

# Legislative Ethics Board



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101 LEGISLATIVE BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
www.leg.wa.gov/leb  
JENNIFER STRUS - COUNSEL  
Jennifer.Strus@leg.wa.gov

## COMPLAINT 2020 – No. 12

*In re Van De Wege*

January 30, 2021

### ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

#### I. NATURE OF COMPLAINT

The complaint alleges that Respondent, Senator Kevin Van De Wege, violated the Ethics in Public Service Act (Act) by using his position as a legislator to benefit his brother. Although the complaint does not cite a specific statute that has been violated, the allegations were investigated under RCW 42.52.070 (special privileges).

#### II. JURISDICTION

The Board has personal and subject matter jurisdiction over the allegations in this complaint. RCW 42.52.320.

#### III. PROCEDURAL HISTORY

Complaint 2020 – No. 12 was received by Board counsel on December 10, 2020 and was discussed during its regularly scheduled meeting on January 18, 2021.

#### IV. FINDINGS OF FACT

##### A. Background

1. Respondent is a member of the State Senate and was previously a member of the House of Representatives. He has represented the 24th legislative district since 2007.
2. Complainant is a registered professional engineer.
3. Complainant alleged that SB 5443 and the amendment to HB 1176 were introduced by Respondent to benefit Respondent's brother and to remove the underlying basis for the *Fisheries Engineers, Inc. v. State of Washington* lawsuit.

B. Senate Bill 5443/House Bill 1176

4. SB 5443 was introduced during the 2019 legislative session. Respondent was the prime sponsor.
5. The bill removed the Board of Registration for Professional Engineers and Land Surveyors (BORPELS) from the Department of Licensing (DOL) and established it as a separate state agency with all necessary powers and duties.
6. BORPELS regulates engineering practices and land surveying. On-site wastewater system designers are also licensed and regulated by BORPELS. BORPELS consists of seven members, comprising five professional engineers and two land surveyors, all of whom are appointed by the Governor.
7. All BORPELS board members are paid the same amount - \$55 for every 8 hours they work. BORPELS officers make the same amount as non-officers.
8. For several years, BORPELS had been considering requesting that the legislature remove BORPELS from DOL. Among other frustrations, BORPELS was unhappy with the way its registration dues were spent by DOL and how few dollars were funneled back into BORPELS's work. The professionals who paid dues to BORPELS were also disgruntled at how DOL was spending portions of the dues they paid. BORPELS believed it could better serve its members if it became a state agency separate from DOL.
9. Ivan Van De Wege, Respondent's brother and a member of BORPELS, along with other BORPELS members, approached Respondent to sponsor a bill to remove BORPELS from DOL. SB 5443 was the result of that request.
10. SB 5443 ultimately died in the House Appropriations Committee during the 2019 session.
11. HB 1176 was requested by the Department of Licensing (DOL) and prime sponsored by Rep. Hoff. Among other things, the bill required that to obtain a certificate of authorization to practice engineering or land surveying, a corporation or limited liability company must continue to be registered with the Department of Revenue. No documentation of the registration needs to be provided to DOL. An applicant for registration with the state BORPELS must provide verification of technical work from professional engineers that supervised the applicant's technical work and have personal knowledge of the applicant's engineering experience.
12. On April 10, 2019, while HB 1176 was on the Senate floor, Respondent proposed an amendment adding the language of SB 5443 to HB 1176. Respondent's amendment passed and the House concurred in those Senate amendments sponsored by Respondent. The portion of the bill affecting BORPELS's move from DOL became effective on July 28, 2019.

13. The effect of the amendment by Respondent was simply to move BORPELS out from under DOL and establish it as its own agency. Respondent's brother received no benefit from this bill, financial or otherwise.

C. Fisheries Engineers, Inc v. State of Washington, Governor Inslee, Attorney General Ferguson & BORPELS

14. In 2018, Fisheries Engineers, Inc. filed a Petition for Declaratory Judgment in Thurston County Superior Court asking the court to declare that a since-repealed BORPELS policy was invalid and that it was impermissible for any person who is not a licensed professional engineer to use the word "engineer" in an occupational title.

15. The Petition was dismissed at Summary Judgment by the Superior Court and was appealed by the Plaintiffs to Division II of the Court of Appeals. The Court of Appeals, in an unpublished decision released on November 10, 2020, determined that the superior court judge should have determined whether Fisheries Engineers, Inc. had standing to bring the Petition and remanded the case to the Superior Court to make that determination.

16. The Assistant Attorney General who handled this case indicated that SB 5443 and HB 1176, as amended, had nothing to do with the Fisheries case. Contrary to Complainant's allegations, the assistant attorney general never argued that either SB 5443 or HB 1176 had any impact on the lawsuit.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.070 provides in pertinent part as follows:

*(1) 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.*

Prior Board decisions have applied the special privileges statute to find violations when a legislator — attorney wrote to his private clients and appeared to offer special access to legislators (*In re Quigley*, 1995 — No. 1), when a legislator solicited tickets to a sporting event from lobbyists (*In re Van Luven*, 2001 — No. 4), and when a legislator pressured a state agency to take action favorable to a private business owned by family members, (*In re Hankins*, 2007 — No. 1B). In each example, a legislator took specific action intended to provide a specific benefit to a specific person or persons.

In this matter, BORPELS, on behalf of its dues-3paying members, approached Respondent to sponsor a bill. BORPELS approached Respondent because he was Ivan Van De Wege's brother and was a legislator. The action Respondent took in sponsoring the bill was intended to provide a benefit to the entire professional engineer and land surveying community, not to Respondent's brother.

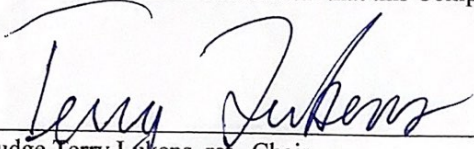
Further, introducing and lobbying for the passage of legislation is the heart of legislative activity; it is the essence of "normal and regular" conduct of a legislator. Every piece of

legislation passed into law affects the actions and opportunities of Washington residents. *In re Reykdal*, 2016 – No. 14.

VI. CONCLUSION AND ORDER

The Board finds no reasonable cause to believe the Respondent violated any provisions of the Act as alleged in this Complaint.

IT IS HEREBY ORDERED that this Complaint be dismissed.

  
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Judge Terry Lukens, ret., Chair

Date: 1/30/21