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EXECUTIVE
ETHICS BOARD

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-032

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 October 2, 2013 the Executive Ethics Board (Board) initiated a complaint against [REDACTED] Director of Operations, Washington State Ferries (WSF), Washington State Department of Transportation (WSDOT) alleging that he may have violated one or more sections of the Ethics in Public Service Act.

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. [REDACTED] is the Director of Operations of WSF for WSDOT and was for all time pertinent to this investigation.

2.2. Sometime around February 2013, the Ferry Agents, Supervisors and Project Administrator's Association, (FASPAA) an employee bargaining Union, asked [REDACTED] permission to use a WSF conference room located at Pier 52 in Seattle to conduct union meetings.

2.3. [REDACTED] contacted several individuals within WSDOT and OFM Labor Relations to obtain information regarding the use of state facilities by other state Unions. He first contacted a Labor Relation Officer within WSDOT. He was advised that other unions were

allowed to use state facilities however, no other state resources could be used to conduct business meetings, e.g., phone, copiers, office supplies. [REDACTED] then contacted OFM and was informed that if other Unions were allowed to use the facility to conduct meetings, then FASPA should be allowed to do so as well. Based on that information, [REDACTED] allowed FASPA to use the WSF training room located at Pier 52 to conduct meetings.

2.4. The Collective Bargaining Agreement between the state and FASPA is silent on the use of state facilities to conduct union meetings. However, WSDOT Executive Order – 1004 is clear on what outside organizations have authorization to use state facilities to hold meetings and employee unions are not one of the authorized organizations.

2.5. In 2002, the Executive Ethics Board issued Advisory Opinion 02-01A, Use of Facilities to Conduct Union Business. In that opinion, the Board stated that state agencies do not have the authority to execute provisions in a written collective bargaining agreement that directly conflict with the Ethics in Public Service Act. The opinion further states that conduct that may directly conflict with the Ethics in Public Service Act included use of state resources for Union activities that were not reasonably related to the negotiation and administration of collective bargaining agreements, such as Union organizing, internal Union business, or advocating for a Union in a certification, union shop, or other election, except as authorized under statute or rules.

2.6. Since the decision to allow FASPA to using the training room located at Pier 52, FASPA has used the facility on four (4) occasions, February 21, May 10, May 28, and October 17, 2013. The meeting on May 10, 2013, was from 12:00 pm to 8:00 pm, (8 hours), all other times were from 5:30 pm to 8:30 pm. (3 hours)

2.7. [REDACTED] has accepted responsibility for his decision, but indicated that he made the decision only after his due diligence by seeking an answer from his agency to the request made of him by the union. He further indicated that it might have been an error of judgment on his part when he did not correlate the use of a meeting room to an ethics issue.

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 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.

3.4. Based on Findings of Fact 2.2 through 2.7, [REDACTED] provided a special privilege to FASPA in violation of RCW 42.52.070.

3.5. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their 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.

3.6. Based on Findings of Fact 2.2 through 2.7, [REDACTED] used state resources in violation of RCW 42.52.160 and WAC 292-110-010(5)(b)

3.7. 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. It is a mitigating factor that [REDACTED] attempted to obtain the correct information regarding FASPA's use of a state facilities to conduct their business meetings and because of the information he obtained, he made the decision to allow the use.

Section 5: AGREED ORDER

[REDACTED] agrees to take instruction in the requirements of RCW 42.52.070 and 42.52.160. Said instruction must be approved by Board staff and must be completed no later than February 1, 2014. In addition, [REDACTED] agrees to refrain from violating RCW 42.52.070 and 42.52.160. [REDACTED] agrees that if in the future, the Board finds him in violation of these sections in a subsequent case, this Stipulation and Order may be taken into account in setting the amount of the penalty.

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] 12/6/13

Respondent

Stipulated to and presented by:

Melanie deLeon 12/16/13

Melanie deLeon Date
Executive Director

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 10th day of January 2014

 Lisa Marsh
Lisa Marsh, Chair

 Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

 Matthew Williams III
Matthew Williams III, Member

 Samantha Simmons
Samantha Simmons, Member

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

 Respondent Date