

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

No. 04-032

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Brian R. Malarky, Executive Director. The following stipulated facts, conclusions, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation.

Section 1: PROCEDURAL FACTS

1.1. On June 28, 2004, the Executive Ethics Board initiated complaint alleging that former State Fire Marshal ██████████ violated the Ethics in Public Service Act by: (a) directing staff to purchase sprinkler system components at a discount for her personal residence; (b) directing staff to participate in the installation of the sprinkler system at her personal residence; and (c) participating in contracting and regulatory decisions related to her spouse's employment with the the National Fire Sprinkler Association (NFSA) and Bates Technical College (BTC).

1.2. The Board is authorized under RCW 34.05.060 to establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. [REDACTED] understands that if Board staff proves any or all of the alleged violations at a hearing, the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.4. [REDACTED] recognizes that there exists a likelihood that the Board staff has evidence from which the Board may conclude that [REDACTED] violated the Ethics in Public Service Act, even if only unintentionally or unknowingly. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order set forth below.

1.5. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint in this matter, subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the agreed order. [REDACTED] in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation and agreed order.

1.7. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [REDACTED] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.8. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.9. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] waives any objection to participation at any subsequent hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, [REDACTED] understands and agrees that this proposed stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. During all times when the complaint in this matter was filed, and at all times material hereto, [REDACTED] was employed as the Washington State Fire Marshal. [REDACTED] employment with the State ended in May 2004.

2.2. [REDACTED] served as the Washington State Fire Marshal since 1998. The Fire Marshal's office supports fire districts and provides assistance with fire investigation and fire code reviews. In addition, the office collects statistics, administers the State Fire Training Academy and coordinates statewide fire mobilizations. The Fire Marshal's office is also responsible for licensing and investigating potential infractions of all sprinkler contractors within the State of Washington.

2.3. [REDACTED] is [REDACTED] husband. From January through November 1999, [REDACTED] was a NFSA regional manager responsible for an area that included the State of Washington. [REDACTED] duties included recruiting sprinkler contractors into the association.

In September 1999, [REDACTED] was hired as a part-time instructor by BTC. [REDACTED] has held various faculty positions at BTC and is currently the Manager for Career, Professional & Technical Education.

2.4. Ron Greenman is the Fire Sprinkler Coordinator at BTC. Mr. Greenman is also the owner of a private sprinkler business and has been in the industry for approximately 28 years.

2.5. Larry Glenn is the Deputy State Fire Marshal and [REDACTED] subordinate.

Purchase and Installation of the Sprinkler System

2.6. In the fall of 1999, [REDACTED] decided to install a fire sprinkler system in her personal residence. According to the invoices, [REDACTED] purchased the sprinkler components from Mr. Greenman for \$1,435.82. The invoices show that Ron Greenman purchased the components from Central Sprinkler Company and [REDACTED] listed as the customer. According to the invoices, there is a difference of \$2,008.51 between the stated, total base price for the sprinkler components and the total price paid by, the [REDACTED]s. It is unclear if this difference was caused by a contractor's discount or a generally available discount from the sprinkler distributor. Several years ago, Central Sprinklers was taken over by another company and the new company was unable to verify the type of discount invoiced.

2.7. In the fall of 1999, [REDACTED] told her subordinate, Larry Glenn, that she planned to purchase materials for a sprinkler system for her home from Mr. Greenman. Mr. Glenn suggested that he could purchase the parts at a discounted rate and that he could perform the actual installation of the sprinkler system. There is no indication that [REDACTED] acted on Mr. Glenn's suggestion as she purchased the sprinkler components from Mr. Greenman. Another subordinate employee, Anjela Foster, wanted to assist in the installation as a learning experience, as she was considering installing one in her own home in the near future. The

installation occurred over the course of two consecutive weekends sometime between November 1999 and January 2000. Mr. Glenn, Ms. Foster, and a [REDACTED] family friend also assisted in the project. [REDACTED] asserts that she did not direct anyone to help, nor did she pay anyone for helping. Mr. Glenn and Ms. Foster stated that they acted on their own time.

