

INVESTIGATION REPORT

Confidential Information

Not For Distribution

To: Marilyn Eddins, Chief Clerk, Colorado House of Representatives

Subject: Workplace Investigation – [REDACTED] Complaint

Conducted by: Amy Travin, Workplace Investigator, Employers Council, Inc.

Date of Report: January 31, 2018

Investigation

Active: December 4, 2017 – January 31, 2018

Procedure: Marilyn Eddins, Chief Clerk of the Colorado House of Representatives, contacted Michele Sturgell of Employers Council, Inc. ("EC") to perform a workplace investigation. Ms. Sturgell explained the investigation process Ms. Eddins and clarified the investigator's role and the necessary expectations in this process as communicated to all participants and referenced below.

The undersigned, Amy Travin, assumed the role of investigator in this matter. I prepared written summary statements for each witness. I communicated similar introductory remarks to each witness. These remarks addressed the purpose of the investigation and my role as a neutral fact finder, confidentiality expectations, Colorado House of Representatives prohibition against retaliation for participation in the investigation and/or making complaints under the equal employment opportunity policy, and the expectation to be truthful. Each witness reviewed his or her statement with me. I encouraged each witness to make any additions, deletions, or other modifications necessary to accurately reflect his or her beliefs. Each witness was asked to review his or her statement to ensure completeness and accuracy and attest thereto by signing the summary statement.

On December 14, 2017, I interviewed [REDACTED] former intern [REDACTED], via FaceTime.

On January 2, 2018, I interviewed Jack Tate, State Senator, at his office, located at 1525 Sherman Street, Denver, CO, 80203.¹

On January 5, 2018, I interviewed [REDACTED] via telephone.

¹ Mr. Tate's attorney, [REDACTED], was present during the interview.

On January 31, 2018, I interviewed [REDACTED], Legislative Aide [REDACTED] at Employers Council offices, located at 1799 Pennsylvania St., Denver, CO, 80203.

Attachments:

1. [REDACTED] Summary Statement²
 - a. Emails between [REDACTED] and this investigator
2. Jack Tate Summary Statement
 - a. Documents provided by Mr. Tate to this investigator
3. [REDACTED] Summary Statement
4. News articles this investigator found concerning Mr. Tate
5. [REDACTED] Summary Statement
 - a. News article provided by [REDACTED]

Background and Summary of Issues

Every year the Colorado General Assembly holds regular session from around the beginning of January, for the following 120 days. Senator Jack Tate represents District 27, which encompasses parts of Southeast Denver and Aurora. This investigator understands [REDACTED] worked as an intern during the 2017 legislative session [REDACTED]. [REDACTED] alleges that Mr. Tate made comments about her clothing, including that he said, "I like the way that skirt looks on you." As well, [REDACTED] alleges Mr. Tate nudged her near her waist, acted flirtatious towards her, and put his arm on her shoulders.

Each of the pertinent allegations will be addressed individually.

Investigator Findings

This section identifies the pertinent allegations, followed by identification of specific sources of supporting or refuting information. Investigator commentary follows to develop specific areas of concern, address credibility assessment, or provide other subjective comment. *For a comprehensive understanding of the issues presented here it is recommended that each summary statement be reviewed individually.* Unless otherwise noted, all information quoted below comes from the summary statements.

Allegation #1: [REDACTED] alleges that in early 2017, Jack Tate said to her, while alone with her in an elevator: "I like the way that skirt looks on you."

Supporting

² Because this interview was conducted via FaceTime, [REDACTED] edited her statement electronically. The edits by [REDACTED] appear in red and strike through text.

