

Legislative Ethics Board

BOARD MEMBERS:
EUGENE GREEN
REP. DREW HANSEN
SEN. JIM HONEYFORD
STEPHEN L. JOHNSON
JUDGE TERRY LUKENS (ret.)
SEN. JAMIE PEDERSEN
KENNY PITTMAN
DEBBIE REGALA
REP. BRANDON VICK



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COMPLAINT 2017 – Nos. 2, 3, 4, 5, 6, 19, 20, 21, 22, 23, 24, 25, 26, 27, and 28
In Re Buchholz (Nos. 2, 3, and 4), Pittman (Nos. 5 and 6), Green (19), Hansen (20), Honeyford
(21), Johnson (22), Lukens (23), Pedersen (24), Pittman (25), Regala (26), Vick (27) and
Buchholz (28)
March 1, 2017

ORDER OF REFERRAL TO ATTORNEY GENERAL

I. Nature of the Complaints

Fifteen complaints were filed against the Legislative Ethics Board and its staff.

Complaints were filed against the following persons:

- Keith Buchholz, Board staff,
- Kenny Pittman, Legislative Ethics Board chair,
- Eugene Green, citizen member of the Board,
- Rep. Drew Hansen, legislative member of the Board,
- Sen. Jim Honeyford, legislative member of the Board,
- (fmr.) Sen. Stephen Johnson, citizen member of the Board,
- Judge Terry Lukens (ret.), citizen member of the Board,
- Sen. Jamie Pedersen, legislative member of the Board,
- (fmr.) Sen. Debbie Regala, citizen member of the Board, and
- Rep. Brandon Vick, legislative member of the Board.

Each complaint addresses the staff investigation and determination of reasonable cause in
Complaint 2016 – Nos. 8 and 13 (Stambaugh).

II. Referral to Attorney General

Because these complaints are made against each member of the Legislative Ethics Board and its only staff, a conflict of interest is present, and action taken by the Board on these complaints could be viewed as a violation of RCW 42.52.070 (Special Privileges).

Accordingly, under Board Rule 1, the Board refers each of these matters to the Attorney General for appropriate action pursuant to RCW 42.52.470 (2).

III. Order of Referral

It is hereby ORDERED that the complaints identified in Section I (In Re Buchholz (Nos. 2, 3, and 4), Pittman (Nos. 5 and 6), Green (19), Hansen (20), Honeyford (21), Johnson (22), Lukens (23), Pedersen (24), Pittman (25), Regala (26), Vick (27) and Buchholz (28)) are hereby referred to the Attorney General for appropriate action under RCW 42.52.470 (2) and Board Rule 1.



Kenny Pittman, Chair

Date: _____



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
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April 18, 2017

Legislative Ethics Board
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Re: Referral of Ethics Complaints

Dear Legislative Ethics Board Members:

The Office of the Attorney General received two orders of referral from the Legislative Ethics Board (Board) under RCW 42.52.470 regarding 25 complaints made against each of the Board's members and staff. We have reviewed the complaints and concluded that none of the alleged facts appear to constitute a violation under the Ethics in Public Service Act (Ethics Act), RCW 42.52. We are, therefore, closing the referrals with no further action.

The following constitutes a summary of our review.

March 01, 2017 Referral

All of the complaints in this referral concern alleged events that occurred during Board proceedings against Representative Melanie Stambaugh. None—even if true—appear to constitute a violation of law under the Ethics Act, RCW 42.52. Instead, at most, they assert purported procedural issues with the Board's then on-going ethics proceedings against Representative Stambaugh, which could be raised and addressed on judicial review under the Administrative Procedure Act, RCW 34.05.570.

First, there is no evidence that either Board Counsel Keith Buchholz or any of the Board members released "confidential information" in violation of RCW 42.52.050.¹ The complainant² contends that Mr. Buchholz improperly released information about ethics allegations made against Representative Stambaugh. Specifically, the complainant contends that Mr. Buchholz

¹ "Confidential information" is defined under the Ethics Act as "(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law." RCW 42.52.010(5).

² The Ethics Act protects the identity of complainants from public disclosure. RCW 42.52.420(4).

