalf of an association hosting a conference in Washington would not comply with the legislature's requirement, found in RCW 42.51.820, that such solicitation efforts are limited to national legislative associations. (2) A gift analysis was appropriate in the situation where a legislator was given tickets to a charitable fund raising event held in a Safeco suite during a baseball game and proposed to give the tickets to his legislative colleagues. The tickets to the game were the tickets to the fund raiser, and the original donor was not the charity but the owner of the suite. (3) A legislator who is subject to the two newsletter, election year restriction contained in RCW 42.52.185, was advised not to send a third mailing to a list of 2,000 constituents who had expressed an interest in "general policy matters." (4) A staff member was advised not to accept a free lunch from a constituent who offered to host the lunch when the lunch was offered as a "thank-you" for legislative services rendered to the constituent. RCW 42.52.140 prohibits the receipt of any gift, reward or gratuity for the performance of any official duty.

The Board discussed a written request from Senator Kohl-Welles, who was unable to attend, that the Board reconsider Advisory Opinion 1996 - No. 7 and provide more flexibility for congratulatory letters sent at state expense in a legislator's non-election year. The issue was carried forward until the September meeting to afford the Senator an opportunity to meet with the Board.

The Chair reminded Board members to let Counsel know if any one wished to attend the COGEL conference in December.

Representative Ericksen advised the Board that he had just received written background information on proposed travel and he was seeking the Board's guidance on whether he, and perhaps the other legislators from his district, might accept travel to a federal agency meeting to testify on issues of great importance to a large employer in the Representative's district. The employer would pay for the commercial flight, approximately \$200 to the furthest meeting, and that it appeared there might be two of these meetings held in the Northwest. This Board meeting presented the first opportunity for the Representative to provide the background information which had been requested by Counsel. The Chair reminded the members that Counsel gave informal advice, not the Board, and that in order to render a formal opinion the usual course was to issue a written advisory opinion only after thorough discussion. Here, however, time was of the essence because the flight was to occur within days. The Board discussed at length how best to proceed so that the Representative would have a timely answer. Each member of the Board felt it was important that Board procedures be followed and it was pointed out that Board precedent indicated that it was first the responsibility of the House and Senate to determine if proposed travel was viewed by the administrations as legislative travel which would qualify under their policies as appropriate for the expenditure of state funds. Next, and absent a request for a formal advisory opinion, Counsel would review the facts and informally advise whether those facts met the Board's standards for travel in an "official capacity" as that term is used in the statute. The Board members stated that if these two steps were followed, and the opinions were that it would be appropriate for the legislators to accept the travel from this third party, they would not view that determination as inconsistent with the law or the Board precedents. Counsel was advised that it was the sentiment of the Board that this was a very narrow and fact-specific situation and should be viewed accordingly when future advice is sought.

There was no further business and the Board adjourned.



James A. Andersen, Chair

LEGISLATIVE ETHICS BOARD MINUTES

September 21, 2004

Members and Staff Present: James A. Andersen, Chair; William F. Asbury, Vice-Chair; Wayne Ehlers; Senator Stephen Johnson; Representative Ed Murray; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover, Marty Lovinger and Tim Sekerak, Designated Ethics Advisers.

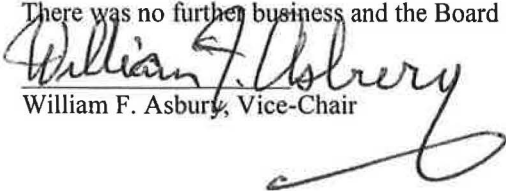
The August minutes were approved.

The Chair recognized Senator Kohl-Welles and Senator Carlson who addressed the Board on Senator Kohl-Welles' request that the Board reconsider the advisory opinions on congratulatory letters in a non-election year. Both Senators stated they try to be accessible, available and supportive of their constituents and they felt it was important to recognize constituents who made contributions to the community. In addition, the Senators suggested there were situations when constituents deserved a letter of congratulations even if it could be argued that their actions did not meet the Board's test of "an extraordinary civic distinction." Senator Kohl-Welles said she felt children who raised money for a good cause should receive a congratulatory letter. Senator Carlson said he appreciated the concern about mass mailings at public expense but that there are awards, in the educational field for example, that deserve a letter of recognition from legislators. Representative Murray agreed that the public does expect certain things from legislators and at times the rules on congratulatory letters seem restrictive. Chair Andersen noted it has always been difficult to decide where to draw the line when public resources are involved. Mr. Ehlers suggested it may be worthwhile for the Board to consider a more objective test for determining what is permitted, perhaps a list of topics that are considered appropriate. Mr. Asbury stated the Legislature had amended the law and provided a list of examples for election year mailings of congratulatory letters but that he felt the Board should review the non-election year standards. Senator Regala agreed the issue should be looked at but questioned whether the general prohibition on letters for graduations, anniversaries, birthdays and similar events should be altered. Ms. Schroeder also agreed the issue should be revisited and perhaps the Board could consider a limit on the number of letters. Chair Andersen stated that it appeared there was a consensus to affirmatively respond to the Senator's request and that he would appoint a subcommittee to study the issue and report to the Board. The Board agreed that all legislators and interested parties should be solicited for their views. Senator Johnson suggested, and the Board agreed, it would be helpful if Counsel and the advisers would provide a list of examples of informal advice in the area. Mr. Asbury, Mr. Betrozoff, Mr. Ehlers, and Ms. Schroeder will constitute the subcommittee and Mr. Asbury will chair.

