



Washington State Executive Ethics Board

2425 Bristol Court SW • PO Box 40149 • OLYMPIA WA 98504-0149

(360) 664-0871 • Fax (360) 586-3955 • <http://www.ethics.wa.gov>

September 16, 2008

The Honorable Christine Gregoire
Governor
PO Box 40002
Olympia, WA 98504-0002

RE: EXECUTIVE ETHICS BOARD COMPLAINT NO. 08-110

Dear Governor Gregoire:

On September 12, 2008, the Executive Ethics Board dismissed the ethics complaint filed against you based on the complaint being unfounded. Enclosed is a copy of the final determination.

If you have any questions, please contact our office at 360-664-0871.

Sincerely,


Melanie deLeon
Executive Director

Enclosure

cc: Complainant



Washington State Executive Ethics Board

2425 Bristol Court SW • PO Box 40149 • OLYMPIA WA 98504-0149
(360) 664-0871 • Fax (360) 586-3955 • <http://www.ethics.wa.gov>

PRELIMINARY INVESTIGATION AND BOARD DETERMINATION

CASE NUMBER: 08-110
DATE: September 12, 2008
RESPONDENT: Christine Gregoire
EMPLOYING AGENCY: Office of the Governor

I. INVESTIGATION

A. Background and Summary of Complaint

The Executive Ethics Board (EEB) received this complaint on April 11, 2008. The complaint was originally filed with the Public Disclosure Commission (PDC). The PDC forwarded the complaint to the Board. EEB staff has completed its preliminary investigation in this matter.

The complaint alleges that Christine Gregoire, the Governor of the State of Washington, violated the Ethics in Public Service Act when she used public funds to campaign for reelection. The complaint further alleges that Governor Gregoire spent taxpayer dollars on political polls, focus groups, campaign rallies and public relations contracts were awarded to political donors. The complaint specifically cites:

1. **Washington Learns Commission Survey.** The complaint alleges that a survey paid for by the Governor's Washington Learns Commission contained questions identical to "nearly every political campaign survey" citing questions about "legislative approval" and message/issue questions. The complaint alleges that these questions are "political" and "campaign-oriented" and "serve no purpose in determining the best education policy for Washington."
2. **Citizen Engagement.** The complaint states that the Governor embarked on a six-city "listening tour," which occurred during the summer of 2007. Elway Research Inc. helped design and conduct the citizen focus group sessions. The complaint further alleges that focus groups of individuals characterized as voters are almost exclusively a tool for campaigns and campaigning for office.
3. **Contract for Communication Related Services.** The complaint alleges that the Governor's Office entered into a contract with a public relations firm, "that is a political donor of the governor's," to evaluate the Governor's Office communications structure. It further alleges that this is the second time a contract has been issued to review the office's "PR strategy." The complaint concludes

that this work is "to improve the governor's political communications in anticipation of the upcoming election campaign."

B. Scope of Board Staff's Investigation and Relevant Facts

EEB staff reviewed the complaint and the following documentation:

