

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████
Respondent.

No. 2012-055

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 its 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 September 9, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that ██████████ Lieutenant Governor, may have violated the Ethics in Public Service Act when he used public resources to support Strategies For Youth, a non-profit organization that he established in 1989 and for which was the acting president during all relevant time periods. The Board found Reasonable Cause on July 12, 2013.

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 the evidence available to the Board staff is such that the Board may conclude he 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 set forth below.

1.5. [REDACTED] 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) 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions 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, this matter will be scheduled for an administrative hearing in front of the Board and [REDACTED] waives any objection to participation by any Board member at any subsequent hearing 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. In October 1989 and while a Washington State Senator, [REDACTED] established the non-profit organization, Strategies For Youth, (SFY) with the Secretary of State's Office. Brad Owen is the Registered Agent and the President/Chairman for SFY. His wife Linda Owen was the Vice President/Treasurer for SFY. According to the Secretary of State, this charity has been inactive since February 1, 2012.

2.2. [REDACTED] created SFY to support work he decided to do as a state Senator, which included working with young people on the topics of substance abuse, drug and alcohol issues and eventually anti-bullying by students and diversity. [REDACTED] wanted to be more creative, so he came up with the idea of using music and visual aids in a program geared towards getting the message across to students. Because his ideas could not be funded with public resources or through the Senate, then Senator Owen created SFY as a mechanism to raise money to pay for expenses of the program, such as musicians, travel, and equipment. The program

predated the creation of SFY [REDACTED] created SFY to work in support of that program, a sort of partnership with a common program and message.

2.3. In 1996 when [REDACTED] first ran for Lieutenant Governor, part of his election platform was that he would continue his work with young people and continue to speak about drugs and alcohol and eventually anti-bulling and diversity.

2.4. [REDACTED] was elected as Washington State's Lieutenant Governor for the first time in 1996 and took office on January 15, 1997. He has since been re-elected four times and his current term ends in 2016. He has been Lieutenant Governor for all times pertinent to this investigation.

2.5. At some point in the late 1990's, [REDACTED] decided that the SFY work was becoming more than he and his wife could handle and a Board of Directors was created. The Board was comprised of educators, law enforcement officers and state workers. [REDACTED] kept his title as President and Mrs. Owen kept her title of Vice President/Treasurer.

2.6. Strategies for Youth charged schools between \$500 and \$600 for its one-hour presentation. While that the price remained consistent through the years, SFY received only what a school could afford. Strategies for Youth used the money received from these presentations to defray the cost of musicians, travel and equipment. Moneys received were used only to cover the actual costs of the program. Linda Owen, who acted as the SFY program coordinator received between \$5,000 and \$9,000 a year in payment from SFY.

2.7. By 2003, SFY was using the Lieutenant Governor's Office staff on occasion to assist in SFY presentation scheduling, transportation, and stage set-up. At that time, the two state Senate attorneys, Mike Hoover and Marty Lovinger advised [REDACTED] that if he was

going to share resources between SFY and his office, he should have an agreement (contract) with SFY to do so.

2.8. Mr. Lovinger and Mr. Hoover drafted a contract and on December 10, 2003, the contract between the Office of the Lieutenant Governor and SFY was presented to both parties for signature. To date, [REDACTED] has been unable to provide a signed contract, although [REDACTED] stated that he did sign the contract. Mr. Sharrett, Lead Director for SFY, could not recall if he signed the contract. The contract states in part:

4. Consideration. The mutual benefit attained by the parties as a result of sharing information, strategies, research and resources in their mutual goal of helping young people grow up healthy in safe communities is consideration for this contract. As consideration for the use of its equipment and resources by the Lt. Governor when the Lt. Governor is dealing with issues relative to its mission, Strategies will be permitted to make use of research and other materials compiled by the staff of the Lt. Governor relative to its mission being addressed by the Lt. Governor. Strategies may also accept assistance offered by staff of the Lt. Governor at presentations made by Lieutenant Governor Brad Owen on behalf of Strategies. In order to enhance presentations and appearances made by Lieutenant Governor Brad Owen on behalf of Strategies, Strategies may use some of the Lt. Governor's office equipment, including specifically, laptop computers and a projector. The Lt. Governor shall receive as consideration the use of equipment and resources of Strategies as provided in this Contract.

