

## COMPLAINT 1999 - NO. 4

### Constituent Mailing - Content - Timing

#### REASONABLE CAUSE DETERMINATION – ORDER OF DISMISSAL

#### **I. Nature of the Complaint**

The complaint alleges that Senator Larry Sheahan violated Chapter 42.52 by authorizing the printing and mailing to selected constituents of a post-session document entitled "1999 Government Guide -- Session Wrap Up Column Inside."

#### **II. Procedural History**

Complaint 1999 - No. 4 was received on September 24, 1999. The complaint was transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because it alleges a violation of RCW 42.52.180 by a legislator.

An investigation was conducted pursuant to RCW 42.52.420. The results were submitted to the Board in an investigative report and the Board deliberated on the complaint at a special meeting on October 28, 1999.

#### **III. Determination of Allegations of Fact**

The complaint focuses on a document entitled "1999 Government Guide -- Session Wrap Up Column Inside" which Senator Sheahan mailed to constituents in the 9<sup>th</sup> Legislative District on June 22, 1999. The document was produced and mailed using state staff time, money and resources. It was mailed bulk-rate at state expense to all persons in Senator Sheahan's District who had voted in the last election. A copy of the document is attached to this Determination.

The document has two parts. One is a 1999 Government Guide which lists the names, phone numbers and addresses of the national, state and local government officials that affect persons living in the 9<sup>th</sup> Legislative District. The second is a "Pull-Out Pamphlet" entitled "1999 End of Session Review." The pull-out consists of four pages that discuss Senator Sheahan's views regarding several issues addressed during the 1999 legislative session. The document contains two pictures of Senator Sheahan and is printed in two colors. It also contains two short letters from Senator Sheahan which explain the government guide and the pull-out. The latter letter contains the statement, "Thanks again for electing me to represent you in Olympia." Senator Sheahan was elected, but not as a Senator. He was appointed from his House of Representatives position to fill the vacancy created when the Senator for the 9<sup>th</sup> District resigned. The unexpired term of Senator Sheahan's position is to be filled in the 1999 elections.

#### **IV. Determination of Allegations of Ethics Law Violations**

##### **A. Relevant Statutes**

RCW 42.52.180 prohibits the use of state resources for the purpose of assisting a campaign for election. For purposes of this complaint, the pertinent portion of RCW 42.52.180 provides as follows:

(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 of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. 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.

(2) This section shall not apply to the following activities:

. . .

(c) Activities that are part of the normal and regular conduct of the office or agency; . . .

In addition to the above restrictions as to the use of public facilities for campaign purposes, RCW 42.52.185 places time restrictions on mailings by legislators. A violation of this statute is a violation of RCW 42.52.180. RCW 42.52.185 provides in pertinent part:

(1) During the twelve month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing must be identical as to their content but not as to the constituent name or address. One such mailing may be mailed no later than thirty days after the start of a regular legislative session, . . . . The other mailing may be mailed no later than sixty days after the end of a regular legislative session. . . .

(2) For purposes of subsection (1) of this section, 'legislator' means a legislator who is a 'candidate,' as defined by RCW 42.17.020, for any public office.

(3) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

**B. Analysis**

**1. Mailing Restrictions**

The mailing restrictions found in RCW 42.52.185(1) prohibit a legislator

from mailing at public expense, more than two newsletters, brochures, or other pieces of literature to constituents during the one year period beginning December 1 of a year in which the legislator runs for election, except under the limited circumstances set forth therein. One mailing can be sent within 30 days of the beginning of the regular legislative session and the other can be sent within 60 days of the end of the regular legislative session. The mailer involved in this complaint was sent on June 22, 1999, which is within 60 days of the end of the 1999 Regular Session. There is a reference in the complaint documents to a joint mailing sent by the legislators who represent the 9<sup>th</sup> District to their constituents as being a second post-session newsletter. The joint mailing, however, was sent out on February 8, 1999, which is within 30 days of the beginning of the 1999 Regular Session. The mailings do not violate the restrictions in RCW 42.52.185(1).

## **2. Content of Document**

The complaint also alleges that the pull-out section of the document constitutes partisan campaigning. The complainant questions the use of taxpayer funds to pay for such a document to be produced and mailed. The complainant also objects to the way the document looks, contending that it is similar to campaign documents. The investigation has disclosed that the contents of the document, including the colors and use of pictures, are consistent with Senate Policies and Procedures for such documents. Further, this Board has determined in prior decisions regarding legislative newsletters that it is generally acceptable for legislators to express their positions on legislative issues dealt with during the session. Constituents are entitled to know how they are being represented in the legislature. See, for example, the Determination in Complaint, 1996, No. 3. The complainant also objects to the failure of the document to disclose that Senator Sheahan had been appointed to the Senate rather than having been elected to it. The letter accompanying the pull-out ends with the statement, "Thanks again for electing me to represent you in Olympia." While it is argued that this statement could be interpreted to imply that he was elected as a Senator, it is nevertheless a true statement. He was elected by the people of the 9<sup>th</sup> District to the House of Representatives. The first mailing sent out by Senator Sheahan does specifically point out that he was appointed to the Senate to replace Senator Prince who had resigned. We do not condone potentially misleading statements, but in the context of this complaint we do not find a violation. In summary, the contents of this "Pull-Out" do not violate RCW 42.52.180.

## **3. Sending the Mailer to Less than All Residents of the 9<sup>th</sup> District**

The complaint alleges that the document in question was not sent to all residents of the 9<sup>th</sup> District and that such a practice violates the law. The investigation revealed that the mailing was limited to all persons in the 9<sup>th</sup> Legislative District who had voted in the last election rather than sending it to all residents in the district. This practice is permitted by the Senate Policies, and is regarded as a way to reduce the cost of mailings by sending them only to the persons who have expressed an interest in legislative issues through their decision to vote. We find no violation of RCW 42.52.180 as

a result of the selection criteria used to limit the list of persons to whom this particular mailing was sent.

**V. Conclusion and Order**

Based on a review of the complaint and the Board's investigation, the Board determines that there is not reasonable cause to believe that Senator Sheahan committed a violation of RCW 42.52.180 or RCW 42.52.185. The complaint is, therefore, dismissed.

**Done This 28<sup>th</sup> Day of October, 1999**

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William Asbury, Chair