1. Response of the Governor's Office.
2. Washington State Constitution, Article III - The Executive.
3. Chapter 43.06 RCW – Governor.
4. AGO 1975 No. 23. Offices and Officers – State – County – City – Governor – Legislator – County Commissioners – City Councilmen – Elections -- Use of Office Facilities to Promote Passage or Defeat of Ballot Propositions.
5. Engrossed Second Substitute Senate Bill 5441; Comprehensive Education Study Steering Committee, Effective Date: 7/24/05.
6. Final Bill Report, E2SSB 5441, Requiring studies of the state's education systems.
7. Washington Learns Steering Committee Agenda, September 6, 2005, November 14, 2005, March 13, 2006, and April 10, 2006.
8. Washington Learns Steering Committee Minutes, March 13, 2006.
9. Office of the Governor Immediate Release dated September 8, 2006, State Education Committee Seeks Citizen Input, "Washington Learns" begins series of public hearings.
10. Washington Learns Public Hearings Schedule.
11. October 16, 2006 memorandum from Davis, Hibbitts & Midghall, Inc., to Washington Learns regarding Statewide Opinion Survey Results.
12. Open Government Tour, Attorney General Statewide Forums. Attorney General Rob McKenna hosted a series of public hearings across the state in the Summer and Fall of 2005 in an effort to increase citizen involvement in government and gather input for new model rules on public disclosure.
13. Open Government, Public Records Brochure.
14. Second Substitute House Bill 1758, Public Disclosure, Effective Date 7/24/05.
15. May 20, 2004 e-mail from Candace Espeseth to Roselyn Marcus regarding latest plan for the POG "Town Hall" Meetings.
16. Seattle Times, June 2, 2004, Two town-hall meetings set on state spending.
17. Spokesman Review, May 28, 2004, Citizens offered look at state's next budget.
18. Engrossed Substitute House Bill 1242, Biennial Budget—Priorities—Review of Agency Requests, Effective Date 7/24/05.
19. Second Substitute House Bill 1970, Government Accountability, Effective Date 7/24/05.
20. State Auditor Sponsored Town Hall Meetings and Focus Groups.
21. Washington State Auditor's Office, Performance Audit Town Hall Meetings: Education & Transportation, Report Summary, April 2006, Elway Research, Inc.

22. The Elway Poll, State Auditor's Office, Objective of Performance Audits "Accountability Definitions", January 2008.
23. The Elway Poll, State Auditor's Office, Public Opinion about Performance Audits, March 2006.
24. Washington State Auditor's Office, Citizen Perspectives on Performance Audits Focus Groups, March 2006.
25. Engaging Residents in Performance Measurement – Bellevue, Washington Style, by Rich Siegel.
26. City of Bellevue, Washington, City Performance Measures, Citizen Forum on "Vital Signs", May 24, 2005.
27. GMAP, What is Citizen Engagement?
28. Elway Research, Inc. and FLT Consulting, Inc., Appendix A: 2007 Citizen Workshops Detail, October 2007.
29. A Summary of Citizen Involvement in Washington State Government Performance, 2007 Citizen Tour, Government Management Accountability & Performance, www.accountability.wa.gov, December 2007.
30. Harvard Kennedy School's Ash Institute Announces Top 50 Innovations in Government.
31. Government Performance Project, Charting the Course for Excellence in Government Performance, Washington, Grading the States 2008.
32. Personal Service Contracts Database.
33. Contract for Personal Services between the State of Washington, Office of the Governor, and Cocker Fennessy, Inc.

Based on the collected evidence, the facts appear to be as follows:

1. Christine Gregoire is the elected Governor of the State of Washington. At the time of these allegations Governor Gregoire had not declared herself a candidate for any office.
2. The Governor has the responsibility of communicating with the citizens she serves, providing an avenue for the citizens to contact the Governor, to timely and appropriately respond to citizen inquiries, and to seek citizen input when developing policy and budget proposals that will affect the citizens of the State of Washington.
3. One of the main complaints from the public is that government does not communicate with its citizens regarding what it does and how it does it and that government officials, both elected and appointed, fail to ask citizens for their opinions on what government does and how it chooses to spend taxpayer money.
4. Article III, Section 2, of the state constitution gives the Governor the unique and broad role as the chief executive exercising the "supreme executive power of the state." The Governor "shall see that the laws are faithfully executed" (Article III, Section 5), "shall communicate with the legislature the condition of the affairs of the state, and recommend such measures as he shall deem expedient for their action" (Article III, Section 6). As set

forth in an Attorney General's Opinion interpreting RCW 42.17.130, the precursor to RCW 42.52.180, this constitutional provision should be interpreted to include communication with the people as part of the meaning of "legislature." Specifically, AGO 1975 No. 23 states:

It is further his specific constitutional duty, under Article III, § 5, to " ... see that the laws are faithfully executed ... "; and he is also specifically directed by Article III, § 6 to communicate with the legislature and to [[Orig. Gp. Page 14]] " ... recommend such measures as he shall deem expedient for their action " While the "legislature" thus referred to undoubtedly meant only the formal state legislative body (House of Representatives and Senate) when the constitution was first adopted in 1889 - inasmuch as the people did not reserve the power to enact laws by direct legislation until twenty-three years later - constitutional provisions should be interpreted to give effect to the manifest purposes for which they were adopted. Their language is to be taken in its general and ordinary sense and when words used therein have both a general and restricted meaning, the general should prevail over the restricted unless the nature of the subject matter or context indicates that a restricted sense was intended. State ex rel., Linn v. Sup. Ct., 20 Wn.2d 138, 146 P.2d 543 (1944). As the court said in that case, constitutional provisions should be interpreted to meet and cover changing conditions of social and economic life. Thus, by reason of Amendment 7, supra, the term "legislature" in the constitution may now properly be construed to include the people in the exercise of their legislative powers under the constitution. Accord, in addition to State ex rel., Linn v. Superior Ct., supra, State ex rel. Mullen v. Howell, 107 Wash. 167, 181 Pac. 920 (1919), and Cooley, Constitutional Limitations, 6th ed. p. 39.

5. Chapter 43.06 RCW sets out the powers and duties of the Governor. This chapter also provides broad authority to that office. Specifically, RCW 43.06.01 provides the general powers and duties of the Governor. In that regard, the AGO Opinion states:

Moreover, the above cited sections of Article III of the constitution, coupled with the broad provisions of chapter 43.06 RCW, indicate that the people and the legislature have always intended their chief executive to be actively involved in all matters and measures affecting the welfare of the state.

Allegation 1- Washington Learns Commission Survey. The complaint alleges that a survey paid for by the Governor's Washington Learns Commission contained questions identical to "nearly every political campaign survey" citing questions about "legislative approval" and message/issue questions. The complaint further alleges that these questions are "political" and "campaign-oriented" and "serve no purpose in determining the best education policy for Washington."

6. The complaint alleges that a "poll paid for by the governor's Washington Learns conducted a survey." The complainant did not cite to a specific survey. However, Davis, Hibbits & Midghall conducted a survey. No public funds were used to pay for the survey. According to Ann Daley, then Washington Learns Director, and verified by Aaron Butcher, Manager of OFM/Governor Accounting, this survey was totally financed by private funds provided by business interests in Washington State who believed it was important to not only have this information but to have it presented to Washington Learns, prior to publishing its final report.
7. The complaint alleges that the questions in the survey are "identical to the questions asked by nearly every political campaign survey." No sample political surveys were provided. However, the fact that a political survey has the same question as a nonpolitical survey does not somehow indicate that the nonpolitical survey is inappropriate for use by a governmental entity.
8. The complaint alleges that these questions "serve no purpose in determining the best educational policy for Washington." In 2005 the Legislature decided it was time to conduct a comprehensive review of the state's education system, from pre-kindergarten through higher education. Due to changing demographics, new studies on early education, and the amount of time that had elapsed since the last study, the Legislature (at the request of Governor Gregoire) enacted Engrossed Second Substitute Senate Bill 5441, creating the Comprehensive Education Study Steering Committee (Washington Learns Committee). In creating this committee, the Legislature stated:

... Through a comprehensive study, the legislature will have solid information to determine how best to use its resources to create a strong education system that will provide an educated citizenry and a thriving economy in this state.
9. In addition to the Governor, Washington Learns members included the Office of Financial Management (OFM) director, the Superintendent of Public Instruction, four members of the Legislature (two Democrats and two Republicans), and four citizens. In addition, three advisory committees were established, one for each educational phase: early learning, K-12, and higher education. Together, these committees had a very broad charge to conduct an education study and provide recommendations in a final report.
10. From the very beginning, Committee members expressed the importance of reaching out and obtaining a wide variety of information from a broad spectrum of people. The Committee needed expert information from consultants, professors, school teachers, and school administrators. But the Committee also expressed its desire to receive information from the business community, which hires our students; teachers, faculty and school administrators, who are responsible for educating our citizens; students and parents, who are the customers of education system; and the general public, who at a minimum, fund the state's education system.