2.8. Sprinkler installation rates range from \$1.00 per square foot for new construction to approximately 1 percent of the total building cost. The county assessor lists the [REDACTED] home as being 2545 square feet. The Bureau of Labor Statistics lists the median hourly income for plumbers, pipefitters and steamfitters in the state of Washington as \$24.37. Mr. Glenn's work on the sprinkler installation totals approximately \$389.92. Anjela Foster worked one weekend; her work was valued at approximately \$194.96.

2.9. [REDACTED] asserts that she spoke to WSP Chief Leichner prior to the sprinkler installation regarding any potential conflicts of interest. Chief Leichner told [REDACTED] that she needed to ensure that she was being treated like anyone else, whether she used a contractor or purchased the parts and installed the system herself, and that she was not getting any benefit because of her position. Although [REDACTED] asserts that she asked Chief Leichner if there would be any problem with having Mr. Glenn install the system at her residence, Chief Leichner does not recall discussing who was to install the system, only purchasing of the components and installing it herself with friends.

[REDACTED] Employment and State Contracts with BTC

2.10. As noted in paragraph 2.3, [REDACTED] was the NFSA regional manager from January through November 1999. In this capacity, [REDACTED] recruited sprinkler contractors into the association. At the same time, [REDACTED] as State Fire Marshal, regulated the contractors that [REDACTED] recruited into the association. [REDACTED] asserts that she spoke with Chief

Leichner about her husband's employment by NFSA, and that Chief Leichner did not see a conflict. Chief Leichner has no recollections of any such conversation.

2.11. The preliminary investigation found no evidence that the State Fire Marshal entered into any contracts or other agreements with NFSA or that the office was involved in any disciplinary actions related to a NFSA member while [REDACTED] was the NFSA regional manager.

2.12. In September 1999, [REDACTED] was hired as a part-time instructor by BTC. From January 2000 through September 2000 [REDACTED] taught teacher training certification courses at BTC. [REDACTED] positions with BTC involved curriculum development and teacher training. The investigation found no evidence that [REDACTED] was involved in BTC's fire fighter training programs. Since 2001, [REDACTED] has held the following management positions at BTC:

- Staff Development Manager, effective March 1, 2001;
- Staff Training Manager, effective July 1, 2001; and
- Manager for Career, Professional & Technical Education, effective February 3, 2003.

2.13. [REDACTED] served on the Fire Protection Engineering Technology Advisory Committee for BTC. [REDACTED] did not participate on this committee. The committee's purpose is to ensure that the college program meets the needs of the industry. The BTC committee is the only committee [REDACTED] was invited to attend.

2.14. Three contracts were established between WSP and BTC from October 1999 through December 2001. The contracts were "interagency" and, therefore, exempt from the competitive bidding process. As the Fire Marshal, [REDACTED] approved the following contracts:

- \$33,000 for a Pilot Firefighter Training Program (10/7/99);
- \$132,000 for the Firefighter Training Program (2/1/00 terminated 10/16/01 due to budget cutbacks); and
- \$96,000 for the Firefighter Training Support (7/11/00).

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] and over the subject matter of this complaint.

3.2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

Purchase and Installation of the Sprinkler System

3.3. The Ethics in Public Service Act prohibits an employee providing exemptions for herself or a special benefit to another family member. RCW 42.52.070 states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.4. [REDACTED] received sprinkler system components for her personal residence at what appears to be a discounted cost. She purchased the components from Ron Greenman, the Fire Sprinkler Coordinator at BTC. Subordinates assisted with the sprinkler installation. Although she asserts she did not direct her subordinates to assist in the installation of the sprinkler system, and her subordinates state that they voluntarily participated in the installation, [REDACTED] received a special benefit in the installation labor costs provided by her subordinate employees.

3.5. The Ethics Act defines gifts as “anything of economic value for which no consideration is given.” RCW 42.52.010(10). The Ethics Act prohibits the receipt of any gift if it could be reasonably expected that the gift would influence the action or judgment a state officer or employees in the performance of official duties. RCW 42.52.140.

