March 18, 1999

IN RE MIELKE
IN RE PENNINGTON

COMPLAINTS 1999- NO. 1 and 1999-NO. 2

REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL

I. Nature of the Complaint and Procedural History

The Complainant alleges that Representative Tom Mielke and Representative John Pennington (Respondents) violated RCW 42.52.070 and RCW 42.52.140 of the State Ethics Act (Act). The complaints are identical therefore this reasonable cause analysis will address both complaints. The Complainant alleges the Respondents accepted campaign contributions from members of the Woodland Community Swimming Pool Committee (Committee), more specifically the chairperson of the Committee, "to push an agenda." It is further alleged that the Respondents then intimidated state employees who were involved in making certain decisions relative to the swimming pool project and, further, that the Respondents failed to respond to the Complainant's request to discuss the pool issue with him. It is noted that the Complainant did not include a charge of intimidation in the complaints but did append a letter to each complaint in which he alleges the Respondents were "intimidating state employees in violation of either RCW 42.52.070 or 42.52.140."

The complaints were received on January 3, 1999. The Board considered the complaints on January 14, and February 11, 1999. The Board concluded it had both personal and subject matter jurisdiction and an investigation was ordered pursuant to RCW 42.52.420.

II. Determination of Allegations of Fact

Based upon the investigation of the two complaints, the Board has made the following determinations of fact:

1. There is reasonable cause to believe to believe that the Respondents received, and properly reported, permissible campaign contributions from the person identified as the chairperson of the Committee.

2. There is no reasonable cause to believe that the Respondents did anything for the Committee other than to facilitate two meetings with state employees who had knowledge of ownership and jurisdictional issues surrounding the proposed site for a community swimming pool. Moreover, none of the state employee participants in these meetings support the contention that the meetings were anything more than exchanges of information and discussions of what processes, if any, might be available to the city of Woodland to obtain use of the site in question.

3. There is reasonable cause to believe that the Respondents did not return the Complainants calls or other requests for a discussion of the pool issue but there are no sections of the ethics law which require legislators to respond to such requests.

4. There is no reasonable cause to believe that the Respondents intimidated any state employees.

Moreover, none of the participants in these meetings describe them as anything but informative and none of them felt they were asked to do anything inappropriate or that they were threatened. The consensus of those in attendance was that it was not apparent which side of the pool issue the Respondents supported.

III. Determination of Allegations of Ethics Law Violations

The relevant statutes are RCW 42.52.070 and 42.52.140. RCW 42.52.070 provides:

> 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.

This Board has addressed the "special privileges" statute on several occasions. In our first opinion, **Advisory Opinion 1995 - No. 1**, we ruled that certain advisory opinions issued by the former Senate, House, and Joint Boards of Ethics, decided under the former Code of Legislative Ethics, would continue to have precedential value. We determined that former Joint Rule 4, in the old Code, which provided that "A legislator shall not use improper means to influence a state agency, board or commission," was largely encompassed within RCW 42.52.070, and these prior "improper means" decisions will continue to have precedential value. We then listed eight early opinions which provide guidance in interpreting .070. **House Advisory Opinions 1981 - No. 2; 1983 - No. 8; 1985 - No. 1; 1985 - No. 2; 1987 - No. 1; 1988 - No. 1; 1990 No. 1;** and **1990 - No. 3**, all dealt in some fashion with questions involving legislators contracting with state agencies, negotiating contracts for others with state agencies, or representing clients in court or in state administrative hearings. These precedents are illustrative of the types of activities which would be analyzed under RCW 42.52.070. In **Advisory Opinion 1995 - No. 7**, we found that .070 would be violated if a legislator-Senator provided his law firm with a memorandum inviting attorneys of the firm to contact him if he could be of help in gaining access to appropriate legislators. The violation would not occur because of an offer to assist people in finding out about the legislative process but rather because the offer enhanced the firm's ability to claim special access. No similar facts are present here. The Board concluded, in **Advisory Opinion 1995 - No. 17**, that this section would be violated if a legislator used his position to solicit lobbyists for money for legislative travel to a conference. These complaints allege no facts involving solicitation of lobbyists. **Advisory Opinion 1996 - No. 5** dealt with the question of an employee making minimal use of state equipment to author a book, for no personal profit, through a contract with a state agency. Again, those facts and the Board's opinion are not applicable to the present complaints. More recently, in **Advisory Opinion 1997 - No. 6**, the Board found that a legislator's acceptance of a club membership not available to the general public would be, under the circumstances presented in that case, a use of position to obtain special privilege. There are no allegations in these complaints that the Respondents are in receipt of any special or extraordinary consideration because of their positions. The Board's latest opinion interpreting .070 is **Advisory Opinion 1998 - No. 5**. In that opinion the Board found that it would be a violation for legislators or staff to solicit contributions for certain legislative events because, among other reasons, such a solicitation creates a clear impression of a relationship with mutual obligations. There are no facts or allegations which suggest that these Respondents solicited any contributions for any thing of value which creates such an impression.

The facts do not support the allegation that the Committee was the unlawful recipient of any special privilege. We find no reasonable cause to believe RCW 42.52.070 has been violated.

The second statute allegedly violated by the Respondents is RCW 42.52.140. This is the so called "quid pro quo" prohibition and it states:

> No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity or favor from a person if it could reasonably be expected that the gift, gratuity, or favor would influence the vote, action, or judgment, or be considered as part of a reward for action or inaction.

The Board finds that the acceptance and reporting of a permissible campaign contribution is not probative of any alleged violation of the Ethics Act. An allegation that an elected official was supporting or "pushing the agenda" of a campaign contributor, even if true, does not in and of itself create reasonable cause to believe this section has been violated and that a public hearing is required. Presumably, if this wasn't the case, the only way a legislator could avoid an accusation that he or she violated this section of the Act would be to oppose the views of their contributors and support those positions held by contributors to their election opponents.

In **Complaint 1995 - No. 4**, we discussed the question of whether a fund-raising letter from a legislator-insurance agent, to other insurance agents, improperly asked for money in exchange for the promise to ". . . continue to represent our interest in Olympia." The complaint alleged that this letter violated .140 (and other sections) because it was a promise to work for certain interests in exchange for a campaign contribution. We dismissed the complaint but noted that even though campaign contributions are not gifts for purposes of analyzing the gift statute (RCW 42.52.150), such contributions still must withstand scrutiny under .140. The "quid pro quo" prohibition of .140 would be applicable to campaign contributions if such contributions were solicited or accepted under circumstances where it could reasonably be expected a vote is being influenced or a reward is being accepted.

We said in that case the whenever the Board is considering allegations that .140 has been violated, we will look for conduct which offers or appears to offer something specific in exchange for something specific. No such conduct exists here and the facts do not support a finding of reasonable cause that .140 has been violated.

IV. Conclusion and Order

Based on a review of the complaints and the Board's investigation, the Board determines there is no reasonable cause to believe that Representative Mielke or Representative Pennington have committed a violation of the State Ethics Act. The complaints are dismissed.

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William Asbury, Chair