11. Washington Learns built steps into its process to ensure that information was sought and received from all disciplines. To that end, a standing agenda item on almost all agendas was time set aside to receive public comment. In addition, representatives of different disciplines were invited to make presentations at Steering Committee meetings. A dialogue with K-12 students and post-secondary students was scheduled for March 13, 2006, in order to understand the education system from the students' perspective.
12. When the draft report was ready for review, Washington Learns scheduled a series of hearings solely for the purpose of allowing citizens around the state to comment on the draft report, its findings and recommendations. In summary, Washington Learns included in its process each and every method available in order to receive feedback from the citizens of this state on the state of the education system and where it should go from here.
13. The privately funded survey included questions such as prioritizing proposals for accomplishing different areas of educational reform dealing with subjects such as math and science, the purchasing of technology for schools, educational accountability and performance, and college and workforce training proposals. These questions are directly on point in regard to the statutory authority provided to Washington Learns. The responses provide valuable information as to where the education policy in this state should be heading, where funding should be concentrated, how much funding would be needed, and how to fund the proposals.

Allegation 2 - Citizen Engagement. The complaint states that the Governor embarked on a six-city "listening tour," which occurred during the summer of 2007. As part of this activity, Elway Research Inc. helped design and conduct the citizen focus group sessions. The complaint alleges that focus groups of individuals characterized as voters are almost exclusively a tool for campaigns and campaigning for office. We assume that this statement is meant to allege that the citizen engagement activity, which included citizen workshops, was done for campaign purposes.

14. Town hall meetings and citizen engagements are a regular and expected part of being an elected official. Nearly every elected official in this state has conducted a citizen's outreach effort, including legislators, during and between sessions, and statewide elected officials. The State Auditor conducted town hall meetings and focus groups to help implement Initiative 900 related to performance audits. In addition, in 2008, the Secretary of State held "Get out the Vote" meetings at 28 colleges across the state, the Superintendent of Public Instruction held 3 "community forums" on gangs across the state, and the Commissioner of Public Lands held 11 "open houses" to celebrate the 50th anniversary of the Department of Natural Resources. Finally, Attorney General McKenna, who ran on a platform of open government and is now running for reelection with a focus on his record for open government, conducted an Open Government Tour "to gather input for new model rules on public disclosure."

15. This allegation deals with activities associated with the Governor's Citizen Engagement. Washington's Citizen Engagement is the latest in a series of innovations in governance initiated by the state.
16. In 2002, Governor Gary Locke introduced "Priorities of Government" (POG), a results-based budgeting tool that focused on a set of ten key statewide results that citizens expect from government, as determined by government. POG is based on the premise that instead of making across-the-board cuts in state agency budgets, state officials need to review a list of state activities and functions, prioritize that list, and then allocate available funds based on this prioritized list.
17. In 2003, Washington was confronted with a severe budget shortfall, and Governor Locke used POG to reprioritize state spending to focus on services that could demonstrate that they contributed to achieving the statewide results. In addition to a profound reorientation for executive and legislative budgetary decision-making, the POG approach included the first experiment in citizen engagement. An outside group of business leaders were appointed to a "guidance team," whose function was to review the list and provide input on how the activities were prioritized. POG was used in developing the Governor's 2003-05 budget proposals. POG also developed a database of statewide indicators and agency performance measures.
18. After the POG exercise, Lynne McGuire, then Senior Budget Analyst for OFM and the lead for POG and POG II, led a lessons-learned exercise to see what went right, what went wrong, and how to improve this process. Several issues surfaced. Agencies felt left out of the process, and although the business leaders served as surrogates, no real citizen input was sought. So when Governor Locke started to develop his final budget proposals (2005-07), a revised POG process (POG II) was used. This time, in addition to agencies being brought into the process, a separate process was developed to solicit citizen input. Town hall meetings in two cities, Seattle and Spokane, were scheduled for the summer of 2004. In addition to receiving input from citizens who attended the meetings, TVW agreed to tape the town hall meetings and replay them with a banner showing how citizens could send in their comments as well.
19. At this point, the POG process was not only seen as a good budgeting tool, but as a best practice for good government. To ensure that the process would continue regardless of who was Governor, the 2005 Legislature enacted Engrossed Substitute House Bill 1242. ESHB 1242 codified many of the aspects of POG as developed by the Locke administration. ESHB 1242, Section 2(1) added the following requirement to RCW 43.88.090:

The governor shall communicate statewide priorities to agencies for use in developing biennial budget recommendations for their agency and shall seek public involvement and input on these priorities.
(Emphasis added.)

