

COMPLAINT 2007 – NO. 3

In Re Marr, Oemig and Tom

REASONABLE CAUSE DETERMINATION AND ORDER

Special Privileges – Private Benefit or Gain

January, 2008

I. Nature of the Complaint and Procedural History

Complaints were received against Senators Eric Oemig, Rodney Tom and Chris Marr on October 22, October 28 and November 4, respectively. The complaints, identical as to alleged facts, have been joined for purposes of issuing one opinion applicable to all three Respondents.

The complaints allege that Respondents violated the Ethics Act (Act) when they used a public resource and/or their legislative position to support one of the parties engaged in collective bargaining. The pertinent statutes are RCW 42.52.070 (special privileges) and 42.52.160 (private benefit or gain).

The Board has both personal and subject-matter jurisdiction.

II. Determination of Reasonable Cause

Reasonable cause does exist to believe that Respondents violated the Act by their use of public resources to advocate on behalf of one party to a dispute.

However, for reasons stated elsewhere in this opinion and in accord with RCW 42.52.425, which grants the board the authority to dismiss a complaint based upon a finding that further proceedings would not serve the purpose of the Act, an order of dismissal will be entered.

III. Determination of Facts

There is reasonable cause to believe that the following constitute the pertinent facts of the case.

1. During the course of the 2007 Legislative Session the issue of compensation increases for community mental health was before the Legislature. When the 2007-2009 biennial budget was approved it contained millions of dollars, both state and federal, “to increase compensation for direct care personnel above and beyond usual and customary wage increases” (Sec. 204(1)(o) – Substitute House Bill 1128; Chapter 522, Laws 2007).

2. Budget language and the Legislative Budget Notes establish that the money was provided to increase compensation for staff who deliver direct patient care and staff such as receptionists, intake workers, and schedulers who directly support such work.
3. Generally speaking, a regional mental health support organization would receive these appropriated funds and contract with public mental health system providers. The regional organizations are sometimes referred to as “pass-through” entities and Behavioral Health Resources (BHR) is a mental health system provider.
4. Some of BHR’s employees are represented by the Service Employees International Union (SEIU). During the time frame the letter, which is the subject of these complaints, was provided by Respondents to SEIU and answered by BHR these entities were involved in collective bargaining. It may be assumed from the letter and the response that this collective bargaining process involved issues in addition to the question of compensation.
5. SEIU and BHR pointedly disagree on the impact the appropriated funds, also referred to as the Direct Care Compensation Increase, were having on the bargaining process. SEIU spokespersons represent that BHR had inserted this “specific” legislative appropriation into the collective bargaining process to leverage the union on other issues.
6. Given these concerns, SEIU turned to legislators for assistance in clarifying the intent of the compensation appropriation. Respondents signed the letter, the text of which was provided by SEIU and not amended by Respondents, in response to the union’s concerns.
7. BHR responded by a letter to legislators and denied misuse of the appropriated funds in the bargaining scenario. In addition, BHR took issue with the letter from Respondents which, among other issues unrelated to the appropriation, pointedly criticized BHR’s choice of hiring “anti-union” legal counsel.
8. The text of the letter was received by e-mail directed to Senator Adam Kline and was sent to him by a lobbyist for SEIU. After the Senator reviewed and approved it without change, the text was transferred to state stationery at his direction by his Legislative Assistant.
9. Although one of the Respondents questions his physical location at the time he signed the letter, all of the Respondents confirmed they signed the letter and it is more likely than not that all signatures were obtained by Senator Kline in the Democratic caucus room.
10. Respondents do not recall or cannot say with certainty that they saw the state letterhead when they signed the attached signature sheet, which was a separate

page. Some have speculated the letterhead may have been folded behind the signature sheet.

XI. Conclusions of Law

In part, the letter establishes a sufficient legislative nexus to enable Respondents to use legislative position and public resources to advocate on behalf of SEIU.

1. “When a legislator becomes an advocate for a constituent, public resources and the office of a legislator may be used on behalf of that constituent if a government official or government office is involved or if the constituent is seeking assistance on legislative issues” (Advisory Opinion 2006 – No. 1).
2. The Legislature’s intent in appropriating the funds, as evidenced by the explicit budget language, was that the money would be used for compensation increases in addition to customary wage increases.
3. In this case, allegations that this legislative intent was being thwarted or ignored established the requisite nexus to enable Respondents to respond to the request from SEIU for assistance.

The letter also addresses issues which lack the requisite nexus.

4. For instance, the Respondent’s criticism directed at BHR’s choice of law firm and comments relative to the “anti-union” bias of that firm and its activities outside these negotiations appear as ill-disguised attempts to dictate to BHR how to manage its internal business decisions on matters not related to the purpose of the appropriation. Overall, significant portions of the letter reflect Respondent’s general interest in labor issues and general support for one side involved in bargaining, neither of which justifies the use of public resources in an advocacy role (Advisory Opinion 2006 – No. 1).
5. Legislators are responsible for the contents of their publications (see, for example, In Re Huff and Schmidt, Complaint Opinion 1998 – No. 3).

VI. Conclusion and Summary

The Board is not sympathetic to claims a document was not carefully reviewed or that legislators are too busy to question the contents or proposed use of a document.

This is the first case to follow Advisory Opinion 2006 – No. 1 which held, in part, that when a sufficient legislative nexus is established a legislator may use state stationery to advocate for one of the parties involved in collective bargaining. However, that opinion did not address the use of this public resource when, as here, a portion of the letter is permitted by the Act and portions are not.

Therefore, we conclude that prospectively the use of a public resource in the fashion it was used in this case will constitute a violation of the Act because the non-legislative use is not de minimis.

VII. Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that no further proceedings are warranted in this case and it is dismissed.

Wayne Ehlers - Chair

Date: 1/31/08