

LEGISLATIVE ETHICS BOARD MINUTES

February 10, 2015

Members and staff present: Gary Bashor; Eugene Green; Rep. Drew Hansen; Senator Jim Honeyford; Dr. Kristine F. Hoover, Chair; Stephen L. Johnson; Senator Jamie Pedersen; Kenny Pittman, Vice-Chair; Rep. Brandon Vick; Keith Buchholz, Senate Counsel; Andrew Logerwell, House Counsel; Mike O'Connell, Board Counsel.

The December minutes were approved. Counsel introduced the first agenda topic, a request for guidance from Pierce County, whether the County could invite legislators to a portion of one day of the U.S. Open in June, 2015. Admission would be complimentary and would include light, self-serve refreshments. Mr. Al Rose and Ms. Jennifer Joly were present from the County and responded to a number of questions from the Board. In addition, Mr. Rose presented the Board with a multi-page document which described the proposal in detail, including an agenda of activities for legislators on the day of their attendance. The proposed agenda includes briefings on transportation and security issues, waste water treatment plant expansion and modernization at the site, beach access to the site and plans for an ADA accessible pier, and the economic impact of the U.S. Open.

At the end of the discussion, Senator Pedersen moved that under these facts the Board would approve the complimentary admission and that a formal advisory opinion would follow. The motion passed. There was further discussion about whether informal advice on the subject would have focused on a presumption in the Ethics Act which could apply to certain community events, or an exemption in the Act which could apply if legislators are making an appearance in an official capacity? Counsel responded that in this case the advice would be that the exemption applied, given the nature of the agenda provided by the County. Senator Pedersen stated that he felt it would be worthwhile for the Board to have a future discussion about both the gift exemptions and presumptions as they might apply to admission to events, and meals which could be a part of an event. Other board members supported this proposal.

The next agenda item was a proposal by Senator Honeyford that the Board address three questions relative to the new rule on meals. The Senator asked if the limits on complimentary meals applied, or should apply: to potlucks attended by legislators and a close, personal friend who is a lobbyist; to meals provided at events to which the entire Legislature is invited; and to events hosted by units of local government. Discussion followed. Rep. Hansen stated that it may be too soon to start amending the rule, especially since the Legislature could address meals issues in the present session. Rep. Vick said that it was his impression that legislators are trying to comply with the rule but that ambiguity does exist. He said he agreed with Senator Honeyford that if the whole Legislature was invited to an event where a meal was provided that it didn't seem that was the type of event which gave rise to the rule which limits meals. Senator Pedersen noted that the gift exemption which permits the receipt of complimentary meals is a type of safe harbor. In other words, you are entitled to the meal if all the conditions are met, and the Board should be careful when it starts discussing exemptions to this safe harbor statute. Senator

Honeyford said there should be some consideration for local government officials who come to Olympia and want to discuss legislative business with their legislator. After all, it is their job and the job of the legislator to have those conversations and everyone is carrying out their responsibilities when they meet. He also pointed out that in many instances the dinner hour may be the only opportunity to do this.

Mr. Johnson agreed that further clarification was needed. Rep. Hansen asked what would be the process if the Board should decide to address changes to the rule. Counsel responded that the examples provided in the rule came from board opinions so a future advisory opinion would be an appropriate vehicle. Rep. Hansen stated that he thought that would be way to address any future advice the Board may have. Mr. Johnson moved that the Board defer action on Senator Honeyford's questions until more information is available and the Legislature and the Board have more experience with how the rule is working. The motion passed.

Counsel sought clarification from the members on their expectations on how the meals issues might be addressed in future meetings. Senator Pedersen said that it was his observation that the meals rule could be part of a larger discussion on other gift exemptions for meals and that he would look forward to that discussion. Rep. Hansen expressed his view that the Board did not require a formal presentation on these issues at a future meeting. He said it was his opinion that Counsel could work with the in-house counsels in three areas: what are the questions members and lobbyists are asking; where are the roadblocks to making the rule work in a sensible way; and what are people saying about what is working and what is not. If the Board, he said, felt some changes were needed it could invite public comment. Other members expressed support for that approach.

The Chair called for public comment and there was none. The public meeting was recessed and the Board convened in executive session for a preliminary discussion on a pending complaint and prior to a determination of reasonable cause. The public meeting was reconvened at 2:00 PM. No members of the public were present. There was no new or unfinished business and the Board adjourned at 2:20.