Information: [REDACTED] former intern [REDACTED], states: "On my first day, I met Senator Jack Tate. We kind of got into the elevator together and he was making jokes and he would nudge and make a joke. I thought he was friendly. I can't remember if there were other people in the elevator. I didn't think anything of it. Until we were both in the caucus meeting and he was on the panel. He kept staring at me while he was on the panel for it. It was a committee meeting, as one of the members of the committee. He was making eye contact with me during the meeting and I would avert my eyes and not make eye contact. I was kind of uncomfortable with him looking at me, but I had to stay in the meeting to take notes. I was kind of close to the back. He was sitting at a half circle table and he was at the table. He was on the far left and I was sitting on the right side of the room. He was maybe 15-20 feet from me, and maybe 20 is a bit of stretch. The room was rather large that the meeting was in, so the chairs were kind of pushed up. It was one of the more intimate settings in the Capital. There were about 10-11 other senators and representatives there. It was my first day, so I didn't really know anyone. I couldn't ID anyone at the time. I remember there being one aid that I vividly remember, he was in the room as well. His name is Andrew, and he worked for Representative Smallwood. The meeting was about an hour. The meetings are about an hour. It was a lunch meeting too, so I remember the senators and representatives were eating in it too. I thought maybe he just had a dead stare. But, it didn't feel like when you zone out and you accidentally feel like you're looking at someone. But he would look around and then we would lock eyes and he would still be looking at me. It felt very calculated. I still tried not to think anything of it. I didn't know him. I didn't think there was anything to it think except he was a nice guy since our first encounter in the elevator we were in the elevator. I didn't really like that he was touching me in the elevator, but it was not until we got back into the elevator after that meeting that things got really uncomfortable."

[REDACTED] continues: "So after the meeting we got back into the elevator. And this is when he made the comment about my skirt. I think he said something like something about the meeting being boring. I know it started off with small talk. But he then said something like, 'I like the way that skirt looks on you.' I remember it caught me off guard from what we had originally been talking about. It made me want to get out of the elevator. We were supposed to get off on the got off in the basement level with the cafeteria. I think we started on the third floor. It had to have been the third floor. The basement is the way the representatives and interns will walk out so we do not have to go through security. My response was in such a way because that it caught me off guard and I kind of sat there for a minute and said, 'Thank you?' and then I got out of the elevator. I got off on the first floor because I was so flustered. I remembered I felt gross and slimy and I wanted to go home and change. I think the elevator was a little bit larger than a standard elevator. It would not be the size of one that you would use to move furniture, but definitely a larger sized elevator."

continues: "A lot of people had stuck around to talk to other representatives. I think the meeting was something about the school to prison pipeline and restorative justice. I think people stuck around. I think I stuck around too. When I had left, that is when he left. Plus, it also depended on where people were going. If you were only going to the chambers, you could just take the stairs. I wasn't looking over my shoulder. I did think it was weird how we both got to the elevator at the same time. When I got off the elevator, he stayed on the elevator. I think I got off on the first floor because I never would have done that. But, I did see him walking back. Both the offices are in the annex building. The annex building is across the street from the capital. You walk out the side door and our offices were on the same floor. I held back and waited until he was gone before I crossed the street. I did see him cross the street."

further states: "I told the aide, . She was like, 'What, really?' asked, 'What happened?' I told them what happened. And said, 'You should probably just stay away from him.' I didn't really talk about it for the rest of the day and I didn't have to go back to the capital so I wasn't really concerned about it happening for a second time. I think works for still, but works out in California now."

Refuting

Information: Jack Tate, State Senator, states: "The first time I learned of the name of the complainant was from an email from the complainant from Ms. Eddins. I would not be able to recognize this person. I do not know who this person is. I do not have an indication of who this is."

Mr. Tate further states: "My knowledge of the actual complaints against me are that I said, 'I really like that skirt you are wearing' and that I made a joke about the Senate versus the House, or something. I have made comments about what people are wearing, if they are dressed professionally. It is never inappropriate. It is an appropriate comment. I don't have a specific recollection of making that comment, 'I really like that skirt you are wearing' to an individual at the Capitol."

Mr. Tate continues: "I chair the senate business committee. That type of meeting, focusing on the school to prison pipeline, would not necessarily be something I normally would be involved with. I am not involved much with education issues. We get invited to lunch often, but I do not remember that meeting."

