

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2018-053

4 Jennifer Smith,

FINAL ORDER

5 Respondent
6

7 **I. PROCEDURAL HISTORY**

8 On August 27, 2018, the Executive Ethics Board (Board) received a complaint referred
9 by the Washington State Beef Commission (WSBC) alleging that Jennifer Smith (Ms. Smith),
10 Office Manager, may have violated the Ethics in Public Service Act by using state resources for
11 her private benefit and gain when she allegedly forged Executive Director Patti Brumbach's
12 signature on Washington State Beef Commission checks to pay for personal items and services
13 valued at over \$23,000.
14

15 The Board entered an Order of Default on March 12, 2021. On March 15, 2021, Board
16 staff provided Ms. Smith with notice of the Board's Order of Default by regular and certified
17 mail.
18

19 Pursuant to WAC 292-100-060(4) Ms. Smith was allowed 10 days to request vacation of
20 the Order of Default. Ms. Smith has not moved to vacate the order entered on March 12, 2021.

21 **II. FINDINGS OF FACT**

22 1. Ms. Smith was hired as the Office Manager by WSBC in June of 2017. Ms.
23 Smith was in that position for all times pertinent to this investigation.

24 2. According to Ms. Brumbach, Ms. Smith's duties as the Office Manager
25 included opening the mail, processing invoices, assigning the proper account codes to purchases
26

1 and to make sure supporting documentation (receipts) were obtained. Ms. Smith would prepare
2 items to be paid, present to Ms. Brumbach for authorization and then send to an outside
3 accountant who would issue the check for payment. Ms. Smith was not authorized to write
4 checks, sign checks, or make any payments.
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6 3. Sometime around May 1, 2018, WSBC was moving their office from Tukwila to
7 Renton. Because of the move, there were instances where some of the supporting documents
8 needed for justification of payments could not be located. According to Ms. Brumbach, the
9 period between June through the start of their annual audit in August was “chaotic” and when
10 documents couldn’t be found or when payments didn’t add up Ms. Smith would say that the
11 documents must have been lost during the transition.
12

13 4. WSBC had a corporate banking account with US Bank, account # ending in 8625.
14 Included in the account were three individual credit cards issued to Ms. Brumbach ending in
15 0946, Ms. Smith ending in 4773, and Jacqueline Madill ending in 9326.
16

17 5. Before payment to US bank, Ms. Brumbach would review charges from all three
18 accounts and would approve payment of the accounts by Mary Van Nuland (Ms. Van Nuland),
19 WSBC accountant. The WSBC used “QuickBooks” software to manage their finances.
20

21 6. Ms. Van Nuland would reconcile WSBC bank accounts monthly, prepare
22 payroll, enter and pay invoices semi-monthly, and prepare quarterly payroll tax reports.
23

24 7. Ms. Van Nuland gave the password to QuickBooks to Ms. Smith at some point
25 in order for Ms. Smith to upgrade the program to a newer version and she never changed the
26 password.

1 8. On May 1, 2018, Bridget Coon (Ms. Coon), a consulting media buyer for WSBC,
2 received an email from Facebook indicating that the March invoice had not been paid. Ms. Coon
3 contacted Ms. Smith. Ms. Smith provided Ms. Coon a check stub (#24249) and indicated that
4 the check had been mailed.

5
6 9. On July 2, 2018, Ms. Brumbach received a pre-suspension notice from US bank.
7 The account was at risk of being suspended because the June 2018 invoice had not been paid.
8 Ms. Brumbach indicated in her response that when she questioned Ms. Smith about the unpaid
9 invoice Ms. Smith offered to resign with an effective date of August 31, 2018, to provide time
10 to hire a new office manager and get through the annual financial audit.

11 10. Ms. Van Nuland indicated in a response that on August 10, 2018, Ms. Smith
12 provided her with only the first page of the July bank statement, indicating that the bank
13 statement did not arrive by mail and that she was only able to get the first page of the statement
14 online. Ms. Smith further indicated to Ms. Van Nuland that Ms. Brumbach was the only person
15 who could get the full bank statement.

16
17 11. On August 14, 2018, auditors from the auditing firm Smith, Bundy, Berman, and
18 Britton arrived at the office of WSBC to conduct the annual financial audit. The auditors were
19 not able to balance the bank account statement for July 2018.

20
21 12. On August 14, 2018, Ms. Smith left work early, approximately 3:00 pm, to attend
22 a doctor's appointment. Ms. Smith sent Ms. Brumbach an email at 10:30 pm advising her that
23 she was resigning effective immediately for medical reasons. Ms. Brumbach accepted her
24 resignation.

1 13. On August 15, 2018, Ms. Smith had resigned her position and the July US bank
2 statement still had not been located.

3 14. The audit team discovered that Ms. Smith was charging personal expenses on the
4 WSBC credit card and that she was creating fraudulent monthly credit card statements to conceal
5 this activity during the monthly reconciliation process. In addition, it appeared to the audit team
6 that Ms. Smith had obtained access to QuickBooks, modified and altered WSBC vendor checks,
7 subsequent to their review, approval and posting in the general ledger in an attempt to conceal
8 her personal charges.

9 15. Ms. Brumbach conducted a review of the credit card statements for WSBC credit
10 card issued to Ms. Smith for the period of October 2017 through June 2018. The review revealed
11 over \$23,000 worth of personal items and services purchased by Ms. Smith using her WSBC
12 credit card.

13 16. Board staff's review of Ms. Smith's WSBC credit card statements showed that
14 she used the credit card to charge food, gas, Apple iTunes, Microsoft Xbox, travel, and other
15 entertainment for herself and family members.

16 17. In addition to the use of the WSBC credit card for personal purchases, the audit
17 revealed, that Ms. Smith received two checks from the Washington State Department of
18 Agriculture (WSDA) issued to the WSBC for \$4,500.00 and \$7,620.00. The checks were forged
19 with Ms. Brumbach's signature and deposited into Ms. Smith's personal USAA Banking
20 account.
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1 18. On October 17, 2018, Ms. Brumbach completed an Affidavit of Forged
2 Endorsement attesting that the signature on both checks are forgeries and that she did not
3 receive or endorse them.

4 19. Ms. Brumbach indicated in a response to Board staff that WSBC insurance
5 reimbursed WSBC \$23,680 for the losses attributed to Ms. Smith's personal spending of WSBC
6 funds.
7

8 20. On August 24, 2018, the case was referred to the Renton Police Department (PD)
9 for criminal investigation.

10 21. Ms. Brumbach told Renton PD Detectives that the two WSDA checks should
11 have been mailed directly to the WSBC lockbox at their bank, indicating that the checks were
12 not supposed to be mailed directly to the WSBC office. Ms. Brumbach further indicted in her
13 response to Renton PD Detectives that she and Ms. Smith were the only two WSBC employees
14 working out of the Renton Office and she did not open or receive the two checks.
15

16 22. A Renton PD Detective was able to determine that check #741681M was
17 deposited from a mobile device into Ms. Smith's USAA back account on 3/12/18 and check #
18 029627M was deposited from a mobile device into Ms. Smith's USAA bank account on 5/31/18.
19

20 23. Ms. Brumbach told the Renton PD Detective that she looked at the picture of the
21 check deposited via mobile device and could identify the manicured fingernails to be Ms.
22 Smith's.

23 24. Renton PD detectives contacted Ms. Smith by phone on June 25, 2019. Ms.
24 Smith acknowledged in a recorded interview that she charged personal items to the WSBC credit
25 card and that she deposited the two checks from the WSDA into her personal banking account.
26

1 25. On July 1, 2019, Renton PD forwarded the case to the King County Prosecutor’s
2 Office for consideration of charging theft in the first degree and forgery charges against Ms.
3 Smith.

4 26. The King County Prosecutor’s Office filed First Degree Theft charges against
5 Ms. Smith in the King County Superior Court on February 24, 2020.
6

7 27. On Friday October 2, 2020, Ms. Smith pled guilty to one count of first degree
8 theft, which included restitution to the Beef Commission for \$42,000 for losses not reimbursed
9 by insurance, two months of house arrest to start on December 4, 2020, and to have no contact
10 with the Beef Commission for ten years.

11 **CONCLUSIONS OF LAW**

12 1. The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
13 which authorizes the Board to enforce the Ethics in Public Service Act, chapter 42.52 RCW,
14 with respect to employees in the executive branch of state government. The Board has
15 jurisdiction over Jennifer Smith, whose actions occurred while she was a state employee.
16

17 Based on the evidence reviewed, Ms. Smith has used state resources for her private benefit or
18 gain in violation of RCW 42.52.160. Ms. Ms. Smith’ activities do not meet the exceptions for
19 the use of state resources as permitted in WAC 292-110-010.
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21 2. RCW 42.52.160(1) – Use of persons, money, or property for private gain, states:

22 No state officer or state employee may employ or use any
23 person, money, or property under the officer’s or employee’s
24 official control or direction, or in his or her official custody, for
25 the private benefit or gain of the officer, employee, or another.
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1 Under WAC 292-110-010 Use of state resources states, in part:

2 (3) **Permitted personal use of state resources.** This subsection applies to any use of
3 state resources not included in subsection (2) of this section.

4 (a) A state officer or employee's use of state resources is de minimis only if each
5 of the following conditions are met:

6 (i) There is little or no cost to the state;

7 (ii) Any use is brief;

8 (iii) Any use occurs infrequently;

9 (iv) The use does not interfere with the performance of any state officer's
10 or employee's official duties;

11 (v) The use does not compromise the security or integrity of state
12 property, information systems, or software;

13 (vi) The use is not for the purpose of conducting an outside business, in
14 furtherance of private employment, or to realize a private financial gain;
15 and

16 (vii) The use is not for supporting, promoting the interests of, or soliciting
17 for an outside organization or group.

18 3. The Board is authorized to impose sanctions for violations to the Ethics Act
19 pursuant to RCW 42.52.360.

20 4. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
21 120-030 have been reviewed.

22 III. FINAL ORDER

23 Based on the foregoing:

24 IT IS HEREBY ORDERED Respondent Jennifer Smith is liable for and shall pay a civil
25 penalty of four thousand five hundred dollars (\$4,500). The payment shall be made to the
26 Executive Ethics Board within forty-five (45) days of this Order.

DATED this 14th day of May 2021.

27 Approved via virtual meeting
28 Shirley Battan, Chair

29 Absent
30 Gerri Davis, Vice Chair

31 Approved in virtual meeting
32 Jan Jutte, Member

33 approved in virtual meeting
34 Earl Key, Member

35 APPEAL RIGHTS

1 **RECONSIDERATION OF FINAL ORDER – BOARD**

2 Any party may ask the Executive Ethics Board to reconsider a Final Order. The request
3 must be in writing and must include the specific grounds or reasons for the request. The request
4 must be delivered to Board office within 10 days after the postmark date of this order.

5 The Board is deemed to have denied the request for reconsideration if, within 20 days
6 from the date the request is filed, the Board does not either dispose of the petition or serve the
7 parties with written notice specifying the date by which it will act on the petition.
8 RCW 34.05.470.

9 The Respondent is not required to ask the Board to reconsider the Final Order before
10 seeking judicial review by a superior court. RCW 34.05.470.

11 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

12 A Final Order issued by the Executive Ethics Board is subject to judicial review under
13 the Administrative Procedure Act, chapter 34.05 RCW. See RCW 42.52.440. The procedures
14 are provided in RCW 34.05.510 - .598.

15 The petition for judicial review must be filed with the superior court and served on the
16 Board and any other parties within 30 days of the date that the Board serves this Final Order on
17 the parties. RCW 34.05.542(2). Service is defined in RCW 34.05.542(4) as the date of mailing
18 or personal service.

19 A petition for review must set forth:

- 20 (1) The name and mailing address of the petitioner;
- 21 (2) The name and mailing address of the petitioner’s attorney, if any;
- 22 (3) The name and mailing address of the agency whose action is at issue;
- 23 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
24 or brief description of the agency action;
- 25 (5) Identification of persons who were parties in any adjudicative proceedings that led to
26 the agency action;

- 1 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;
2 (7) The petitioner's reasons for believing that relief should be granted; and
3 (8) A request for relief, specifying the type and extent of relief requested.
4 RCW 34.05.545.

5 **ENFORCEMENT OF FINAL ORDERS**

6 If there is no timely request for reconsideration, this is the Final Order of the Board. The
7 Respondent is legally obligated to pay any penalty assessed.

8 The Board will seek to enforce a Final Order in superior court and recover legal costs
9 and attorney's fees if the penalty remains unpaid and no petition for judicial review has been
10 timely filed under chapter 34.05 RCW. This action will be taken without further order by the
11 Board.