20. The statute clearly requires the Governor to seek public involvement in the budget process and development of statewide priorities. Then-Senator Esser voted in favor of ESHB 1242, (as well as 2SSHB 1970 and E2SSB 56441) in a nearly unanimous vote by the Legislature.
21. Also enacted in the 2005 legislative session was Second Substitute House Bill 1970, dealing with government accountability. This bill codified the Government Management Accountability and Performance (GMAP) established by Governor Gregoire. As part of this legislation, the Legislature required the Governor to report to citizens on state agency performance. Specifically, ESHB 1970 Section 3(6) provides:
 - (6) The governor shall report annually to the citizens on the performance of state agency programs. The governor's report shall include:
 - (a) Progress made toward the priorities of government as a result of agency activities; and
 - (b) Improvements in agency quality management systems, fiscal efficiency, process efficiency, asset management, personnel management, statutory and regulatory compliance, and management of technology systems.
22. Governor Gregoire signed both bills into law on May 11, 2005. As a result, the POG process was once again reviewed. This time it was combined with GMAP to ensure compliance with the newly enacted legislation as the Governor developed her 2007-09 budget. Larisa Benson, director of GMAP, through her work with the State Auditor on performance audits, was aware of the process used by the State Auditor to obtain citizen input on how to implement voter approved Initiative 900, relating to Performance Audits. The State Auditor used a process of polling and focus groups through a contract with Elway Research to implement the initiative.
23. In preparation for the 2007-09 budget and to comply with both ESHB 1242 and ESHB 1970, OFM and the Governor's Office began the POG process. At this time, Governor Gregoire launched Washington's current program of citizen engagement. The objective, in part, was to reverify the key results identified as important to citizens for the budget process and to see if these results resonated with citizens. Ms. Benson, director of GMAP, proposed the citizen engagement strategy to the Governor and her senior staff. The idea was further vetted by a board of citizens appointed by the Governor to advise and oversee aspects of state government performance. This ultimately led to the selection of a consultant with strong local credibility, developed from years of facilitating public meetings and conducting public opinion surveys, to help design and implement the workshops.
24. Elway Research Inc. (Elway) had previously developed a citizen engagement process for the City of Bellevue. Bellevue's Vital Signs was a more advanced POG process on the local level, which had won accolades as a Best Practice for local government. Bellevue had been using the citizen forum process developed by Elway with great success. It

appeared this type of forum would work well for the State of Washington and serve to implement the new legislation. OFM contracted with Elway Research Inc., to design and implement a citizen engagement process similar to Bellevue's Vital Signs Citizen Forum.

25. Using the same basic process, seven workshops were held throughout Washington. The locations were selected at or near population centers in all parts of the state. Elway randomly recruited 50 citizens in each location to participate in the citizen workshops. Elway used the voter list as a tool to find possible participants because:

- (1) 72 percent of the eligible citizens are registered to vote,
- (2) the list includes contact information that is usually accurate, and
- (3) the people on the list would be more likely to live in the area where registered which would ensure that participating citizens actually represent the location.

The goal was to have a group that represented a balance between gender, age, education, income, and ethnicity. Party and political preference and voting records were not considered in selecting participants. The purpose was to get a broad cross section of the population in each location to ensure the broadest input of citizen views, not for any political purpose. Elway selected the participants and presented the list to the Governor's Office and OFM staff. The state had no input as to who would attend.

