

LEGISLATIVE ETHICS BOARD MINUTES  
February 9, 2012  
418 Legislative Building – Meeting by Phone

Members and staff present: David R. Draper, Chair; Senator Jim Honeyford; Dr. Kristine F. Hoover; Rep. Jamie Pedersen; Kenny Pittman; Rep. J.T. Wilcox; Mike O'Connell, Board Counsel.

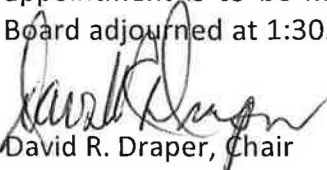
The minutes from the last two meetings in September and October were approved. The citizen members elected Mr. Draper as Chair and Dr. Hoover as vice-Chair for 2012. The draft of the 2012 Ethics Alert was approved as amended and the Board directed that it be printed and distributed. Counsel advised that pending legislation which would amend the Ethics Act in various ways had not passed out of committees by the legislative cut-off date and appeared not to be under further consideration by the Legislature during this session.

The Board proceeded to discuss its budget. The latest figures showed that spending through the first seven months of the current fiscal year was approximately \$6,300 under allotments. The Savings Incentive Account (SIA) had been reduced by slightly over \$13,000 for costs of defending the Arthur West lawsuit. The SIA balance is now approximately \$39,000. The Board approved the publication of the 2012 Legislative Ethics Manual. Counsel was directed to update the manual, after the close of the 2012 legislative session(s), in the usual manner which would include new opinions, any legislative changes to the Act, new Board composition, etc. Any proposed substantive changes will be presented to the Board prior to publication.

Counsel provided two examples of informal advice given since the last meeting. (1) An entertainment group could, subject to the monetary limits of the gift laws, provide complimentary event tickets to legislators. (2) A legislator appointed to a state board as a private citizen and not as a legislator was advised not to use legislative staff or other public resources to prepare and send a letter requesting his reappointment to the board.

Chair Draper called for public comment and there was none. The public meeting was recessed at 12:45 and the Board convened in executive session to discuss quasi-judicial matters related to complaints and prior to determination of reasonable cause. The public meeting was reconvened at 1:10 and the Chair again called for public comment and there was none.

The Board approved a meeting schedule of April 19, June 21, August 16 and October 18. A December date would be set later if a meeting is required. The citizen board members discussed the vacancy created by the resignation of Tony Cook. The Ethics Act provides this appointment is to be made by the citizen members. There was no further business and the Board adjourned at 1:30.

  
David R. Draper, Chair

LEGISLATIVE ETHICS BOARD MINUTES

April 19, 2012

Senate Rules Room – 2<sup>nd</sup> Floor, Legislative Building

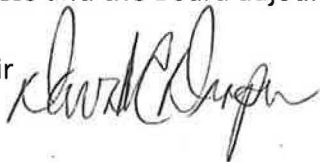
Members and staff present: David R. Draper, Chair; Senator Jim Honeyford (by phone); Dr. Kristine Hoover, Vice-chair (by phone); Stephen L. Johnson; Senator Debbie Regala; Rep. Jamie Pedersen (by phone); Kenny Pittman; Rep. J.T. Wilcox (by phone); Tim Sekerak, House Counsel; Mike O'Connell, Board Counsel.

The minutes of the last meeting (February) were approved. The Board welcomed former Senator Stephen L. Johnson as a new citizen board member. Tim Sekerak provided a handout and discussed informal advice provided to Legislative Assistants during an election year. Counsel provided an update of the Board's budget.

Counsel informed the Board on three examples of informal advice given since the last meeting: (1) Legislators are restricted to two newsletters for approximately 12 months before a general election for a legislator's election to office. Does the two-newsletter restriction always apply so long as the legislator's seat or position is subject to the general election? The statute contemplates that the legislator, not the office, is the trigger for imposing the mailing restriction. Therefore, there may be a circumstance where it is reasonable to assume that the legislator is not a candidate for election and the purpose behind the statute would not be furthered by imposing the mailing limitations. (2) A meeting in a legislative office between a legislator and supporters of a bill with a referendum clause which has passed the Legislature, to discuss strategy in support of the measure, would violate RCW 42.52.180 even if the meeting took place prior to any signature-gathering efforts. Advisory Opinion 1995 – No. 8 concluded that a measure referred to the voters by the legislature, either as a referendum or proposed constitutional amendment, will become a ballot proposition when it passes the legislature. (3) In 2008, the Legislature provided that electronic communication, including newsletters, with constituents who had indicated they would like to be contacted would be permitted throughout the session and up until 30 days after a "legislative session." This amendment created an exception to the election-year, two newsletter restriction. This expanded method of communication is not limited to a regular session so that legislators may, during any session and up to 30 days thereafter, use electronic mail to communicate with constituents who have indicated they would like to be contacted.

