

Legislative Ethics Board

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COMPLAINT 2017 – No. 41

In Re Young
October 5th, 2017

Campaign Use of Facilities of an Agency

DETERMINATION OF REASONABLE CAUSE AND STIPULATION

I. Nature of the Complaint

The complaint alleges that Rep. Jesse Young used the facilities of an agency (state resources) in support of a campaign for public office. The issues in the complaint were brought to the attention of the Board by the Board receipt of a letter from the House of Representatives. The Board directed that a complaint be filed against Rep. Young based on the conclusions found in the letter. The complaint cites possible violations of the Ethics in Public Service Act: that Rep. Young's legislative assistant (LA) worked on the campaign for re-election of Rep. Young during working hours, and that the LA was required to do so as a condition of retaining her job.

The complaint alleges actions that could constitute a violation of RCW 42.52.180, which in part provides:

- (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.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....

II. Jurisdiction

The Board has personal and subject-matter jurisdiction. RCW 42.52.320.

III. Findings

1. Rep. Jesse Young is a member of the Washington House of Representatives. He was a candidate for re-election in 2016. His legislative assistant (LA) began working for him on November 1, 2015, and left his office approximately October 31, 2016.
2. The final session of the 2015-16 legislature adjourned *sine die* on March 29, 2016. Rep. Young began the process of opening a district office in Gig Harbor WA shortly thereafter. His LA agreed to work in his district office during the 2016 interim. She established a work schedule of four days per week (M-Th), from 8:00 am until 6:00 pm. ("state time"). House caucus staff and Rep. Young approved the condensed schedule.
3. In May 2016, the district office opened. Shortly afterward, the LA volunteered to work on Rep. Young's campaign for re-election to the House of Representatives. Both Rep. Young and the LA stated that the initial discussions fixed on evenings, Fridays, and weekends for campaign activities. Both Rep. Young and the LA acknowledged that they understood that the LA could not perform campaign work while at the district office or on state time (i.e., during working hours as described in the LA's condensed schedule). Both stated that they understood that the LA could schedule campaign events for the representative on a single calendar, but that further campaign work was prohibited during legislative working hours. Rep. Young further informed his campaign staff that his LA could not perform campaign work while on state time.
4. Rep. Young's district office contained wifi services provided by the legislature's IT staff. His LA used the wifi to access her legislative computer and a personal laptop computer that she brought to work with her.
5. The LA was part of Rep. Young's campaign team for most of four months. At times, both Rep. Young and the LA commented in writing on the need to keep campaign activities separate from legislative activities. Rep. Young confirmed that he, his LA, and his campaign staff understood the restriction.
6. Rep. Young provided his LA with a campaign email account to be used for campaign purposes. The emails were set up through a campaign domain site, so that each campaign person had a "jyfsr.com" (Jesse Young For State Representative) account. Rep. Young had administrative privileges over the domain, giving him the ability to see the emails sent and received by his campaign staff, but only if he changed their passwords. He stated that he did not do so during the campaign.

7. To manage calendars for both his legislative and campaign activities, Rep. Young chose to use a gmail based calendar system. He approved access for his LA in order for her to be able to schedule campaign events, using the JYFSR email system. He stated that his LA was not supposed to access the JYFSR account while on state time except to schedule events.
8. The LA brought her personal laptop to work, in order to access her JYFSR email. She stated that this was required, either for purposes of scheduling or responding to campaign emails. Her laptop underwent repairs at one point during summer 2016, and she was concerned that accessing the campaign email with her legislative computer would create an electronic trail. However, while her laptop was under repair, she used the state computer to access the campaign email while at work.
9. Rep. Young provided a complete set of his LA's campaign emails in her account, totaling 172 emails. He also provided all of his texts with his LA; however, due to a replacement of his phone, those texts only covered September 9, 2016, through October 31, 2016. (There were also two unrelated texts from May 2017.)
10. The LA provided selected texts from her cell phone, almost all pertaining to campaign issues.
11. The JYSFR emails and the texts between Rep. Young and his LA reflect both campaign and legislative activities. The cell phone records of both Rep. Young and his LA confirmed the dates and times of the texts.
12. The LA's automatic signature on all campaign emails referenced both her official position ("Executive Asst. to Representative Jesse Young") and her campaign position ("Campaign Office Admin. Support"). Rep. Young acknowledged that he participated in the creation of the automatic signature, and intentionally did not use the term "Legislative Assistant." He chose to use "Exec. Assistant to Representative Jesse Young." Rep. Young understood the phrase "Executive Asst. to Rep. Jesse Young" to refer to her campaign position, not her official state job.
13. When not at work, the LA also sent fundraising emails on behalf of Rep. Young. Those emails also contain both legislative and campaign contact information for the LA. Some of the fundraising emails cited legislative efforts that could be conducted on behalf of the email recipient.
14. Rep. Young stated that he understood the limits on use of state resources, and expected that his LA would not be accessing the JYFSR email account during work hours except for scheduling purposes. Despite numerous substantive campaign texts and emails between Rep. Young and his LA, Rep. Young did not remind his LA of those restrictions.

