COMPLAINT 2002 - NO. 1 - GIFTS
REASONABLE CAUSE DETERMINATION AND ORDER OF DISMISSAL

May 27, 2002

1. Nature of the Complaint

The complaint alleges that Representative Steve Van Luven, 48th Legislative District, received a helmet, shoulder pads and a football from the Seattle Seahawks and that the total value of the items was in excess of the $50.00 gift limit established in the Ethics in Public Service Law (Act). The complaint also references a campaign contribution from the Seahawks to the Representative prior to the legislative session during which the legislature considered and approved a bill which established a process for voter approval of a new football stadium and a construction financing package. The complaint alleges that receipt of the campaign contribution violated the Act because the Representative sponsored the stadium bill, supported a new Seahawks stadium, and presided over legislative hearings on the bill. The complaint states that the alleged improper gifts were reported in the press or on radio by someone in the Seattle media.*

II. Jurisdiction

The complaint alleges, among other things, improper receipt of gifts by a state legislator. The Board has both personal and subject matter jurisdiction.

III. Procedural History

Complaint 2002 - No. 1 was received on February 20, 2002. An investigation was conducted pursuant to RCW 42.52.420 and the results of the investigation were considered by the Board on March 21, and April 25.

IV. Determination of Allegations of Facts

The investigation covered an approximate three year period, 1996-1998, and included review of over 1,200 news articles, inspection of reports filed with the Public Disclosure Commission and interviews of several individuals.

*The complainant later alleged the gifts were reported by the Seattle Times in 1997, but has been unable to produce the article or the author

1. According to the reports on file with the Public Disclosure Commission (PDC), Representative Van Luven received campaign contributions from the Seahawks organization and lobbyists employed by the Seahawks and some of the contributions were made during the Representative's 1996 campaign effort as alleged in the complaint. There is nothing contained in these reports which indicate that the contributions violated the laws relative to how much may be contributed and when contributions may be made nor does the complaint allege otherwise. Enforcement of the laws on campaign contributions is the responsibility of the PDC. The complainant states that he has unsuccessfully fought public financing for both the Seattle Mariners' and Seattle Seahawks' stadiums and decries campaign contributions as attempts to buy influence.

2. In 1997, the Washington State Legislature passed Engrossed House Bill 2192, commonly referred to as the Seahawks' stadium bill. The bill, sponsored by Representative Van Luven, contained a number of financing tools to provide funds for construction of a new stadium, subject to a statewide

vote**.** Representative Van Luven was chair of the House committee which exercised jurisdiction over the stadium legislation and he presided at the public hearings on the bill. It is alleged and acknowledged by the Representative that he was a spokesperson in favor of the new stadium although the investigation showed that his approach was at odds with the Seahawks. The Seahawks and the Representative disagreed on the tax package for the new stadium and the amount of personal financial commitment which should be required of Mr. Paul Allen, who held the option to purchase the football team. Representative Van Luven did eventually vote for Engrossed House Bill 2192 in a form less favored by him.

3. Representative Van Luven acknowledged that he requested and received a Seahawks' football helmet for use as a prop during House debate on the stadium issue. He states he returned the helmet following the debate. No facts were discovered to the contrary.

4. No facts were discovered which suggest or infer that Representative Van Luven received a set of shoulder pads as alleged in the complaint.

5. Representative Van Luven acknowledges that he, along with other legislators, received an autographed football from Seahawks lobbyist, Mr. Forrest "Bud" Coffey. Mr. Coffey's report to the PDC, dated September 1, 1997, lists Representative Van Luven as a recipient of an autographed Seahawks football valued at $29.50. Neither describe the ball as National Football League "game" quality but rather as a cheaper version which has straps added to accommodate autographs.

6. No other records at the PDC, filed by Seahawks lobbyists for 1996, 1997, or 1998, list footballs, shoulder pads or helmets as gifts to legislators.

7. The complainant, after filing the complaint, directed the investigation to an article written by Mr. David Postman, reporter for the Seattle Times, which purportedly discussed the three gifts from the Seahawks to the Representative. When contacted, Mr. Postman had no recollection of such an article but agreed to do a computer search of the Times' archives. He reported later that his search revealed no articles by him on these items. The Board's investigation, independent of Mr. Postman's efforts, involved two different computer searches of the archives and no such article was discovered. Prior to the Board's consideration of the investigative report the complainant provided copies of two newspaper articles to support his gift allegations. The first article was printed in the Seattle Post-Intelligencer on November 4, 1996, and reports on the campaign contributions referred to in finding of fact #1, given to the Representative and others as well as the two major political parties. The second article, written by David Postman and printed in the Seattle Times on April 9, 1997, concentrates on Seattle Mariner's issues but does mention that Representative Van Luven briefly displayed a Seahawks helmet on the floor of the House of Representatives.

8. The complainant further alleged that Mr. Jim Kelley had knowledge of facts to support the gift allegations. Mr. Kelley had worked for Governor Gary Locke during the 1997 legislative session and was, according to a July 11, 1997, Seattle Times article, ". . . one of the architects of the financing package for the stadium . . ." Mr. Kelley was interviewed and stated he had no idea why he might have been so identified by the complainant and that while he was very active in the stadium legislation he had no connection with nor any knowledge about gifts to legislators from the Seahawks. No facts were discovered to the contrary.

