

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Jeff Merrill

Respondent.

No. 2020-014

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, JEFF MERRILL, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through KATE REYNOLDS, Executive Director, pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On October 2, 2019, the Executive Ethics Board (Board) received a complaint alleging that Courtney Stewart (Ms. Stewart), Sergeant with the Washington State Patrol (WSP) assigned to the Bellevue District Office, may have violated the Ethics in Public Service Act. The complaint alleged that she used state resources to participate in a political advertisement in opposition to Washington State Initiative I-976.

2. On September 26, 2019, Neil Weaver (Mr. Weaver), WSP Captain in charge of Government and Media Relations (GMR), received a tweet on his WSP Twitter account alleging improper conduct of Ms. Stewart in her involvement in a political advertisement where she

identified herself as a WSP trooper who opposes I-976. The tweet included a link to a YouTube political advertisement. Mr. Weaver viewed the YouTube video and believed that Ms. Stewart may have violated WSP Policies and the Ethics in Public Service Act. Mr. Weaver sent an email to WSP District 2 Captain Ron Mead (Mr. Mead) to advise him of the potential policy violation of one of his employees. Mr. Weaver submitted the complaint to the Office of Professional Standards (OPS). The complaint was subsequently assigned to Internal Affairs (IA) for investigation on October 3, 2019.

3. The WSP received 20 complaints related to the political advertisement in which Ms. Stewart participated.

4. As a result of the Stewart investigation the OPS initiated additional investigations into the conduct of Troopers Jeff Merrill (Mr. Merrill) and Nicholas King (Mr. King) regarding their involvement in the filming of the anti I-976 advertisement.

5. Ms. Stewart has been employed with the WSP for 18 years and has been in her current position for 11 years.

6. Trooper Jeff Merrill (Mr. Merrill) was the President of the Washington State Patrol Trooper Association (WSPTA) during the period relevant to this complaint. In July 2019, the WSPTA was concerned about Tim Eyman's Initiative I-976.

7. Trooper Nicholas King (Mr. King) has been employed with the WSP for 20 years. Mr. King is currently assigned to District 2, Bellevue. In addition, Mr. King is a back up to the District's Public Information Officer (PIO). Mr. King is also on the WSPTA Executive Board as the District 2 WSPTA representative.

8. Kelly Evans (Ms. Evans), owner of Sound View Strategies, told WSP investigators that her company was a general consultant for the "No on 976 campaign." Sound View Strategies

contacted the WSPTA. The WSPTA initially made a monetary contribution to the campaign. Then the campaign asked the WSPTA for troopers to volunteer to be in a television advertisement.

9. Ms. Evans told WSP investigators that the campaign never contacted the WSP regarding the advertisement; they assumed that was being done by the WSPTA.

10. Ms. Evans told WSP investigators that Mr. Merrill was provided with a script at least one week prior to the filming. She was unaware if the troopers (Ms. Stewart and Mr. King) received the script prior to the filming.

11. Ms. Stewart told the WSP investigators that she has known Mr. Merrill for her entire career and has maintained a business relationship with him. She further stated that she has assisted the WSPTA on several other occasions working directly with Mr. Merrill.

12. Ms. Stewart told WSP investigators that everything she has worked on with the WSPTA had been approved by the WSP.

13. Ms. Stewart also told WSP investigators that Mr. Merrill asked her to participate in the political advertisement opposing I-976.

14. Mr. King told WSP investigators that based on conversations from Mr. Merrill to WSPTA Board members, he understood the Chief was in support of both Ms. Stewart and himself participating in the advertisement opposing I-976. Mr. King indicated in his response that he was unsure if the Chief Mr. Merrill was referring to was Chief Batiste or Assistant Chief Sass.

15. The WSPTA had several meetings where the Chief of the WSP was present. During the meetings, it was discussed that the WSPTA was planning to oppose I-976. WSPTA Executive Board members believed that the Chief was in support of any opposition by the WSPTA.

