

# Legislative Ethics Board



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## COMPLAINT 2012 – NO. 1

In Re Hargrove

Use of Public Resources for Political Campaigns  
September, 2012

### REASONABLE CAUSE DETERMINATION – STIPULATION AND ORDER

#### I. Nature of the Complaint – Background

The complaint was filed on July 17, 2012. The Respondent is Rep. Mark Hargrove who represents the 47<sup>th</sup> Legislative District. Respondent was elected to his first term of office in 2010 and is a candidate for reelection in 2012.

The complaint alleges that Respondent created a campaign “video advertisement” with the use of public resources and that this action constituted a violation of RCW 42.52.180, which states 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 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.

...

The investigation included interviews with the Respondent, numerous House staff, employees of the Public Disclosure Commission in the Compliance and Financial divisions and the owner of FastTrax Communications. In addition, Public Disclosure Commission records were reviewed as was the questioned video.

## **II. Jurisdiction**

The Board has both personal and subject-matter jurisdiction.

## **III. Reasonable Cause**

Based upon the investigation and the determinations of fact the Board concludes that reasonable cause does exist to believe the Respondent violated RCW 42.52.180 by producing the video.

## **IV. Determinations of Fact**

1. Respondent is a candidate for reelection to the 47<sup>th</sup> Legislative District and since his initial 2010 election campaign has contracted with FastTrax to produce campaign commercials for television.
2. In November, 2011 Respondent inquired of House communication staff if staff could assist him in producing a video dealing with state budget issues and designed to be broadcast on television and beyond the boundaries of his legislative district.
3. Staff advised they could not be of assistance as it was House policy not to use public resources to produce videos for use outside a member's legislative district. Respondent was also advised that legislative issues may be discussed in a campaign and non-public funds could be used to discuss legislative issues.
4. There are no facts to suggest that Respondent discussed with communications staff the possibility of using his campaign resources to film the video in House office space.
5. Respondent did not seek ethics advice from House Counsel or Board Counsel relative to any ethics issues which might be associated with using campaign resources and public resources to produce the video.
6. During the early days of the 62<sup>nd</sup> Legislative Session, 2<sup>nd</sup> Ex. Session, which ran from November 28, 2011 to December 14, 2011 the thirty second video was filmed in the House Republican Caucus room.
7. On December 2, 2011 the "Hargrove for House" campaign committee paid FastTrax \$3,416 from campaign funds for the cost of video production and for the purchase of

television airtime from Comcast. The video aired on Comcast for approximately three weeks in December, 2011.

8. FastTrax produced the video pursuant to the terms of a contract executed earlier in 2011 with "Hargrove for House." The contract called for five TV commercials and this video was one of the five.
9. The video displays the "Hargrove for House" banner which is also the banner utilized by the Respondent's campaign. The video attributes its production to that campaign organization.
10. The video utilized a budget chart produced by legislative employees and used legislative email addresses and legislative phone numbers as contact points. The chart was not prepared for this video but rather was produced prior to the video production by legislative staff for the legislative purpose of illustrating state budget information.
11. No employees of the House were involved in the production of the video.
12. On or about June 15, 2012 the video was placed on Respondent's YouTube channel which had been created for him by FastTrax. The video was available for viewing from that date until approximately July 10, 2012 when it was removed at Respondent's request due to concerns related to its production.

#### V. Precedent

RCW 42.52.180 is violated when the facilities of an agency are used for the purpose of assisting a campaign for election and facilities of an agency include "office space."

Legislators are ultimately responsible for their communications (Complaint 1998 – No. 3).

There are public areas on the capitol campus, such as the steps leading into the capitol building, which are often used for political rallies. Those spaces are under the control of the Department of General Administration and insofar as they are available for political and campaign use on an equal access basis the Ethics Act does not prohibit legislators from using them for those purposes (Advisory Opinion 1997 – No. 5).

When a campaign committee mailed a newsletter which dealt with legislative issues, which were permissible issues for the campaign to discuss, the mailing became a campaign mailing because it was produced and paid for by the campaign. The discussion of legislative issues did not convert the mailing to a legislative mailing. RCW 42.52.180 prohibits use of legislative addresses and phone numbers as contact points for recipients of campaign mailings or other campaign materials (Complaint 2002 – No. 2).

Whether legislative materials were properly created at public expense in the first place is not determinative. Rather, it is the use to which the materials are later put which determines whether the statute (RCW 42.52.180) has been violated (Complaint 2006 – No. 5). See also Advisory Opinion 1997 –No. 7 – Doorbelling with legislative materials in a defined period before an election is a violation of RCW 42.52.180.

The Board enforces the Ethics Act with a no-tolerance view toward campaign – related activities with the use of public resources. The preparation of campaign materials with the use of public resources is a violation of the Act (impermissible personal use – RCW 42.52.160) even if the materials are never provided to any campaign for its use (Complaint 1996 – No. 1).

#### **VI. Conclusions of Law**

1. The video was a campaign video. It was produced at the request of the Respondent by a company under contract with Respondent’s campaign committee, was paid for by the campaign committee, attribution was given to the campaign committee and the campaign banner was used in the video.
2. The budget chart used in the video is a public resource. The legislative email address and phone number used in the video are public resources. The office space used to produce the video is a public resource. These public resources were used to assist the “Hargrove for House” campaign when they were used in the production of the video which was later broadcast on television and placed on Respondent’s YouTube channel.
3. The production of the video, had it never been shown on television or YouTube, would nevertheless have constituted a violation of the Ethics in Public Service Act. Campaign materials prepared with the use of public resources are an impermissible personal use (RCW 42.52.160).

#### **VII. Conclusion and Order**

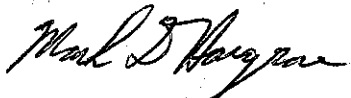
It is determined that reasonable cause has been established to conclude that Respondent violated RCW 42.52.180, Use of Public Resources for Political Campaigns.

It is ORDERED, ADJUDGED AND DECREED that Respondent be reprimanded by the issuance of a Letter of Instruction, which this Order shall constitute, and that within fifteen days of the entry of this Order he shall participate in ethics training with House Counsel and that such training shall emphasize RCW 42.52.180. A record of completion of training shall be filed with the Board.

It is further ORDERED, ADJUDGED AND DECREED THAT Respondent pay a civil penalty in the amount of Three Hundred Dollars (\$300.00) payable to the Washington State Treasurer and pay the board’s investigative costs in the amount of Fifty Seven Dollars and Twelve Cents

(\$57.12) payable to the Legislative Ethics Board. The total amount of \$357.12 must, in accordance with RCW 42.52.180 and Board Rule 5, be paid within 45 days of the date of this Order unless an extension is granted by the Board. Payments are the personal responsibility of the Respondent.

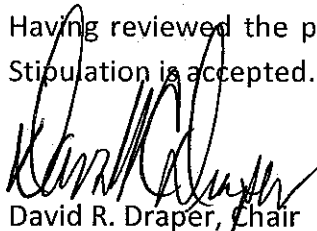
I, Mark Hargrove, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel, or have actually reviewed it with legal counsel; fully understand its legal significance and consequence; agree to the entry of findings of fact and conclusions of law, agree to sign it as a resolution of this matter, and have voluntarily signed.



Representative Mark Hargrove

Date: 7/9/12

Having reviewed the proposed Stipulation, and on behalf of the Legislative Ethics Board, the Stipulation is accepted.



David R. Draper, Chair

Date: 9/11/12