

Legislative Ethics Board



BOARD MEMBERS:
REP. LAURIE DOLAN
EUGENE GREEN
SEN. JIM HONEYFORD
JUDGE TERRY LUKENS (ret.)
PAMELA MADSON
DAN McDONALD
SEN. JAMIE PEDERSEN
DEBBIE REGALA
REP. LUANNE VAN WERVEN

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LEGISLATIVE ETHICS BOARD MINUTES January 27, 2020

Present were: Eugene Green, Chair; Debbie Regala, Vice-Chair; Rep. Laurie Dolan; Rep. Luanne Van Werven; Sen. Jamie Pedersen; Sen. Jim Honeyford; Judge Terry Lukens; Pamela Madson; Dan McDonald; Jennifer Strus, Board Counsel; Ohad Lowy, House Counsel; Rebecca Faust, citizen

The Board minutes for the December 2, 2019 meeting were approved.

The Board reviewed two conflict of interest disclosure forms one of which was submitted by Amanda Eichelberger, who is a session aide in the Senate and the other submitted by BreAnn O'Leary, who works in the Senate Workroom. The Board had no concerns with either of the disclosures.

The Board approved the final draft of the 2019 Annual Report with the changes discussed. The report will be posted on the LEB website and a copy sent to the Coalition for Integrity in Washington, DC which publishes the annual report Enforcement of Ethics Rules by State Agencies: Unpacking the S.W.A.M.P. Index.

The Board discussed at length the Advisory Opinion request 2019 – No. 5 which asks for clarification about qualifications to be a Board member. The Board directed counsel to discuss the request with the person making the request, answer those questions that can be answered easily when meeting with the requester, discern those questions that might require significant research and report back to the Board at the March meeting.

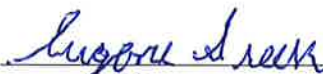
The Board also discussed the following question presented to it. Can a member's campaign, which received free tickets to a political convention offer those tickets to other members free of charge? Tickets generally cost \$155. The Board determined that the more appropriate entity to answer this question is the Public Disclosure Commission. The Board declined to offer an opinion on gifts between members.

The Board moved into executive session to consider pending complaints. Upon conclusion of the Board's consideration of pending complaints, executive session ended, and the Board went back into public session.

There was no public comment.

The Board selected March 16, 2020 from 10:00 am to noon as its next meeting date.

The meeting was adjourned.



Eugene Green, Chair

Date: 3-16-2020

Legislative Ethics Board

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LEGISLATIVE ETHICS BOARD MINUTES March 16, 2020

Present were: Eugene Green, Chair; Rep. Laurie Dolan; Rep. Luanne Van Werven; Sen. Jamie Pedersen; Sen. Jim Honeyford; Judge Terry Lukens (by phone); Pamela Madson (by phone); Dan McDonald; Jennifer Strus, Board Counsel; Ohad Lowy, House Counsel; Jeannie Gorrell, Senate Counsel; Rebecca Faust, citizen

The Board minutes for the January 27, 2020 meeting were approved.

The Board reviewed one conflict of interest disclosure form submitted by Ohad Lowy, who is the new House counsel. The Board had no concerns with the disclosure.

The Board discussed Board counsel's suggestion that the administrative rules be amended to allow counsel to not accept complaints for which the Board has no personal jurisdiction. The Board determined that the recent rules permitting administrative dismissal of complaints were sufficient to dispose of complaints in which the Board has no personal jurisdiction.

The Board discussed whether it should permit complaints to be electronically filed. Both the Executive Ethics Board and the Commission on Judicial Conduct allow complaints to be filed on line. Sen. Pedersen raised the increased budget request made by the Commission which was due to the large increase in complaint filings once the Commission allowed complaints to be filed online. His concern was that the current staffing of the LEB could not handle a large increase in filings. Most of the members felt that the current method required by the Board to file complaints (proper paper form signed by the complainant and sent by mail to the Board) is adequate. Board counsel was instructed to contact the Commission to discuss their increase in filings and report back at the next meeting.

