

Legislative Ethics Board Minutes

January 19, 2006

Present: James A. Andersen, Chair; John Betrozoff, Vice-Chair; Tony M. Cook; Wayne Ehlers; Rep. Doug Ericksen; Senator Stephen Johnson; Rep. John Lovick; Donna McKereghan; Tim Sekerak, House Counsel; Mike O'Connell, Board Counsel.

The December minutes were approved.

Counsel distributed financial report forms to the citizen members with a reminder that the completed forms must be submitted to the Public Disclosure Commission by April 17. The Board discussed a draft of an ethics alert prepared by Counsel at the Board's request. Topics addressed in the draft were gift implications associated with complimentary admission to certain events, and use of public resources. After discussion, the draft was approved and Counsel was directed to distribute the document to legislators and staff.

As an information item only, the Board reviewed an e-mail from a senator's constituent expressing concern that the senator, who is in an election cycle, would be limited in sending electronic newsletters because of the law on election-year mailings. Representative Lovick noted that a bill had been introduced which would give some consideration to this issue.

The Board next reviewed several ethics-related bills which are under consideration this legislative session. The Board had previously expressed its support for one of the bills which would alter the terms of citizen board members. The other bills were discussed as information items only.

The Chair called for public comment and there was none. The public meeting was recessed and the Board convened in executive session to discuss preliminary matters related to pending complaints. The Board reconvened in public session, the Chair again called for public comment and there was none. Members thanked retiring board member John Betrozoff for his years of service and presented him with a plaque in recognition of his many contributions.

There was no further business and the meeting was adjourned.



James A. Andersen, Chair

Legislative Ethics Board Minutes

February 16, 2006

Present: Tony M. Cook; Wayne Ehlers; Rep. Doug Ericksen; Senator Stephen Johnson; Rep. John Lovick; Donna McKereghan; Senator Debbie Regala; Mike Hoover and Marty Lovinger, Senate Counsel; Tim Sekerak, House Counsel; Mike O'Connell, Board Counsel.

Mr. Ehlers chaired the meeting as Judge Andersen was unable to attend. The January minutes were approved.

The Board welcomed Carolyn Lindsey and Carla McKnight. Ms. Lindsey is retiring as the director of House Accounting and has been responsible for oversight of the Board's budget for many years. Ms. McKnight will be replacing her. Board members expressed their appreciation to Ms. Lindsey for her service and assistance and welcomed Ms. McKnight.

Ms. Diane Smith, Staff Coordinator for the Senate Government Operations and Elections Committee, presented an update of pending legislation which would amend the Ethics in Public Service Act, RCW 42.52. Members asked several questions and expressed their gratitude for her attendance and information.

Counsel reported he had presented at two classes on ethics issues since the last board meeting. One was with UW Law School students and the other with students in graduate programs at Evergreen State College. House Counsel, Tim Sekerak, reported he had given advice on two newsletter issues. (1) A member's newsletter was sent to the wrong legislative district due to an error by the State Department of Printing who refunded the costs of mailing to the member's account. The newsletter was then mailed to the correct district. The advice was the incorrect mailing did not count as one of the two newsletters permitted in an election year because the applicable statute applies to mailings to "constituents." (2) A newsletter was mailed to a member's district with some information missing due to an error by the Department. Member was advised that the mailing counted as one of the two allowed because it did go to constituents and the statute provides no relief for printing errors or abatement of the mailing deadlines.

The Chair called for public comment and there was none. The public meeting was recessed and the Board convened in executive session to discuss preliminary matters related to pending complaints. The Board reconvened in public session, the Chair again called for public comment and there was none.

There was no further business and the meeting was adjourned.

Wayne Ehlers



Legislative Ethics Board Minutes

March 16, 2006

Members and staff present: James A. Andersen, Chair; Tony M. Cook; David R. Draper; Rep. Doug Ericksen; Rep. John Lovick; Donna McKereghan; Senator Debbie Regala; Mike Hoover, Marty Lovinger and Tim Sekerak, designated ethics advisers; Mike O'Connell, Counsel.

Chair Andersen welcomed Judge David R. Draper (retired) to the Board. Mr. Draper was appointed by the Governor to a term ending in September, 2010.

The February minutes were approved.