Mr. Tate further states: "I do not remember making that type of comment in an elevator, while I was alone with an intern or an aide, or at all. I do not remember the comment, 'I like the way that skirt looks on you.' It is not my understanding that that was the comment that I was alleged to have said. Everyone wears name tags over there, it is on a lanyard. I am saying that it is plausible I could have

made a comment about someone's outfit if it appears remarkable. Some people do not necessarily dress professionally, and so I will give a compliment if I believe they have dressed nicely. It is a matter of being friendly."

Comment: These allegations are difficult to determine, given that the only witnesses are the parties involved.

This investigator found [REDACTED] credible, generally. First, [REDACTED] stated she was not "out for blood" on Mr. Tate and also gave him the benefit of the doubt that his actions were based on not understanding personal space. This leniency by [REDACTED] bolsters her credibility. Second, [REDACTED] did not appear to have a motive to make up these allegations. She appeared to prefer to remain anonymous, especially with the press. Third, [REDACTED] did not seem overly emotional during her interview with this investigator. This appeared consistent with the allegations made, the time since the allegations allegedly occurred, and also that she had told the story before. Finally, her details of some of the actions or movements of Mr. Tate made it seem more plausible that something happened, rather than that she was making something up.

Specifically here, [REDACTED] appeared to remember details of the day when she states she first encountered Mr. Tate. Those details bolster her credibility in this allegation. These specifics include what type of meeting she attended and which floor on which she exited the elevator.

This investigator did not find Mr. Tate's responses credible, generally. First, it appears Mr. Tate may have been attempting to sway this investigator's opinion by giving articles from the press about the allegations. One item he handed this investigator was a Facebook post by [REDACTED] colleague and supervisor, [REDACTED] (see Attachment 2a). Another one of the articles he handed this investigator was how other women at the Capitol would never think of him doing this type of thing, that they have always had good encounters with him (see Attachment 2a). This information appeared as a thinly veiled attempt at showing [REDACTED] allegation was political and most likely untrue. However, it was relatively clear that the articles wherein other women at the Capitol believed the allegations outside of Mr. Tate's character were not witnesses to these allegations. This appears as an attempt to sway this investigator that what other women think about him is a binding fact and must mean it is what all women think about him. This action by Mr. Tate, appearing to sway the investigation by providing outside information, hinders his credibility.

Second, during his interview, Mr. Tate seemed to lack an awareness of how social perceptions of certain eye movements, or comments, could possibly make someone feel uncomfortable. This hindered his credibility because it seems likely that a politician, whose job is, in part, to relate to the public, would lack such an awareness. Third, Mr. Tate appeared reserved in his interview. The

appearance of being reserved seemed possibly out of character for Mr. Tate. For example, at the end of the interview, he stated he had a question. However, Mr. Tate and his attorney left the room to discuss the question. When they returned, it was apparent the attorney advised Mr. Tate not to ask the question. This interaction appeared to make it seem Mr. Tate was relatable, or trying to be relatable, and also seem more likely that Mr. Tate may ask or say inappropriate questions or comments in certain situations.

Specifically here, Mr. Tate states it is "plausible" that he "could have" commented on someone's outfit, if it was "remarkable." This answer appeared rehearsed. This hinders Mr. Tate's credibility in this allegation. Further, because Mr. Tate had hired an attorney, whom was present at his interview, it makes it more likely he may have rehearsed his answer to this allegation, especially considering that Mr. Tate knew of the complaint in advance of the interview because of the newspaper articles. Second, while it does not seem necessarily out of line to comment on another person's outfit, a similar comment would take a different tone if given to a person of another gender, a person you did not know, and a person that was quite younger. Further, if a comment was made on a bracelet, or a hat, it would be another instance where the comment appears appropriate. However, a comment about a skirt takes a different tone.