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improperly released information before a complaint or reasonable cause determination had been issued. At the time, Representative Stambaugh was already the subject of an ethics complaint. During the course of its investigation, Board staff identified additional alleged violations. The Board then issued a Determination of Reasonable Cause identifying all of the alleged violations against Representative Stambaugh and released it to the media.

The complainant's allegations stem from the fact that it was not until after the Determination that the Board initiated a second complaint regarding the additional violations found during the Board's investigation. The Board issued a second Determination of Reasonable Cause on those allegations. Even if this amounted to some sort of procedural issue, it would not amount to a violation of RCW 42.52.050 with respect to improper disclosure of confidential information. No statute protects the identity of a person subject to a legislative ethics complaint. Further, while the Board rules do state that the name of persons charged will not be entered on a publicly-available status sheet until a reasonable cause determination has been made, that rule appears to have been followed based on the issuance of the Board's initial determination order.

The complainant also contends that the Board intentionally released this information one week before the November 2016 general election to harm Representative Stambaugh's re-election campaign in violation of RCW 42.52.180.³ Nothing in the materials provided suggests that the Board acted outside the scope of its normal procedures when issuing the initial determination order and subsequent notification to the public. Further, nothing suggests that any of the bi-partisan Board members or staff sought to assist Representative Stambaugh's opponent in the election.

The remainder of the complaints concern alleged procedural issues with Ms. Stambaugh's legislative ethics proceedings. For example, the complainant asserts that the Board improperly consolidated Representative Stambaugh's two complaints into one proceeding and that Mr. Pittman should not have participated in Representative Stambaugh's hearing. None of these allegations appear to amount to a violation under the Ethics Act; instead, at most, they concern the scope of the Board's authority under RCW 42.52.320. And even if these allegations were true and amounted to procedural irregularities or the Board acted outside its authority, those issues could be raised in a judicial review proceeding under the Administrative Procedure Act. *See, e.g.*, RCW 42.52.440; RCW 34.05.570.

March 03, 2017 Referral

The second complaint contends that the Board members and staff violated RCW 42.52.320 by failing to dismiss the original complaint against Representative Stambaugh

³ This statute provides in relevant part "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 . . . As to state officers and employees, this section operates to the exclusion of RCW 42.17A.555."

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for lack of personal or subject matter jurisdiction. The original complaint asserted that Ms. Stambaugh's use of legislative videos on her campaign Facebook website violated RCW 42.17A.555 under the Fair Campaign Practices Act. The complainant asserts that the original complaint asserted a violation outside the Legislative Ethics Board's authority and that the Board therefore could not and should not have considered or taken action on it.

Nothing in this second complaint amounts to a violation under the Ethics Act. Rather, the complaints amount to an assertion that the Board acted outside the scope of its authority under RCW 42.52. Such an assertion would appropriately be raised in a judicial review challenge under the Administrative Procedure Act, assuming the complainant satisfied the requirements for challenging Board action. Even so, as addressed further, the Board likely made no error with respect to its consideration of the Stambaugh complaint.

While the Board does not have authority to adjudicate violations of RCW 42.17A.555—a statute enforced by the Public Disclosure Commission—the Board does have jurisdiction over RCW 42.52.180. This statute is similar in text to RCW 42.17A.555 and applies to state officers and employees, such as Representative Stambaugh. We could find no authority that suggests that an agency that receives a complaint asserting a set of facts that constitutes an alleged violation under the agency's jurisdiction loses jurisdiction over that controversy simply because the complaint erroneously cites another statutory violation. Instead, our courts have said, that “[i]f the type of controversy is within the subject matter jurisdiction [of the agency], then all other defects or errors go to something other than subject matter jurisdiction.” *Marley v. Dep't of Labor & Indus.*, 125 Wn. 2d 533, 539, 886 P.2d 189 (1994). Here, it is likely that a court would find that the Board had jurisdiction over the “type of controversy” alleged in the complaint against Representative Stambaugh and therefore acted within its authority.

In sum, the referred complaints give us no reason to believe that any violation of the Ethics Act occurred. We have closed the referrals, and will forward a copy of this letter to the complainants under separate cover. Thank you for bringing these matters to the attention of the Attorney General's Office.

Sincerely,



NOAH PURCELL

Solicitor General

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