

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: [REDACTED]

NO. 00-33

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between [REDACTED] and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS AND LAW

1. **FACTS**

a. The Executive Director to the Board filed the above referenced complaint on October 6, 2000, against [REDACTED] the Washington State Secretary of State, pursuant to a referral from the Public Disclosure Commission.

b. [REDACTED] is a statewide elected officer subject to the jurisdiction of the Board under RCW 42.52.360. [REDACTED] was first elected to office in 1980 and has served 5 terms.

c. Kelly Balcomb-Bartok is a freelance photographer, naturalist, and educator who resides in San Juan County. In addition, Mr. Balcomb-Bartok was a Democratic Party candidate for the office of San Juan County Commissioner, District 1. Mr. Balcomb-Bartok's name appeared on the September 19, 2000 primary ballot.

d. Darcie L. Nielsen is the San Juan County Commissioner for District 1. Ms. Nielsen's name appeared on the September 19, 2000 ballot as a Democratic Party candidate for the office of San Juan County Commissioner. Ms. Nielsen won the September 19, 2000 Democratic primary election.

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e. Pursuant to the State Constitution, [REDACTED] office publishes a statewide Voters Pamphlet, which includes information about statewide ballot initiatives and candidates for statewide public office in the general election. The Voters Pamphlet is the official election publication of the State and is widely respected by citizens and all branches of state government. In 1998, the legislature approved a statewide primary election Voters Pamphlet, which was jointly funded by the Secretary of State and the Washington State Supreme Court. The first statewide primary election Voters Pamphlet ("2000 Primary Pamphlet") was printed and distributed to voters in early September 2000.

f. The Secretary of State has executed 10-year agreements with most Washington counties to include information regarding candidates for local public office or local ballot initiatives in the statewide Voters Pamphlet. Most, but not all, counties carried forward their existing agreements so that they could include information in the 2000 Primary Pamphlet.

g. In 1995, [REDACTED] signed a 10-year agreement with San Juan County to provide a San Juan County section in the general election Voters Pamphlet. The agreement was negotiated by the Secretary of State, Elections Division. This agreement was carried forward for the purpose of including San Juan County in the 2000 Primary Pamphlet. Under the agreement the San Juan County Auditor provided all content for the San Juan County's section of the 2000 Primary Pamphlet and reimbursed the State a pro-rata share of the statewide pamphlet's production cost, including postage and fees. San Juan County paid \$555.41 for the 2000 Primary Pamphlet.

h. The evidence indicates that Mr. Balcomb-Bartok initially discussed his intention to run for San County Commissioner with local friends and members of the community in April 2000.

i. [REDACTED] recalled that sometime in April, May, or June 2000 he agreed to endorse Mr. Balcomb-Bartok if he ran for County Commissioner or any other political office. [REDACTED] noted that Mr. Balcomb-Bartok is a personal friend who he has known and worked with for many years.

j. Just prior to May 31, 2000, Shawn Merchant, Voter Services Manager in the Secretary of State's Office, talked to [REDACTED] about the cover for the 2000 Primary Pamphlet. Mr. Munro told Mr. Merchant that he wanted to use whales on the cover of the pamphlet and recommended that he contact Mr. Balcomb-Bartok for the photographs. [REDACTED] has always selected the cover topic for each Voters Pamphlet. Later that day, Mr. Balcomb-Bartok verbally agreed to provide a photograph for the cover at no charge to the state and provided sample photographs for review.

k. On July 13, 2000, Mr. Merchant asked Mr. Balcomb-Bartok for additional photographs to use as additional filler pages inside some editions of the 2000 Primary Pamphlet.

l. On July 15, 2000 Mr. Balcomb-Bartok filed a form C-1 with the Public Disclosure Commission indicating that he was a candidate for San Juan County Commissioner. All senior officials involved in production of the 2000 Primary Pamphlet asserted that they were unaware that Mr. Balcomb-Bartok was a candidate for public office or that he would appear in the 2000 Primary Pamphlet.