The Board discussed the current Board rule that requires the final Board opinion to be mailed to the Complainant and Respondent on the same day and provided to other interested persons (usually the media) the following day. The issue arises when the order is mailed to the Complainant and Respondent and the following day the order is emailed to other recipients including the media. In this situation, the media often receives the order before the Respondent does. Counsel suggested that the rule be interpreted to allow her to email the final order to the Complainant and Respondent and follow it up by sending them a hard copy. This process will allow the simultaneous mailing of the order as required by the rule. The Board agreed that this process is in the spirit of the rule which intends that Respondent and Complainant receive the final order before other interested persons.

The Board discussed the request for an advisory opinion on qualifications of citizen members of the LEB (*Advisory Opinion* 2019 – No. 5). Board counsel was instructed at the previous meeting to meet with the requester and determine which of the questions asked were fairly easy to answer and which were too hypothetical in nature. Board counsel reported on that meeting. The Board instructed counsel to draft an advisory opinion answering the questions that were easy to answer and determine which were too hypothetical to answer.

The Board discussed at length the advisory opinion request from the Secretary of the Senate about legislative staff working on campaigns or running for office. The Secretary's request was divided into two questions. Both questions were discussed by the Board and they agreed on the response to Question 1 and directed Board counsel to draft an

opinion answering the first question. Counsel was directed to draft two opinions answering Question 2 and the Board will consider both opinions at its next meeting.

The Board discussed a question presented by the ethics advisers: if the Board finds reasonable cause to believe that a member has violated the ethics law, can that member use caucus communications staff with which to handle media requests about the finding? The Board, in a split decision, determined that because there is a sufficient legislative nexus to the use of state resources (communications staff), it was permissible. Board counsel was directed to draft a memo to the ethics advisers in the House and Senate explaining the Board's position on this question.

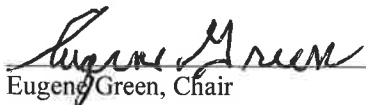
The Board discussed another issue brought up by the ethics advisers. RCW 42.52.180 states that "official legislative websites" of legislators seeking reelection or election to any office cannot be altered beginning on the first day of the declaration of candidacy filing period . . . through the date of certification of the general election of the election year." The question arose about whether the term "official legislative website" includes official legislative Facebook or Twitter accounts. The Board determined that the term does include those social media platforms and instructed counsel to issue an Ethics Alert to that effect. In the Alert, counsel was asked to include a reminder about other "freezes" that are in effect during election years.

The Board moved into executive session to consider pending complaints. Upon conclusion of the Board's consideration of pending complaints, executive session ended, and the Board went back into public session.

There was no public comment.

The Board selected May 4, 2020 from 10:00 am to noon as its next meeting date.

The meeting was adjourned.



Eugene Green, Chair

Date: 6-22-2020

Legislative Ethics Board



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Legislative Ethics Board Minutes June 22, 2020 Meeting Held Virtually

Present were: Eugene Green, Chair; Rep. Laurie Dolan; Sen. Jamie Pedersen; Judge Terry Lukens; Rep. Luanne Van Werven; Pamela Madson; Tom Hoemann; Sen. Jim Honeyford; Dan McDonald; Jennifer Strus, Board Counsel; Jeannie Gorrell, Senate Counsel; Ohad Lowy, House Counsel

The Board welcomed its newest member, Tom Hoemann, who replaced Debbie Regala (Vice-Chair) as a citizen member of the Board.

The minutes for the March 16, 2020 Board meeting were approved.

The Board elected Judge Lukens as its new vice-chair.

The Board reviewed an employment disclosure form submitted by Michael Bezanson whose wife took a job as the Director of Results Washington. The Board saw no conflicts with the disclosure.

Board Counsel reported on her conversation with the Executive Director of the Commission on Judicial Conduct and their experience with e-filing. Counsel reported that since the Board has allowed complaints to be filed by email, it has received three complaints. The Board agreed that accepting complaints by email should be continued during the COVID-19 crisis as long as the proper form is submitted and signed by the complainant. The Board will consider adopting this approach permanently at a later meeting.

