

State of
Washington
House of
Representatives



January 6, 2015

Hand-Delivered

Legislative Ethics Board
P.O. Box 40482
Olympia, WA 98504-0482

CONFIDENTIAL

Re: Complaint/Referral of Ethics Matter

Dear Chairperson Hoover and Members:

The purpose of this letter is to refer to you a complaint and possible violations of the Ethics in Public Service Act, and to ask that the Legislative Ethics Board ("Board") exercise its jurisdiction to investigate this matter and take appropriate action. If the allegations are true, the House of Representatives ("House") asks the Board to impose any penalties or remedies that are warranted, including making recommendations to the House on further remedial steps or actions that the House should take. Given the serious nature of these charges and the demands of the upcoming legislative session, the House respectfully requests that the Board expedite review of this matter to the extent practicable.

I. Introduction, Chronology, & Background

Last fall, two legislative assistants came to speak with senior House Republican Caucus ("HRC") staff about expense reports ("reports") being submitted on behalf of a member, Representative Susan Fagan ("member"). The assistants were concerned that the reports were inaccurate and that the member was constantly making changes to the reports. The Chief Clerk of the House of Representatives ("Chief Clerk") was informed and met with the legislative assistants. She asked that those assistants prepare materials to substantiate any problems or improprieties, which they did. Those materials are included with this letter.

At this point, it became clear to the House that these allegations were more serious than originally thought. In sum, there are allegations of theft, fraud, and improper use of staff by the member to falsify expense reports in order receive payments of state taxpayer money from the House to which the member was not otherwise entitled. In the roughly ten month period at issue, the total overpayments appeared to run into several thousand dollars and perhaps even more.

II. Supporting Materials

At the request of the Chief Clerk, two legislative assistants who worked directly for the member prepared materials documenting the allegations of fraud. These materials are included with this letter,

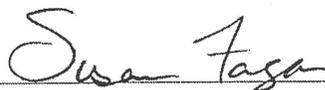
and they have been put into a notebook as organized by these assistants. In this notebook¹ are two sets of materials (for ease of reference, these materials have been paginated in the order received):

1. First, a small packet of materials tucked into a pocket of the notebook entitled, "Mileage Expense Summary January – April 2014."
2. Second, the materials in the binder portion of the notebook entitled, "Mileage Expense Summary and Index."

While prepared by different people and having slightly different formats, these two sets of material are organized chronologically and include the same information: a summary sheet,² with dates and amounts and an explanation of the discrepancy alleged; and supporting documents which substantiate the allegations. These supporting materials include the member's office calendar, maps of relevant locations in relation to the legislative district, invitations and similar items detailing the actual events, communications (usually e-mails) between the member and the assistant, and similar documents. In some cases, the assistant has made hand-written notes on materials to flag the inconsistency.

Also included are the actual expense sheets submitted to the House by the member for payment.³ It is worth noting that the member specifically attested to the accuracy of the submitted materials. Here, as an example, is a signature block from a typical reimbursement sheet:

▶ I hereby certify under penalty of perjury that this is a true and correct claim for necessary expenses incurred by me and that no payment has been received by me on account thereof.

X 
signature of State Representative

Not only does House policy make clear that members are responsible for their expense reports, but the actual form also has the member certify—under penalty of perjury—the accuracy of each report. To the extent that the member wishes to provide additional explanations for any expense, it is worth noting that the House works first and foremost with the expense report she submitted and certified as correct.

The House has not yet undertaken a comprehensive investigation beyond review of these materials. Having met with the legislative assistants, and having reviewed the materials they provided, the Chief

¹ To assist the Board with distribution of these materials, 15 copies of this notebook are provided.

² These summary sheets appear to have been prepared as Excel spreadsheets. Some of the numbers involved may be formatted as dollars as opposed to simple numbers in the case of mileage. This is a small error that should be apparent when reviewed in context.

³ In the middle of 2014, the House switched to an electronic system for expenses, which is why some months' summaries look different from others.

Clerk has no reason to believe their testimony and materials to be anything other than credible. The materials support essentially five categories of misconduct:

1. Claiming expenses for fake or nonexistent events;
2. Charging expenses to the unlimited House reimbursement account instead of to the member's limited expense account by claiming the wrong location;
3. Claiming mileage in excess of actual mileage driven;
4. Seeking reimbursement for campaign-related activity; and
5. Directing the assistants to change properly prepared expense reports to one of the categories of improper expenses outlined above.