16. Mr. Merrill also asked Mr. King to participate in making an advertisement in opposition of I-976. Mr. King was a WSPTA representative, representing troopers and sergeants in District 2, Bellevue.

17. Sometime the day before filming, September 12, 2019, Ms. Stewart contacted her direct supervisor, WSP Lieutenant Zachary Elmore (Mr. Elmore). Ms. Stewart advised Mr. Elmore that she was asked by the WSPTA to participate in a commercial opposing I-976. She told Mr. Elmore that filming was going to take place during the day and she would need to take off an hour to go home to get her personal vehicle and then drive to the location. At that time, Ms. Stewart believed the time of the shoot was going to be around 4:00 – 4:30 pm. Ms. Stewart's shift is 7:00 am to 5:00 pm.

18. Mr. Elmore told WSP investigators he recalled he had just returned from a short vacation at the end of August 2019, when Ms. Stewart contacted him. Mr. Elmore indicated in his response that she informed him the WSPTA had asked her to participate in making an advertisement opposing I-976.

19. Mr. Elmore indicated in his response to WSP investigators that he gave his approval for Ms. Stewart to assist the WSPTA in making the commercial but that she could not use state time or state resources. Mr. Elmore indicated that Ms. Stewart replied no uniform, no car, and no time. She also indicated that she would take leave or something.

20. Mr. Elmore indicated in his response to Board staff that he recalled having a conversation with Ms. Stewart prior to September 12, 2019. He also recalled that he advised her she would have to participate on her own time and not use any state resources.

21. Ms. Stewart told WSP investigators that she did not speak to anyone else in her chain of command to get permission or approval to participate in the commercial for the WSPTA.

22. On September 12, 2019, Ms. Stewart was scheduled to work 7:00 am to 5:00 pm. Ms. Stewart told WSP investigators that she actually started work at 6:00 am so she would be off at 4:00 pm. Ms. Stewart told WSP investigators that the original time set for the production of the commercial was somewhere between 4:00 and 4:30 pm and the location was going to be somewhere in the Seattle area.

23. Ms. Stewart told WSP investigators that on September 12, 2019, sometime before 3:00 pm, she received a text message from a person on the film crew that the location was going to be somewhere at a bridge up in the Marysville area and the time had changed to 3:00 – 3:30 pm.

24. Mr. King told WSP investigators that on September 12, 2019, he was at the Bellevue District Office when he received a text message from the filming company sometime before noon indicating that the time for filming the commercial was moved to 3:00 -3:15 pm and the location was up north of Everett, near the Ebey Slough.

25. Mr. King indicated in his response to WSP investigators that he contacted Mr. Merrill, via text message, and asked Mr. Merrill to obtain permission from the Captain (Ron Mead (Mr. Mead), District 2 Commander) for him and Ms. Stewart to use state time and vehicles to drive to the new location at the new earlier time.

26. Mr. King told WSP investigators that about 15-20 minutes later he received a text message from Mr. Merrill indicating that Captain Mead gave his permission for him and Ms. Stewart to use state time and their state issued vehicles to drive to the filming location.

27. Mr. Mead told WSP investigators that he missed a call from Mr. Merrill on September 12, 2019 at 11:50 am. He called Mr. Merrill back at 11:57 am. Mr. Mead stated that the phone call was about two minutes and for most of that time Mr. Merrill was explaining the

negative impacts of I-976 and that the WSPTA had chosen to do a commercial. During the conversation, Mr. Merrill asked permission from Mr. Mead to allow Ms. Stewart and Mr. King to drive their patrol vehicles on state time to the location of the commercial, north of Everett.

28. Mr. Mead told WSP investigators that he told Mr. Merrill he could not give permission for Ms. Stewart and Mr. King to use their assigned patrol vehicles to drive to the location of the filming and that Mr. Merrill indicated that he understood.

29. Mr. Mead indicated in response to the WSP investigators that at the time he talked with Mr. Merrill he was not advised what Mr. King or Ms. Stewart would be doing in reference to the making of the advertisement.