Kristine F. Hoover, Chair

LEGISLATIVE ETHICS BOARD MINUTES

April 21, 2015

Members and staff present: Gary Bashor; Eugene Green; Rep. Drew Hansen; Senator Jim Honeyford; Stephen L. Johnson; Senator Jamie Pedersen; Kenny Pittman, Vice-Chair; Rep. Brandon Vick; Andrew Logerwell, House Counsel; Mike O'Connell, Board Counsel.

Mr. Pittman presided.

The minutes of the February meeting were approved.

The first order of business was the discussion of a draft advisory opinion on the subject of complimentary tickets for legislators to attend a day at the U.S. Open in Pierce County. In February the Board had orally approved the receipt of these tickets under the facts presented by Pierce County. Counsel explained that the issue before the Board was the adoption of a formal advisory opinion on the subject. Senator Pedersen brought up the topic of a bill which had passed the Legislature and was before the Governor. This bill, said the Senator, seemed to broaden the definition of the official duties of elected officials and he requested a discussion of whether this might affect the proposed advisory. Discussion followed. Mr. Johnson moved that the Board adopt the advisory as written and Mr. Green seconded. The motion passed with Senator Honeyford voting nay.

The Vice-Chair called for public comment and there was none.

The public meeting was recessed and the Board convened in executive session for a preliminary discussion on a pending complaint and prior to a determination of reasonable cause. The public meeting was reconvened at 2:20 PM.

There was some discussion about changing the August 18, meeting date. That discussion will continue at the June meeting. There was no further business and the Board adjourned at 2:30 PM.



Kenny Pittman, Vice-Chair

LEGISLATIVE ETHICS BOARD MINUTES

June 16, 2015

Members and staff present: Gary Bashor; Eugene Green; Rep. Drew Hansen (by phone); Senator Jim Honeyford; Dr. Kristine F. Hoover, Chair; Stephen L. Johnson; Senator Jamie Pedersen; Kenny Pittman, Vice-Chair; Rep. Brandon Vick; Jeannie Gorrell and Keith Buchholz, Senate Counsel; Andrew Logerwell, House Counsel; Mike O'Connell, Board Counsel.

The April minutes were approved.

The Chair called upon Rep. Graham Hunt. Rep. Hunt submitted a request for an advisory opinion on his proposal to provide an additional connection to legislative information. Andrew Logerwell provided a visual display of the proposal during the Representative's remarks. The status of links to legislative is three-fold: Campaign websites may link to legislative websites and there is no limit to the number of links; legislative websites may not link to campaign websites; and legislative materials may not be posted on campaign sites. Board opinions reflect caution in this area because of the prohibition on the use of public resources to assist a campaign (RCW 42.52.180). Rep. Hunt explained that visitors to his legislative site may currently choose to select a hyperlink which would provide notice to the visitor of new content and that notice would appear on the site used by the visitor as the functional equivalent of an email inbox. His question for the Board is whether his campaign site could contain this hyperlink (referred to as an RSS feed) to legislative documents without violating the prohibition against the use of legislative materials to assist a campaign. The Board posed several questions and in response, Rep. Hunt stated: (1) the feed does not move legislative materials to the campaign site, it only allows the link to documents which are on the legislative site; (2) these documents could be any documents which have been approved to be on a legislative site, including news articles; (3) currently, any one visiting a legislative site can subscribe to the RSS link, his question is whether his campaign site can subscribe; (4) when a user clicks on the hyperlink, which contains a short description of the document and the date it was posted, the user is taken to the document and the site is identified as a legislative site, not the campaign site. Counsel was directed to draft an advisory opinion for consideration at the August meeting.

The next agenda item was a presentation by the Senate Counsels on the Senate's proposed changes to its social media policy. Jeannie Gorrell provided a handout and explained that the Ethics Act provides that such policies be reviewed by the Board in circumstances where the enforcement or interpretation of the Ethics Act may be involved. The changes would take effect on July 1, unless the Board raised concerns. The new policy will allow each caucus and each member to create and maintain an official Facebook page and YouTube account. Each caucus may also maintain an official Twitter account but there would be no Twitter accounts for individual members. Ms. Gorrell explained that it is not the intent of the new policy to redefine appropriate content. There must be a legislative purpose, no campaigning would be allowed, and the Senate would enforce its policy against impugning members. Further, employees may not comment on the caucus pages due to Senate concerns about the prohibition of lobbying by

