

February 17, 1997

**COMPLAINT 1996 - NO. 9  
Senator Calvin Goings, Respondent**

**ORDER, IN PART**

**REASONABLE CAUSE DETERMINATION  
AND DISMISSAL, IN PART**

**I. Nature of the Complaint**

The complaint alleges that Senator Calvin Goings violated the prohibition against the use of state resources for campaign purposes contained in the State Ethics Act, as well as the mailing restrictions contained in Initiative 134. It alleges that a document, prepared and sent by the Senator to his constituents using state resources, is clearly campaign-oriented— and, therefore, in violation of RCW 42.52.180. The complaint identifies a number of similarities between the document and one of the Senator's campaign documents and argues that these similarities constitute a violation of the Act. The complaint also alleges that the document is not a newsletter— and, therefore, violates the mailing restrictions of RCW 42.17.132. A copy of the complaint, and attachments thereto, is attached as Exhibit A.

**II. Procedural History**

Complaint 1996 - No. 9 was received on July 19, 1996. The complaint was transmitted to the Office of the Attorney General for staff assistance on the same date, July 19, 1996, pursuant to RCW 42.52.450, because it alleges a violation of RCW 42.52.180 by a legislator.

An investigation was conducted pursuant to RCW 42.52.420. The results were submitted to the Board in an investigative report on October 10, 1996.

On January 9, 1997, a stipulation, proposed by Senator Goings, was presented to the Board. A copy of the proposed stipulation is attached as Exhibit B.

**III. Acceptance of Stipulation as to Facts**

The Board's procedural rules provide that a complaint may be settled either by stipulation

of facts or by stipulation of facts, conclusions and penalty. Board Rule 1(A)(8). The stipulation proposed by Senator Goings stipulates to the facts and conclusions, but not a penalty.

The Board accepts the respondent's stipulation of facts. The Board incorporates herein by this reference the respondent's stipulation of facts.

The Senator's stipulation focuses on a set of letters that his office prepared and sent to constituents who had responded to the document that is the subject of this complaint. That document provided an opportunity for constituents to request additional information, by checking off boxes, in a number of areas, such as Crime, Taxes, and K-12 Education. When constituents indicated they would like to receive information in any of these categories, and sent the document back to the Senator, the constituent received a response letter that addressed a number of issues, not necessarily the issues on which the constituent requested additional information. All of the letters were identical in their content. These letters became the focus of the investigation and of the Board's deliberations in this case.

The Board also investigated and considered all other facts alleged in the complaint and its attachments. All other facts alleged in the complaint are accepted for purposes of this decision.

#### **IV. Determination of Violation of Law**

##### **A. Relevant Statutes**

Section 42.52.180 of the RCW prohibits the use of state resources for the purpose of assisting a campaign for election. For purposes of this complaint, the pertinent portions of RCW 42.52.180 provide as follows:

(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.

In addition to the above restrictions, RCW 42.17.132 places certain restrictions on

mailings by incumbent legislators during most of the last year of their term of office. A violation of this statute is deemed to be a violation of RCW 42.52.180. RCW 42.17.132 provides as follows:

During the twelve-month period preceding the last day for certification of the election results for a state legislator's election to office, the legislator may not mail to a constituent at public expense a letter, newsletter, brochure, or other piece of literature except as provided in this section.

The legislator may mail one mailing no later than thirty days after the start of a regular legislative session and one mailing no later than sixty days after the end of a regular legislative session of identical newsletters to constituents.

The legislator may mail an individual letter to an individual constituent who (1) has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; or (2) holds a governmental office with jurisdiction over the subject matter of the letter.

A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings, including but not limited to production costs, printing costs, and postage.

## **B. Analysis**

### **1. Mailing Restrictions**

The mailing restrictions found at RCW 42.17.132 prohibit legislators from mailing a "letter, newsletter, brochure, or other piece of literature" to constituents, except under the limited circumstances set forth therein. The term "newsletter" is not defined in the statute. The Board has previously used the ordinary meaning of the term. "Newsletter" is defined in Webster's New World Dictionary, College Edition, as a "report issued by a firm, governmental agency, etc. to keep employees or the public informed of pertinent matters." Webster's Third New International Dictionary defines the term to include "a printed sheet . . . containing news or information of current interest to or bearing upon the interests of a special group". Complaint Opinions 1996 Nos. 2 and 3. We conclude that the document that is the subject of the complaint in this case is a newsletter for purposes of RCW 42.17.132. This was the first newsletter sent by Senator Goings during the 12-month period subject to the mailing restrictions.

The first newsletter contained a section that allowed constituents to request further information from the Senator with check offs in broad subject matter categories. In

Advisory Opinion 1995 - No. 19, we addressed this very issue. We were asked whether a legislator may respond to constituents where the legislator has, by various means, solicited the constituents' requests for further information. We provided the following response:

In our answer to these questions, we assume that the legislator would not solicit information requests for general legislative information but rather would solicit requests for information dealing with narrow subject matters. The legislator should not solicit requests for information on broad subjects because the legislator's responses to such requests would resemble a newsletter in scope of coverage. To stay within the purpose of RCW 42.17.132, the legislator should not use subject matter boxes that deal with broad subject matters. Furthermore, the legislator should not provide periodic updates on broad subject matter requests.