The Chair called for public comment and there was none. The public meeting was recessed at 12:40 PM and the Board convened in executive session to discuss quasi-judicial matters related to pending complaints and prior to determination of reasonable cause. The public meeting was reconvened at 1:35 PM. The Chair again called for public comment and there was none. There was no further business and the Board adjourned.

David R. Draper, Chair



## LEGISLATIVE ETHICS BOARD MINUTES

October 18, 2012

Members and staff present: David R. Draper, Chair; Eugene Green; Senator Jim Honeyford; Dr. Kristine F. Hoover, Vice-Chair; Rep. Jamie Pedersen; Kenny Pittman; Senator Debbie Regala; Rep. J.T. Wilcox; Keith Buchholz and Jeannie Gorrell, Senate Counsel; Tim Sekerak, House Counsel; Mike O'Connell, Board Counsel.

Others in attendance: Andrea McNamara Doyle, PDC Executive Director; Lori Anderson, PDC Communications and Training Officer; Barbara Baker, House Chief Clerk; Bernard Dean, House Deputy Chief Clerk; Tom Hoemann, Secretary of the Senate; Bob Ackroyd, Legislative Support Services.

The minutes from the August meeting were approved.

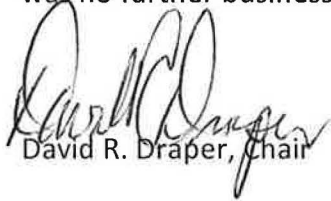
During the August meeting the Board expressed interest in learning more about the issue of reimbursement to legislators for expenses related to their legislative offices. Generally, there are two reimbursement systems. Surplus campaign accounts may be established with PDC and may be used to reimburse for office expenses not paid for by the Legislature. The second system is employed by both the House and Senate and for all practical purposes they mirror each other.

PDC staff began the discussion with a power-point presentation describing the surplus campaign accounts and the laws and rules governing their establishment and use. Many questions followed. The following is part of that discussion. (a) The PDC view of non-reimbursed office-related expenses, which may be paid from a properly established surplus campaign account, are those expenses the Legislature has not paid or is not going to pay; (b) in a particular case a legislator may be advised not to claim a particular expense as office-related but those instances are not common; (c) the PDC does not have a list of expenditures which would or would not qualify for reimbursement from a surplus account; (d) due to lack of resources the PDC does not routinely audit surplus campaign accounts. The accounts become a subject of inquiry when a complaint is filed; (e) with regard to phone purchases and use, it is the view of the PDC staff that non-reimbursed office-related expenses would not include the purchase and use of a campaign cell phone – however, a phone as well as other items may be legally transferred back and forth from a surplus account to a campaign account so its status may change from one time period to another; (f) If the Legislature had a list of items or expenses it considered not to be a proper office-related expense, the PDC could give that list some weight when the question was whether a surplus account could be used for reimbursement. However, the surplus funds statute is very broad and does not contain a definition of office-related expenses. The Board thanked Ms. Doyle and Ms. Anderson for their participation and information.

Counsel reported that on behalf of the Board he had received a citizen's letter asking the Board to be involved in efforts to sue the Attorney General and seek removal of the Attorney General through a legislative trial. Counsel forwarded the letter to the AG and legislative attorneys. Counsel had informally advised legislative staff they could accept a waiver of a \$50 registration fee to attend a healthcare conference on issues related to staff's official duties.

The Chair called for public comment and there was none. The public meeting was recessed at 1:50pm and the Board convened in executive session to discuss quasi-judicial matters related to pending complaints and prior to determination of reasonable cause.

The public meeting reconvened at 2:18pm. No members of the public were present and there was no further business. The Board adjourned.



David R. Draper, Chair

The Board welcomed House and Senate administrators and legislative counsels. Rep. Pedersen began by posing the general question of whether, under the Ethics Act, it was ever permissible to reimburse legislators for legislative use of their personal phones when the phone is also used for campaign purposes. He stated he was particularly concerned about a situation where a legislator might claim all or part of the data plan as a reimbursable item, to be paid for with public funds.