Therefore, based on the information provided, this investigator finds it more likely than not that in early 2017, Jack Tate said to [REDACTED] while alone with her in an elevator: "I like the way that skirt looks on you."

Allegation #2: [REDACTED] alleges that in March of 2017, Jack Tate nudged her, looked her up and down, and acted flirtatious.

**Supporting
Information:**

[REDACTED] states: "What ended up happening was Ellie was in the elevator, and he came in, and the whole time we're in the elevator, he's looking me up and down, which he did often. He would make another joke and nudge me, and he would act flirtatious. [REDACTED] actually said, 'Are you okay?' I said, 'That's a regular occurrence.' She said, 'That's creepy. I would have actually hit him.' It was more in the middle of my internship. It was probably more in March, probably because I knew I was getting to the point where I wanted to quit. March was the point I thought it wasn't good for my mental health where I didn't think it was good to be in the situation anymore."

[REDACTED] continues: "I didn't notice him touch other people. Like the time we were in the elevator with [REDACTED], he was kind of standing there, and still touch me and reach out to me, even though she was there. She is my age. She is not not pretty. So, I don't know, it felt like selected targeting. I don't know if he did that to anyone else professionally. I know that I did hear during my time there that

he made other people feel uncomfortable, but they were never going to say anything about it. I can't tell you any names, it was through the aides talk."

further states: "Senator Tate did walk by the offices sometimes. He would say hi to me quite often. I didn't have a cubicle. But he would walk by and a couple of times he would say, 'Hi how are you?' and that type of thing. It did seem odd to me because every time I saw him leaving a I was leaving, there are two ways to get to the elevators. If you went to the right, that was where you would go for our offices. But if you went left, his offices were very close. If he went our way to get to the elevators, he would definitely be going out of his way. That is why it seemed. I couldn't tell you if he was ever talking to other senators or representatives in our area. If he was over there, I wouldn't really leave Rep. Michaelson Jenet's office."

, states: "I know Senator Tate, but I am not a close confidant of his. I had very limited interactions with him. I have interacted with him, it was just limited. I will tell you that his office is on the same floor as mine. I would see him in the hallway around my aide's cubical. I thought it was interesting that he was over there. I made note, 'I wonder what he is doing here.' He has an exit to the elevator on his side and we have an exit to the elevator on our side. Where it could not be strange was that the office at the end of my hall was another Senator. I didn't see him talking to that Senator, and I don't know if he has a relationship with that Senator. But when he was coming over, I knew he wasn't coming to talk to me, because we didn't work on anything together. I really do not know how many times he was there. I saw him there a handful of times. I spent most of my time in the Capitol, and not over on our floor. The handful of times I saw him there, I was there, but there was not regularity to my schedule. My aide's name is . Across the hall from my office was a series of cubicles. and then the interns had cubicles out there. I saw him in the hallway near the cubicles. I would be walking into my office and he would be in the hallway and I would say hi and would go into my office and that would be it. I had not thought much about it until my intern's last day. I don't have a specific memory of Senator Tate talking to "

Refuting

Information: Mr. Tate states: "I meet dozens of new people every day. I would be speculating if I would say that my banter with an intern or aide was perceived as flirtatious. It is not something I have any recollection of nor something I would do. I am friendly with people. If I have met someone before, I would say hi to them in the hall if I saw them again. There may be around 300-400 aides or interns. Each legislator has one or two aides and one or two interns, or even multiple aides."

, Legislative Aide , states: "Senator Tate is never in his office. He is never there. Her accusation that this is happening

around the office, is never there. When I was there in the last session, he was there maybe 2-3 days and maybe 10 meetings for the entire session I was there. Most meetings are held in the Capitol. I didn't even know that they were even seeing each other. She only came in a couple of days a week, so that even further limited their interactions."

Comment: Unlike the first allegation, this allegation was allegedly witnessed by a third party. However, [REDACTED] did not return this investigator's attempts at contact. [REDACTED] did speak to the press about the incident. However, neither the lack of contact, nor [REDACTED] statements in the press swayed this finding one way or another.