The Board discussed the advisory opinion request it recently received from the Chief Clerk of the House. The request contains seven questions pertaining to a number of election year activities.

Board counsel recommended that the Board develop a process by which it reviews advisory opinions to ensure it still agrees with the conclusions and reasoning in the opinions. Many of the opinions were written at the Board's inception more than 20 years ago. Board counsel was instructed to put together a


listing of opinions by topic and develop a plan and process for reviewing them. Counsel is to report back at the next meeting.

The Board moved into executive session to discuss pending complaints.

There was no public comment.

The next meeting of the Board is currently scheduled for August 31, 2020 but in light of the impending special session and the cancelled May meeting, Counsel was asked to reschedule the meeting in early August to coincide with the possible special session when the legislative members will be present on campus.

The meeting was adjourned.



Eugene Green, Chair

Date: 8-3-2020

Legislative Ethics Board

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Legislative Ethics Board Minutes August 3, 2020 Meeting Held Virtually

Present were: Eugene Green, Chair; Judge Terry Lukens, Vice-Chair; Rep. Laurie Dolan; Sen. Jamie Pedersen; Rep. Luanne Van Werven; Pamela Madson; Tom Hoemann; Dan McDonald; Jennifer Strus, Board Counsel; Victoria Cantore, Senate Counsel; Ohad Lowy, House Counsel; RM Parker, citizen

The minutes for the June 22, 2020 Board meeting were approved.

The Board discussed the draft advisory opinion responding to the request it recently received from the Chief Clerk of the House. The Board agreed that it be made clearer at the beginning of the opinion that the opinion applies only to the use of state resources with which to do the things that are being asked in the request. The Board discussed whether a “triggering event” should be added as a factor to be considered with the other five factors. The Board ultimately agreed that it should be but believes that the term to be used is triggering circumstances rather than triggering event and that it is to be included as part of the factor “source of the initial statement.” There was discussion about whether the term “triggering circumstances” should be defined broadly. The Board felt that if it was not defined more broadly it would diminish the ability of the legislative branch to be part of the response or solution to the triggering circumstances. It was also decided that the factors are to be applied whether the statement made by a legislator is in response to a statement made by another or initiated by the legislator. The Board also determined that the 5 factors should also be applied to the caucus postings.

The Board discussed the process by which advisory opinions will be reviewed. Counsel stated that many of the opinions include more than one area of the law. It is possible that part of the opinion will be valid and another part should be removed. Sen. Pedersen suggested that in these situations, it might be best for the Board to remove the opinion altogether and issue a new opinion with just the good law in it. Board member Madson asked whether the Board was also reviewing complaint opinions. The Board determined not to review them because they are *res judicata*, meaning that the matter underlying the ethics complaint has been finally decided.


Counsel raised the issue of fund raising by members who work for non-profit organizations. The question posed was whether a member working for a nonprofit can fundraise for that nonprofit by seeking donations from organizations and companies that employ lobbyists. The Board stated that the member could if he or she is very clear with the organization with whom he or she is seeking donations that he or she is doing so in his or her capacity as an employee of the nonprofit and not in his or her capacity as a legislator.

There was no public comment.

The Board moved into executive session to discuss pending complaints.

The next meeting of the Board is scheduled for August 31, 2020 from 10-12 and will be held virtually.

The meeting was adjourned.



Eugene Green, Chair

Date: 8-31-20

Legislative Ethics Board

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Legislative Ethics Board Minutes August 31, 2020 Meeting Held Virtually

Present were: Eugene Green, Chair; Judge Terry Lukens, Vice-Chair; Rep. Laurie Dolan; Sen. Jamie Pedersen; Sen. Jim Honeyford; Rep. Luanne Van Werven; Pamela Madson; Tom Hoemann; Dan McDonald; Jennifer Strus, Board Counsel; Jeannie Gorrell, Senate Counsel; Ohad Lowy, House Counsel; Bernard Dean, House Chief Clerk; Eric Temple; 360 Strategies.

The minutes for the August 3, 2020 Board meeting were approved.