30. Mr. Mead indicated in his response to WSP investigators that he first became aware of Ms. Stewart's participation in the advertisement when, on September 26, 2019, he received an email from Mr. Weaver, which contained an attachment of the video.

31. Julie Fisher (Ms. Fisher), WSP Sergeant and Mr. King's direct supervisor at that time, indicated in her response to Board staff that she was away from the District for 10 weeks of training during this time and was not aware of Mr. King's participation until the day the advertisement aired featuring Ms. Stewart. Ms. Fisher indicated that she learned that Mr. King was involved in his own advertisement later that same day.

32. Ms. Fisher indicated in her response that Mr. King told her that Mr. Merrill obtained approval from Mr. Mead to participate in the filming of the anti I-976 advertisement.

33. Ms. Fisher indicated in her response that Mr. King was the Trooper-in-charge of her detachment while she was away for training.

34. Spike Unruh (Mr. Unruh), WSP Trooper and WSPTA Vice President, told WSP investigators that he was on an airplane sitting one seat away from Mr. Merrill when Mr. Merrill

made the phone call to Mr. Mead. Mr. Unruh told WSP investigators that he clearly heard Mr. Mead tell Mr. Merrill that he could not give permission to Ms. Stewart and Mr. King to use their patrol cars to drive to the location to film the commercial.

35. Mr. King told WSP investigators that after he received the text from Mr. Merrill he sent a text message to Ms. Stewart. *"we're good to go. I was just told by Jeff [Merrill] and we have the support of our captain to drive up there in our patrol cars so we don't have to go home and change, particularly for you, Courtney. Because you have to drive to freaking Alki Beach before you go north on I-5 to Everett at 4:00 pm in the afternoon."*

36. Mr. Merrill indicated in a response to Board staff that he remembers the conversation with Mr. King as a phone call and that he told Mr. King that the use of his patrol vehicle was not approved however if he did drive his patrol vehicle to just keep it quiet and don't say anything. Mr. Merrill further indicated that it did not make sense to him that he would send a text that it was approved when Captain Mead advised him that it was not approved.

37. Mr. Elmore indicated in his response to Board staff that Ms. Stewart did not contact him regarding using her patrol vehicle to drive to the filming location on September 12, 2019. He further indicated that he believes he was at the district office on that day and was available to Ms. Stewart.

38. Mr. King told WSP investigators that he did not get off work on the day of the filming until 4:00 pm.

39. Mr. King told WSP investigators that he arrived at the filming location at about 3:45 to 4:00 pm. At that time, Ms. Stewart had not yet arrived. Mr. King told WSP investigators that he had begun putting on his costume uniform when he observed Ms. Stewart arrive in her patrol vehicle.

40. Mr. King told WSP investigators that he and Ms. Stewart did not use their WSP uniforms or vehicles in the production of the commercial.

41. Ms. Stewart told WSP investigators that on the day of the filming she was told by Mr. King they had received permission to drive their assigned patrol vehicles to the filming location. She indicated in her response that because she believed she had permission, she did not take time off, as she had earlier discussed with her supervisor, Mr. Elmore, to drive to her home in Alki Beach to get into her personal vehicle to drive up to the filming location. Instead, she drove directly from the district office arriving at the King/Snohomish County line at the end of her shift, at about 4:00 pm. The location of the filming was not in Ms. Stewart's assigned patrol area of King County.

42. Ms. Stewart told WSP investigators that she did not use leave because it was the end of her shift, by the time she reached the King/Snohomish county line.

43. Ms. Stewart did not advise WSP Communications that she was out of service or that she was out of her assigned area.

44. Ms. Stewart told WSP investigators that she arrived at the filming location after 4:00 pm, Mr. King was already there and in his costume and standing by the door of the vehicle, an old Crown Victoria. She was met by a woman who started doing her makeup and then took her over to get her costume on. The costume shirt they had for her was too small and she ended up using the uniform shirt Mr. King had used. It was not a WSP uniform shirt.

