

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Tracy Devora
Respondent.

No. 2015-057

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, TRACY DEVORA, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On August 25, 2015 the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that Christina Hughes¹ (Ms. Hughes), Warehouse Operator, supervisor, and her subordinate Tracy Devora (Ms. Devora), Fiscal Technician for the Department of Corrections (DOC), may have violated the Ethics in Public Service Act by accepting a gift from an agency contracted vendor and with a value of over \$50 dollars..

¹ Hughes, EEB 2015 – 056 (Reasonable Cause Determination and Investigative Report.)

2. Ms. Devora has been employed by DOC since September 3, 2014. At the time of the violation, Ms. Devora was a Fiscal Technician 4.

3. On December 31, 2014, the SAO received a whistleblower complaint alleging that Ms. Hughes used her position as a Warehouse Operator supervisor to obtain free tickets to Seahawks games on two separate occasions and Seattle Mariner Suite tickets at Safeco Field on one occasion from a sales representative of a state contracted vendor, WAXIE Sanitary Supplies (WAXIE).

4. On January 27, 2015, the SAO referred the investigation of Ms. Hughes to DOC to conduct an internal investigation.

5. On January 30, 2015, Ms. Devora was contacted by the DOC investigator. At this time, Ms. Devora was only believed to be a witness. Ms. Devora indicated in her response to the DOC investigator that she was aware of Ms. Hughes accepting free tickets to a Mariner game. She also indicated that Ms. Hughes asked her if she wanted to go a game and that she was getting free tickets from a personal friend. Ms. Devora further indicated that she did not know it was a "WAXIE thing" until she got to the game.

6. Ms. Devora told the DOC investigator that it seemed to her that before they got to the game Ms. Hughes thought that the WAXIE representative was inviting her as a friend and not as a representative of WAXIE. Once that they learned that the tickets were related to WAXIE both of them became uncomfortable. The only people at the event that she and Ms. Hughes knew were Mr. Ordonez and the WAXIE representative. She was aware that Mr. Ordonez was working at the game in guest services.

7. On February 4, 2015, the DOC investigator contacted the WAXIE sales representative. The representative told the DOC Investigator that WAXIE has a "Customer Appreciation Event" every year where the company invites all of their customers to a Mariner's game. The representative was not

sure of the exact date but thought it was one of the last games of the 2014 season sometime in September. The representative further stated that she invited everyone she works with at DOC to the game including Ms. Hughes, Ms. Devora and Randy Ordonez (Mr. Ordonez).

8. On April 13, 2015, the SAO investigator contacted Ms. Devora by phone. Ms. Devora again indicated that she did not accept the ticket from the WAXIE representative. She told the SAO investigator that Ms. Hughes approached her and asked her if she wanted to go to a ballgame, indicating that a friend of hers gave her the tickets. Ms. Devora further stated that they did not realize it was a WAXIE sponsored event until they arrived at the game.

9. Ms. Devora told the SAO investigator that she was not aware that the free tickets came from the WAXIE representative. She indicated that Ms. Hughes gave her the tickets in the car on the way to the game. She further indicated that she drove but could not remember where or how she paid for parking.

10. The SAO investigator indicated in their report that approximately 5 minutes after the initial call with Ms. Devora, she called back and indicated that she was not completely honest in her first response regarding the Mariner's tickets. Ms. Devora told the SAO investigator that the WAXIE representative sent her the tickets and parking pass to her personal email account but insisted that that she did not know the event was a customer appreciation event. Ms. Devora confirmed that she also used the parking pass to park free at the game.

11. The SAO used a pricing chart that was in effect on the date of the event, September 8, 2014, to determine how much a single ticket would cost without a vendor discount. Suite pricing requires a minimum number of tickets purchases, the value amount determined by the SAO were only estimates. Per the pricing chart a suite seat equivalent to the size and location, without catering would

be approximately \$105 per ticket. In addition to the ticket to the event, Ms. Devora received free parking with an estimated value of \$20 to \$40.

12. Ms. Devora received a letter of counseling from DOC for violating DOC policies regarding accepting gifts from a representative of WAXIE Sanitary Supplies, a state vendor.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing Special Privileges. 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.

2. Based on the stipulated facts above, Ms. Devora secured special privileges in violation of RCW42.52.070.

3. The Ethics in Public Service Act, Chapter 42.52 RCW, limits state officers and employees from receiving gifts. RCW 42.52.150 – Limitations on Gifts states, in relevant part:

(1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars...

.....
(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

- (d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;
- (e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;
- (f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and
- (g) Those items excluded from the definition of gift in RCW 42.52.010 except:
 - (i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;
 - (ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and
 - (iii) Flowers, plants, and floral arrangement

4. Based on the stipulated facts above, Ms. Devora accepted a gift from a state contracted vendor in violation of RCW 42.52.150.

5. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that these types of violations significantly reduce the public respect and confidence in state government employees. In the matter at hand, it is a mitigating factor that Ms. Davora received a letter of counseling from her employer.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Tracy Devora and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. Tracy Devora agrees that if any or all of the alleged violations were proven 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).

5. Tracy Devora further agrees that the evidence available to the Board is such that the Board may conclude she violated the Ethics in Public Service Act. 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.

6. Tracy Devora waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Tracy Devora from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of

the facts 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 stipulation. Tracy Devora, 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Tracy Devora and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Tracy Devora at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Tracy Devora does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Tracy Devora waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Tracy Devora understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Tracy Devora agrees to pay a civil penalty in the amount of one-thousand five hundred dollars (\$1,500) for the violations associated with RCW 42.52. The Board agrees to suspend seven hundred and fifty dollars (\$750) on the condition that Tracy Devora complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The civil penalty in the amount of seven hundred and fifty dollars (\$750) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Tracy Devora, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.



TRACY DEVORA
Respondent

11/28/2017

Date

Presented by:



KATE REYNOLDS
Executive Director

2/16/17

Date

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;

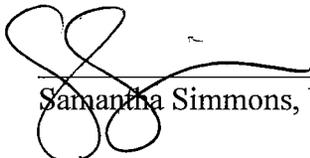
 REJECTED in its entirety;

 MODIFIED. This stipulation will become the order of the Board if the Respondent approves* the following modification(s):

DATED this 24th day of March, 2017



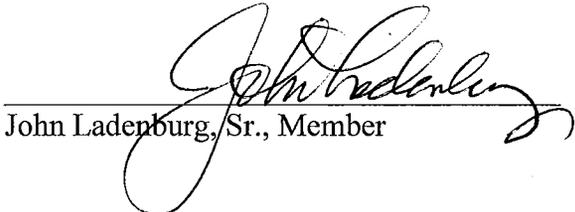
Anna Dudek Ross, Chair



Samantha Simmons, Vice-Chair



Lisa Marsh, Member



John Ladenburg, Sr., Member

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

Tracy Devora, Respondent Date