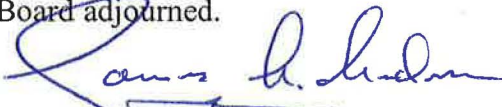
Chair Andersen welcomed Representatives Hunt and Hudgins, and Senators Keiser and Kline. Senator Keiser had requested an opportunity to discuss the analysis of a recent Board opinion which addressed the use of public resources to assist a constituency and which had concluded that a particular labor dispute was private in nature. The effect of the ruling was that public resources could not be used to intervene or take sides in the dispute. Senator Kline began by agreeing that legislators ought not to use public resources to become involved in private disputes but that labor disputes involve public policy. He said there is a public interest in labor disputes and by definition they are not private. Senator Keiser agreed and stated that characterizing a labor dispute as a private matter is a fundamentally flawed approach as labor strife affects jobs, plant closures, and the economy and unemployment laws. Mr. Cook asked if there are any distinctions between one labor issue and another. He used the example of unions coming to Olympia to request legislation during a dispute with employers and asked if that couldn't be distinguished from the facts of the recent opinion in which the Board found that type of legislative connection to be missing. Senator Kline responded by saying that there does need to be a line drawn at some point but that he wasn't sure where that should be or what factors might be determinative. Senator Keiser asked the Board whether legislators shouldn't resolve a dispute in the community if they could and, if so, isn't it appropriate to utilize public resources to do so? Ms. McKereghan said she tends to focus on the distinction between benefiting an individual and benefiting an issue and that in her view the present discussion is not limited or confined to labor issues or labor disputes. Representative Ericksen expressed concern about the use of public resources in other disputes which most would view as private in nature and asked where one was to draw the line? Senator Kline acknowledged that was the question. Perhaps, he said, some language such as "redeeming social purpose," "potential legislative interest" or "matter of public concern" would help clarify when public resources could be used. Senator Regala agreed that establishing a bright-line test was difficult and that she tends to ask whether the dispute in question involves taking sides. If it does, the next question is what broad public policy question is at stake or at issue? Senator Keiser responded by saying that legislators do not have to be neutral in controversies in their neighborhoods. Ms. McKereghan agreed but said the present discussion is not about staying neutral or

avoiding taking a position, but whether public resources should be used in the intervention process. Senator Regala noted that the Ethics Act also talks about using public resources for the benefit of "another" so the question here is not limited to whether legislators personally benefit. Representative Ericksen expressed concern that by permitting public resources such as letterhead to be used in taking sides in a controversy where the legislative connection is not clear, we would open the door for legislators to take staff along to assist or advocate for one side or the other. Should this be OK? Senator Kline emphasized that at some point the issue must be viewed as either public or private and the focus taken away from the parties involved. Representative Hudgins said he believed constituents expect legislators to be leaders and advocates and that legislators advise constituents where they stand on the issues. It follows, he said, that legislators then need to be able to work on those issues and those legislators should be given the benefit of the doubt in doing so. Representative Hunt said he agreed with the other legislators and he expressed concern that legislators were being silenced and dissuaded from assisting constituents.

There was no further discussion and Chair Andersen thanked everyone for their attendance and input. He said he felt he could sum up the feelings of the Board by stating that this issue would be an agenda item at some point in the future and the Board would discuss what action, if any, it might choose to take.

Counsel gave three examples of informal advice provided since the last meeting. (1) Since the legislature adjourned on the 59th day (one day early), the time frame for mailing a 2nd legislative newsletter in an election year, which is 60 days after the end of the legislative session, begins from the 59th day, the day of adjournment sine die. (2) Legislators were advised not to use legislative e-mail addresses as return addresses for constituents who were responding to a communication from a private non-campaign web site unless the initial communication conformed to the Act in all regards. (3) Assuming that a legislative newsletter conforms to all applicable statutes and Board opinions, the question of whether such a newsletter prepared without the use of public resources may be posted on a legislative web site is a policy decision for the House and Senate.

The Chair called for public comment and there was none. The public meeting was recessed and the Board convened in executive session to discuss preliminary matters related to pending complaints. The Board reconvened in public session, the Chair again called for public comment and there was none. There was no further business and the Board adjourned.



James A. Andersen
Chair

Legislative Ethics Board Minutes

May 18, 2006

Members and staff present: James A. Andersen, Chair; Tony M. Cook; David R. Draper; Wayne Ehlers; Rep. Doug Ericksen; Rep. John Lovick; Donna McKereghan; Senator Debbie Regala; Mike Hoover, Marty Lovinger and Tim Sekerak, designated ethics advisers; Mike O'Connell, counsel.