Mr. Tate states he was not flirtatious with an intern or aide during the 2017 legislative session. This investigator is not persuaded by this statement. First, it appears that Mr. Tate may have walked towards [REDACTED] side of the large office building, multiple times, during the session. Given the layout of the offices, Mr. Tate would have been going out of his way to walk by where [REDACTED] desk was located. [REDACTED] corroborates [REDACTED] account that Mr. Tate repeatedly went by her office. And while [REDACTED] claims Mr. Tate was "never" in his office, this appears as an exaggeration and is not credible because [REDACTED] also states he saw Mr. Tate in his office 2-3 times during the session. This action, of Mr. Tate going out of his way while on his office floor, makes it seem more likely he was 'targeting' [REDACTED]. Second, Mr. Tate has a motive to deny this allegation. He has a wife, children, and a political career that puts him in the limelight. While these facts alone do not mean he would have to deny the claim, it does make it more likely he would be evasive, as he has appeared to do here.

[REDACTED] seems credible in this allegation. She does not appear to have a motive to fabricate this story. Additionally, she appeared most upset by when Mr. Tate would allegedly eye her and nudge her. This emotional response appears proportional to her allegations. Finally, this investigator found her credible generally (see Allegation 1).

Therefore, this investigator finds it more likely than not that in March of 2017, Jack Tate nudged [REDACTED] looked her up and down, and acted flirtatious.

Allegation #3: [REDACTED] alleges that between January and early April of 2017, Jack Tate put his hand on her shoulder, multiple times.

Supporting Information: [REDACTED] states: "Often when I was walking into the capitol and I would say, 'Good morning Senator Tate' and he would say either just hello or, 'No come over and talk!' During these encounters he would put his hand on my shoulder. I

think know it was written in my body language that it made me uncomfortable. He didn't seem to like get it. When I would squirm or dip my shoulder or repositioning myself so I was not standing right next to him, he would press down a little bit to kind of hold me in place. It made me so uncomfortable to not want to be in that situation."

Refuting

Information: Mr. Tate states: "I would imagine it is typical for everyone to put their arms around the shoulders of people at the Capitol to say hello or something similar. Mostly I always offer my hand to shake hands. A lot of people like to hug. I offer my hand to shake hands first. In as far as terms as an arm around the shoulder, I think it could be like anyone else. It is not something I think about. People put their arm around my shoulder. I would not say it is typical, but I guess everything is circumstantial. It is certainly plausible that I would. I am six feet tall. No one has ever mentioned me making them feel uncomfortable about my arm around their shoulder, at least prior to this. It does not sound plausible that I would leave my arm too long around someone's shoulders or that I would have pushed down at all to hold them in place."

Comment: As with the previous allegations, Mr. Tate speaks in generalities and tries to sway the conversation away from these specific allegations. Mr. Tate admits he puts his arms around the shoulders of people he may be standing with, when at the Capitol. He denies leaving his arm too long or pushing down to hold them in place.

It appeared Mr. Tate was a relatively larger man, taller than most. It also appeared [REDACTED] was an average size woman. It seems likely that if Mr. Tate put his hand on [REDACTED] shoulders, it could feel weighty.

This investigator found [REDACTED] credible, generally (see Allegation 1).

As a result, this investigator finds it more likely than not that between January and early April of 2017, Jack Tate put his hand on [REDACTED] shoulder, multiple times.

Allegation #4: [REDACTED] alleges that around March of 2017, Jack Tate nudged her around her waist or rib area, around seven or eight times.

Supporting

Information: [REDACTED] states: "In front of other people, he was very casual about his encounters with me. Even if your colleagues make a joke, they don't usually touch you. He would just touch my shoulder or nudge my waist. He would do that nudge that people do, but it was lower. It was like he was trying for the lower half of my body. The hand on the shoulder thing all the time. The staring

and leering and full gazes, and the creepy way he would look me up and down, like if your boyfriend thought you looked good before going out. More of a up and down, almost catcall type of way.”