15. Generally, Rep. Young did not maintain the required separation between legislative activity and campaign activity. The records produced by Rep. Young and his LA contain twenty five communications in which substantive campaign actions were discussed or undertaken while the LA was at work in Rep. Young's district office.

These include:

- a. Direct communications between Rep. Young and the LA:
 - i. Rep. Young texts: "Hey, got done with the [lobbyist's] call. It was a nice 7,500 conversation. That puts me over 60 now."
 - ii. Multiple texts regarding the campaign's problems with missing campaign signs.
 - iii. Multiple requests that the LA arrange for the collection of a campaign donation check.
 - iv. Rep. Young texts campaign contribution history of several charter school groups.
 - v. LA texts information on social media posts of Rep. Young's opponent.
 - vi. LA texts: "[Major corporation] is in! Expect max out... Yaay!" Rep. Young texts: "Book it." LA texts: "I'm supposed to follow up on Friday to see which of his other ... clients will contribute to you.... We talked for a good half hour."
- b. Direct communications between Rep. Young's campaign staff and LA while LA is at work:
 - i. Campaign manager ("manager") solicits and receives LA's assistance to set up campaign fundraiser.
 - ii. Manager solicits assistance in determining cost of attending gubernatorial fundraiser.
 - iii. Manager directs LA to immediately identify lobbyists for fundraising.
 - iv. Manager requests additional information about efforts to recover missing campaign signs.
 - v. LA ordered campaign materials for Rep. Young's staff and volunteers.
 - vi. LA provides bulk mailing permit to campaign.
- c. LA transferred multiple materials from legislative email account into campaign account, including a power point, legislative emails and non-campaign community event information.
- d. Although an LA may schedule campaign events for legislators, Rep. Young's LA often exceeded that function by inquiring about issues to be discussed at campaign events and offering assistance at them, information important in her position as a campaign volunteer.

16. Campaign communications to third parties often included both legislative and campaign functions and contact information. This created the possibility of confusing recipients of those communications.
 - a. When using campaign email, the LA's automatic signature listed both her legislative job and her campaign position. Rep. Young created this signature.
 - b. When not at work, the LA sent requests for donations or endorsements to various lobbyists and groups. In addition to the auto-signature, these requests often listed her legislative email address and phone number, and her campaign email address and phone number. If she received a response, she followed up while at work.
 - c. On one occasion, Rep. Young included both his campaign contact information and his legislative contact information in response to an inquiry from a constituent.
 - d. The LA also combined legislative functions when soliciting donations:
 - i. "I think it's important that the Departments in the 26th feel that they have an open door to Representative Young."
 - ii. "Whenever you get an opportunity to see if there is a way state funding can help the district/association don't hesitate to let me know."
17. The records produced by Rep. Young and his LA did not contain any corrective instructions from Rep. Young once he knew or should have known that his LA and campaign staff were conducting campaign business while his LA was on state time.

IV. Prior Board Decisions

RCW 42.52.180 explicitly prohibits any use of the facilities of an agency to support or oppose a campaign for public office, including the efforts of state employees during working hours. *Complaint Opinion 2014 – No. 4*, *Complaint Opinion 2010 – No. 6*, *Complaint Opinion 2006 – No. 9*, and *Complaint Opinion 2006 – No. 2*.

The Board adopted the strict zero tolerance language of RCW 42.52.180 in *Complaint Opinion 1996 – No. 1*, stated in its policy manual as: "The Ethics Board has adopted a 'zero-tolerance' policy for campaign-related personal use of legislative facilities, even if such usage does not actually assist a campaign."

Several prior decisions prohibited the use of individual legislative contact information in campaign communications. These decisions addressed use of state-produced response cards used in a campaign mailing (*Complaint Opinion 2001 – No. 5*), use of the legislator's individual contact information, and the legislature's hot-line number (*Complaint Opinion 2002 – No. 2*), while allowing the use of a link to the legislature's website (*Complaint Opinion 2012 – No. 3*).

