

COMPLAINT 2001 - No. 5
Joe Marine, Respondent

REASONABLE CAUSE DETERMINATION AND ORDER

June 6, 2002

I. Nature of the Complaint

The complaint makes four allegations against former Representative Joe Marine, related to a letter and response card that he mailed to voters in his district.

The first allegation is that former Representative Marine violated RCW 42.52.180* by using public resources in his election campaign, specifically response cards printed at state expense that contained the address and telephone number of his legislative office.

The second allegation is that the mailing did not contain disclosures required by RCW 42.17.510.

The third allegation is that the mailing violates RCW 43.04.050 because it uses the Washington State seal in a political campaign.

The fourth and final allegation is that, if the mailing was not a campaign mailing, then the mailing violated RCW 42.52.185's restrictions on mailings by legislators at state expense during the 12-month period before an election.

II. Procedural History

The complaint was received on October 24, 2001. The complaint was transmitted to the Office of the Attorney General for investigation pursuant to RCW 42.52.450, because it alleged a violation of RCW 42.52.180 by a legislator. An investigation was conducted pursuant to RCW 42.52.420 and the results of the investigation were submitted to the Board in an investigation report which was considered by the Board on March 21, and April 25, 2002.

*The complaint alleges RCW 42.17.130, but it is RCW 42.52.180 that applies to legislators.

III. Determination of Allegations of Fact

The investigation disclosed that the mailing that is the focus of the Complaint was made by the Committee to Elect Joe Marine (campaign committee).

The mailing had two parts, a letter and a response card. The letter was written by campaign committee staff. The campaign committee sent the letter to a voter if the voter was not at home at the time Mr. Marine door belled, on behalf of his campaign, at the voter's home. Printing and mailing costs for the letter were paid by the campaign. This letter contained the campaign committee's address and telephone number. However, the letter encouraged the recipient to send a response card to Mr. Marine's Olympia legislative office. The letter stated in part:

I want to give you a chance to share with me your concerns and opinions regarding the issues facing our State. Please complete the enclosed comment card and return it to my office in Olympia so that I can accurately represent the people who live in our district

. . .

Mr. Marine had response cards printed using his legislative budget in February or March, 2001. The State Department of Printing printed five thousand response cards, at a cost of \$380.64. Mr. Marine stated that he used these response cards when he door belled in his district when he went home from the legislative session on weekends. The cards were preprinted with Mr. Marine's Olympia legislative office address, the Legislature's toll-free hotline telephone number, and the state seal. The response cards invited a person to write down comments or questions and mail the card to Mr. Marine's Olympia legislative address, or to call Mr. Marine on the legislative hotline. These cards will be referred to as the DOP response cards.

Mr. Marine's campaign committee began to mail letters in August, 2001. The campaign committee had mailed 3,270 letters by September 12, 2001 and mailings continued after that date. Mr. Marine and campaign staff members admit that the DOP response cards were used in campaign mailings sent during the months of August and September, 2001. It is likely that most, if not all, of the 3,270 letters mailed by the campaign committee during that period contained DOP response cards. Staff members' recollection was that there was a supply of the DOP response cards in the campaign office. The campaign field coordinator stated that no one told her not to use the DOP cards in campaign mailings. In fact, the cover letter (which the field coordinator drafted) encouraged voters to send the card to Mr. Marine's Olympia legislative address. Mr. Marine states that using the DOP response cards was an inadvertent mistake.

Two campaign staffers recall that Mr. Marine's wife, Cindy Marine, brought to the staff's attention that the campaign should not use the DOP response cards. The campaign then paid to print a different response card. These will be referred to as the campaign response cards. The campaign response cards were printed on October 10, 2001, and the campaign used them instead of the DOP response cards after that date. The campaign paid \$194.94 for 3000 cards. The campaign response cards contained the campaign committee's Mukilteo mailing address and telephone number. These cards did not contain the state seal. However, the campaign response cards also contained the toll-free legislative hotline telephone number and encouraged people to call either the campaign number or the legislative hotline number. After the campaign started using the campaign response cards, the cover letter was redrafted to remove any reference to the Olympia legislative address. Legislative staff in Olympia has no recollection of receiving Mr. Marine's response cards during the August through November, 2001 period.

IV. Determination of Violations of Law

1. Allegation of RCW 42.52.180 Violation

A. Relevant Statute and Previous Board Guidance

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 stationary, 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.

