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ADVISORY OPINION 2023 – No. 3

Use of Public Resources to Comment on International Events March 2024

The Board received a request for an advisory opinion on October 17, 2023, from Ohad Lowy, House Counsel, who waives confidentiality.

A. INTRODUCTION

House Counsel, in his request, asks multiple questions about whether and when public resources can be used to initiate a statement providing a legislator's opinion on international events. The Board is of the opinion that the questions posed merely restate the same question in different ways. Therefore, the Board will not respond to the individual questions posed but will respond to the overarching question as paraphrased below.

B. QUESTION

Under the Ethics Act, specifically RCW 42.52.160, under what circumstances may a legislator use public resources to initiate a statement or communicate about an international matter or event?

C. OPINION

It is a violation of RCW 42.52.160 for a legislator to use public resources (legislative staff, legislative computer or official office space etc.) to initiate a statement or communication regarding an international matter or event for which there is no legislative nexus – no connection – with the legislator's official duties, the policy or programmatic prerogatives of Washington state government, or the legislative institution. A legislator who uses public resources in such a manner does so for his or her private benefit or gain.

D. ANALYSIS

RCW 42.52.160(1) prohibits a state officer or state employee¹ from using any person, money, or property (known in the opinions as public resources²) under his or her official control or direction, or in his or her official custody, for the private benefit or gain of the officer or another unless that use is part of a state employee's official duties. *In re Higginbotham, 2005 – No. 1.*

The Board has previously held that before a legislator can use public resources there must be a sufficient legislative nexus – a connection with the legislator's official duties. A legislative nexus or connection is established if the actions of the legislator have a reasonably objective nexus or connection to the legislator's official duties, the

¹ "State employee" means an individual who is employed by an agency in any branch of government. RCW 42.52.010(18).

² "Public resources" include but are not limited to use of stationery, postage, machines, and 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.

policy or programmatic prerogatives of the legislature or the legislative institution. *In re Haler*, 2007 – No. 1A; *Ethics Alert* – August 2021.

The legislature is essentially a fiduciary steward of public resources. Legislative interest in an international event is a private interest of that legislator unless connected to the legislator’s duties or role in the legislature. In other words, there would be no tangible legislative nexus because there is no connection between the international event and a legislator’s duties as a state legislator nor involvement with the institution itself. State legislators are not elected to Congress whose official duties can include international events; rather, they are elected to the state legislature which has no authority, generally, over international matters or events.

Some legislators will argue that their constituents want to know what they think about a particular international event. If the event has no connection to the legislature and does not fall within a legislator’s official duties, then legislators cannot use public resources with which to initiate statements or communications about their opinions on these events. As with certain other classes of communications generally (e.g., inquiries about ballot measures), the Board does believe that a legislator could respond briefly, using public resources, to a specific inquiry from a citizen asking the legislator’s views about an international matter or event.

Further, communication of a legislator’s “intent” to address an international matter or event in a future session (for example, to sponsor a piece of legislation or a resolution on the topic) does not create the needed legislative nexus to permit the use of public resources with which to broadcast these plans. At their core, such matters and events are not connected to official duties and “future plans” cannot make them so. Actual introduction of a bill or the passage of a resolution in either chamber will make them, appropriately, the subject of legislative consideration; at that time, the use of public resources for communicating about legislation or resolutions regarding such matters or events may be appropriate. That is a matter for the institution, not the Board.

The question is whether using public resources gathered from the taxpayers of the state of Washington to disseminate a legislator’s opinion on international matters or events with no legislative nexus is a violation of .160(1). We hold that it is. To allow the use of public resources in this fashion is to allow legislators to use public resources to amplify their private opinions about events over which they have no official responsibility. This is exactly what .160(1) was intended to prevent.

Finally, it bears repeating, as we have done in the past, that this opinion does not prohibit legislators from voicing their opinion about international matters or events; they just cannot use taxpayer provided resources to communicate those views.

ON BEHALF OF THE LEGISLATIVE ETHICS BOARD, this opinion is signed this 25 day of April, 2024.



Tom Hoemann, Chair