Copies of the House and Senate reimbursement policies were distributed and explained by the administrators and counsels. Mr. Hoemann and Ms. Baker explained the lengthy and complex history involved in switching from a broad, quarterly reimbursement voucher system to a more detailed expense voucher system. The change was a result of IRS accounting requirements. Although the vouchers are more detailed, they explained, the detail varies from member to member. Much depends on the type of phone or data plan a member has, what detail is supplied to them by their provider, etc. Plans differ, and so do the costs and the manner of billing. Several issues related to the difficulty in identifying the exact percentages of legislative and campaign use was discussed. Legislators are encouraged to use their best, reasonable efforts to estimate those percentages. Some times this can be an average over several months, since they do not have to submit their reimbursement requests on a monthly basis. Total reimbursement is capped on a yearly basis and includes much more than cell phone use. Also included are district office expense, mileage, etc.

Senator Honeyford said he appreciated the difficulty in trying to establish error-free, exact numbers but we need to do whatever we reasonably can to keep legislative use and campaign use separate. Chair Draper asked if the legislature bought phones for the members. Not at this time was the response. Mr. Hoemann said the Senate could buy phones he supposed but they would be state property and no mixed use would be permitted. Most members don't want to carry multiple phones, one for legislative use and another for campaign or personal business use, so they buy their own and are eligible to draw on their yearly reimbursement allowance for the legislative use they make of their own device.

Dr. Hoover asked if it would be helpful for the Board to give some ethics advice in this area. Perhaps, she said, based upon a hypothetical and published in an Ethics Alert. The Board discussed this and concluded that it was probably premature to try to do that at this point. Concern was expressed that this was a very complex issue and involved not only difficult accounting issues for the administrators but also somewhat elusive ethics concepts. There were concerns expressed by some members that the Board was just learning about these issues and it needed to proceed with some caution. Also, when the Board issues advice or an alert, it needs to structure that advice so that readers clearly understand the ethics basis for that advice. Rep. Pedersen said he also appreciated the complexities of the issue but the bottom line is that the Board is to enforce the prohibition on the use of public funds to support campaigns and his concern was that public funds reimbursement of a data plan, for instance, used for both legislative and campaign use seemed to conflict with the Board's mandate. The Board agreed to continue the discussion at a later meeting.

Draft LEGISLATIVE ETHICS BOARD MINUTES

December 13, 2012

Senate Rules Room

Members and staff present: David R. Draper, Chair; Eugene Green; Senator Jim Honeyford; Dr. Kristine F. Hoover, Vice-Chair; Stephen Johnson; Rep. Jamie Pedersen; Kenny Pittman; Senator Debbie Regala; Rep. J.T. Wilcox; Mike O'Connell, Board Counsel.

The minutes from the October meeting were approved.

House Bill 1005, which has been pre-filed, would eliminate the Executive and Legislative Ethics Boards and transfer the duties of the two boards to the Public Disclosure Commission. The Board will be kept informed on this bill. The 2013 ethics manuals have been printed and distributed.

While on vacation, Counsel received a phone message from a reporter asking whether a trial lawyer-legislative candidate could serve as a legislator and continue bringing suits against state agencies. Without sufficient facts or resources at his disposal Counsel responded that if this person was elected he could seek advice from the Board on this issue.

Meeting dates for 2013 were set for February 21, April 18, June 20, August 15, October 17 and a December date to be determined.

The Board was informed that seven employment disclosure forms had been received. Six of these were filed by employees of the Joint Legislative Audit and Review Committee. Eric Whitaker, Dana Lynn, Keenan Konopaski, Stephanie Hoffman-Sacks, Tracey Elmore and Mary E. Welsh reported that their spouses or registered domestic partners had an employment relationship with a state agency and all these positions were granted through a competitive process. Rep. Mathew Manweller reported that he was a professor at Central Washington University.

Chair Draper called for public comment and there was none. The public meeting was recessed until 12:45 and the Board convened in executive session to discuss quasi-judicial matters, prior to a determination of reasonable cause, related to Complaint 2012 – No. 4.

The public meeting was reconvened, there was no public comment or other business and the meeting was adjourned. A reception in honor of Senator Regala was held after the meeting.

Dr. Kristine F. Hoover, Vice-Chair