Although an executed copy of the contract was not located, SFY and [REDACTED] worked to honor the terms of the contract.

2.9. Brett Pendleton was a musician who met [REDACTED] and started working for SFY as a musician sometime around 2004. At first Mr. Pendleton was paid by the performance, then he was paid part-time as the SFY Band and Program Director. Sometime after 2005, he was put on a full salary of approximately \$3,000 per month. As revenues for the SFY presentations started to decline, his SFY salary was reduced to \$2,000 per month.

2.10. Mr. Pendleton was hired by the Office of the Lieutenant Governor to be [REDACTED] Administrative Assistant in July of 2009. Mr. Pendleton's state salary was \$3,007 per month or \$18.79 per hour.

2.11. At the time the Lieutenant Governor hired Mr. Pendleton, he was and continued to be the SFY Program Director. By direction from [REDACTED] he continued to perform his SFY duties while simultaneously working from the Lieutenant Governor's Office as the Administrative Assistant to [REDACTED]. There was no agency policy requiring authorization for outside employment.

2.12. With direction from [REDACTED] Mr. Pendleton would schedule and solicit schools for future SFY presentations. He would also assist in the coordination of SFY fundraisers. Mr. Pendleton spent somewhere between 16 and 18 hours on scheduling and coordinating SFY presentations and fund-raisers from July 2009 until March 2011 during his regular state office hours.

2.13. Mr. Pendleton assisted [REDACTED] on 15 SFY school presentations from September 18, 2009 to March 15, 2011, for a total of 80 hours of state time. During that time, he received a salary from both SFY and the state.

2.14. Brian Dirks, Communications Director for [REDACTED] assisted from time to time with SFY presentations. While at these presentations, [REDACTED] would give him direction as to what needed to be done. From May 2008 to February 2011, he assisted with seven SFY presentations for a total of 40 hours.

2.15. Mr. Pendleton and Mr. Dirks were aware of the contract to share resources with SFY. Although [REDACTED] would speak of it often, neither one of them had actually seen it.

2.16. The SFY Board approved the personal use of all SFY equipment by [REDACTED] and Mrs. Owen. This included the personal use of a 2006 Dodge 2500 truck and computer. With SFY's approval, Mrs. Owen sometimes used the truck and computer for personal reasons.

2.17. [REDACTED] admitted that most, if not all, of the quarterly SFY meetings were held in his state office. Mr. Pendleton would normally take the minutes and then send them out to the meeting participants using his state computer, taking about 1 ½ hours of his time per meeting.

2.18. On February 28, 2011, SFY held its last Board meeting at the Lieutenant Governor's Office. At that meeting, [REDACTED] reported to the Board that the total income for the 2010 fundraiser was \$42,111.74, total expenses were \$11, 489.93, with a net income of \$30,621.81.

2.19. [REDACTED] also advised the Board that it was time to wrap up the program, citing the economy and other factors that had made it too difficult to book schools.

2.20. At the February 28, 2011 meeting, the SFY Board discussed Dissolution and Liquidation of SFY assets, as follows:

Dissolution of Assets – [REDACTED] stated that the Board needed to approve the budget through April. He told the Board that there was \$5,256 left in the bank. He thought that SFY should use assets to pay Brent Pendleton's salary through the end of April, that Mrs. Owen's salary would be reduced and SFY should shut down its website and phone line to eliminate those bills.

