

# Legislative Ethics Board

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101 LEGISLATIVE BUILDING  
PO BOX 40482  
OLYMPIA, WA 98504-0482  
360-786-7343  
www.leg.wa.gov/lcb

JENNIFER STRUS - COUNSEL  
Jennifer.Strus@leg.wa.gov

## ADVISORY OPINION 2019 – No. 4B

LEGISLATIVE EMPLOYEE PARTICIPATION IN CAMPAIGN ACTIVITIES WHILE ON LEAVE WITHOUT PAY OR  
WORKING A REDUCED OR PART TIME SCHEDULE  
May 2020

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The Board has received an advisory opinion request from Brad Hendrickson, Secretary of the Senate, who has waived confidentiality. The original request contained two questions; the first question was answered in *Advisory Opinion 2019 – No. 4A*.

### I. BACKGROUND

The Senate practice regarding a legislative employee's participation in campaign activities has been to allow them to fully participate in campaign activities if done so on their own time. The Senate does not monitor the activities of its employees on evenings, weekends and vacation time. In the past, Senate employees have been employed by and volunteered for campaigns, and have run for elected office, campaigning on their own time.

The Senate understands that Senate employees may do what they like on their off hours provided the activity is not a conflict with their Senate employment. While the Senate has no formal policy on the matter, it has not allowed employees to take leave without pay or work a reduced (part-time) schedule in order to campaign because it is concerned that allowing leave without pay or working a reduced schedule could be interpreted as a use of state resources.

The House of Representatives has a more restrictive policy covering employees working on campaigns or running for office. The House prohibits employees working on campaigns from being paid to do so from the filing date (usually in May) through the date of the general election. This prohibition applies whether the employee is on leave or not. The House policy further requires an employee to terminate his or her employment with the House if he or she becomes a candidate for any state legislative or statewide elective office.

The requester is not interested in aligning the practices of the House and Senate, but rather, is seeking guidance on the limits of the Ethics in Public Service Act (Act) on the campaign activities of legislative employees.



## II. QUESTION

May legislative employees take leave without pay or work a reduced schedule in order to engage in campaign activity including employment, volunteer activities, or as a candidate for public office?

If yes, is the answer different if the employee is a candidate for a legislative office? Statewide office? Local office? Judicial office?

## III. CONCLUSION

It is not a violation of RCW 42.52.180 for a legislative employee to take leave without pay or work a reduced schedule in order to work or volunteer for a campaign for public office. If the employee is a candidate for public office, the restrictions in *Advisory Opinion* 2019 – No. 4A should be considered before approving a leave of absence or a move to a reduced schedule.

## IV. ANALYSIS

RCW 42.52.180 explicitly prohibits any use of the “facilities of an agency” to assist or oppose a campaign for public office, including the efforts of state employees during working hours. *In re Young*, 2017 – No. 41. Facilities of an agency “include but are not limited to, use of stationery, postage, machines, equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.” RCW 42.52.180(1). The Board has adopted a “zero tolerance” policy for campaign-related personal use of facilities of an agency even if such usage does not actually assist a campaign. *In re Johnson*, 1996 – No. 1.

According to the Senate Personnel Reference Manual, all eligible employees are members of the Washington Public Employees’ Retirement system (PERS). All eligible new employees become PERS members on the date of their hire. Employees are also eligible for state medical insurance benefits and may enroll upon initial appointment or during subsequent open enrollment periods. All legislative employees are covered by workers’ compensation and unemployment insurance. Employees are also entitled to vacation and sick leave. The Senate also contributes to the employee’s social security account as well as Medicare which are employment benefits the employee will realize upon attaining a certain age.

The Senate has no set policy governing when an employee can take a leave of absence or work a reduced schedule. An employee may request a leave of absence which must be approved by the Secretary of the Senate and the decision whether to grant the request is done so on a case by case basis. An employee can request to work a reduced schedule and must receive prior approval by both the employee’s supervisor and the Secretary of the Senate. The employee need not state a reason for requesting the move to a reduced schedule.

The question of whether employee benefits constitute “facilities of an agency” is one of first impression for the Board. The Board has previously acknowledged that legislative employees may work on campaigns only during their “non-working” hours or risk violating RCW 42.52.180. *Advisory Opinion* 2019 – No. 4A. RCW 42.52.320(2)(c) requires the Board to define “working hours for purposes of RCW 42.52.180.” Legislative Ethics Board Rule 4 provides as follows:

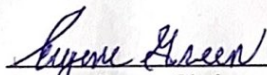


- (1) A legislative employee's working hours are those designated or required by Senate, House of Representatives, or legislative agency work schedule policy. If an employee has a designated work schedule different from the work schedule policy, that employee's working hours are the hours approved by that employee's supervisor and the Secretary of the Senate, Chief Clerk of the House of Representatives, or administrative director of a legislative agency, as appropriate.
- (2) . . .
- (3) "Working hours" do not include time in official leave status, if the leave has received advance written authorization.

In accordance with its definition, the Board believes that an employee's "non-working hours" include the time after the employee has completed his or her designated work schedule, the unworked hours on a reduced schedule or all hours when an employee is on an approved leave of absence. As a result, the Board believes that there is no violation of the statute by an employee who does campaign work on his or her own time whether that is after normal work hours, during unworked hours when an employee is working a reduced schedule or all hours if an employee is on an approved leave of absence. As long as the employee doing campaign work is not treated differently in terms of receiving benefits from any other employee with a similar schedule (e.g. an employee taking leave to care for a sick spouse or taking parental leave), the benefits an employee receives are earned by virtue of his or her employment.

In fact, legislators accrue retirement service credit and enjoy health benefits during times of the year when they are campaigning nearly full time. This was the case before, at the time of and after the enactment of the Ethics in Public Service Act. Employee benefits, earned by virtue of work the employee actually performs for the legislature, therefore, are not considered "facilities of an agency."

ON BEHALF OF the Legislative Ethics Board, this opinion is signed on the 28 day of MAY, 2020.

  
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Eugene Green, Chair