V. Determination of Ethics Law Violations

a. **The football** - relevant statutes are RCW 42.52.140 and 42.52.150

.140 - Gifts

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

This section contains the "quid pro quo" prohibition and it controls what otherwise might be permitted activity under other sections of the Act. If, for instance, the receipt of a gift would be permissible under RCW 42.52.150 (the gift statute), the gift would still have to withstand scrutiny under .140. "In analyzing .140, the Board is primarily looking for conduct which offers or appears to offer something specific in exchange for something specific. The offer of a vote on a specific bill in exchange for money is an obvious example of a violation of the quid pro quo prohibition"(Senate Ethics Board Complaint 1975 - No. 1, and Legislative Ethics Board Complaint 1995 - No. 4). There are no facts that Representative Van Luven offered his vote on the stadium bill in exchange for a football. Moreover, the quid pro quo prohibition in .140 is conditioned on the words "if it could be reasonably expected that the gift . . . would influence the vote...or be considered a reward . . ." There are no facts which would lead to the conclusion that it would be "reasonable" to assume that the post-session gift of the football influenced the Representative's position on the stadium bill.

Complainant infers the football should be viewed as a reward and the Representative's acceptance of the ball violated .140. "Reward" is not defined in the statute but in the cases cited above it is clear that some facts must be developed which show that an arrangement or an understanding was reached. There simply are no facts in this case to conclude it would be reasonable to assume the football was a "reward" within the meaning of the prohibition.

In addition, we note that RCW 42.52.150, which generally limits permissible gifts to $50.00, contains a lengthy list of items "presumed not to influence under RCW 42.52.140 and may be accepted without regard to the limit . . ." (the $50.00 limit).

.150(2)(c) - Limitations on gifts

. . . the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

As it is not reasonable to assume that this football was agreed upon as the reason for the Representative's actions on the stadium bill, and as it appears the football was an unsolicited token of appreciation and entitled to the "presumption" that it could be accepted without violating .140., there is no reasonable cause to believe there has been a violation of this statute.

b. **Campaign contributions** - relevant statutes are RCW 42.52.010 and 42.52.140

.010 - Definitions

. . .

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include . . .

(h) Campaign contributions reported under chapter 42.17 RCW . . .

Since the gift analysis is not applicable to campaign contributions reported to the PDC pursuant to

the disclosure requirements of 42.17 RCW, the only question remaining is whether the acceptance of Seahawk campaign contributions by Representative Van Luven violated .140, the "reasonable expectation" statute quoted above in the football analysis.

In Complaint 1995 - No. 4, ***In Re Smith***, a legislator-insurance agent sought campaign contributions from other insurance agents in a fund raising letter in which he identified himself as a member of the House Insurance Committee and stated "I will continue to represent our interests in Olympia, but I need your help to stay there." We began our analysis of the .140 issue by reference to Senate Ethics Board Complaints 1975 - No. 1, and 1991 - No. 1. Both of these opinions predated the present Legislative Ethics Board but were adopted as precedents in this Board's first advisory opinion, 1995 - No. 1. These opinions stand for the propositions that (1) the prohibitions found in .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 and, (2) there must be some evidence that there was an offer or an appearance of an offer to give or receive something specific in exchange for something specific, a "quid pro quo."

In Complaint 1975 - No. 1, a senator was found to have violated the ethics law by his acceptance of $10,000 in cash campaign contributions under circumstance where it was clear to that Board that the money was a reward in exchange for securing passage of a particular piece of legislation. In Complaint 1991 - No. 1, an ethical violation was alleged to have occurred because a senator accepted campaign contributions from lobbyists with interests in legislation before the committee the senator chaired. The Board dismissed the complaint due to a lack of evidence that the contributions were conditioned on influencing any particular action, or that any personal gain was involved. Accordingly, in ***Smith***, we found no reasonable cause to believe that the legislator improperly conditioned his legislative performance on a campaign contribution. While we were critical of that legislator for his "somewhat crude approach to fund raising" we recognized that elected officials naturally solicit and receive support from people who agree with their views, not oppose them.

Later, in Complaints 1999 - No. 1 and No. 2, ***In Re Mielke/Pennington***, it was alleged the legislators accepted campaign contributions to "push an agenda" of the contributors. However, in those cases, as in the present case, there was no evidence of conduct which supported the proposition that something specific was offered in exchange for something specific and we dismissed the complaints for lack of reasonable cause to believe that .140 had been violated. We also found in ***Mielke/Pennington***, at page 3:

> . . . 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. Presumably, if this wasn't the case, the only way a legislator could avoid an accusation that he or she hadn't 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.

VI. Conclusion and Order

Based on a review of the complaint, the documents offered in support thereof and the Board's investigation, the Board determines there is no reasonable cause to believe that Representative Van Luven has committed a violation of the Ethics Act. The complaint is dismissed.

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James A. Andersen - Chair