

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

No. 00-13

STIPULATION AND ORDER

I. STIPULATION

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

A. **FACTS AND LAW**

1. FACTS

a. The above-referenced complaint alleges that [REDACTED] Consumer Education and Public Affairs Officer for the Office of Insurance Commissioner (OIC), violated RCW 42.52.180(1) by using facilities of his agency to assist the U.S. Senate campaign of Insurance Commissioner Deborah Senn. The Board on June 16, 2000 found reasonable cause to believe that the allegation was true.

b. On March 17, 2000, Allen Whitehead, President of AFSCME Local 443, sent a letter to Local presidents urging them to support the endorsement of Ms. Senn's opponent and oppose the endorsement of Ms. Senn. The letter also criticized OIC working conditions and Ms. Senn's "history of treating labor unions unfairly."

c. [REDACTED] (outside work) took part in drafting two identical rebuttal letters dated March 28, 2000 defending Ms. Senn's treatment of her office employees. While at work on March 28-29, 2000, [REDACTED] took annual leave to solicit fellow OIC employees to sign the letter. The letter was signed by 14 OIC employees and one former OIC employee, all of whom were union members or former union members. Thirteen of the fifteen signees were

either approached by [REDACTED] to sign the letter or approached [REDACTED] requesting to sign the letter. Approximately five other OIC employees who were approached by [REDACTED] declined to sign the letter.

d. When approached by [REDACTED] to sign the letter, the OIC employees were at OIC offices between the work hours of 8 a.m. to 5 p.m.. Most of the signing employees did not take annual leave and did not leave the office premises to either discuss or sign the letter.

e. [REDACTED] asserts that the purpose of the rebuttal letter was not to support Ms. Senn's political campaign, but rather to respond to the charge in the Whitehead letter that Ms. Senn has a history of treating union members unfairly. However, the investigation of this complaint showed the following:

(1) While defending OIC working conditions, the rebuttal letter notes that the Whitehead letter had urged endorsement of Ms. Senn's opponent;

(2) [REDACTED] himself found it prudent to take annual leave to solicit the signatures;

(3) [REDACTED] wrote the rebuttal letter and solicited the signatures just several days prior to a union conference at which endorsements were made, including an endorsement in the U.S. Senate race; and

(4) The rebuttal letter was handed out by Senn supporters at the conference, and [REDACTED] along with others, spoke at the conference in support of Ms. Senn and of OIC working conditions.

2. APPLICABLE LAW

a. RCW 42.52.180(1) states:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working

hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

B. RESOLUTION

1. [REDACTED] does not admit that his conduct, as alleged in the complaint, violated RCW 42.52.180(1). However, [REDACTED] acknowledges that if the matter went to a hearing the Board could find that his conduct did violate RCW 42.52.180(1) for the following reasons:

a. The Board could find that the Stevenson letter was written for the purpose of assisting the Senn campaign for U.S. Senate; and

b. The Board could find that [REDACTED] used the facilities of the OIC in that he solicited signatures of OIC employees in OIC offices and during the working hours of 8 a.m. to 5 p.m.

2. [REDACTED] agrees, pursuant to RCW 42.52.430(1)(b), to a civil penalty in the amount of one thousand five-hundred dollars (\$1,500), payable to the Board in equal installments over six months from entry of this Stipulation and Order.

3. [REDACTED] agrees to take a class on the state ethics law as arranged through Board staff within six (6) months from entry of this Stipulation and Order.

C. CONCLUSIONS OF LAW

1. Pursuant to RCW 42.52, the Executive Ethics Board has jurisdiction over [REDACTED] and 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 [REDACTED] from all further ethics proceedings under RCW 42.52 for matters arising out of the facts contained in the complaint, subject to payment in full of the civil penalty owed in the amount of \$1,500.00 and compliance with all other conditions of this Stipulation. [REDACTED] agrees to release and discharge the Board, its officers, agents, and employees from all claims, damages, and causes of action arising out of the 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 [REDACTED] the Office of Insurance Commissioner, 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 will be inadmissible for any purpose in any other proceeding involving [REDACTED] the state, and/or third parties aligned with the state.

4. 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 I am represented by counsel and have been made fully aware of the legal significance of this Stipulation; that I knowingly and voluntarily waive my right to a hearing in this matter; and that I fully understand and voluntarily agree to this Stipulation.

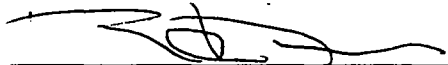
[REDACTED]


C. JAMES FRUSH
Attorney for Mr. Stevenson

July 19, 2000
Date

July 21, 2000
Date

Stipulated to and presented by:


RICHARD A. McCARTAN
Assistant Attorney General

July 19, 2000
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 following modifications are approved by _____

DATED this 28th day of July, 2000.

Cheryl L. Rohret
REV. CHERYL ROHRET, Chair

SUTAPA BASU, Vice Chair

Janet Lim
JANET LIM, Member

James M. Vache
JAMES VACHE, Member

LAQUITA FIELDS, Member

I, _____, accept/do not accept (circle one) the proposed modification.

Date

C. JAMES FRUSH, Attorney for _____

Date