██████████ further states: “The nudges would start on the shoulder. But then it would drift. After the initial times would he would nudge my shoulder, after he said something that he thought was funny, it would go lower. And sometimes he would nudge me on the side, near the ribs or bit lower, on the side. It’s a hard place to describe. If I would guess, he probably nudged me around seven or eight times. He would not do it every time I saw him. It was only some of the times I encountered him. It was usually more verbal about how I dressed. It was only physical towards the end when I started not going to the Capitol as much. That was the reason he was doing the nudging thing. So, it was probably around March when the nudging mostly happened.”

Refuting

Information: Mr. Tate states: “I do not remember ever touching anyone on their waist. That is not typical for me. I would not imagine doing something like that.”

Comment: ██████████ does not appear to desire to exaggerate how many times Mr. Tate may have nudged her in the side. This bolsters her credibility in this allegation. Additionally, it appears to make her uncomfortable that he would nudge her shoulder, but more so that he would nudge her by the waist. This appears as an appropriate emotional response, and also bolsters her credibility in this allegation. Further, this investigator found ██████████ credible, generally (see Allegation 1).

Mr. Tate denies touching “anyone” on their waist. This investigator is not persuaded by this statement. Mr. Tate has motive to deny touching anyone in this way. Additionally, Mr. Tate’s response to this question appeared quick and firm. While that may sometimes be because the statement is not true, in this case, it appears without much consideration. Mr. Tate states he does not know who the complainant is in this case. But if he were to be asked if he touched anyone’s waist in the 2017 legislative session, it seems to make more sense that he would have to think about it, and not have such a quick response, especially if he is one to have his arm around people’s shoulders, or give handshakes often. It is apparent that he is not averse to touching. Therefore, it seems more likely he should be questioning himself whether he, in fact, may have touched someone’s waist.

Therefore, this investigator finds it more likely than not that around March of 2017, Jack Tate nudged ██████████ around her waist or rib area, around seven or eight times.

Other Issues

During the witness interview process, several issues arose that this investigator determined were not within the scope of the allegations discussed above.

1. [REDACTED] stated [REDACTED] told her that Mr. Tate made the comment: "Come by my office and I can help you grow your political career." However, [REDACTED] did not make that allegation to this investigator.

Conclusion

As indicated above, it appears more likely than not that Mr. Tate made the comment, "I like the way that skirt looks on you. As well, it appears more likely than not that Mr. Tate acted flirtatious with [REDACTED] while in an elevator with her. Finally, this investigator found it more likely than not that Mr. Tate [REDACTED] nudged her near her waist, around seven to eight times.

Summary of Findings

1. This investigator finds it more likely than not that in early 2017, Jack Tate said to [REDACTED] while alone with her in an elevator: "I like the way that skirt looks on you."
2. This investigator finds it more likely than not that in March of 2017, Jack Tate nudged [REDACTED] looked her up and down, and acted flirtatious.
3. This investigator finds it more likely than not that between January and early April of 2017, Jack Tate put his hand on [REDACTED] shoulder, multiple times.
4. This investigator finds it more likely than not that around March of 2017, Jack Tate nudged [REDACTED] around her waist or rib area, around seven or eight times.

Analysis

Decision-makers for the Office of Legislative Legal Services are responsible for assessing whether the facts of this matter support the allegations presented here or otherwise establish unacceptable conduct. This investigation report is intended to be the tool for making that analysis by identifying the relevant allegations and addressing sources of supporting and refuting information. This investigator's commentary is also shared, but it is important to understand that another person, such as a judge or a juror, might reach different conclusions based on the same or additional information.

END REPORT

Respectfully submitted,

EMPLOYERS COUNCIL, INC.

Amy Travin, J.D.
Workplace Investigator

AET/

Attachments