

July 24, 2000

Advisory Opinion 2000 - No. 1 - Use of Public Resources

A legislator has asked the Legislative Ethics Board (Board) for an advisory opinion regarding charitable fund-raising. We have paraphrased the questions and take this opportunity to propose and answer an additional question related to the general issue of the use of public resources on behalf of non-governmental entities.

QUESTIONS:

1. A. May a legislator, without using state resources, raise funds for community-based charities and if the answer is "yes," does it matter from whom such donations are solicited?

B. If there are restrictions on who is solicited may the legislator suggest potential donors to the charity?

C. Is it significant whether or not a legislator's charitable efforts predated his or her election as a state legislator?
2. May a legislator, using state resources, raise funds for community-based charities provided he or she does not solicit lobbyists or lobbyist-employers?

(Even though the advisory opinion request was limited to the actions of legislators, this opinion applies to legislative staff as well, relative to the issues on charitable fund raising)

3. Many legislators publish what is commonly referred to as a "government guide." May a legislator include the names, addresses, phone numbers and/or fax numbers of non-governmental entities which provide educational or social services in such a guide?

OPINION

1. A. As a general rule, the State Ethics Act does not prohibit a legislator, acting without the use of state resources, from supporting community-based charities. Such support may include fund-raising provided the legislator does not specifically solicit lobbyists or lobbyist-employers. Examples of non-specific appeals which are incidental and would not violate the Act are; (1) where a legislator sits on the board of directors of a non-profit charity and his or her name is included on the letterhead of the charity but the legislator does not sign a fund-raising letter; and (2) where a legislator is a member of a local sportsman's group and is asked to sign a fund-raising letter which is sent to a list of sportsmen compiled by the group and the list contains a few individuals who are registered as lobbyists.

B. A legislator may suggest potential donors to a charity provided she or he does not use the position of legislator to secure special privileges for the charity. It would not be a special privilege to provide a charity with a public document not created for solicitation purposes, such as the lobbyist book prepared by the Public Disclosure Commission.

C. Upon election, all legislators are subject to the provisions of the State Ethics Act and no exemptions from the Act are applicable by reason of prior fund-raising activities.

2. Subject to two specific exemptions, legislators may not use state resources to engage in fund-raising.

3. Legislators may publish resource materials which contain information about non-governmental entities which provide educational or social services, provided the information is not promotional.

ANALYSIS

1. A. The solicitation of lobbyists has been addressed by this Board in three advisory opinions: **AO 95 - No. 17**; **AO 96 - No.1**; and **AO 98 - No.5**. **AO 95 - No. 17** dealt with the use of public resources to solicit funds to be paid to a non-profit corporation. The non-profit would apply the funds to pay for legislator's travel expenses and registration fees to enable them to attend an educational conference on legislative issues. The Board found that most, if not all, of those solicited would be lobbyists and such solicitation would violate both **RCW 42.52.070** and **42.52.160**. In **AO 96 - No. 1**, we held that **RCW 42.52.140**, the "reasonable expectation" rule would be violated if, even without the use of public resources, legislators solicited or accepted contributions from lobbyists or from persons or entities that employ or retain lobbyists. **AO 98 - No. 5**, while concluding that it was highly unlikely that soliciting certain contributions from lobbyists would affect or influence the vote, action, or judgement of legislators or staff, such solicitation definitely raised the appearance of reasonable expectation to the outside observer. That opinion noted that there certainly could be a concern, on the part of those solicited, that refusal to participate could have ". . . negative consequences in terms of access and good will." Those same concerns exist when a legislator solicits a lobbyist for his or her favorite charity.

.070 - special privileges

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons. ("Persons" is defined in RCW 42.52.010 as ". . . any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.")

.140 - gifts

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgement of the officer or employee, or be considered as part of a reward for action or inaction.

.160 - use of persons, money, or property for private gain

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as

part of a state officer's or state employee's official duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgement of the officer or employee, or be considered as part of a reward for action or inaction.