Next, Mr. Steve Excell, Assistant Secretary of State, made a presentation on the history and permitted uses of the State Seal. Board members asked several question about legislator's use of the Seal. For instance if a legislator may not use office stationery to send a letter because of election year mailing restrictions, may the legislator affix the Seal to stationery purchased at private expense? Mr. Excell stated the answer would depend on whether the letter was viewed as official state business, in which case it would be proper. Mr. Excell noted the Board would most likely have to decide that question. The Board expressed its appreciation to Mr. Excell for a very informative discussion and indicated that in view of his response to the private stationery question it would most likely have a future discussion of the issue.

Ms. Carolyn Lindsey, House Accountant, reviewed the Board's budget and recommended the Board request a \$178,000 appropriation for FY 2006 and the same amount for FY 2007. After discussion, the Board adopted the recommendation and directed Counsel to forward the proposal to the House and Senate.

There was no further business and the Board adjourned.


William F. Asbury, Vice-Chair

(Draft) **LEGISLATIVE ETHICS BOARD MINUTES**

October 21, 2004

Members and Staff Present: William F. Asbury, Vice-Chair; John Betrozoff; Wayne Ehlers; Ruth Schroeder; Senator Debbie Regala; Mike O'Connell, Counsel; Mike Hoover, Marty Lovinger and Tim Sekerak, Designated Ethics Advisers.

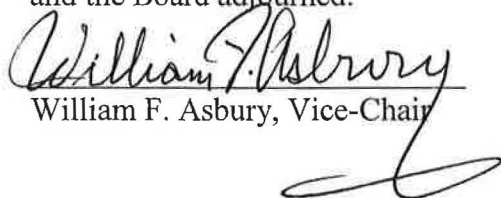
The September minutes were approved.

Counsel reported he had given informal advice to a legislator that the Ethics Act would not be violated if the legislator donated a piece of equipment for three months to a community college heavy equipment repair program at the request of the college. In accordance with long standing policy the college would not charge for student labor and in return the legislator would have to agree to leave the equipment with the class for this extended period of time for the benefit of the class. The legislator would pay a shop fee and would pay for any needed parts. The provisions in the Act which address conflicts of interest, special privileges and gifts were analyzed.

Ms. Schroeder will attend the Conference on Governmental Ethics Laws (COGEL) in December.

The Board received the report of the subcommittee on congratulatory letters. Mr. Asbury chaired the subcommittee and Mr. Ehlers and Ms. Schroeder were participants. The subcommittee met in Olympia with staff and reviewed Board opinions and informal advice. In addition, the subcommittee polled legislators and staff for their views on the subject. Mr. Betrozoff stated that any new advisory opinion on this subject must avoid opening the door to mass mailings, which would seem to conflict with the mailing statutes. Mr. Ehlers thought it would be helpful to consider a requirement that the recipient of a proposed congratulatory letter would have already been recognized or honored in some special way before the letter could be sent. Following the discussion, counsel was directed to prepare a draft advisory opinion for consideration at a later meeting. The draft will present two options. (1) Differentiate, with examples, election year congratulatory letters and non-election year letters and (2) retain the same standards for election year and non-election year letters and illustrate the flexibility of the standards by listing examples found in the Board's opinions and informal advice. Both approaches should also give examples of honors or awards which would not meet the standards.

Counsel informed the Board that ethics orientation sessions for new legislators and staff were being scheduled and that he and Chair Andersen would be speaking to new House members on December 1. In addition there will be an ethics CLE for government attorneys in Olympia on December 15. On November 9, counsel will assist with a high school ethics conference at St. Martins College. Vice-Chair Asbury called for public comment and there was none. There was no further business and the Board adjourned.


William F. Asbury, Vice-Chair

LEGISLATIVE ETHICS BOARD MINUTES

December 2, 2004

Members and Staff Present: James A. Andersen, Chair; William F. Asbury, Vice-Chair; John Betrozoff; Representative Doug Ericksen; Representative Ed Murray; Senator Debbie Regala; Ruth Schroeder; Mike O'Connell, Counsel; Mike Hoover, Marty Lovinger and Tim Sekerak, Designated Ethics Advisers.

Also present was Mrs. William F. (Janet) Asbury and Jean Wilkinson, Assistant Attorney General.

The October minutes were approved.

Following discussion, it was moved and seconded the Board propose agency request legislation, sponsored by the four legislative Board members, to amend the Ethics Act. The purpose of the legislation would be two-fold: (1) Eliminate the requirement that all complaints alleging a violation of RCW 42.52.180 be referred to the Attorney General and (2) grant the Board the ability to dismiss a complaint following investigation if the violation is not material, is inadvertent and minor, or has been cured and further proceedings would not serve the purposes of the Act. Ms Wilkinson suggested the draft legislation be provided to Attorney General-Elect McKenna for comment. The Board agreed with the suggestion and also directed Counsel to provide the draft to other interested parties. The motion passed unanimously.

The Chair called for public comment and there was none.

The Board then convened in executive session to receive a report from Ms. Wilkinson on Complaint 2004 – No. 3.

The Board reconvened in public session and the Chair again called for public comment. There was none and there was no further business and the Board adjourned. Following adjournment a reception was held in honor of retiring Board member William F. Asbury.


James A. Andersen, Chair