There were no employment disclosure forms submitted to be approved at this meeting.

The Board discussed the revised draft advisory opinion 2020-01. This request, from the Chief Clerk of the House contained seven questions each of which was discussed separately. The first question dealt with whether the 5 factors outlined in Advisory Opinion 2000 – No. 4 were still applicable to press releases issued during the election year freeze. The Board agreed that those 5 were still applicable but added two more: triggering circumstance and legislative nexus. Press releases initiated by members will have to meet the triggering circumstance factor and all press releases will have to meet the legislative nexus factor. Several members felt the Board’s approach in adding two factors was “muzzling” legislators.


The Board discussed the date upon which this advisory opinion should be effective. All agreed that it should apply prospectively only. There was some discussion that perhaps it should not be effective until after the general election; however, a majority of Board members felt it should be effective sooner rather than later.

There was no public comment.

The Board moved into executive session to discuss pending complaints.

The next meeting of the Board is scheduled for October 12, 2020 from 10-12 and will most likely be held virtually.

The meeting was adjourned.



Eugene Green, Chair

Date: 10-12-20

Legislative Ethics Board

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REP. LAURIE DOLAN
EUGENE GREEN
TOM HOEMANN
REP. LARRY HOFF
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LEGISLATIVE ETHICS BOARD MINUTES October 12, 2020 Meeting Held Virtually

Present were: Eugene Green, Chair; Judge Terry Lukens, Vice-Chair; Rep. Laurie Dolan; Sen. Jamie Pedersen; Sen. Jim Honeyford; Pamela Madson; Tom Hoemann; Dan McDonald; Jennifer Strus, Board Counsel; Jeannie Gorrell, Senate Counsel; Victoria Cantore, Senate Counsel; Ohad Lowy, House Counsel

The minutes for the August 31, 2020 Board meeting were approved.

The Board discussed the draft recusal policy. The policy states that if an ethics complaint is filed against a legislative Board member, that member cannot participate in the Board's work until the complaint is decided. There were concerns raised that someone could file frivolous complaints against Board members at the same time which would paralyze the work of the Board. Several Board members also disagreed with the portion of the policy that requires a member to recuse him or herself because the complaint is against a seatmate. The Board determined that Board counsel would work with Board member Pedersen to develop a new draft to be considered at the December meeting.

The Board discussed the receipt of per diem for legislative Board members who attend virtual meetings. Based upon the statutes, per diem for legislators is designed to reimburse them for their expenses in attending meetings. Conversely, the statute pertaining to citizen members states they are to be compensated for their time. The statute also encourages the meetings to be held other than in person, if possible, to save on travel expenses. As a result, the legislative Board members will not claim per diem for any meetings held virtually.

Rep. Pollet had expressed concern to the Board counsel about the use of pseudonyms in opinions. He felt that the use of these was not transparent to the public. Board counsel indicated that it would be brought to the full Board for discussion. Several Board members felt that if not using pseudonyms would interfere with the obtaining the facts necessary to make a decision then the use of pseudonyms was appropriate. There was also concern that some witnesses might fear reprisal if their names are used and in these

situations, the use of pseudonyms might be appropriate. The Board concluded that absent compelling information to the contrary the use of pseudonyms when appropriate is permitted.

Because many of the legislative agency meetings are virtual, Legislative Support Services is offering to provide branded backgrounds for legislative committees, boards etc. These backgrounds would feature a legislative logo or picture and would block the view of the room in which the member is sitting while attending the meeting. These are available to any Board member who would like one.

The Board discussed whether Board counsel should have a limited privilege when providing ethics advice to legislators or legislative staff. It was agreed that to do so would require a statutory change.

Board counsel updated the Board members on the most recent public records requests received by the House and Senate requesting information on ethics complaint investigations. The Board discussed whether it should request legislation to protect from disclosure some of the information gathered during an ethics investigation. It was decided that the Senate Counsels, House Counsel and Board Counsel should have an in-depth discussion and report on that discussion at the next Board meeting.

There was no public comment.