3.6. Moreover, the law prohibits receipt of any item with a value greater than \$50, even if the gift could not reasonably be expected to influence state officers and employees,

except for certain specified items. RCW 42.52.150(1) and (2). In EEB Advisory Opinion 01-05, the Board advised that use of a private suite at a sporting venue has an economic value that exceeds the face price of the ticket by at least \$50. The Board further advised that this value shall hold, unless the state employee can provide specific evidence that shows otherwise. Like the private suite, the presumption of a gift may be overcome by determining the actual value of the gift (or in this matter the commercial value of installation of the sprinkler system).

3.7. There are additional restrictions for state officers and employees who participate in regulatory matters or conduct state business, who may only receive a gift if it is specifically enumerated in RCW 42.52.150(4). RCW 42.52.010(10) and subsections (2) and (4) of RCW 42.52.150 provide exemptions that may be relevant in this matter. RCW 42.52.010(10)(c) and (i), provides in relevant part that "Gift" does not include: "(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers; ..." (i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group ..."

3.8. If [REDACTED] accepted free installation from the subordinate employees, then she may have accepted gifts in violation of RCW 42.52.150(2). [REDACTED] accepted several days of free labor from her subordinates. Since the system was installed over a period of two weekends the project included at least 16 hours of labor, and the gift from Mr. Glenn alone amounted almost \$400.

3.9. While she does not admit to any intentional violations of the Ethics Act, [REDACTED] understands that based on Findings of Fact 2.1 through 2.9, the Board would conclude that [REDACTED] violated RCW 42.52.070 and RCW 42.52.150 when she accepted assistance from her subordinates with her home sprinkler installation.

██████████ Employment and State Contracts with BTC

3.12. Under the Ethics Act a state employee is prohibited from having a beneficial interest, directly or indirectly, “in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.” RCW 42.52.030.

3.13. In EEB Advisory Opinion 97-05, the Board advised that a state officer or employee holds a beneficial interest in his or her spouse’s employment with a state agency. As noted in Relevant Fact No. 2.3 and 2.12, it appears that BTC employed her husband but his work was unrelated to the fire training academy or any services provided by Bates in a contract with the Fire Marshal’s office. Therefore, ██████████ did not violate RCW 42.52.030 by approving contracts directly related to her spouse’s BTC employment.

3.14. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. There are no aggravating factors in this matter. Mitigating factors in this case include that the subordinates voluntarily assisted ██████████ with the sprinkler installation and it appears any violation was inadvertent.

Section 4: AGREED ORDER

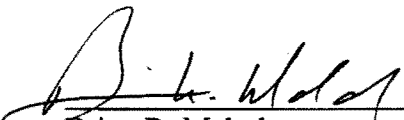
4.1. [REDACTED] will pay a civil penalty in the amount of five hundred dollars (\$500.00). The civil penalty of \$500.00 is payable to the state Executive Ethics Board within forty-five (45) days of the entry of this order.

CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety. I knowingly and voluntarily waive my right to a hearing in this matter; and I fully understand and voluntarily agree to this Stipulation.

[REDACTED]

Stipulated to and presented by:



Brian R. Malarky Date
Executive Director 1 Oct 04

II. ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

_____ ACCEPTED in its entirety;

_____ REJECTED in its entirety;

X _____ MODIFIED. This Stipulation will become the Order of the Board if the

Respondent approves* the following modification(s):

_____ (⁵2,000) two thousand dollar civil penalty

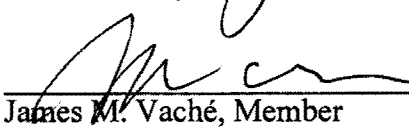
DATED this 8th day of October, 2004.



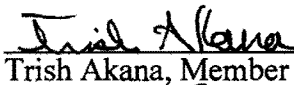
Marilee Scarbrough, Chair



Paul Zellinsky, Vice Chair




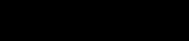
James M. Vaché, Member



Trish Akana, Member



Evelyn Jensen, Member

* I,   do not accept (circle one) the proposed modification(s).