26. Each workgroup in each location was presented with information about the state's budget and performance measures. The participants were broken into small groups, each presented with one subject area (transportation, education) and a list of activities/priorities. They then were asked to prioritize activities in the subject area provided. Their rankings were reported out to the whole group and to OFM and the Governor to use when developing her budget.
27. Also included in this process was a Town Hall meeting in each location. At these meetings, the Governor would have the opportunity to report to the citizens on the subjects required in ESHB 1970 and to receive additional input and respond to questions, as required by ESHB 1242. These events were unscripted. Notice was provided in the communities and anyone could attend. No screening was done regarding attendance at the Town Hall meetings. Again, this input was used in developing the budget and implementing the 2005 legislation.
28. Since the legislation requires input on all budgets and requires an annual report to citizens, this process was repeated in the summer of 2007. So the "listening tour", which actually took place in five cities, is the same process as fully described above, except that instead of calling the sessions "citizen workshops," it was called "citizen engagement" and the town hall meetings were the listening tour.

29. The complaint alleges that focus groups are almost exclusively a tool for campaigns. These were not "focus" groups as the term is commonly used. Focus groups are commonly smaller groups of people where you test messages and messengers. These citizen workshops were developed to receive input on the priorities of government and to implement and comply with current law. The citizens were specifically told by Victor Moore, Director of OFM that the voice of the people is rarely in the room when budget decisions are made. He further stated before each workshop that this activity is designed to bring the voice of the people into the room when the Governor is developing her budget. This type of activity, regardless of the name, has become a common tool for government.
30. The original POG process and its subsequent iterations has been the recipient of numerous awards. Included in the accolades for this citizen-centric process started by Governor Locke and continuing with the improvements made by Governor Gregoire are the 2004 Innovations Award by the Council of State Governments, finalist for the 2005 Harvard Kennedy School's Ash Institute Innovations in American Government Award, Top 50 Programs of the 2008 Innovations in American Government Awards competition, and a grade of A- from the Pew Center of the States in its Grading the States Project, in which no state received an A.
31. All the Governor's activities in regards to the citizen engagement and town hall meetings were authorized by statute. In addition, this type of activity is commonly used in the normal and regular conduct of business by statewide elected officials.

Allegation 3 - Contract for Communication Related Services. The complaint alleges that the Governor's Office entered into a contract with a public relations firm, "that is a political donor of the governor's," to evaluate the Governor's Office communications structure. It further alleges that this is the second time a contract has been issued to review the office's "PR strategy." The complaint then concludes that this work is "to improve the governor's political communications in anticipation of the upcoming election campaign."

32. Like all statewide elected officials, the Governor has a communications office. Unlike other statewide elected officials, the Governor has broad authority and responsibility to communicate with the public, provide an avenue for the public to communicate with and receive a response back from the Governor, her staff, and cabinet agencies. In addition, the media expects to receive information from the Governor's office regarding schedules, policy, actions, etc., as do other state agencies, federal and local government entities, and other state governments. A communications staff must coordinate activities both in Olympia and in other parts of the state and needs to be able to respond to emergencies, such as floods, fires and earthquakes. All these activities and responsibilities are part of the normal and regular conduct of the Governor's office and are handled by the Governor's communications office.

33. Like any state agency, it is important to take time to review and to make any necessary changes in the way they do business. As needs change, agencies make operational adjustments to meet the new objectives. Such actions cannot stop just because a statewide elected official may choose sometime in the future to run for reelection.
34. In October 2007, Cindy Zehnder began in her new position as the Governor's Chief of Staff. Around this same time, Holly Armstrong, the Communications Director, announced her resignation. In addition, there were a number of vacancies or anticipated vacancies in the communications office. Given the new Chief of Staff and the impending staff losses, it appeared a good time to do a review and receive any recommendations on how the communications office could operate better and more efficiently in order to meet the Governor's constitutional and statutory duties and meet the expectations of the people she serves. As described in the Personal Services Contract Filing:

The Governor's Office is unique in state government in that the Governor is expected to be the spokesperson on behalf of the state and its citizens. As such Governor Gregoire must be aware of multiple breaking issues and be prepared to react and address them immediately. She is expected to provide her position on a broad array of issues in the course of the day. The Communications Office acts as a hub for much of the daily activity of the Governor. Having a well functioning communications team in place is key to the Governor's accurate, open, accessible communication with citizens.