The April minutes were approved as corrected. The Board will not meet in June. The citizen members of the Board will attend a state ethics conference on June 15 in Olympia. Ms. McKereghan presented a progress report from the subcommittee she chairs on the issue of use of public resources to assist constituents. Senator Regala and Chair Andersen complimented the group on their efforts to date. Ms. McKereghan announced plans for the subcommittee to meet again at the June ethics conference.

Counsel informed the Board that a letter had been received from Mr. James K. Pharris, Deputy Solicitor General for the Attorney General. Mr. Pharris advised that the Attorney General's office would respond with a formal opinion on the question of which ethics board exercises jurisdiction over the Office of the Code Reviser. That opinion, according to the letter, would most likely be forthcoming in August.

Staff presented examples of informal advice on the question when, if ever, would post office or mailing list company mistakes permit a legislator's newsletter to be re-mailed in an election year without that mailing counting as one of the two newsletter mailings permitted by RCW 42.52.185. On one occasion all of the newsletters in a mailing were sent to the wrong legislative district and another, non-counting mailing was authorized. On another occasion some of the constituents in a legislative district were inadvertently left out of the mailing and an extra mailing was not authorized.

This meeting was the last for retiring member and Chair James A. Andersen. Pursuant to RCW 42.52.310 the citizen members agreed to select a chair and vice-chair from among themselves in the near future.

The Chair called for public comment and there was none. The public meeting was recessed and the Board convened in executive session to discuss preliminary matters related to pending complaints. The Board reconvened in public session, the Chair again called for public comment and there was none. There was no further business and the meeting was adjourned.



James A. Andersen
Chair

Legislative Ethics Board Minutes

July 20, 2006

Members and staff present: Neil Amondson; David R. Draper, vice-Chair; Wayne Ehlers, Chair; Rep. Doug Ericksen; Donna McKereghan; Senator Debbie Regala; Tim Sekerak, House Counsel; Mike O'Connell, Board Counsel.

The May minutes were approved (the Board did not meet in June).

Ms. McKereghan and counsel began the discussion of the latest subcommittee draft of a proposed advisory opinion on the use of public resources to assist constituents. Other subcommittee members as well as Board members not on the subcommittee raised several questions and offered a number of suggestions for changes or clarification. Following a lengthy discussion Counsel was directed to incorporate the agreed upon changes in a revised draft and circulate it to the subcommittee members for review. Following this review the proposal will be provided to all members of the Board for consideration at the August 17 meeting.

In response to an issue raised by a Board member, counsel advised that informal advice has been that legislative staff may respond to an e-mail request for contact information for a legislator's campaign site on the web so long as staff does not engage in any campaigning in the responsive e-mail.

Counsel reported that on July 12, he presented a continuing legal education class to legislative attorneys on the history of legislative ethics. Mr. Draper stated that he had attended and found the presentation informative.

The 2006 annual convention of the Council on Governmental Ethics Laws (COGEL) will be held in New Orleans, December 3-6. Board members were given a packet of information on the conference. Counsel advised he had responded informally that there was no per se prohibition to a legislator's plans to utilize his private business to conduct fundraising, for a fee, for the campaign of a candidate for judicial office and for the campaign in support of an initiative.

Chair Ehlers called for public comment and there was none. The public meeting was recessed and the Board convened in executive session to discuss preliminary matters related to pending complaints. The Board reconvened in public session, the Chair again called for public comment and there was none. There was no further business and the meeting was adjourned at 2:20 pm.


Wayne Ehlers
Chair

Legislative Ethics Board Minutes

August 17, 2006

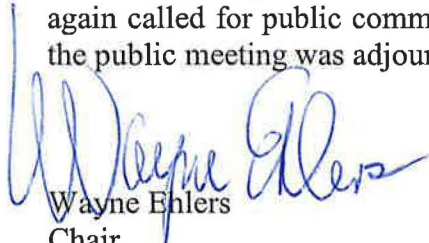
Members and staff present: Neil Amondson; Tony M. Cook; Wayne Ehlers, Chair; Rep. John Lovick; Donna McKereghan; Senator Debbie Regala; Mike O'Connell, Counsel.

The July minutes were approved. Chair Ehlers welcomed Rep. Zack Hudgins who stated he was present to ask questions and offer comments on draft advisory opinion 2006 – No. 1. The Board deferred consideration of the draft until later in the meeting to allow the Representative an opportunity to review it. The Board agreed to meet on September 21 and October 26 at the SeaTac Doubletree and on November 30 in Olympia. Counsel reported on the status of the 2005-2007 budget and informed the Board that House Accounting had been asked to work up some preliminary figures for the 2007-2009 budget for discussion at a future board meeting, most likely the November meeting in Olympia. Counsel reported he would be presenting an ethics refresher class to the LEAP (Legislative Evaluation and Accountability Program) employees on August 31. There are approximately one dozen employees of this small legislative agency which is located off the main campus.