45. Ms. Stewart indicated in a response to WSP investigators that she had not seen the script prior to reading it from the teleprompter. She assumed that the script had been approved by the WSP.

46. Ms. Stewart told WSP investigators that no WSP uniforms, vehicle, or badges were used in the making of the commercial.

47. At the time of the filming Ms. Stewart was unaware of the graphics and subtitles in the commercial that identified her as a Washington State Trooper.

48. The political advertisement in opposition to I-976 first aired on September 26, 2019¹.

Advertisement Script:

*There were 560 fatalities on our roads in 2017. So anytime there's a measure on the ballot that impacts our highways I take a close look. Tim Eyman's Initiative 976 is dangerous because it threatens road safety projects all over Washington. It puts at risk critical repairs to the 160 bridges and overpasses that are rated in poor condition. Join Firefighters, Nurses, EMT's and **Washington State Troopers** and protect all of us by voting no on 976. (Emphasis added)*

49. Ms. Stewart told WSP investigators that she was not aware of the banner in the film that identified her as a Washington State Trooper until the commercial had come out.

50. On September 27, 2019, the WSPTA sent a copy of the advertisement to the Chief's Office. The Chief's Office made a recommendation that the advertisement remove the Washington State language. The WSPTA complied by removing "Washington State Patrol" and inserting Washington State Patrol Troopers Association.

51. Karl Nagel (Mr. Nagel), WSP Labor and Policy Advisor, told Board staff that he had not seen or approved of the commercial prior to it airing on September 26, 2019.

¹ Date based on the first complaint received by the WSP.

52. Mr. Nagel told Board staff that he called Mr. Merrill to advise him the advertisement opposing I-976 should not have identified Ms. Stewart as a Washington State Trooper and in doing so, it appeared that the WSP was endorsing the ad. Mr. Nagel further indicated in his response that on September 27, 2019, he received a text message from Mr. Merrill indicating that they would remove the Washington State Patrol language and replace it with Washington State Patrol Troopers Association. Mr. Nagel indicated that he did not approve or disapprove of the revised language but simply replied to the text message “acknowledged” indicating his acknowledgement of the change of language. See the revised advertisement below:

Advertisement Script:

*There were 560 fatalities on our roads in 2017. So anytime there's a measure on the ballot that impacts our highways I take a close look. Tim Eyman's Initiative 976 is dangerous because it threatens road safety projects all over Washington. It puts at risk critical repairs to the 160 bridges and overpasses that are rated in poor condition. Join Firefighters, Nurses, EMT's and **Troopers** and protect all of us by voting no on 976 (Emphasis added)*

53. Mr. Merrill indicated in a response to Board staff that he received a phone call from Mr. Nagel a few days after he had provided WSP a copy of the original video. Mr. Nagel indicated in that phone call that the WSP would like some language changed to better clarify that the video represented views of the WSPTA and not the WSP.

54. Mr. Merrill stated in his response that Mr. Nagel indicated once these changes were made, the Chief would be okay with it.

55. Mr. Merrill indicated that after communicating with Mr. Nagel he immediately contacted the political consultant and had them pull the advertisement and make the requested changes.

56. Ms. Stewart told WSP investigators that she believed Mr. Merrill would have gotten approval for the project through the WSP and that it was her responsibility to seek approval for her participation in the project. She believed Mr. Merrill had WSP approval based on what Mr. Merrill had told her and she got approval from her WSP chain of command, Mr. Elmore, to participate in the project.

57. Mr. Unruh told WSP investigators that because of the conversations, he had with Mr. Merrill, that he believed this commercial was Mr. Merrill's project. He asked Mr. Merrill several times, if the commercial was being properly vetted through the WSP channels. Mr. Merrill told him "it was all good to go."

58. Mr. Unruh told WSP investigators that because of the conversations he had with Mr. Merrill he actually thought Mr. Merrill had vetted the advertisement through the agency and through GMR and that, they were all on board with it.