B. The request asks if a legislator could suggest potential donors to a charity. We assume the question is more directly put if we were asked whether a legislator could suggest the names of lobbyists or lobbyist-employers who might be amenable to contributing. The legislator must be careful not to attempt to do indirectly what is not permitted to be done in a direct fashion. The use of resources such as legislative offices, stamps, stationery, phones or staff, for example, could not be used to research, cultivate or refine a list of contributors for the charity because of our earlier analysis of **RCW 42.52.070**, the special privileges prohibition.

However, there is no prohibition in the Act to providing any entity, including a charity, the information necessary to obtain a copy of the Registered Lobbyist Directory produced by the Public Disclosure Commission. Provided it was not the legislator who was doing the soliciting of the lobbyist, directly or indirectly, we find no prohibition to the legislator-private citizen sharing whatever personal information he or she may have as a way of assisting the charity in its identification of potential donors. Furthermore, we have held in **AO 1995 - No. 17**, that a legislator could, at public expense, send a letter to a nonprofit organization containing his or her endorsement of the organization even in those cases where it is reasonable to assume that the letter may be used in connection with the organization's fund-raising efforts.

C. The Act contains no exemptions from the restrictions on fund-raising for those legislators who were involved in charitable efforts prior to being elected. As a practical matter, it may be more difficult to raise funds in exactly the same way as was done prior to legislative service. Lobbyists or lobbyist-employer/donors from a previous solicitation list would no longer be appropriate for the legislator to solicit.

2. In **AO 95 - No. 17**, the Board was asked to analyze several letters proposed to be sent by legislators at public expense. In that context we found that legislators have expansive authority to carry out community or public purpose functions and one of the letters we approved would be sent to a nonprofit organization containing the legislator's endorsement of the organization. We also expressed concern that this authority to promote nonprofit organizations not be abused and stated that ". . . we do not believe it is appropriate for legislators to engage in direct fund-raising at public expense." In that same opinion we noted two workplace-related situations where a literal application of this prohibition would not serve the purpose of the law. Specifically, we exempted workplace solicitations such as the United Fund drive and internal fund-raising efforts to assist legislative employees or their family members who are in need. **RCW 42.52.160** permits this Board to adopt rules providing for these exceptions, among others, and allowing occasional use of public resources, at de minimis cost, if the activity does not result in interference with the proper performance of public duties. The Board did adopt Legislative Ethics Board Rule 3 which

states in pertinent part:

(b) If there is no actual cost to the state or the cost is de minimis, if there is a public benefit, and if the use does not interfere with the performance of official duties, then infrequent and incidental use of state resources for private benefit may be permissible.

(i) The cost to the state is de minimis if the actual expenditure of state funds is so small as to be insignificant or negligible.

(ii) A public benefit under this rule may be direct or indirect, such as improving employee morale or activities that improve the work-related job skills of a legislator or employee.

This rule has permitted the House and the Senate to identify permissible workplace solicitations on behalf of the United Fund drive, Habitat for Humanity, and needy families during the holiday season as well as assisting members of the "legislative family" in times of need. The Board is mindful that at some point there has been an institutional determination that a particular fund-raising effort is in accord with the requirements of Rule 3 and that legislators and staff are free to participate in that internal effort.

3. The Board finds that the newsletter analysis contained in **Complaint 1996 - No. 2**, which is the basis for the argument that government guides are limited to a directory of addresses and phone numbers for government officials, was limited to whether or not such a guide included in a newsletter somehow changed the character of the newsletter for the purposes of applying **RCW 42.52.185**, the election year mailing statute. The Board was not asked, nor did it decide, whether government offices and officials were the only proper items for inclusion. In **AO 95 - No. 17**, we held, generally, that the scope of a legislator's authority included community and public purpose functions and that legislators possess expansive authority to carry out those functions. The inclusion of the names, addresses, phone numbers and/or fax numbers, only, of organizations which provide some sort of educational or social service in a "government guide" or a "public resource guide," whatever the term, is an example of a community or public purpose and would not violate the State Ethics Act. It would, however, be an unlawful promotion of a non-government entity if a particular provider in a class of providers was selectively included or excluded.