

Advisory Opinion 2015 – NO. 2
Campaign Site Access to Legislative Documents

August 18, 2015

The Board has received an advisory request from Representative Graham Hunt, who has waived confidentiality.

QUESTION

Visitors to legislative websites may choose to select a connection, described in the request as a hyperlink or an RSS feed, which enables the visitor to receive notices of new documents added to a legislative site. This notice contains a description of the document and the date the document, or a link to it, was added to the legislative site. The visitor may click on this notice, which has been characterized as similar to a notice of new email, and is then taken directly to the document. According to the request, the advantages of this type of connection include not having to search for new material and gaining timely access to new legislative-related information.

Representative Hunt acknowledges Board opinions which permit a campaign page to link to an official legislative site, but restrict the placing or posting of legislative documents on a campaign site.

His question is whether he may add this legislative connection, or RSS feed, to his campaign site for the benefit of those who visit that site.

ANSWER

The answer is yes. Although the proposed RSS feed would be to documents, these documents are available on caucus and member web sites and have been placed there only after a determination they are appropriate and related to legislative issues. There is no material difference between what is proposed in this advisory request and the present practice of campaign links to legislative sites, which this Board has determined does not violate RCW 42.52.180.

DISCUSSION

Questions surrounding the appropriate use of legislative materials by campaigns have evolved over time. Significant factors in this evolution include changes in technology and the expectations of the public with regard to access to legislative information. Our opinions recognize there is a meaningful distinction, in an ethics sense, between distributing legislative

news releases produced at public expense at a campaign rally, and providing access to these public documents through official legislative sites to anyone who seeks that access (citations omitted).

The issue presented by this advisory request may be stated as follows: Is the proposed RSS feed a link and, if so, may the link be directed to a legislative document or must it be directed to an official legislative website?

First, we conclude that the proposed feed is more in the nature of a link than a posting of a document. A visitor must choose, by clicking on the notice provided on the campaign site, to visit a document in order to read it. A brief description of the topic of the new material, free from editorial comment, was presented to the Board as an example of how the notice would be presented. We view this approach as an aide to visitors who are interested in access to public documents and not a publication of the document itself. A publication, or posting of the document on a campaign site is not allowed pursuant to the Board's interpretations of RCW 42.51.180. See, most recently, Complaint Opinions 2008 – No. 4 and 2012 – No. 3.

Second, we believe that until modified or overruled by the Board, CO 2010 – No. 3 (Marr) is determinative of the question whether a link from a campaign site is restricted to a legislative site. Senator Marr provided a link from his campaign site to a legislative video found on the Senate Democratic Caucus website. The video was clearly a public resource and had been approved for inclusion on that website, presumably after it had met the criteria for compliance with the Ethics Act and applicable Senate policies. That opinion concluded that; *“There are no provisions in the Act nor opinions of the Board interpreting the Act which prohibit Respondent from linking his personal sites (including his campaign site) to legislative sites or legislative materials...”*(emphasis added). In the context of the present advisory request we see no material distinction between a legislative video and, for instance, a legislative news release or newsletter. Furthermore, the opinion also stands for the proposition that the Board did not view the access to the video as a “posting.” It could not be viewed by merely visiting the campaign site. A visitor would see that a legislative video was available but it would have to be accessed by clicking on a type of notice, which seems to be very similar to the procedure Representative Hunt is proposing through the use of the RSS feed.

In conclusion, we determine that notice of new legislative material which may be found on official legislative websites may be provided to visitors to campaign websites, and the notice may contain a brief, factual description of the material together with a link that takes the visitor directly to the material. We believe that this process, coupled with the Legislature's action in 2010 which prohibits new material to be added to legislative sites after June 30 for legislators facing reelection, and the continued oversight of materials proposed to be added to legislative sites regardless of the election cycle, strikes a reasonable balance between the prohibition on campaign use of public resources and access to public records.