III. Alleged Ethics Violations

There is credible evidence that the member engaged in multiple violations of the Ethics in Public Service Act (Chapter 42.52 RCW), including but not necessarily limited to the following:

1. **Fraud & Theft – Improper Use of State Resources for Personal Gain.** The primary allegation is that, from approximately January through October of 2014, the member falsified expense reports so as to receive state money to which she was not entitled. Factually, these allegations break down into three categories:
 - a. **Fake/Nonexistent Events.** It is alleged that there were numerous events that were simply made up—that is, there was no such meeting, town hall, or other event. The allegation is that the member simply listed nonexistent events to increase the amount she was paid by the House. The primary way in which this is alleged to have been accomplished is by claiming mileage to events that did not occur.
 - b. **Wrong Location/Distance.** It is alleged that there were numerous instances where the member listed the wrong location of an event, or the total distance travelled on an occasion. The primary ways in which this is alleged to have been accomplished were by claiming an event took place within her legislative district when, in fact, the actual location was outside of the legislative district; and/or claiming that the total distance travelled was in excess of 100 miles when, in fact, it was not. The reason for this distinction turns on House policy for travel. The general rule is that most member travel is paid for from that member's annual business expense account. The business expense account is capped at \$5,500 per year (\$6,500 per year if the member maintains a district office). There is an exception to this rule which is crucial to these particular allegations: if a member has a large legislative district, and if that member travels to events within the district, and if the travel exceeds 50 miles one way or 100 miles in one day, then the member may be reimbursed by the House and it does not count against the business account limit. Effectively, there is no limit to this in-district 100-mile reimbursement. As alleged here, the member either falsified the actual location of events to make them appear to be in her district when they were not, or she falsified the total miles travelled to make the mileage appear to be greater than 100 miles when the actual distance travelled

was less, or she did both. She allegedly did this so that her travel payments would not be capped by her own expense account's limit.

- c. **Inflated mileage.** It is alleged in some instances that the member increased the number of miles travelled beyond the actual distance to further increase the amount she would be reimbursed by the House.

These allegations could be theft and fraud under our criminal code. They could also constitute the misappropriation and falsification of accounts by a public officer under RCW 42.20.070. Specific to the Ethics in Public Service Act, they could constitute use of money for private gain (RCW 42.52.160) and the improper gifting of state funds (RCW 42.52.170).

2. **Campaign Activity – Improper Use of State Resources for Political Campaigns.** Among the allegations of fraudulent reimbursement are several which are alleged to be for campaign activities. On at least two occasions, it is alleged that the member falsified an event so that she could travel to pick up a campaign contribution check. On at least one occasion, it is alleged that the member falsified an event so that she could work at a campaign booth at a county fair. If true, this would violate the ethics prohibition against using public resources for political campaigns (RCW 42.52.180).
3. **Pressuring Employees – Improper Use of Office & Resources for Private Gain.** One of the more serious allegations made is that the member pressured her legislative assistants to make changes to expense reports so that she could inflate the payment she received thereby using her official position for personal, monetary gain. These staff report having the member consistently change the reports they prepared—reports they prepared based on House policies and the common practices and training provided House staff—so as to perpetrate fraud. The aides report being very uncomfortable with all of this. To quote one assistant:

...I entered [the member's] expenses off her sheet and added in her fake meetings, which cover her and make her expenses submitted look like legitimate house expenses on the surface...I don't expect every wrong addressed and corrected, that isn't realistic, and in all honesty, I don't really care if [the member] always does the right thing. I am uncomfortable being left here to continue to be her scapegoat. I am facilitating her by entering fake meetings and falsifying her expenses, and am playing either the loyal assistant who does what [the assistant is] told even when [the assistant] knows it's wrong, or the dumb puppet that she can manipulate to do whatever she wants. She knows I'm not either...I feel a bit like that goat on Jurassic Park, tied up, waiting to get eaten alive.

This particular assistant eventually left her job with the House, in part because she felt uncomfortable with the situation. Pressuring assistants to assist with fraudulent expenses would be the improper use of an employee under her direction for personal gain (RCW 42.52.160).

While these allegations may involve House policies, they specifically implicate state resources and, if true, would violate the Ethics in Public Service Act.

IV. Conclusion

The House considers these allegations to be extremely serious, and believes that referral to the board comports with both the letter and the spirit of the Ethics in Public Service Act, RCW 42.52 et seq. While there are many questions raised, the House also believes the Board has jurisdiction to handle the overall investigation and make recommendations should other action or referral to other entities be appropriate, or to even make those referrals directly.

Beyond meeting with the legislative assistants and receiving their materials, the House has not conducted a formal investigation. The member, of course, deserves ample opportunity to present any materials or witnesses she may have, and to offer any explanation as to any allegation. The House has met with her to explain the seriousness of this matter. While she does not agree with the allegations, she understands their significance, has cooperated with the House to date, and has indicated that she will likewise cooperate with the Board should it choose to investigate. The House will take no further action on this matter pending the Board's review.

In all cases, the House is willing to cooperate fully with the Board and assist in any way the Board desires. Staff and resources can be made available as requested from the Board.

Representative Fagan is currently represented by counsel. Her attorney is:

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Thank you for your attention to this matter and for any consideration you can give to expediting this matter. Should you have any questions or need any additional information or assistance, please do not hesitate to contact the Chief Clerk.

Very truly yours,

THE WASHINGTON STATE HOUSE OF REPRESENTATIVES



By Barbara Baker, Chief Clerk
Washington State House of Representatives

Enclosure: Notebook of supporting materials (15 identical copies for distribution)