59. Mr. Unruh told WSP investigators that it was not until the September 12, 2019 phone conversation between Mr. Merrill and Mr. Mead when he clearly heard Mr. Mead tell Mr. Merrill that he could not authorize Ms. Stewart and Mr. King the use of state vehicles to drive to the filming location. Then Mr. Merrill lied to him indicating that Mr. Mead gave his permission.

60. Mr. Merrill indicated in a response to Board staff that the WSPTA did not draft the script but that they did convey to the media consultant that no WSP equipment, uniforms or vehicles were to be used in the advertisement. Mr. Merrill further indicated that the WSPTA

advised the media company that any affiliation supporting the anti-I-976 position would need to be attributed to the WSPTA not the WSP.

61. Mr. Merrill indicated in his response to Board staff that the initial video was produced and released without the WSPTA's final approval.

62. On October 3, 2019, The WSP initiated an investigation of Ms. Stewart into policy violations related to this complaint. The WSP subsequently opened an investigation into Mr. King's involvement in making the political ad.

63. On October 3, 2019, Mr. Merrill sent out an email to executive members of the WSPTA. The email indicated that he was starting to receive some negative feedback from WSPTA members about the WSPTA's participation in the anti-I-976 TV ad featuring Ms. Stewart and another one that had not shown yet featuring Mr. King. The email indicated that the WSP Chief asked they remove the Washington State language and that the WSPTA complied inserting the WSPTA language. This change satisfied Mr. Nagel and the revised ad began airing.

64. On October 8, 2019, Mr. Unruh sent a text message to Mr. Merrill indicating that the WSPTA needed to suspended Mr. King's video from being released before it aired and that GMR should review and approve it.

65. On October 10, 2019, Mr. Merrill suddenly resigned his position as the WSPTA President. Mr. Merrill retired from the WSP shortly thereafter and declined to be interviewed by WSP investigators.

66. Mr. Merrill indicated in his response to Board staff that the WSPTA is not required to seek WSP approval for union related activities, indicating that this campaign to oppose I-976 was initiated by organized labor to address the perceived impact to its members.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources 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. RCW 42.52.180(1) states:

RCW 42.52.180 – Use of public resources for political campaigns:

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 a 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 the use of stationary, postage, machines and equipment, use of state employees of the agency during working hours, vehicles, office space, and publications of the agency and clientele lists of the persons served by the agency

2. Based on the evidence reviewed by Board staff, Mr. Merrill directed the use of state resources to oppose a ballot proposition in violation of 42.52.180.

3. 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.

4. Based on the stipulated facts above, Mr. Merrill directed the use of state resources to support an outside organization (WSPTA) in violation of RCW 42.52.160.

5. 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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor these types of violations significantly reduce the public respect and confidence in state government employees.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jeff Merrill and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. Jeff Merrill agrees that if any or all of the alleged violations were proven 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).

5. Jeff Merrill further agrees that the evidence available to the Board 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.

6. Jeff Merrill 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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Jeff Merrill from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. Jeff Merrill 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Jeff Merrill and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Jeff Merrill at this time.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Jeff Merrill does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Jeff Merrill waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Jeff Merrill understands and agrees that this stipulation as well as information obtained during any settlement discussions between the


parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Jeff Merrill agrees to pay a civil penalty in the amount of two-thousand, five-hundred dollars (\$2,500) associated with violations of, RCW 42.52.

12. The civil penalty in the amount of two-thousand, five-hundred dollars (\$2,500) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

I. CERTIFICATION

I, Jeff Merrill, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.


JEFF MERRILL
Respondent
9-29-2020
Date

Presented by:


KATE REYNOLDS
Executive Director
11/13/2020
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

 X

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 13th day of November, 2020

Approved via Virtual Meeting
Shirley Battan, Chair

Approved via Virtual Meeting
Gerri Davis, Vice-Chair

Approved via Virtual Meeting
Lisa Marsh, Member

Absent
Anna Dudek Ross, Member

Approved via Virtual Meeting
Jan Jutte, Member

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

Jeff Merrill, Respondent

Date