

May 28, 1996

Advisory Opinion 1996 - No. 7

QUESTION

The Board received a letter from Mr. Martin which in pertinent part reads as follows:

. . . [L]egislators have received the following letters:

- (1) from Marcus Gaspard, Executive Director of the Higher Education Coordinating Board, providing a list of the students who have been designated as Washington Scholars and urging legislators to send the students personal letters of congratulations recognizing their civic achievement;
- (2) from the Washington Interscholastic Activities Association, listing the Winter athlete-scholars and suggesting that these students deserve recognition; and
- (3) from Boy Scout troop leaders, notifying the legislators of the names of scouts who have recently been promoted to Eagle Scout.

My questions are these: During the twelve-month period specified in RCW 42.17.132, may a legislator mail congratulatory letters to persons who have accomplished some civic achievement in the absence of either a direct "contact" by such recipient or a contact made by a third-party? Assuming a legislator receives a letter such as one of the three listed above from a third-party (a person other than the civic achievement recipient), may that legislator mail a congratulatory letter during the twelve-month period specified in RCW 42.17.132?

OPINION

Our answer to each question is "no."

In **Advisory Opinion 1995 - No. 17**, we held that the State Ethics Act does not prohibit legislators from sending, at public expense, letters on their official stationery congratulating constituents who have achieved some extraordinary civic distinction. In this opinion request, we are asked to decide whether the mailing restrictions in RCW 42.17.132 apply to such congratulatory letters. We decide that they do.

The mailing restrictions in RCW 42.17.132 were largely enacted by Initiative 134, approved by the voters on November 3, 1992. The restrictions are **not** part of the State Ethics Act, Chapter 42.52 RCW.¹ Nor do the restrictions contain any exception for congratulatory letters. In pertinent part, they read as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

...

The legislator may mail an individual letter to an individual constituent who . . . has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office. . . .

...

During the twelve-month period specified in this law, a legislator may mail a congratulatory letter to a constituent but only if the constituent "has contacted the legislator regarding the subject matter of the letter. . . ." In the question before us the constituents to whom the congratulatory letters would be mailed have not contacted the legislators.

It would be a significant stretch of **Advisory Opinion 1995 - No. 17** to say that the opinion renders the mailing restrictions in RCW 42.17.132, which is not part of the State Ethics Act, inapplicable to congratulatory letters. Also, such an interpretation would conflict with RCW 42.17.132 which, as previously noted, does not contain any exception for congratulatory letters. Finally, it is significant that amendments to RCW 42.17.132 enacted in 1995 do not contain any exception for congratulatory letters.² The Legislature has had ample opportunity to provide for such an exception but has not done so. It is not our role to provide for the exception.

In **Advisory Opinion 1995 - No. 17**, we held that legislative authority, as it has historically evolved through tradition and practice, includes the authority for a legislator to send, at public expense, a congratulatory letter to a constituent who has achieved an extraordinary civic distinction. We stated that:

¹ *We have jurisdiction to interpret RCW 42.17.132 because a 1995 amendment to it provides that a violation of the restrictions constitutes a violation of the State Ethics Act's prohibition, in RCW 42.55.180, against the use of office facilities for campaign purposes.*

² *See: Sec. 5, chapter 397, Laws of 1995.*

Such a [letter] will be viewed by the public as an appropriate recognition for achievement, not as a misuse of public resources. Elected officials have traditionally honored persons who have achieved civic distinctions.

We decide here that legislators would violate RCW 42.17.132 by mailing the congratulatory letters specified in the question before us. Except for the technical requirements of this law, we believe that there would be nothing improper in their mailing these letters. Perhaps, RCW 42.17.132 is too broad. We recommend that the Legislature review this law for the purpose of determining whether letters such as these should continue to fall within the law's reach.

Retired July 2022 - See Advisory Opinion 2021 - No. 1