Returning to the subject of the draft advisory, Ms. McKereghan summed up the key points identified by the subcommittee which included the suggestions that (1) legislators may be advocates for constituents when dealing with government offices or government officials and (2) legislators may use public resources to assist constituents in a number of ways (with examples given) when the connection to the legislative process is well established. Rep. Hudgins expressed some concern that the Ethics Act does not seem to offer much guidance to legislators, or to the Board, in defining discretionary or official duties. Both Ms. McKereghan and Chair Ehlers agreed with this observation and noted that the legislature did provide some broad guidelines and the Board tries very hard to work within those. Rep. Hudgins said he was concerned that legislators not be forestalled from being advocates for their constituency and that legislators should be encouraged to take a position on issues. He asked if someone could give him an example of a situation where a constituent has a problem and asks a legislator for help and on one hand a legislator could use public resources to help and on the other hand a legislator could not. His concern, he said, is that legislators not inadvertently make a mistake in this area. Mr. Cook responded that this draft opinion says that a legislator could not use public resources to write a letter to the constituent's neighbor demanding payment to the constituent for alleged property encroachment. However, said Mr. Cook, the legislator could use public resources to supply a copy of the law on boundary disputes, do further research on the particular facts of this dispute, or prepare a bill on boundary disputes or measure of damages. Rep. Lovick agreed and stated to Rep. Hudgins that the Board does not operate on a "gotcha" philosophy and the advisory opinion process is designed to permit a full and public discussion. Rep. Lovick said he felt the question was an excellent one and hoped that the opinion was clear on the points raised by Mr. Cook. Senator Regala said she thought the question and the answer were well stated and the advisory opinion should be very helpful. Following further discussion the draft was

unanimously adopted. Board members expressed appreciation to Rep. Hudgins for his participation and his thoughtful questions.

Chair Ehlers called for public comment and there was none. The public meeting was recessed and the Board convened in executive session to discuss with Mr. Ken Wilson preliminary matters related to his investigations and with Counsel on preliminary matters related to other pending complaints. The Board reconvened in public session. The Chair again called for public comment and there was none. There was no further business and the public meeting was adjourned.



Wayne Ehlers
Chair

Legislative Ethics Board Minutes

September 21, 2006

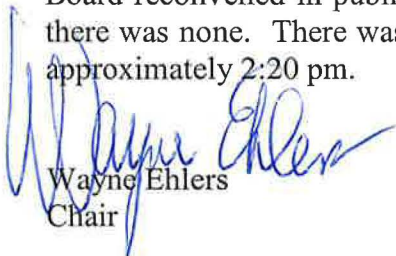
Members and staff present: Tony M. Cook; David R. Draper, vice-Chair; Wayne Ehlers, Chair; Rep. Doug Ericksen; Rep. John Lovick; Donna McKereghan; Mike O'Connell, Counsel.

The August minutes were approved.

Chair Ehlers called for public comment and Ms. Leslie Nelson introduced herself and addressed the Board on issues she had presented to the Executive Ethics Board in the form of a complaint. Following her presentation she was advised to leave with counsel the documents she had brought to the meeting. Counsel will review the documents and provide Ms. Nelson with a complaint form in the event she decides to file a complaint with this Board.

Board members briefly discussed whether it might be helpful to address, perhaps in the nature of an addition to its operating policies, the issue of a board member's singular involvement in the investigative stage of a complaint proceeding. Counsel was advised that the policies of other boards and commissions would most likely be good sources for examples. The discussion will continue at a later meeting but before the 2007 Ethics Manual is printed.

The public meeting was recessed and the Board convened in executive session to discuss with Mr. Ken Wilson and counsel the status of investigations of pending complaints. The Board reconvened in public session and the Chair again called for public comment and there was none. There was no further business and the public meeting was adjourned at approximately 2:20 pm.



Wayne Ehlers
Chair

Legislative Ethics Board Minutes

October 26, 2006

Members and staff present: Neil Amondson; David R. Draper, vice-Chair; Wayne Ehlers, Chair; Rep. Doug Ericksen; Rep. John Lovick; Donna McKereghan; Mike O'Connell, Board Counsel.