We provide the following examples of broad verses narrow subject matters: Education— would be a broad subject matter, while higher education tuition,— merit pay for teachers,— or class size— would be narrow subject matters. Crime— would be a broad subject matter, while the death penalty— or sentencing guidelines— would be narrow subject matters. A request for information on all issues before the Education Committee would be a broad subject matter request, while a request for a particular bill would be a narrow subject matter request.

Because the Senator's first newsletter in this case solicited responses in broad rather than narrow subject matter categories, we conclude that the newsletter ran afoul of the above proscription. We do not necessarily conclude, however, that the solicitation in the newsletter for requests for further information is itself a violation of the mailing restrictions of RCW 42.17.132. A violation only occurs where the legislator sends a response to the constituents' request for further information, and that response is in the form of a newsletter that exceeds the two-newsletter limit during the 12-month period.

In Advisory Opinion 1996 - No. 4, we distinguished between newsletters— and individual letters—, the latter not counting as one of two allowed newsletters during the 12-month period. We distinguished as follows:

We believe that the mailing . . . may very well be considered a newsletter— mailing if in appearance the items mailed resemble a newsletter.— If the items mailed would be identical pieces . . ., we would consider them to be a newsletter.— If, on the other hand, the items would be in the form of individualized letters with a named individual in the address and in the salutation (such as Dear Mr. Smith—), then we would consider them as authorized individual letters— responding to a constituent contact.

The appearance test we adopt here to distinguish between large mailings of newsletters— and individual letters— may appear somewhat artificial in that individualizing the letters does not require changes in the portrayal of the [subject matter], the substance of the letters. However, in a large mailing situation like this one, appearances are important. Members of the public will be inclined to view the items mailed as a newsletter— if the items have the appearance of a newsletter.— Our appearance test is consistent with the public’s perception.

Although this opinion was issued after Senator Goings sent his response letters, it is, nevertheless, useful in determining whether a particular mailing is a newsletter.

We conclude that the set of 225 response letters sent by Senator Goings to his constituents is a newsletter. The letters are identical in content and address a number of general issues. They were not tailored to address the specific requests for information made by constituents.

Senator Goings stipulated to the fact that he sent yet a third newsletter in May of 1996. We conclude that, because Senator Goings sent three newsletters during the 12-month period subject to the mailing restrictions, he has violated RCW 42.17.132.

## **2. Other Allegations**

We have also investigated and considered the other allegations in the complaint and conclude that there is no reasonable cause to believe that the Senator has violated the State Ethics Act in any respect other than the violation of the mailing restrictions described above. The remainder of the allegations in the complaint center on the fact that the Senator’s state-funded newsletter is similar in appearance to a mailer paid for and sent by his campaign and that the state-funded newsletter has the appearance of campaign literature. We are not convinced that the mere similarity to campaign literature is sufficient cause, without more, to find a violation of the prohibition on the use of state resources for campaign purposes. We set forth in Advisory Opinion 1996 - No. 11 several factors that will be used in determining whether legislative materials violate that prohibition. Those factors are timeliness, proximity to election, relevance, the source of the initial statement, and the tone and tenor of the materials. Applying those factors, we conclude that there is not reasonable cause to believe that Senator Goings’ newsletter violates the prohibition on the use of public facilities for campaign purposes found at RCW 42.52.180 and, therefore, we dismiss the complaint with respect to those allegations.

## **V. Determination of Penalty**

The Board determines that the payment of damages and a penalty are appropriate in this

case. The Senator stipulated to the fact that the cost of producing and mailing the response letters was \$131.01.

However, because the respondent was a relatively new Senator, because he was apparently not informed of his obligations under the mailing restrictions, because the Senator sent the response letters before this Board issued Advisory Opinion 1996 - No. 4 regarding the requirement that response letters be individualized, and because the Senator gave this Board complete cooperation in this case, the size of the monetary penalty is mitigated.

The Board concludes that the violation in this case justifies the repayment of damages to the Senate and the payment of a penalty in the amount of \$100.00.

## **VI. Order**

It appearing from the stipulation as to facts and the conclusions of the Board that Senator Goings has violated RCW 42.17.132 and, according to the provisions of that section, such violation constitutes a violation of RCW 42.52.180,

Now, Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, by mailing three newsletters during the 12-month period between December, 1995 and December, 1996, the respondent, Senator Calvin Goings has violated RCW 42.17.132 and RCW 42.52.180 and that he pay damages and a monetary penalty.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondent shall pay damages in the amount of \$131.01. Payment of such damages shall be made to the Washington State Senate.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the respondent shall pay a penalty in the amount of \$100.00. Payment of such penalty shall be made to the Legislative Ethics Board.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there is no reasonable cause to believe that the respondent has violated the State Ethics Act in any of the remaining allegations contained in the complaint and that all of the remaining allegations contained in the complaint are, therefore, hereby dismissed.

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William Asbury, Chair