35. In addition to the review, the Office also needed assistance in the recruitment of a new Communications Director and other communications staff. The Governor's Office does not have the internal resources for these recruitments, and like many other agencies when a high-level staff position needs to be filled, a consultant is hired to lead that process. Since 1992, higher education institutions and state agencies have contracted with outside consultants on numerous occasions to help recruit and hire executives as a normal course of business. The review of the Office would help determine what skills were needed to fill this and the other vacancies. Finally, a temporary Communications Director was appointed, borrowed from another agency. It was determined that an experienced consultant was needed to assist the communications office in its daily operations, provide assistance to the temporary Director, and help in the transition to the new staff.
36. Based on these needs, the Governor's Office entered into the contract to evaluate the current communications structure, to assist with the transition of hiring a new Communications Director, help recruit staff for the communications function, provide on-call assistance, and help develop a framework for its communications. These represent distinct services for which few can qualify to perform. Cocker Fennessy was not hired because of any support, but rather because of Anne Fennessy's unique qualifications, having served as Communications Director for Governor Lowry. As only a person who has been a part of a Governor's communication office knows, it is difficult to understand the breadth and quantity of issues that come into the Governor's Office on a daily basis and be in a position to respond to them. Ms. Fennessy also has the expertise

to step in and assess the current organizational structure. Finally, she was available to immediately provide the short-term services needed.

II. APPLICABLE LAW AND ANALYSIS

RCW 42.52.180 prohibits a state officer or employee from using facilities of an agency for the purpose of assisting a campaign for election of a person to an office. This prohibition does not apply to activities that are part of the normal and regular conduct of the office or agency. RCW 42.52.180(1) states:

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 regard to the allegations in this complaint, all the activities cited are the normal and regular conduct of the Governor's Office, Office of Financial Management, and Washington Learns. All of the activities deal with either communicating with the public or engaging in a process to receive communications from the public. The described actions by Governor Gregoire, her staff, executive agencies, and commissions on which she served were made in accordance with law. Many of the actions taken were pursuant to specific statutory authority while others are necessarily implied from either constitutional or statutory authority. In all events, the activities were done in the normal and regular course of conduct and not to assist in any political campaign. It is important to note that during the time period that each and every activity was undertaken, the Governor was not a declared candidate for any office.

In order to determine if an activity is normal and regular conduct of the office, it is important to understand the constitutional and statutory authority of the Governor. Although the Governor's authority is extremely broad, it is not unlimited. However, the Governor has the responsibility of communicating with the citizens she serves, providing an avenue for the citizens to contact the Governor and to timely and appropriately respond to citizen inquiries, and to seek citizen input when developing policy and budget proposals that will affect the citizens of this state. All the activities set out in the complaint are activities that directly relate to and are authorized by these broad constitutional and statutory provisions.

In relation to the Washington Learns issue, the privately funded survey included questions such as prioritizing proposals for accomplishing different areas of educational reform dealing with subjects such as math and science, the purchasing of technology for schools, educational accountability and performance, and college and workforce training proposals. These questions are directly on point in regard to the statutory authority provided to Washington Learns. The responses provide valuable information as to where the education policy in this state should be heading, where funding should be concentrated, how much funding would be needed, and how to fund the proposals. As such, any time spent on this survey is the normal and regular conduct of Washington Learns and not the use of state resources for campaign purposes.

Citizen engagements are a regular and expected part of being an elected official. The State Auditor has conducted town hall meetings, as has the Secretary of State and the Attorney General on various issues. Citizen engagement is a part of the Priorities of Government process and was implemented by Governor Locke. The Governor is directed to engage the citizens in accordance with RCW 43.88.090 and ESHB 1242 and SSHB 1970. A group of citizens approved the idea of selection of a consultant to conduct public opinion surveys. Elway previously developed a successful citizen engagement process for the City of Bellevue. OFM contracted with Elway to design and implement a citizen engagement process similar to the one developed for Bellevue.

