

Legislative Ethics Board



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PRITCHARD BUILDING, ROOM 204
PO BOX 40551
OLYMPIA, WA 98504-0551
360-786-7343
www.leg.wa.gov/leb
JENNIFER STRUS - COUNSEL
Jennifer.Strus@leg.wa.gov

COMPLAINT 2022 – No. 3

In re Pedersen
April 2, 2022

ORDER OF DISMISSAL – LACK OF REASONABLE CAUSE

I. NATURE OF COMPLAINT

The complaint alleges that Respondent violated the Ethics in Public Service Act (Act) (RCW 42.52.020 – conflict of interest) by serving as Chair of the National Leadership Council of Lambda Legal, a national organization.

II. JURISDICTION

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

III. PROCEDURAL HISTORY

Complaint 2022 – No. 3 was received on January 19, 2022 and was discussed during the Board’s regularly scheduled meeting on March 21, 2022. Pursuant to Legislative Ethics Board Operating Policies, Respondent did not participate in the discussions or decisions related to this complaint.

IV. FINDINGS OF FACT

1. Respondent is a member of the state Senate representing the 43rd legislative district. He was elected to the House of Representatives in 2006 and was appointed to the Senate in December 2013, elected in 2014 and re-elected in 2018.
2. Lambda Legal was founded in 1973 and its mission is to achieve full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy work.
3. Headquartered in New York City, Lambda Legal has several regional offices across the country.

4. Lambda Legal's National Leadership Council (NLC) is a group of volunteers who have agreed to take a leadership role in developing financial resources to support the mission of Lambda Legal.
5. Respondent joined the Lambda Legal Board in 1998 and served until 2005. Board members are term limited at 7 years. From 2003-2005 Respondent served as Co-chair of the Board of Directors. Respondent has served on the NLC since leaving the Board of Directors.
6. Respondent indicated that the major responsibility of the NLC members is to assist in raising funds to support the work of Lambda Legal. He conducts this fundraising in the local area.
7. The national organization of Lambda Legal sends a spreadsheet of all the Seattle donors to Respondent. His work for the NLC is to contact people, especially the legal community, who have donated in the past and ask them to donate again. Almost all of the fundraising Respondent conducts for Lambda Legal is through email.
8. Respondent is neither paid nor receives reimbursement for his work as a member of NLC.
9. Lambda Legal does not currently employ a lobbyist in Washington state.
10. Respondent does not recall, during his time in the legislature, Lambda Legal ever testifying or taking a position on a bill before the state legislature.
11. Complainant provided no evidence of a specific action or activity relating to Respondent's membership on the National Leadership Council that would violate the Act.

V. ANALYSIS AND CONCLUSIONS OF LAW

RCW 42.52.020 provides that “no state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.”

The majority of cases interpreting this section of the statute have considered whether a legislator's outside employment conflicts with that legislator's official duties. Although this complaint deals with whether there is a potential conflict of interest when a legislator sits on a board for a private organization, the Board believes the analysis it has used to determine whether a legislator has a conflict with outside employment is equally applicable in analyzing the situation presented in this complaint.

When looking at whether a legislator's outside employment presents a conflict of interest with the legislator's official duties, the Board, historically, has used two tests: *per se* and functional. Senate Board of Legislative Ethics *Advisory Opinion* 69-1 (cited as precedent in *Advisory Opinion* 95-1). See also *In re Caldier*, 2018 – No. 3.

The *per se* test looks at whether a legislator's outside employment presents such a direct conflict with his or her official duties that the employment itself would violate .020. The Board has found that the following outside employment positions presented a *per se* violation of .020:

- Legislator as Executive Director of organization focusing on the public "education" about an issue before the legislature (*Advisory Opinion* 1998 – No. 6);
- Legislator paid for lobbying the legislature on behalf of his outside employer (*Advisory Opinion* 1999 – No. 5);
- Legislator worked for college board and was paid to work with legislators on legislation (*Advisory Opinion* 95 – No. 1 - citing Senate Board of Legislative Ethics *Advisory Opinion* 69-1)
- Executive Director of trade organization having promotion of legislation as one of its paramount purposes (*Advisory Opinion* 95-1 – citing Senate Board of Legislative Ethics *Advisory Opinion* 69-3)

The functional test inquires into whether there are any activities of "outside" employment that would conflict with a member's legislative duties, thereby requiring the legislator to refrain from such duties or refrain from the outside employment. *In re Eickmeyer*, 2006 - No. 3. The general rule is that a legislator does not have an interest which is in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator as a member of a business, profession, occupation, or group, to a greater extent than to any other member of such business, profession, occupation or group. *Advisory Opinion* 95-1 (adopting the provisions of Joint Rule 2 of the former Code of Legislative Ethics).

Using the *per se* test, the question is whether membership on the board of an organization presents such a direct conflict with a legislator's official duties that the member cannot sit on the board while serving as an elected official. If the organization's major purpose or mission is grassroots lobbying or providing the state legislature with policy recommendations on a particular issue, the legislator's membership on the organization's board of directors could constitute a *per se* conflict of interest. *See Advisory Opinion* 1998 – No. 6 (Board equated an organization's purpose of "public education" to grassroots lobbying which it indicated was a *per se* conflict under .020).

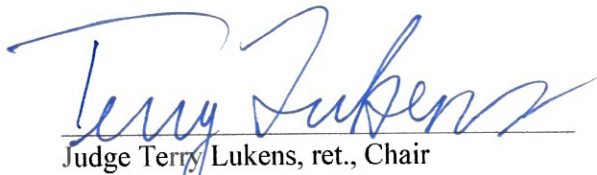
In this matter, Lambda Legal does not employ a lobbyist nor does its mission include grass`roots lobbying or trying to influence policy decisions of the state legislature. Furthermore, although Respondent was expected to fund raise as an NLC member, there is no indication he solicited lobbyists for donations. The Board has previously held that the Act does not prohibit a legislator, acting without the use of state resources, from supporting community-based charities. This support can include fund-raising provided the legislator does not specifically solicit lobbyists or lobbyist employers. The Board also indicated that if a legislator sits on the board of directors for a non-profit charity and his or her name is included on the letterhead of the charity but the legislator does not sign a fund-raising letter that that action would not violate the Act. *Advisory Opinion* 2000 – No. 1. Furthermore, the Board's ruling in *Advisory Opinion* 2020 – No. 2 regarding the solicitation of lobbyists should be also be considered when a legislator sits on the board of directors for a non-profit organization.

If the board membership does not present a *per se* conflict, the Board then analyzes the legislator's board membership using the "functional" test to determine whether there is nevertheless a conflict. The question then becomes whether the Respondent's NLC membership accords him a "benefit or detriment . . . as a member of a business, profession, occupation, or group, to a greater extent than to any other

member of such business, profession, occupation or group.” The Board finds no evidence of a benefit or detriment that accrued to Respondent as a result of his NLC membership. By all accounts, Respondent donated his time to the board; he was neither paid as an NLC member nor was he reimbursed for any expenses incurred from his NLC membership. The same is true of the other NLC members. The application of the functional test to this complaint’s set of facts indicates that there was no violation of RCW 42.52.020 resulting from Respondent’s NLC membership.

VI. ORDER

IT IS HEREBY ORDERED: that reasonable cause does not exist that Respondent, Sen. Pedersen, violated RCW 42.52.160.



Judge Terry Lukens, ret., Chair

4/2/22

Date