Liquidation of Assets – [REDACTED] recommended that the SFY Board donate the projector and screen to the Office of the Lieutenant Governor. Board Member Gene Sharrett made a motion to dissolve SFY and transfer the assets to Lt. Gov. and Mrs. Owen. [REDACTED] suggested that because Mrs. Owen had not received a full salary in years, equaling about \$40,000, the assets should go to her. [REDACTED] also suggested that some of the assets be given to Mr. Pendleton. Board Member Gary Edwards expressed his concern with the assets going to Mrs. Owen. Board Member Mike Burris indicated that he was concerned with what the public would think about the distribution of assets to Ms. Owen. [REDACTED] replied that the public can be critical but "Linda has never taken a full salary." After some discussion, Board

Member Joe Williams made the motion, "In consideration of the many years of deferred compensation any remainder of assets should be transferred to Linda Owen, as of April 30, 2011." Board Member Gary Edwards seconded the motion. The motion was approved by all Members. An incomplete list of assets, as listed on SFY 2007 Federal Tax Asset Report is shown below:

<u>ITEMS</u>	<u>Cost</u>	<u>Date of purchase</u>
• 2006 Dodge Ram 2500 Diesel Pickup Truck	\$32,977	10/25/05
• Box light	1,030	10/17/05
• Headset	542	10/19/05
• Misc. photo and Sound Equip.	2,522	Since 1990
• Staging Equip.	4,670	Since 1990
• Music Equip.	17,452	Since 1990
• Office Equip.	13,489	Since 1990
• Staging Equip.	4,670	Since 1990

Total purchase price of the equipment owned by SFY between 1989 and October 2005 was \$93,754. In August 2008, SFY estimated that equipment's value to be \$10, 256 for tax purposes. The actual distribution of these assets is presently on hold. Some of the video equipment has been donated to a school.

2.21. [REDACTED] indicated, that the Office of the Lieutenant Governor would have done the same kind of work with young people even without the existence of SFY, and that, without the support of SFY, his office would have paid the bill for the presentations.

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.

3.3. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having an interest in an activity or transaction where there is a conflict with the performance of official duties. 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.

3.4. ██████████ recognizes that if stipulated Findings of Fact 2.7 through 2.15 were presented at hearing, the Board would likely conclude that ██████████ conducted activities incompatible with his public duty in violation of RCW 42.52.020.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from having a financial interest in a transaction. RCW 42.52.030 states in part:

No state officer or state employee, except as provided in subsection (2) 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.

3.6. ██████████ recognizes that if stipulated Finding of Fact 2.6, and Findings of Fact 2.12 through 2.20, were presented at hearing, the Board would likely conclude that ██████████ had a financial interest in SFY's financial success in violation of RCW 42.52.030.

3.7. 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.

3.8. ██████████ recognizes that if stipulated Finding of Fact 2.17 was presented at hearing, the Board would likely conclude that Brad Owen's use of staff time and public office facilities provided a special privilege to SFY in violation of RCW 42.52.070.

3.9. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for private benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

3.10. [REDACTED] recognizes that is stipulated Findings of Fact 2.7 through 2.8, and Findings of Fact 2.11 through 2.20, were presented at hearing, the Board would likely conclude that Brad Owen used state resources for his personal benefit and gain.

3.11. 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. Aggravating factors are that [REDACTED] is a high-ranking elected official and these types of violations significantly reduce the public respect and confidence in state government employees. A mitigating factor is that the alleged violations pertain to SFY presentations, which conveyed positive messages to school age children.

Section 5: AGREED ORDER

5.1 Based upon the foregoing, [REDACTED] will pay a civil penalty in the amount of fifteen thousand dollars (\$15,000). The Board agrees to suspend (\$5,000) of this civil penalty on the condition that [REDACTED] 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.

5.2 The civil penalty of \$10,000 is payable in monthly installments of \$416.67 for the next twenty four months, to the State Executive Ethics Board, with the first monthly payment due 30 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; 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 and Agreed Order, I understand that I will receive a signed copy.

[REDACTED]

8/4/2014
Date

Respondent

Stipulated to and presented by:

Adina
[Signature] 8/19/14
Executive Director 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 12th day of September, 2014.

Lisa Marsh
Lisa Marsh, Chair

Approved via telephone
Anna Dudek Ross, Vice-Chair

M. Williams III
Matthew Williams, III, Member

Samantha Simmons
Samantha Simmons, Member

Sumeer Singla
Sumeer Singla, Member

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

 Respondent Date