The Board moved into executive session to discuss pending complaints.

The next meeting of the Board is scheduled for December 7, 2020 from 10-12 and will be held virtually.

The meeting was adjourned.



Eugene Green, Chair

Date: 12-7-20

Legislative Ethics Board

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REP. LAURIE DOLAN
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REP. LARRY HOFF
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LEGISLATIVE ETHICS BOARD MINUTES December 7, 2020 Meeting Held Virtually

Present were: Eugene Green, Chair; Judge Terry Lukens, Vice-Chair; Sen. Jamie Pedersen; Sen. Jim Honeyford; Rep. Larry Hoff; Pamela Madson; Tom Hoemann; Dan McDonald; Jennifer Strus, Board Counsel; Jeannie Gorrell, Senate Counsel; Victoria Cantore, Senate Counsel; Ohad Lowy, House Counsel

The Board welcomed its newest member Rep. Larry Hoff.

The minutes for the October 12, 2020 Board meeting were approved.

The Board approved the purchase of a Zoom license with which to conduct its meetings in the future.

The Board discussed the Employment Disclosure Form submitted by Bernard Dean regarding his wife's employment with the Governor's Office. The Board did not find a conflict and the Form was approved.

The Board discussed the amended draft recusal policy. Sen. Pedersen who assisted with the rewrite of the policy indicated that he thought the policy should just apply to legislators because if someone filed a complaint against the entire Board, if the citizen members are not included in the policy, they could continue to operate while the complaints against members are being resolved. There was significant discussion about how to handle complaints against citizen members of the Board. Counsel was instructed to gather information from other Boards or Commissions with citizen members about how they handle this issue and bring it back to the Board at the January meeting.

The Board discussed the revamped Employment Disclosure Form. The original form was confusing to those needing to fill it out. Counsel, with the assistance of the other ethics advisers divided the form into two separate forms: one that concerns employment with a state agency and the other that concerns contracts or grants with state agencies. The Board approved replacing the current form with these two forms.

Counsel presented the draft Advisory Opinion 2020-02. The Board discussed the contents of the draft opinion. Some members found the opinion a bit complicated. Counsel was directed to incorporate the changes suggested by several members and send out a clean copy to members so that they can review the opinion again and suggest changes. The Board voted to approve the substance of the opinion.

At the meeting on June 22, 2020, the Board decided that it should review all past advisory opinions to ensure that it still agreed with the positions taken by former Boards on the issues. Counsel presented charts detailing two advisory opinions. The Board discussed the process by which it should decide whether it wants to continue with the opinion, particularly how the Board will indicate that the opinion has been reviewed. One member suggested that perhaps the Board could use the approach the Code Reviser uses when a Supreme Court case overrules a statute. Another suggestion was to include in the chart a list of the opinions that cited as precedent the opinion being reviewed. Counsel will look at both options and report on them at the next meeting.

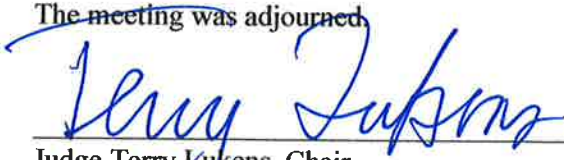
The following issue was brought to the Board's attention: a member requests that the chamber to which he belongs purchase a router for him to use in his home during the remote session. The router will allow the member to remotely participate in the session. The issue is that the router will also allow the member to access WIFI for personal purposes as well and the concern is that allowing this would be a violation of RCW 42.52.160 – public use for private gain. The Board stated that the WIFI accessed by a router purchased with state resources is akin to the legislative WIFI available to the public while they are on the capital campus. Furthermore, the router does not create material that might violate the ethics law; rather, computers do. The Board believed the use of the router for personal purposes was essentially incidental especially in this current climate with COVID and a remote session.

There was no public comment.

The Board moved into executive session to discuss pending complaints.

The next meeting of the Board is scheduled for January 18, 2021 starting at noon and will be held virtually.

The meeting was adjourned.



Judge Terry Lukens, Chair

Date: 11/21/21