staff. Several questions followed. Keith Buchholz explained that Twitter can be “blog-like” and staff can get involved in “back-and-forth” conversations which may not be viewed as consistent with the ban on lobbying. As a result, the Senate requires attribution to a member for Twitter remarks. We ask, he said, that staff provide the member’s name who made the remark or who authorized the remark. Mr. Buchholz stated that the policy would be reviewed in about a year. Mr. Green asked if the Board would be advised if there were any changes following the review and Ms. Gorrell responded that the Board would be advised if any significant changes were proposed. Senator Pedersen asked how the new policy would be enforced. Mr. Buchholz replied that it would be enforced internally and if there were issues which involved the Ethics Act they would come under the Board’s jurisdiction. Mr. Johnson asked whether the proposed policy directly affected the ethics rules, and the response was that it was not intended to affect the ethics rules but that the Senate wanted to be assured the Board was comfortable with the policy. The Board, not expressing any material reservations at this time, thanked the presenters for the information.

The next item was a report from the sub-committee on travel. House Counsel, Andrew Logerwell, reminded the Board that “travel” is not defined in the Ethics Act and a specific issue before the sub-committee is how to identify what travel must be reported to the Public Disclosure Commission (PDC). Legislators and ethics advisors often struggle with, for example, the scenario when a legislator is approved for a tour which by statute includes travel, but there is a portion of the tour which involves getting to the place it starts. Valuation is also an issue. Must a legislator account for his or her pro-rata share of the cost of a helicopter ride used in a tour or to get to the tour? Mr. Pittman, chair of the sub-committee, explained that the PDC had expressed some concerns about a definition of travel for legislators which might be inconsistent with the definition of travel for the executive branch and inconsistent with present requirements for lobbyist reporting of travel. Mr. Pittman said he planned on further communication with the PDC and further information for the Board in August.

Chair Hoover called for public comment and there was none. At 12:52 PM the Board recessed the public meeting and convened in executive session for a discussion on a pending complaint prior to a determination of reasonable cause. The public meeting was reconvened at 2:00 PM. There was no further business and the meeting was adjourned.


Kenny Pittman, Vice-Chair

LEGISLATIVE ETHICS BOARD MINUTES

August 18, 2015

Members and staff present: Gary Bashor; Eugene Green; Senator Jim Honeyford; Stephen L. Johnson; Senator Jamie Pedersen; Kenny Pittman, Vice-Chair; Rep. Brandon Vick; Jeannie Gorrell and Keith Buchholz, Senate Counsel; Andrew Logerwell, House Counsel; Mike O'Connell, Board Counsel.

The meeting was chaired by Mr. Pittman. The June minutes were approved. The first order of business was the request for an advisory opinion from Rep. Graham Hunt. The request was discussed at length during the June meeting, at which time the Representative and House Counsel presented the Board with information on the technology involved if, as requested, the Board approved a link described as an RSS feed from campaign sites to legislative materials. Following the June meeting Counsel was directed to prepare a draft advisory which presented options for the Board's discussion. After discussion of the draft, Senator Pedersen moved and Mr. Green seconded, that the option which permitted the link be adopted as the opinion of the Board. The motion carried with Senator Honeyford voting no. Supporters of the motion pointed to the strong policy in Washington in support of the availability of public records. Senator Honeyford expressed his concern that approval of the request would result in campaign use of public resources.

Counsel provided three examples of informal advice given since the last meeting. (1) A legislative agency may offer employment to an individual who has a consulting contract with a non-legislative state agency. Given the nature of the contract, and the duties involved, the legislative agency was advised there did not seem to be confidentiality, use of resources, or lobbying concerns and that the potential hire was not a "state employee" presently, for purposes of filing an employment disclosure form. (2) Several out-of-state entities contacted the Board with questions about gifts and meals provided by their clients to Washington legislators who would attend the NCSL annual conference in Seattle. Reporting questions were forwarded to the PDC and Counsel advised on the meals which could be accepted by legislators who would be making an appearance in an official capacity. (3) After review of a travel agenda and written communication from a legislator, the legislator was advised he could accept travel expenses for a trip to Israel. The facts supported an informal determination that the agenda established a reasonably objective nexus with the legislator's duties so that the trip would constitute an appearance in an official capacity and travel and subsistence expenses would be exempt from gift restrictions pursuant to RCW 42.52.010(9)(d).

