

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

David Emmons

Respondent.

No. 2021-013

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, David Emmons 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 March 22, 2021, the Executive Ethics Board (Board) received a complaint alleging that David Emmons (Mr. Emmons) the Former Executive Director (ED) of the Olympic College Foundation (OCF) at Olympic College (OC) may have violated the Ethics in Public Service Act by using his position to secure special privileges for himself or other persons.

2. According to OC, Mr. Emmons was originally hired by OC on January 14, 2013 as the Director of the OCF and became the Executive Director on September 30, 2015. OC states that on June 11, 2019 Mr. Emmons was notified of the complaint and the subsequent investigation

by OCF. According to OC, Mr. Emmons was provided with a copy of the investigation on August 22, 2019 and on September 30, 2019, he resigned.

3. According to the complaint, in fall 2019, conversations within the OCF led to concerns about whether Mr. Emmons' properly followed established procedures in receiving and awarding restricted purpose funds.

4. OCF self-reported its concerns to the OC and the college's Assistant Attorney General (AAG). OCF was informed that OC intended to invoke its contractual right to perform its own audit of OCF records. OCF agreed to cooperate fully with OC and asked that the audit occur as soon as possible to allow OCF to correct any deficiencies within the current fiscal year ending June 30, 2020.

5. The complaint states that due to many factors, including the ongoing closure of the OC since mid-March 2020 due to the COVID-19 pandemic, the College has not yet retained a qualified professional to conduct the intended audit. Subsequently, OCF decided to move forward with its own internal review (Audit) and identified several areas of concern.

6. Board staff were provided a copy of the Audit and determined the allegations in regards to scholarships awarded by Mr. Emmons to a student at OC were within the Board's jurisdiction. The student's name was redacted by OC and was identified by the initials MK. All other students mentioned in the audit were also identified by their initials only.

7. According to the Audit, in fall of 2019, several OCF staff expressed confusion and frustration about the procedures for awarding student scholarships. Complaints included that the procedures were not well documented and staff had observed inconsistencies in how individual awards were made by Mr. Emmons, seemingly outside of the established committee process for reviewing and selecting scholarship recipients.

8. The Audit states several staff questioned how one international student (MK) had been awarded multiple OCF scholarships in an excessive amount, relative to other OCF student scholarship recipients, by Mr. Emmons.

9. At the request of Board staff, OC provided the current award process:
- The Foundation advertises its general scholarships on the AwardSpring platform. Applications open in January of each year and usually close in April.
 - During the January to April window, there are rolling deadlines with a group of scholarships closing each week. If there are no applicants or very few, they may extend the individual scholarship deadlines, but generally not the final deadline.
 - Volunteers read and rank applications.
 - Each application for each scholarship is evaluated by three people.
 - Once the rankings are compiled, they form the basis for awards. The top person for each scholarship typically receives that award unless they have already received another scholarship. Then OCF moves to the next person on the list who does not already have a full award. They try to award each student at least half-a-year's tuition or around \$2,000. Many students receive more. In case of a tie (i.e., several students have the same score from the readers), the student with the highest GPA gets the award.
 - OCF generally does not re-open applications (unless there were no applicants) nor award a scholarship to students who have not applied.
 - Students are notified of their awards and must complete and submit a scholarship award packet in order to accept their scholarships.

10. According to the Audit, in May 2020, scholarship awards to MK were reviewed and determined that MK was awarded the following individual OCF scholarships for the 2019-20 academic year, with a cumulative value of \$5,325.

11. \$1,000 Bremer Trust scholarship:

- MK was ranked 19th by reviewing committee and received a partial award.
- Applicants #4, 7, & 10 also received partial awards.
- 15 higher ranked applicants (than MK) received no award.
- All 18 higher ranked applicants had less cumulative dollar awards (than MK).
- Scholarship required recipients to be a resident of Washington State; as an International Student, MK did not meet this requirement for an award.

12. \$1,000 Thomas Graham scholarship:

- MK was ranked by the committee as #1 of sixteen candidates. He received a \$1000 award.

- This scholarship required recipients to be a resident of Washington State; as an International Student, MK did not meet this requirement for an award.
- Of 16 applications timely submitted and reviewed by the committee, four did not get any award, including those ranked #2 and #3.

13. \$1,500 Reid Family scholarship:

- Application deadline for this award was February 18, 2019.
- MK's application was put into the system February 19, 2019.
- MK was ranked 4th by reviewing committee and received a \$1,500 award.
- Higher three applicants, all with cumulative dollar awards less than MK, were skipped over.
- Scholarship required recipients to be a resident of Washington State, as an International Student, MK did not meet this requirement for an award.

14. \$575 West Sound Performing Arts scholarship:

- Application deadline for this award was March 11, 2019.
- Two applications were submitted by the deadline and were reviewed by the committee, AS was ranked #1 and received no award; HR was ranked #2 and received \$575.
- HM and MK applications were (administratively) put into the system on May 15, 2019.
- HM was not reviewed by the committee, and did not receive any award.
- MK was not reviewed by the committee and was awarded \$575.
- Scholarships required a "demonstrated interest of study of Performing Arts" by answering a supplemental question. MK's application did not include that question/answer, therefore, it did not meet that requirement for an award.

15. \$1,250 OC Business Scholarship:

- MK awarded \$1,250.
- This scholarship was not listed in AwardSpring.
- Audit was unable to confirm criteria for this award.
- Audit was unable to confirm designated fund from which this award was made.
- Audit was unable to find a record/file on this award in OCF offices and was unable to determine the origin of award criteria, which was also advertised and awarded in 2018 and 2019.

16. According to the Audit, Mr. Emmons did not adhere to the award process or any process and appears to be using his discretion for awarding scholarships to MK. Mr. Emmons

failed to seek board approval and chose MK over more qualified applicants who timely applied for scholarships they did not receive.¹

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from securing special privileges for themselves or others. RCW 42.52.070(1) 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.

2. 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 and they were continuous in nature. It is a mitigating factor that Mr. Emmons resigned his position with OC at the conclusion of OC's Audit.

D. STIPULATION AND AGREED ORDER

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

¹ Board staff contacted OC and asked if Mr. Emmons as the ED of the OCF has the final word on scholarship awards. In a written response they stated "...the Foundation executive director ultimately is responsible for ensuring that Foundation scholarships are awarded in keeping with the donors' wishes and the written agreements."

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. David Emmons 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. David Emmons further agrees that the evidence available to the Board is such that the Board may conclude they 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. David Emmons waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or their 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 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. David

Emmons 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 David Emmons 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 David Emmons 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 David Emmons 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, 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, David Emmons 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. David Emmons agrees to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) associated with violations of RCW 42.52.

12. The civil penalty in the amount of one thousand five hundred dollars (\$1,500) 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, David Emmons, 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.

David Emmons 10-22-2021
David Emmons Date
Respondent

Presented by:

L. Reynolds 11/11/2021
KATE REYNOLDS 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 12th day of November 2021.

Approved via Zoom
Shirley Battan, Chair

Approved via Zoom
Gerri Davis, Vice Chair

Approved via Zoom
Jan Jutte, Member

Absent
Earl Key, Member

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

David Emmons, Respondent Date