

IN RE JOHNSON

COMPLAINT 1996 - NO. 1

REASONABLE CAUSE DETERMINATION - FINDING OF VIOLATION- DISPOSITION ORDER

I. Nature of the Complaint

The Complaint alleges that House of Representatives employee Jill Johnson violated provisions of the State Ethics Act (Act). The allegations are based on the following stated or implied facts: that Jill Johnson, while employed as an administrative assistant with the House of Representatives, did use her legislative computer to create documents related to campaign strategy and that such documents served no legitimate legislative purpose. The Complaint alleges that Johnson violated one or more of the following provisions of the Act: RCW 42.52.050; RCW 42.52.070; RCW 42.52.160; and RCW 42.52.180.

II. Procedural History

Complaint 1996 - No. 1 was issued by the Legislative Ethics Board (Board) on March 12, 1996, pursuant to the provisions of RCW 42.52.320(2)(d) which authorizes the Board to investigate and determine complaints on its own motion. The Board considered the matter on February 21, March 15, and April 18, 1996. An investigation was conducted pursuant to RCW RCW 42.52.420. Ms. Johnson proposed to enter a Stipulation before the Board pursuant to Board Rule 1(8), which states:

Any matter before the board may be disposed of by a stipulation at any stage of the proceeding. The respondent shall sign the stipulation before presentation to the board. If the stipulation is rejected by the board, the stipulation shall be withdrawn and cannot be used by or against the respondent in any proceeding.

Based on its investigation of the facts alleged in the complaint, the Board accepted the respondent's Stipulation on April 18, 1996, in which she acknowledged the jurisdiction of the Board in this case and admitted she had used her legislative computer to create campaign-related documents and that such use was for a private purpose.

III. Determinations of Allegations of Fact

Based upon its investigation of the Complaint, and the Stipulation of the respondent, the Board has made the following determinations:

(1) Ms. Johnson, while a legislative employee, did type on a House of Representatives' computer the campaign documents that are the subject of this complaint.

(2) These documents were not mailed or otherwise delivered to another person.

(3) Ms. Johnson did not intend that any campaign use be made of these materials but did intend that they would be helpful to her in her search for different employment.

(4) Ms. Johnson is no longer employed by the House of Representatives.

(5) Ms. Johnson did not have the benefit of formal ethics training until after she created the documents.

IV. Determinations of Ethics Law Violations

(1) *RCW 42.52.050* provides, in pertinent part:

(2) No state officer or state employee may disclose confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

We do not have reasonable cause to believe that this section has been violated. Our investigation, and the Stipulation, establish that Ms. Johnson did not deliver the documents on campaign strategy nor any of the materials referenced therein. The question, therefore, of whether confidential information was involved in this case is not reached by the Board.

(2) *RCW 42.52.070* provides that:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

We do not have reasonable cause to believe this section has been violated. In **Advisory Opinion 1995 - No. 7**, and **Advisory Opinion 1995 - No. 17**, we determined that this section would be violated if a legislator wrote a letter offering legislative assistance to the attorneys in his firm which would allow his law firm to portray that it had a special privilege because of special access to the legislature (1995 - No. 7), and if a legislator used his position to solicit lobbyists for money for travel to a conference (1995 - No. 17). This section is not applicable to this case because there has been no communication, request, demand, or acceptance of special treatment.

(3) *RCW 42.52.160* provides, in pertinent part:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

We find that this section has been violated by Jill Johnson. Our investigation and her Stipulation have established that she did use a legislative computer to create campaign strategy materials as part of her efforts to obtain new employment in the private sector. We interpret this law as prohibiting any private use of a legislative computer to create documents that would appear to establish a violation of the State Ethics Act's prohibition (*RCW 42.52.180*) against the use of office facilities for the purpose of assisting an election campaign.

For purposes of *RCW 42.52.160* it is not relevant that Ms. Johnson believed she could engage in this activity without violating the Act. We decide here that her private use of the office computer to prepare materials of this nature is a violation of *RCW 42.52.160*, regardless of her purpose. The Board finds that a "zero-tolerance" policy is appropriate for this type of personal use, even if there has been no actual assistance to a campaign.

(4) *RCW 42.52.180* provides, in pertinent part:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion or opposition to a ballot proposition . . . Facilities of an agency 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.

Pursuant to our investigation and the Stipulation of the respondent we do not have reasonable cause to believe that this section has been violated. We have held that it is a violation of *RCW 42.52.160* for a legislative employee to make private use of a legislative computer when the employee makes use of the computer to create campaign-related documents. *RCW 42.52.180* would be our next area of inquiry had Ms. Johnson assisted a campaign, but there are no facts to support a finding of such assistance.

V. Conclusion and Order

The Board determines that Jill Johnson violated *RCW 42.52.160* by engaging in impermissible personal use of public facilities.

The Board imposes no penalty in this case. Factors involved in our deciding against imposition of a penalty include; (1) Although these documents discussed campaigns, they were not constructed for a campaign purpose; (2) Ms. Johnson never mailed or delivered the documents to anyone; (3) Ms. Johnson is no longer employed by the House of Representatives so a

reprimand placed in her personnel file would be of little or no significance; and (4) Ms. Johnson did not have the benefit of formal ethics training until after she created the documents.

Theлма Jackson, Chair