In Advisory Opinion 1997 - No. 7, the Board gave advice regarding what is allowable when members contact constituents at home using legislative materials. The Board noted that in most cases direct door-to-door contact with constituents is for campaign purposes, and therefore use of state resources is not permitted when doorbelling. Even when such direct contacts are for purely legislative purposes, the common perception is that doorbelling is a campaign activity. The Board articulated guidelines it would use to determine whether direct door-to-door contact constitutes a violation of RCW 42.52.180. First, the Board concluded that any doorbelling with legislative material after June 30, of the year in which a member is up for election would be a violation of RCW 42.52.180. Second, in order to qualify as a legislative contact, the member's remarks to constituents would have to clearly state the purpose of the visit. Furthermore, the member cannot conduct a multiple-purpose visit, combining both campaign discussion or material and legislative business. Third, the Board stated that material should not be prepared at public expense solely for doorbelling purposes. Finally, the Board stated that it is not "normal and regular conduct" of a legislator's duties to initiate state-funded communication in close proximity to an election.

The Legislative Ethics Manual contains the following passage at pages 17-18 summarizing the advice provided in Advisory Opinion 1997 - No. 7:

In another example, the board found that it would not be a violation for a member to use legislatively prepared material in connection with doorbelling, if the doorbelling was conducted on a legislative, rather than a campaign basis. The Board conditioned its finding on the assumption that the material was initially prepared for a legitimate

legislative purpose, and that no such use would take place after June 30 of an election year.

In addition, in Advisory Opinion 1995 - No. 18, the Board advised that any campaign related telephone call with the Legislature's telephones is prohibited, even if it does not result in a cost.

Mr. Marine's campaign committee used response cards printed at state expense in campaign mailings. Response cards printed at state expense are a facility of the state Legislature. In this case, a significant use of the Legislature's resources occurred.

Mr. Marine took action in an attempt to correct these violations after approximately two months, by printing different cards and redrafting the campaign letter. However, the new campaign response cards still encouraged voters to contact Mr. Marine by using the legislative hotline telephone number.

B. Reasonable Cause Determination

1. There is reasonable cause to believe Mr. Marine violated RCW 42.52.180 on the basis of his campaign use of response cards printed at state expense.

2. There is reasonable cause to believe Mr. Marine violated RCW 42.52.180 when his campaign printed materials contained the legislative toll-free hotline number. The Board finds that the question of using the hotline number in conjunction with a campaign mailing or a campaign document is a matter of first impression for the Board. Our finding that such use is prohibited will be applied prospectively only, meaning that we will not impose a penalty on Mr. Marine for use of the hotline in this case.

2. Allegation of RCW 42.17.510 Violation

The Legislative Ethics Board does not have jurisdiction to enforce RCW 42.17.510. The Public Disclosure Commission enforces this statute. *See* RCW 42.17.360.

3. Allegation of RCW 43.04.050 Violation

The Legislative Ethics Board has determined that it does not have jurisdiction to enforce RCW 43.04.050. This statute is enforced by the Secretary of State. Complaint 2000 - No. 7, Jurisdiction Determination - Order of Dismissal (March 2001).

4. Allegation of RCW 42.52.185 Violation

This allegation was apparently made as an alternative to allegation number 1, in case the investigation showed the mailing was made at state expense. This mailing was made by the campaign, and therefore is properly analyzed under RCW 42.52.180 and allegation number 1.

V. Conclusion and Order

Based on a review of the complaint and the Board's investigation, the Board determines that there is reasonable cause to believe Mr. Marine violated RCW 42.52.180.

There is no reasonable cause to believe Mr. Marine violated RCW 42.52.185. The Board does not have jurisdiction over alleged violations of RCW 42.17.510 and 43.04.050. Allegations two, three and four are dismissed.

Board Rule 1(H) provides that a complaint may be settled by stipulation. Following its own complete and independent review, the Board accepts the respondent's attached stipulation.

Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, by utilizing materials printed at state expense in campaign mailings the respondent, Joe Marine, has violated RCW 42.52.180.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondent shall pay to the Washington State Treasurer the sum of \$380.64 to reimburse the State for the printing of the DOP response cards and, in addition, shall pay to the Legislative Ethics Board the sum of \$500.00 toward costs of the investigation of this case.

Pursuant to Board Rule 5(D) these assessments must be paid within 45 days of this Order, unless an extension is granted by the Board.

James A. Andersen - Chair