The Governor has broad authority and responsibility to communicate with the public. It is important to take time to review and make necessary changes in the way the Governor's office does business. Cindy Zehnder began her new position as Chief of Staff in October 2007, the Communication Director announce her resignation around the same time. There were also a number of vacancies or anticipated vacancies in the communications office. This time appeared to be a good time to review and receive recommendations on better operations of the communications office. Based on these needs, the Governor's office entered into a contract with Cocker Fennessy because Ms. Fennessy was the prior Communications Director for Governor Lowry and has the expertise to assess the current organizational structure.

All the contract services provided are for the official and lawful functions of the Governor's Office for which state resources can and should be used to perform. None of these services in any way relate to any campaign activity, nor does the communications office in any way perform campaign-related activity. This work is related to communication with the public to fulfill the Governor's constitutional and statutory duties along with citizen expectations, and is the normal and regular conduct of the agency.

III. RECOMENDATION

WAC 292-100-050(2) provides that upon receipt of the board staff's investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

Based on Board staff's investigation, Board staff recommends that the Board dismiss the complaint as unfounded.



Melanie de Leon
Executive Director
Executive Ethics Board

IV. DETERMINATION

Based upon the above analysis and conclusions, and pursuant to RCW 42.52.420, we, the State of Washington Executive Ethics Board, determine the following:

Dismissal

- Any violation that may have occurred is not within the jurisdiction of the Board.
- The Complaint is obviously unfounded or frivolous
- Any violation that may have occurred does not constitute a material violation because it was:
- Inadvertent and Minor
- Cured

Reasonable Cause

- There IS reasonable cause to believe that a violation of RCW 42.52.180 has been or is being committed.
- There IS NOT reasonable cause to believe that a violation of RCW 42.52.180 has been or is being committed.

V. POTENTIAL PENALTY

- _____ We believe that one or more violations of RCW 42.52 may have occurred, and the penalty may be MORE THAN \$500.00.

- _____ We believe that one of more violations of RCW 42.52 may have occurred, and the penalty may be LESS THAN \$500.00.

VI. CONCLUSION

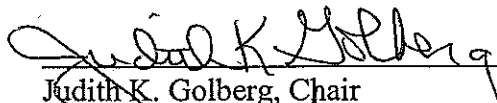
- This matter is hereby dismissed based upon the Dismissal Determination found above.

- _____ Upon finding there IS reasonable cause to believe that violation(s) of RCW 42.52 have occurred, IT IS HEREBY ORDERED that the Executive Director of the Board schedule a public hearing on the merits of the complaint.

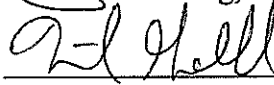
- _____ Upon finding there IS reasonable cause to believe that violation(s) of RCW 42.52 have occurred and that penalty and costs no greater than \$500.00 will be assessed for these violations, IT IS HEREBY ORDERED that the Executive Director of the Board schedule a brief adjudicative proceeding under WAC 292-100-190 on the merits of the complaint.

- _____ Upon finding there IS NOT reasonable cause to believe that violation(s) of RCW 42.52 have occurred, IT IS HEREBY ORDERED that the complaint is DISMISSED

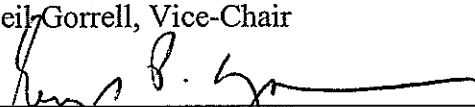
DATED this 12th day of September 2008.



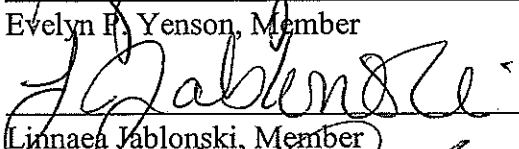
Judith K. Golberg, Chair



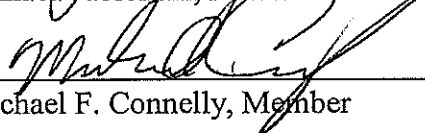
Neil Gorrell, Vice-Chair



Evelyn P. Yenson, Member



Linnaea Jablonski, Member



Michael F. Connelly, Member