

Legislative Ethics Board

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COMPLAINT 2022 – No. 4

In re Dhingra

~~March~~, 2022

April 2

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 her membership on the Board of Directors for NAMI Eastside, which Complainant alleges participates in advocacy with the state legislature. Respondent is listed as a board member of NAMI Eastside in her caucus website biography.

II. JURISDICTION

The Board has personal and subject matter jurisdiction. RCW 42.52.320. Although the Respondent resigned her board membership in January 2020, this Board has subject matter jurisdiction because the alleged violation occurred within five years of the date the complaint was filed. RCW 42.52.540.

III. PROCEDURAL HISTORY

Complaint 2022 – No. 4 was received on January 27, 2022 and was discussed during the Board's regularly scheduled meeting on March 21, 2022.

IV. FINDINGS OF FACT

1. Respondent is a member of the state Senate representing the 45th legislative district. She has served in the Senate since 2018.
2. The National Alliance on Mental Illness (NAMI) is a United States-based advocacy group originally founded as a grassroots group by family members of people diagnosed with mental illness. NAMI identifies its mission as "providing advocacy, education, support and public awareness so that all individuals and families affected by mental illness can build better lives."

3. Headquartered in Arlington, Virginia, NAMI has around 1,000 state and local affiliates and is represented in all 50 U.S. states, Washington, D.C., and Puerto Rico.
4. NAMI Eastside is the East King County Affiliate of the National Alliance on Mental Illness.
5. The mission of NAMI Eastside is to provide advocacy, education, support, and public awareness so that all people impacted by mental illness and mental health conditions can build better lives.
6. Although Respondent was a Board member of NAMI Eastside, she has not been a member since January 2020.
7. Respondent was neither paid nor received reimbursement for her work as a Board member.
8. Although she was expected to fundraise as a board member, Respondent indicated she solicited her friends, family and other networks to do so before she was elected. Once elected, when Respondent posted about fundraising events on her personal social media, she included the disclaimer¹ recommended by the Legislative Ethics Board in ETHICS ALERT - April 2019.
9. Respondent indicated that she should have had her biography on the caucus website corrected to reflect that she was no longer a NAMI Eastside board member.
10. During the time Respondent was a Board member and a state legislator, NAMI Eastside did not employ a lobbyist and was not involved in any advocacy work with the state legislature.
11. Complainant provided no evidence of a specific action or activity relating to this former board membership 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 concern whether a legislator’s outside employment conflicts with the legislator’s official duties. Although this complaint deals with whether there is a potential conflict of interest when a legislator sits on the board of directors 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.

¹ “THE ETHICS IN PUBLIC SERVICE ACT DOES NOT ALLOW ME TO SOLICIT CHARITABLE DONATIONS FROM LOBBYISTS OR LOBBYIST EMPLOYERS. IF YOU ARE RECEIVING THIS REQUEST AND ARE EITHER A LOBBYIST OR A LOBBYIST EMPLOYER, PLEASE DISREGARD MY REQUEST TO MAKE A DONATION TO THIS CHARITABLE CAUSE.”

In determining 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 Calder*, 2018 – No. 3.

The *per se* test looks at whether a legislator's outside employment present 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 a board of directors 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).

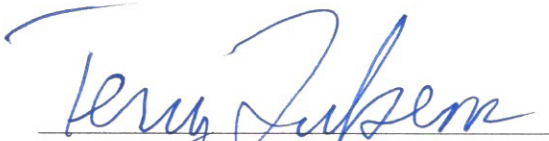
In this matter, NAMI Eastside does not employ a lobbyist nor does its mission include grassroots lobbying or trying to influence policy decisions of the state legislature. Furthermore, although Respondent was expected to fund raise as a board member she did not solicit lobbyists for donations and, in fact, included the appropriate disclaimer on social media requests 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 board membership accords her 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 her former membership on the board of directors of a local non-profit organization. By all accounts, Respondent donated her time to the board; she was neither paid as a board member nor was she reimbursed for any expenses as a result of her board membership. The same is true of the other NAMI Eastside board 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 board membership.

VI. ORDER

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



Judge Terry Lukens, ret., Chair

4/2/22

Date