The Board also has recognized the responsibility of an elected official for the actions of his or her campaign staff. *Complaint Opinion 2016 – No. 16*.

V. Conclusions

1. Reasonable cause exists to conclude that Rep. Young failed to establish clear separation between the legislative and campaign functions supplied by his LA. He communicated directly with his LA regarding campaign issues while she worked in his district office, both by initiating and receiving substantive campaign communications; his campaign managers followed that example by engaging in similar communications; and Rep. Young took no evident action to stop such communications once he knew or should have known that his LA was engaged in campaign activity while at work.
2. Reasonable cause exists to conclude that Rep. Young texted his LA at work regarding campaign functions such as donations and signage, received texts from his LA on identical issues while she was at work, and received substantive campaign-related emails sent by her during work hours, in violation of RCW 42.52.180.
3. Reasonable cause exists to conclude that Rep. Young's campaign manager emailed and texted Rep. Young's LA while she was at work, seeking information and assistance on campaign issues, in violation of RCW 42.52.180.
4. Rep. Young is responsible for his actions and the actions of those working for him, including both his LA and his campaign manager. *Complaint Opinion 2016 – No. 16.*
5. Providing legislative contact information in a campaign communication is a violation of RCW 42.52.180. *Complaint Opinion 2001 – No. 5, Complaint Opinion 2002 – No. 2.* Reasonable cause exists to conclude that both Rep. Young and his LA provided legislative contact information in campaign communications. The Board notes that a legislator and staff may respond to a campaign inquiry made to the legislative office and may provide contact information for the legislator's campaign under such circumstances; accordingly, the restriction on providing legislative contact information should apply only to mass communications by the campaign and individual communications initiated by the legislator or his staff.
6. Donation solicitations stated that the legislator would work to support the potential donors' legislative interests. Such comments could be viewed as inviting a *quid pro quo* understanding that a donation to a successful campaign for re-election could result in a direct benefit to the constituent.

The Board is aware that some legislators and their legislative assistants work together on the legislator's campaign for re-election or for election to another public office. In the present case, both the legislator and the legislative assistant knew and understood the prohibition on

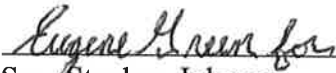
performing campaign work while on state time, and the legislator stated that his other campaign workers knew of it. However, in practice, neither Rep. Young nor his LA honored the line between legislative and campaign work, with both persons acting in violation of the statute. Once Rep. Young received a campaign communication from his legislative assistant that she generated while on state time, he should have immediately responded that such an action was not allowed, and taken steps to ensure that further violations did not occur.

When a legislative assistant works or volunteers in the legislator's campaign for office, the risk of an ethics violation is high. A legislator becomes accustomed to having an assistant who quickly and professionally accomplishes multiple tasks that benefit the legislator, the legislator's constituents and the taxpayers. Although a legislator may freely move between a legislative event and a campaign event during the course of an afternoon, the same is not true of the legislative assistant. The legislator comes to rely heavily on the assistant to promptly handle legislative questions. That same degree of reliance cannot possibly be transferred to campaign activities as the assistant's legislative work hours prohibit prompt responses on campaign issues.

When a public employee works or volunteers for a legislator's campaign, the legislator would be advised to exercise great vigilance in order to maintain the separation between campaign and legislative activities that the law requires.

VI. Order and Stipulation

It is hereby ORDERED: that Rep. Jesse Young pay a civil penalty in the amount of One Thousand Five Hundred Dollars (\$1500.00), payable to the Washington State Treasurer; provided, however, that Five Hundred Dollars (\$500.00) of this penalty be suspended, with such suspension conditioned upon Rep. Young having no further violations of Chapter 42.52 RCW (Ethics in Public Service Act) through the course of the 2022 general election cycle.

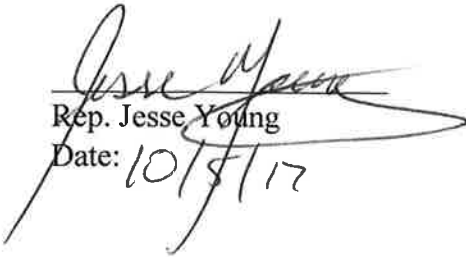

Sen. Stephen Johnson

Chair

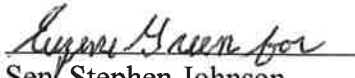
Date:

I, Jesse Young, 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, and agree to personally sign it as a resolution of this matter, and have voluntarily signed.


Rep. Jesse Young
Date: 10/5/17

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


Sen. Stephen Johnson
Chair
Date: