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**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the matter of:

RAYMOND WHITE,

Respondent.

OAH NO. 05-2019-AGO-00034

EEB NO. 2018-02

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER ON BOARD
STAFF'S MOTION FOR SUMMARY
JUDGMENT

I. PROCEDURAL HISTORY

1.1 On April 30, 2018, the Executive Ethics Board (Board) received an anonymous complaint alleging that Raymond White (Mr. White), Vice President for Administrative Services at Bellevue College (BC), may have violated the Ethics in Public Service Act (Ethics Act). Decl. of Killeen Ex. 1. The complaint alleged that Mr. White used his position to influence the awarding of contracts, provided a specific contractor with special privileges, received entry into a ¹Mariners baseball game paid for by a contractor, and used state resources to support and promote his outside business. Id.

1.2 On December 10, 2018, the Board found reasonable cause to believe that a violation of the Ethics Act was committed.

¹ During the investigation, Board Staff learned that Mr. White actually attended a Seattle Seahawks game at which McKinstry awarded BC and other community colleges a Champion of Sustainability award. Decl. of Killeen Ex. 4. Board Staff found Mr. White's attendance at the Seahawks game not to be a violation of the Ethics Act.

1 1.3 An evidentiary hearing in this matter is scheduled for March 12, 2020.

2 1.4 On November 14, 2019, Board Staff, through counsel, filed a Motion for
3 Summary Judgment (Motion), requesting that the Board find that Mr. White violated the Ethics
4 Act, RCW 42.52 and impose sanctions. Board Staff brought the Motion pursuant to WAC 10-
5 08-135.

6 1.5 On December 3, 2019, Mr. White filed a response to the Motion, which Board
7 Staff, through counsel, replied to on December 18, 2019.

8 1.6 After due and proper notice, a hearing was held on the motion for summary
9 judgment. The hearing was held at the Board offices at Bristol Court in Olympia, Washington,
10 convening on January 10, 2020. Administrative Law Judge TJ Martin from the Office of
11 Administrative Hearings conducted the proceedings, and Board Chair Shirley Battan, and
12 members Lisa Marsh and Jan Jutte were present. Also present was Assistant Attorney General,
13 Michelle A. Carr, legal advisor to the Board.

14 1.7 The Board's Executive Director, Kate Reynolds, and other Board Staff members
15 were present.

16 1.8 Chad C. Standifer, Assistant Attorney General, represented Board Staff.

17 1.9 Mr. White represented himself.

18 1.10 Board Staff filed the following documents:

- 19
- 20 • Board Staff's Motion for Summary Judgment;
 - 21 • Declaration of David Killeen in Support of Motion for Summary
22 Judgment, with attached Exhibits 1-18; and
 - 23 • Board Staff's Reply to Respondent's Opposition to Board Staff's Motion
24 for Summary Judgment.

25 1.11 Mr. White filed the following documents:

- 26 • Response to Board Staff's Motion for Summary Judgment.

1.12 The proceedings were recorded and open to the public.

1.13 The motion hearing was adjourned on January 10, 2020.

1 Based on the documents filed and evidence presented, the Board enters the following
2 Findings of Fact, Conclusions of Law, and Order on Board Staff's Motion for Summary
3 Judgment:

4 II. FINDINGS OF FACT

5 2.1 Mr. White is the former Vice President for Administrative Services at BC. Decl.
6 of Killeen Ex. 1.

7 2.2 BC used outside contractors, including the Seattle-based company McKinstry, to
8 perform emergency repairs and the necessary maintenance on the HVAC equipment that
9 supplies heat, cooling, and air circulation to the occupied areas of the campus. Decl. of Killeen
10 Ex. 3 at 3. McKinstry also developed a dashboard tool for sharing data, regarding the BC
11 mechanical, electrical, and plumbing infrastructure. Decl. of Killeen Ex. 15 at 3.

12 2.3 According to Edward Biggers, Maintenance and Distribution Manager at BC, Mr.
13 White approved work done on "critical need" BC HVAC systems. Decl. of Killeen, Ex. 5 at 1.
14 Mr. White or Dexter Johnson (Mr. Johnson) would approve all maintenance or repair work
15 completed by McKinstry. Id.

16 2.4 According to Andrew Kapoi, Procurement Manager at BC, either Mr. Johnson or
17 Mr. White approved Purchase Orders for McKinstry, depending on the dollar amount. Mr.
18 Johnson and Mr. White could both approve expenditures. Decl. of Killeen Ex. 6 at 1.

19 2.5 In the spring of 2013, Mr. White and other BC administrative services employees
20 worked with McKinstry on plans to develop BC's Issaquah Center. McKinstry presented the
21 development plan to BC in August 2013. Killeen Ex. 1 at 2.

22 2.6 On two separate occasions, Mr. White toured the McKinstry facilities with a
23 group of staff from Whatcom Community College and BC to review the work McKinstry
24 performed. Decl. of Killeen Ex. 3 at 2-3.

25 2.7 On April 2, 2018, Mr. White had lunch with McKinstry representatives to discuss
26 Mr. White's interest in participating in a North West Association of Physical Plant

1 Administrators (NWAPPA) workshop. Decl. of Killeen Ex. 7. McKinstry paid \$53.04 total for
2 Mr. White's and two McKinstry employees' meals. Decl. of Killeen Ex. 8.

3 2.8 On May 5, 2018, McKinstry employee Ric Cochrane (Mr. Cochrane) sent an
4 email to Mr. White's BC account, inquiring as to whether he was interested in speaking at the
5 June 5th and June 20th NWAPPA workshops. Decl. of Killeen Ex. 9. In this email, Mr. Cochrane
6 indicated that McKinstry would pay Mr. White's expenses associated with attendance at the
7 workshops. Id. Mr. White responded that he was available to speak at the workshop on the 5th
8 but was not available on the 20th. Id.

9 2.9 On May 29, 2018, Mr. White sent Mr. Cochrane an email, inquiring about the
10 logistics for the June 5th NWAPPA workshop. Decl. of Killeen Ex. 10. In his reply, Mr.
11 Cochrane indicated that Mr. White should make his own travel plans and keep all of his receipts
12 for reimbursement by McKinstry after the event. Id.

13 2.10 On June 9, 2018, Mr. White sent an email from his personal Gmail account
14 thanking Mr. Cochrane for including him in the NWAPPA workshop. Decl. of Killeen, Ex. 11.
15 Mr. White attached receipts for his expenses, including Airfare (\$478.40), Uber (\$28.59), and
16 parking (\$30.00). Id. On June 25, 2018, Mr. Cochrane responded "Finally in the process – sorry
17 for the delay." Id.

18 2.11 Mr. White did not submit leave for June 5, 2018. Decl. of Killeen Ex. 12.

19 2.12 In response to Board staff, Mr. White indicated that his participation in the
20 NWAPPA workshop was part of his official duties and acknowledged that McKinstry
21 reimbursed him for travel expenses. Decl. of Killeen Ex. 13.

22 2.13 On April 16, 2018, upon McKinstry's request, Mr. White provided a reference
23 for McKinstry in conjunction with an opportunity being pursued by the company with Colorado
24 Mountain College, describing the advantages of the dashboard tool created by the company.
25 Decl. of Killeen Ex. 15.

1 2.14 Board Staff reviewed Mr. White’s email for the period of August 8, 2016, through
2 June 9, 2018. During that time-period, Mr. White sent four emails promoting his new business
3 venture, Integrated Planning Solutions, which included a link to the site,
4 www.integratedplanning.solutions. Decl. of Killeen Ex. 16. Mr. White sent one of the emails,
5 dated March 20, 2018, to McKinstry. Id. In a July 12, 2018, email to Kim Becklund at King
6 County Metro, Mr. White writes, “I will do your study and report for half of whatever your
7 consultant quotes you!!!” Id. at 7.

8 2.15 Board Staff reviewed Mr. White’s internet history, which showed that he
9 accessed the Integrated Planning Solutions website using the Chrome Browser on two days, May
10 26, 2018, and June 2, 2018. Decl. of Killeen, Ex. 17. Mr. White also accessed the Integrated
11 Planning Solutions website on October 8, 2017, using the Internet Explorer browser. Decl. of
12 Killeen Ex. 18.

13 2.16 Mr. White argues that because he did not participate in oversight of the
14 McKinstry contract, he is not in violation of RCW 42.52.150(4). According to Mr. White, any
15 technical violations of the Ethics Act occurred only because the law is unclear and that none of
16 the ethics trainings, which Mr. White attended in his 32 years as a state employee covered the
17 topic clearly. Additionally, Mr. White asserts that he never had an outside business, but that he
18 only created a website to serve as a resource bank of strategic planning materials. Last, Mr.
19 White claims that his supervisor directed him to draft the letter of recommendation for
20 McKinstry.

21 III. CONCLUSIONS OF LAW

22 3.1 The Board has jurisdiction to hear this matter pursuant to RCW 42.52.360(1),
23 which authorizes the Board to enforce the Ethics Act with respect to employees in the executive
24 branch of state government. The Board has jurisdiction over Mr. White, whose actions occurred
25 while he was a state employee. The complaint was filed in accordance with RCW 42.52.410, the
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1 Board found reasonable cause pursuant to RCW 42.52.420, and an adjudicative proceeding was
2 conducted pursuant to RCW 42.52.430. All the required procedural notices have been provided.

3 3.2 WAC 10-08-135² provides that a motion for summary judgment may be granted
4 and an order issued if the written record shows that there is no genuine issue as to any material
5 fact and the moving party is entitled to judgment as a matter of law. The object and function of
6 a summary judgment is to avoid a useless trial. *Hudesman v. Foley*, 73 Wn. 2d 880, 886, 441
7 P.2d 532 (1968). Summary judgment is appropriate if there is no genuine issue of material fact
8 and the moving party is entitled to judgment as a matter of law. *Ellis v. City of Seattle*, 142 Wn.
9 2d 450, 458, 13 P.3d 1065 (2000); *see* CR 56(c).

10 The basic facts of this matter are not in dispute, rendering resolution of this matter by
11 summary judgment appropriate. First, Mr. White does not dispute that he accepted payment for
12 his lunch during a meeting with McKinstry representatives. Second, Mr. White does not dispute
13 that he accepted payment from McKinstry for expenses incurred travelling to the June 2018
14 NWAPPA workshop. Third, Mr. White does not dispute sending a letter of recommendation for
15 McKinstry using state resources. Fourth, Mr. White does not dispute using his state email address
16 to send four emails referencing his business, Integrated Planning Solutions. Last, Mr. White does
17 not dispute having used his state computer to access his business website.

18 3.3 The Ethics Act governs the conduct of state officers and employees. Under
19 RCW 42.52.430(5), a violation must be established by a preponderance of the evidence.

20 3.4 RCW 42.52.150 provides in part:

21 (1) No state officer or state employee may accept gifts, other than those specified
22 in subsections (2) and (5) of this section, with an aggregate value in excess of
23 fifty dollars from a single source in a calendar year or a single gift from multiple
24 sources with a value in excess of fifty dollars . . .

25 (4) Notwithstanding subsections (2) and (5) of this section, a state officer or state
26 employee of a regulatory agency or of an agency that seeks to acquire goods or
services who participates in those regulatory or contractual matters may receive,

² The Board has adopted the model rules of procedures, chapter 10-08 WAC, WAC 292-100-006.

1 accept, take, or seek, directly or indirectly, only the following items from a person
2 regulated by the agency or from a person who seeks to provide goods or services
to the agency:

3 ...
4 (g) Those items excluded from the definition of gift in RCW 42.52.010
except:

5 (i) Payments by a governmental or nongovernmental entity of
6 reasonable expenses incurred in connection with a speech,
presentation, appearance, or trade mission made in an official
capacity;

7 (ii) Payments for seminars and educational programs sponsored
8 by a bona fide governmental or nonprofit professional,
educational, trade, or charitable association or institution; and

9 (iii) Flowers, plants, and floral arrangements.

10 3.5 RCW 42.52.160(1) states:

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

13 3.6 Mr. White does not dispute the basic facts, supporting violations of the Ethics Act
14 and his claimed ignorance of the law does not cure his violations. Furthermore, his argument
15 that he did not participate in the oversight of McKinstry is not persuasive. As one of the
16 individuals with responsibilities under the McKinstry contract, Mr. White was subject to the
17 prohibitions set forth in RCW 42.52.150(4), which prohibits the receipt of gifts of any amount.
18 Additionally, Mr. White used his BC email address to send four emails, referencing his new
19 business venture, Integrated Planning Solutions, with the purpose of generating interest in his
20 new venture.

21 3.7 Based on the above Findings of Fact, the Board concludes that Mr. White, by a
22 preponderance of the evidence, violated RCW 42.52.150(4) by accepting a gift from McKinstry
23 in the form of lunch and by receiving reimbursement from McKinstry for travel in connection
24 with his presentation at a NWAPPA workshop.

1 3.8 Based on the above Findings of Fact, The Board also concludes that Mr. White,
2 by a preponderance of the evidence, violated RCW 42.52.160(1) by using his state computer to
3 promote his outside business.

4 3.9 Based on the above Findings of Fact, the Board does not conclude that Mr. White,
5 by a preponderance of the evidence, violated RCW 42.52.160(1) by providing a letter of
6 recommendation for McKinstry.

7 3.10 Under RCW 42.52.480, the Board may impose a civil penalty of up to \$5,000 per
8 violation or three times the economic value of anything received or sought in violation of the
9 Ethics Act, whichever is greater. The Board concludes that a \$750 penalty for Mr. White's
10 violations of RCW 42.52.150 and a \$250 penalty for his violations of RCW 42.52.160(1),
11 totaling \$1,000, is appropriate. The Board considered the factors discussed below in assessing
12 this penalty.

13 3.11 In determining the appropriate sanction, the Board may review the nature of the
14 violation, as well as aggravating circumstances and mitigating factors set forth in WAC 292-
15 120-030. The Board may consider the monetary cost of the violation, including the cost of the
16 violation to the state and the value of anything received or sought in the violation. Id. Here, Mr.
17 White's violations tend to reduce public respect for or confidence in state government or state
18 government officers or employees. WAC 292-120-030(2)(e). No mitigating factors are present.

19 IV. ORDER

20 4.1 Board Staff's Motion for Summary Judgment is GRANTED.


21 4.2 It is hereby ordered that Raymond White is assessed a total monetary civil penalty
22 of \$1,000 based on his violations of RCW 42.52.150 and RCW 42.52.160(1).

23 4.3 The total amount of \$1,000 is payable in full within 90 days of the effective date
24 of this Order.

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DATED this 24th day of January 2020.

WASHINGTON STATE EXECUTIVE ETHICS BOARD


Shirley Battan, Chair

1 **APPEAL RIGHTS**

2 **RECONSIDERATION OF FINAL ORDER – BOARD**

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

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

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

12 **FURTHER APPEAL RIGHTS – SUPERIOR COURT**

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

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

20 A petition for review must set forth:

- 21 (1) The name and mailing address of the petitioner;
- 22 (2) The name and mailing address of the petitioner’s attorney, if any;
- 23 (3) The name and mailing address of the agency whose action is at issue;
- 24 (4) Identification of the agency action at issue, together with a duplicate copy, summary,
25 or brief description of the agency action;
- 26

1 (5) Identification of persons who were parties in any adjudicative proceedings that led to
2 the agency action;

3 (6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

4 (7) The petitioner's reasons for believing that relief should be granted; and

5 (8) A request for relief, specifying the type and extent of relief requested.
6 RCW 34.05.546.

7 **ENFORCEMENT OF FINAL ORDERS**

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

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