Mr. Pittman announced that the subcommittee on travel had met this morning prior to the regular meeting and several questions remain about whether the Board should issue an advisory on the issue of defining travel, which in turn could affect the reporting required of legislators to the PDC. Mr. Pittman advised that further discussions were needed and House Counsel would check with members of the House on the issues involved. More information will be provided at the next meeting.

Mr. Pittman called for public comment and Denny Eliason, a registered lobbyist, came forward to request the Board consider amendments to the meals rule. He stated he represents the Bankers Association and the Restaurant Association and it has been his client's practice to meet with legislators on a regional basis to discuss legislative issues. He said it works best for everyone to do this over lunch, and that his clients provide legislators with the complimentary lunch. If this is counted, he said, as one of the twelve (12) meals permitted by the rule, attendance may suffer. He stated his clients hold these lunches about seven times per year, each time inviting different legislators.

Senator Pedersen stated that the request illustrates a misunderstanding among our colleagues. We have an ethics statute which outlaws gifts, and then creates some exceptions. If this Board defines you out of the "rule of 12," then we have to figure out if another exemption applies. My initial response, said the Senator, is that your problem is with the Legislature not the Board.

Mr. Eliason said he understood but perhaps the Board could clarify that what he described is not, or should not be, one of the 12 meals. The Senator responded by saying that if your clients don't fit under 150(5), the business meal exception, then there has to be a different exemption.

Representative Vick said he would like the Board to work on this and that he was willing to have further discussion. Senator Honeyford reminded the Board that he had proposed amendments to the meals rule and those should be revisited. His proposals would have provided some relief from the rule for local governments, receptions or dinners where all members of the Legislature are invited, and casual potluck affairs when legislators and lobbyist-friends share food. Mr. Eliason suggested the Board look for flexibility on the meals issues by also considering out-of-Olympia meals provided at regional events for a bi-partisan group of legislators.

Mr. Johnson said that he believed the Board started the discussion on meals with examples on one-on-one involvement between legislators and lobbyists. Perhaps, he said, we should acknowledge that at this time.

Senator Pedersen noted that exemptions for food were limited. There are two, he said that may apply to the concerns expressed here today. Those are (1) hosted receptions, found in .150(2)(f), and events sponsored by or in conjunction with certain entities, found in .150(2)(j). Judge Bashor said he saw a fundamental difference between being served at a sit-down dinner with lobbyists and getting your food by visiting a buffet line at an event where many were invited. Mr. Green asked if the Board should consider a subcommittee which included legislators to consider amendments to the rule or further examples of what counts as one of the 12. After discussion the Board expressed a preference for having all members involved in further deliberation.

If, under the current rule and the examples provided by the Board, a complimentary lunch as described by Mr. Eliason is viewed as one of the 12 annual business meals, the question, said Senator Pedersen, is whether associations such as the Bankers and Restaurant owners could fit under the 150(2)(j) exemption. Could we he asked, consider a definition of meals which accompany events which have broad invitations to fall within that exemption. He suggested the

Board look at options, prepared by Counsel for discussion at the next meeting. Senator Honeyford suggested the Board look at situations where all legislators are invited and find that complimentary meals at such events are exempt. He cited annual 4-H and Farm Bureau dinners as examples. Mr. Johnson agreed that the approaches put forward by the Senators are good starting points and the Board can discuss and test such an analysis.

The public meeting was recessed at 12:50 and the Board convened in executive session for consideration of a pending complaint prior to a determination of reasonable cause. The public meeting was reconvened at 1:10. There was no further business and the meeting was adjourned.


Kenny Pittman, Vice-Chair

LEGISLATIVE ETHICS BOARD MINUTES

December 3, 2015

Members and staff present: Gary Bashor (by phone); Eugene Green; Representative Drew Hansen (by phone); Stephen L. Johnson; Senator Jamie Pedersen; Kenny Pittman, Vice-Chair; Debbie Regala; Representative Brandon Vick; Jeannie Gorrell and Keith Buchholz, Senate attorneys; Mike Hoover and Cathy Maynard, House attorneys; Mike O'Connell, Board Counsel.

The meeting was chaired by Mr. Pittman, who welcomed new Board member Debbie Regala. The August minutes were approved. The citizen Board members elected Mr. Pittman as Chair and Mr. Johnson as Vice-Chair for 2016.

