

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

MAJOR GENERAL
[REDACTED]

NO. 98-17

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between [REDACTED] through his attorney, Kent Caputo, and the EXECUTIVE ETHICS BOARD ("Board") through Richard A. McCartan, Assistant Attorney General.

A. FACTS AND LAW

1. FACTS

a. This complaint is against Major General [REDACTED] the now retired Adjutant General, Military Department (Department). The complaint alleges that Major General [REDACTED] violated RCW 42.52 when he approved a contract for the National Guard Association of Washington (NGAW) to operate the Department's recreational facility known as Camp Murray Beach.

b. Major General [REDACTED] signed the contract between the Department and NGAW in July 1995. The contract allows NGAW to refurbish, operate, and maintain the Beach and to retain any profits. The contract was given to NGAW without competitive bids under RCW 43.19.1906. Major General [REDACTED] and other members of the Department belong to NGAW, a private association supporting various programs for the benefit of members. These program include such things as scholarship and special assistance grants, social events, lobbying, and non-profit museum funds.

c. Although he signed the contract in his capacity as Adjutant General, Major General [REDACTED] did not participate in conceiving or negotiating the contract. Rather, he signed the contract when it was presented to him by subordinates, including legal counsel advising as to federal and state issues. In signing the contract, Major General [REDACTED] acted on the advice and direction of legal and operational subordinates and did not knowingly violate RCW 42.52. Major General [REDACTED] neither anticipated nor personally received any benefits from NGAW from funds earned under the contract.

2. APPLICABLE LAW

a. RCW 42.52.030(1) states:

No state officer or state employee, except as provided in subsections (2) and (3) of this section, may be beneficially interested, 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.

b. RCW 42.52.030(3) states:

No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member

c. RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

d. 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.

B. RESOLUTION

1. Major General [REDACTED] agrees that he unknowingly violated RCW 42.52.030(3) by signing the contract with NGAW when he was a member of NGAW.

2. Major General [REDACTED] denies that his actions violated RCW 42.52.030(1), 42.52.020 or 42.52.070, as found in the Board's Reasonable Cause Determination, but agrees that the Board could find otherwise.

4. Major General [REDACTED] will pay a civil penalty in the amount of one thousand dollars (\$1,000.00). The amount is payable to the state Executive Ethics Board within seven (7) days of approval of this Stipulation and Order by the Board.

C. CONCLUSIONS OF LAW

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

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

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2) which states 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.

D. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Major General [REDACTED] from all further ethics proceedings under RCW 42.52 for matters arising out of the facts

contained in this complaint, subject to payment in full of the civil penalty owed in the amount of \$1,000.00. Major General [REDACTED] 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 Order.


2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Major General [REDACTED] the Military Department, the State of Washington, or other third party, which are now in existence or may be filed in the future.

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

E. CERTIFICATION

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

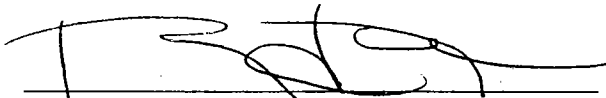
[REDACTED]


KENT CAPUTO
Attorney for Respondent

11/1/00
Date

11-1-2000
Date

Stipulated to and presented by:


RICHARD A. McCARTAN
Assistant Attorney General
11-3-00
Date