m. In early August 2000, the Secretary of State's 2000 Primary Pamphlet materials, including several pages of Mr. Balcomb-Bartok's photographs, were sent to Candy McDonald, an independent contractor who is the Voters Pamphlet composition coordinator. On August 21, 2000, San Juan County submitted their materials for the 2000 Primary Pamphlet. The San Juan County materials were sent directly to Ms. McDonald without being reviewed by the Secretary of State's Office. Ms. McDonald then arranged the pamphlet and sent it directly to the printer.

n. San Juan County's section of the statewide pamphlet was located on pages 44 through 51 in Edition 14 of the 2000 Primary Pamphlet. The cover and last page of all editions of the 2000 Primary Pamphlet included a color photograph of four orca whales made by Mr. Balcomb-Bartok. Cover photo credits, including Mr. Balcomb-Bartok's name and city, are provided in small type on page 2. Edition 14 of the 2000 Primary Pamphlet contained three additional orca whale photograph sheets located on pages 43, 52, and 53. Each photograph sheet included three additional orca whale photographs made by Mr. Balcomb-Bartok and a photo credit citation, printed in a slightly more prominent font than the page 2 credits. Mr. Balcomb-Bartok's

candidate photograph and statement appeared on page 46 and Ms. Nielsen's photograph and candidate statement appeared on the page 47. While Ms. Nielsen's name appeared two times in Edition 14 of the 2000 Primary Pamphlet, Mr. Balcomb-Bartok's name appeared six times in the same publication, four of those appearances were in small print.

o. In early September 2000, Edition 14 of the 2000 Primary Pamphlet was printed and copies were mailed to 11,433 San Juan County households.

2. APPLICABLE LAW

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] acknowledges that as the Secretary of State he was personally responsible for the content of the 2000 Primary Pamphlet. [REDACTED] denies that he knowingly violated RCW 42.52.180(1) when ten photographs and four photo credit statements from a candidate for public office in San Juan County appeared on a state funded Voters Pamphlet that was distributed to San Juan County voters. [REDACTED] acknowledges, however, that if this matter come before the Board it could find that his conduct violated RCW 42.52.180(1).

2. In lieu of a civil penalty, [REDACTED] agrees to send a letter of apology to Darcie L. Nielsen, Mr. Balcomb-Bartok's opponent in the September 19, 2000 primary. A copy of the letter of apology is attached to this document. In addition, [REDACTED] agrees that prior December 31, 2000; he will implement the following agency changes:

STIPULATION AND ORDER

(1) Adopt an agency policy that prohibits the use of art work, photography, or other materials provided by candidates to public office in a Voters Pamphlet in which the candidate's name appears, except that required by law or rule for the candidate's statement;

(2) Adopt an agency policy which provides that prior to final printing a responsible member of the Office of the Secretary will review complete "print ready" copies of each edition of the Voters Pamphlet; and

(3) Adopt language, to include in Secretary of State Voters Pamphlet contracts, that will certify that those who provide content materials for a Voters Pamphlet are not candidates for public office and nor will they run for public office while their materials are being used in a state or local Voters Pamphlet.

3. [REDACTED] further agrees to reimburse the Board for the costs of investigating this matter in the amount of five hundred dollars (\$500.00). The amount is payable to the Board within ten (10) days of approval of this Stipulation and Order by the Board.

C. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Board has jurisdiction over [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 [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the reimbursement owed in the amount of \$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 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 [REDACTED] and the Board, 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 I have had an opportunity to consult with legal counsel; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

[REDACTED]
Respondent

11-13-2000

Date

Stipulated to and presented by:

[Signature]
Executive Director

[Signature]
Jerril Thomas
Senior Counsel, Assistant Attorney General
Counsel for the Executive Director

November 13, 2000
Date

11/17/00
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

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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 17 day of November , 2000.

CHERYL ROHRET, Chair

 Cheryl Rohret
SUTAPA BASU, Vice Chair

 Janet Lim
JANET LIM, Member

 James Vache
JAMES VACHE, Member

 Laquita Fields
LAQUITA FIELDS, Member

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

Respondent _____

Date _____