Counsel provided four examples of informal advice given since the last meeting. (1) Legislative meeting notices are generally not subject to election year mailing restrictions; (2) Legislators may accept reasonable expenses, including meals, while on a legislative related tour of the Cherry Point Industrial Area; (3) A complimentary meal provided to legislators by the King County Council, during a public meeting called for the purpose of discussing issues related to the 2016 legislative session, may be accepted (both (2) and (3) relied upon the gift exemption for meals during an appearance in an official capacity – RCW 42.52.010(9)(d)); (4) The \$50 gift exemption is not applicable to honoraria offered to a legislator by a lobbyist-employer for making a presentation on legislative issues because honoraria is not allowed, in any amount, pursuant to RCW 42.52.130, when the person offering the honorarium is reasonably likely to seek or oppose legislation.

An extensive discussion followed on the subject of meals. Several points of view were offered and one point of consensus was that when complimentary meals are provided to legislators, it makes a difference if the invitation was broad-based. Also, legislators make many appearances in an official capacity and some flexibility is needed in the interpretation of the Act and Rule 5 when complimentary meals are provided on these occasions. Representative Hansen and others pointed out that legislators are often invited to attend legislative-related breakfasts, lunches and dinners on occasions sponsored by government entities. Legislators are present, he said, in an official capacity and those occasions may be distinguished from other meal situations. After discussion, Representative Hansen moved that these occasions with government entities, when the invitee list is composed of a broad-based group of legislators, constitute an appearance in an official capacity and complimentary meals are permitted pursuant to the gift exemption found in RCW 42.52.010(9)(d). The motion was seconded and passed.

The next issue was a discussion of which entities might be “presumed” to provide complimentary food and beverage pursuant to RCW 42.52.150(j). That presumption applies to events “sponsored by or conjunction with a civic, charitable, governmental, or community organization.” Counsel noted that this presumption does not require a determination that legislators in attendance be involved in the performance of official duties. The issue was raised at the August meeting by Mr. Denny Eliason, who represents certain associations who have historically met with legislators to discuss legislative issues. At that meeting there was a discussion about

whether those associations might fall under the presumption in .150(j). Senator Pedersen, and others, stated that they did not see how these associations could be characterized as civic, charitable, governmental or community organizations. Senator Pedersen said he felt these business associations might fall under the exemption for an appearance in an official capacity if they invited a broad-based group of legislators. Ms. Regala agreed, stating that it was her view that the meals issue came to the Board as a result of a few legislators who were dining out too much on a one-on-one, or similar basis, with lobbyists. After discussion, it was moved, seconded and passed that business associations as described by Mr. Eliason are not "organizations" within the meaning of the presumption, but that if their list of invitees was broad-based the gift of meals exemption applicable to legislators who make an appearance in an official capacity to discuss legislative business applies.

After further discussion, Representative Hansen suggested that the Ethics Act does not require amendments because of the decisions reached today because it already contains exemptions and presumptions. The Board is interpreting those exemptions and presumptions, which it is charged to do. In summation, he said, an occasion may be a legislative reception where all the legislators or all the members of a house are invited, which is presumably exempted; or it may be appearance in an official capacity which is the result of a broad-based invitation; or it may be some type of special event which in some cases creates a presumption a meal may be accepted if the host fits the definition of "organization." Comments from other members of the Board were in agreement with that description of the Board's actions. Counsel was directed to draft additional examples for Rule 5 to reflect the Board's decisions and which will be discussed at the next meeting. Representative Vick requested some type of a flow chart on the meals questions for the next meeting. A proposed discussion on the question of potlucks which involve legislators and lobbyists was deferred until the next meeting to afford Senator Honeyford an opportunity to participate.

Chair Pittman called for public comment and recognized Mr. Eliason, who supported the Board's decision to define "an appearance in an official capacity." He explained that the associations he had referred to meet with legislators, on a regional basis over lunch, and in his view those meetings are part of a legislator's official duties. It is more efficient to meet at noon when people can attend but now attendance is down and it may be, he said, because of uncertainty about whether lunch would count as one of the 12 business meals.

The public meeting was recessed at 1:35 and the Board convened in executive session to discuss a pending complaint prior to a determination of reasonable cause. The public meeting was reconvened at 1:50. The public was invited back into the meeting room. The Chair again called for public comment and there was none. The Board agreed to meet on February 16, and to set the rest of the 2016 meeting schedule at that meeting. There was no further business and the Board adjourned.


Kenny Pittman, Chair