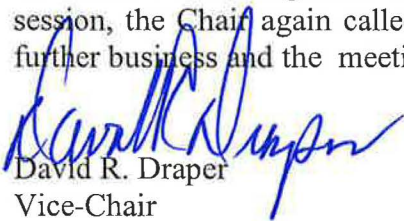
The September minutes were approved.

Counsel reported that House Accounting recommended a small increase in the Board's budget request for 2007-2009, basically a consideration for inflation. The amount of increase requested would be \$3,000 and if approved the Board's budget for each of the fiscal years in the next biennium would be \$188, 406. The Board's budget has increased an average of 3% per year for the past decade and each fiscal year, with the exception of one, the Board has under spent its allotment. Board members authorized counsel to proceed with the request.

Counsel reminded members of the impending deadline for registering for the COGEL conference. Ms. McKereghan indicated an interest in attending and Chair Ehlers requested that any other members who wished to attend should let counsel know right away so arrangements could be made.

One example of informal advice rendered since the last meeting dealt with costs associated with the attendance of a legislator's spouse at a legislative conference. Counsel advised that the spouse's expenses were personal to the legislator pursuant to the facts of the request. The Chair called for public comment and there was none.

The public meeting was recessed. The Board convened in executive session to discuss the status of investigations of pending complaints. The Board reconvened in public session, the Chair again called for public comment and there was none. There was no further business and the meeting was adjourned at approximately 2:45 pm.



David R. Draper
Vice-Chair

Legislative Ethics Board Minutes

November 30, 2006

Members and staff present: Neil Amondson; Tony M. Cook; David R. Draper, vice-Chair; Representative John Lovick; Donna L. McKereghan; Senator Stephen Johnson; Senator Debbie Regala; Mike Hoover and Marty Lovinger, Office of Senate Counsel and Tim Sekerak, Office of House Counsel; Mike O'Connell, Board Counsel.

Mr. Draper chaired the meeting. The October minutes were approved.

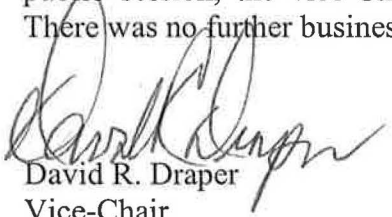
The Board discussed its complaint investigative process and how that process compared with the investigative procedures followed by similar quasi-judicial entities; the Executive Ethics Board, the Public Disclosure Commission and the Commission on Judicial Conduct. The Board found that for each entity staff or other designated individuals conducted the investigation into the facts and presented the results of the investigation to the members. The Board agreed that it was important that all its members have the same information and that Board members should not conduct independent investigations into the facts of a complaint. However, the Board noted, at times other documents will be attached to a complaint or referenced within the complaint and the question becomes how far a member should go in researching these other documents. A recent complaint identified a legislator's campaign web site and alleged that the site contained legislative news letters and legislative press releases in apparent violation of the Ethics Act. The question was asked: May a Board member access the web site without being criticized for conducting an independent investigation? The Board concluded this would be appropriate. Senator Regala compared the reference to the web site to a piece of paper that was available to all Board members. Moreover, said Mr. Amondson, the documents on the web site are exhibits and could well have been attached to the complaint, as is often the case. No member should be precluded, he said, from reviewing what are in fact exhibits in support of a complaint. The Board did agree that in this example it would not be appropriate for a member to go beyond the web site to access other sites or documents not referenced in the complaint.

Counsel presented a budget update and advised the Board on the status of the 2007 Legislative Ethics Manual which is scheduled to be printed and distributed before the legislative session.

The vice-Chair called for public comment and recognized Ms. Mary Jean Hrbacek. Ms. Hrbacek urged the legislative members of the Board to be pro-active on issues related to charities and not-for-profit organizations in Washington. She expressed her frustration with agencies in her attempts to acquire public records on oversight of charities and stated that in her opinion it did not seem that any state agency had the necessary authority or resources to effectively oversee charities and not-for-profits. She understood that the Board did not possess this authority either but that nevertheless it would hopefully be alert to situations when it could assess, under the Ethics Act, relationships between legislators and not-for-profits when those legislators were employed by the charities or

not-for-profits. Several Board members thanked Ms. Hrbacek for attending the meeting and for sharing her comments.

The vice-Chair recessed the public meeting and the Board convened in executive session to discuss preliminary matters related to pending complaints. The Board reconvened in public session, the vice-Chair again called for public comment and there was none. There was no further business and the meeting was adjourned.

A handwritten signature in black ink, appearing to read "David R. Draper", is written over the typed name and title.

David R. Draper
Vice-Chair