

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Amanda Maxwell
Respondent.

No. 2021-054

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, Amanda Maxwell 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 December 7, 2021, the Executive Ethics Board (Board) received an anonymous complaint alleging that Amanda Maxwell (Ms. Maxwell), the Executive Director and Secretary for the Utilities and Transportation Commission (UTC), may have violated the Ethics in Public Service Act by using state resources for private benefit or gain.

2. According to the complainant, Ms. Maxwell sent an email to UTC employees regarding a "nationally televised acquittal" with links to donate to the American Civil Liberties Union (ACLU).

3. The complainant provided a copy of an email dated Friday, November 19, 2021, with the subject line of: Rittenhouse Verdict. The email was sent from Ms. Maxwell's UTC email address and was sent to UTC DL All Commission. The email stated:

Team: Today, a jury found Kyle Rittenhouse not guilty of shooting and killing two people and injuring another during the social justice demonstrations in Kenosha, Wisconsin last year. Please be aware of the emotional toll, trauma, and harm this event may cause your fellow UTC co-workers. If you are in need of emotional support, you can call EAP for free, confidential counseling at 877-313-4455 or by filling out an online intake form. EAP also offers additional racism and mental health resources. The American Civil Liberties Union wrote this statement on the case, quote, "Rittenhouse's trial high lights an urgent need for reform for both police and the criminal legal system." The ACLU offers several resources to learn about current issues, get help, *ways to donate*, and local events to get involved in. (Italics/Bold added by Board staff for emphasis.)

4. According to UTC, Ms. Maxwell began her employment on August 12, 2008, as a Communications Consultant 4. On December 23, 2013, Ms. Maxwell was promoted to the position of Media and Communications Manager (WMS Band 1). In January 2016, Ms. Maxwell was promoted to serve as the Commission's Communications Director (WMS Band 2). In February the Communications Director position description was revised to include management of the Consumer Protection Division, and was reclassified to WMS Band 3. On September 16, 2021, Ms. Maxwell was appointed to her current position of Executive Director and Secretary of the UTC.¹

5. In a written response to Board staff, Ms. Andrews, Deputy Director and Chief Financial Officer for UTC, stated that on November 19, 2021, Kyle Rittenhouse was acquitted of felony charges by a jury in Kenosha, Wisconsin. That day, Ms. Maxwell sent an email to all

¹ According to UTC, Ms. Maxwell has no letters of concern or disciplinary actions in her personnel file and all annual evaluations completed by former supervisors speak to Ms. Maxwell's commitment to excellence in public service. In her 13-year career in state service, she has received no prior ethics complaints.

Commission staff acknowledging the verdict and identifying resources available to employees who may need emotional support in light of the acquittal verdict. The decision to send an email following the Rittenhouse verdict was made after consultation with their Equity, Diversity and Inclusion (EDI) Committee.

6. At Ms. Maxwell's request, a new, junior Communications staff member wrote a draft email, which included the link to the ACLU's website, and sent it to Ms. Maxwell for review. Ms. Maxwell reviewed the email and sent it to all staff over her name.

7. According to Ms. Andrews, on the date of the email, UTC's ethics advisor position was vacant,² so Ms. Maxwell did not seek a review of the email for potential ethics concerns. Ms. Maxwell has indicated, however, that she considered several factors in deciding to go forward: (1) the link was not included for the purpose of advancing the personal interests of, or for the benefit of, Ms. Maxwell or any other person or organization; (2) the linked website does not advocate for or against a ballot initiative or political candidate; and (3) the linked website is one approved by the state's Combined Fund Drive, and is in fact found on the CFD's own website, <https://give.wa.gov>, administered by the Office of the Secretary of State.

8. According to Ms. Andrews, in hindsight, Ms. Maxwell says that she would not have included the reference to the ACLU in her email. While she did not believe that the email in any way pressured employees to take any particular action, she concluded upon reflection that it may be viewed as an agency endorsement of the organization and she wishes to avoid that perception. She maintains she acted in good faith in sending the email in question and that this violation of the Ethics in Public Service Act was inadvertent and unintentional.

² According to UTC, as of January 1, 2022, the ethics advisor role has been filled, and that position will be working closely with Ms. Maxwell on future all-staff communications.

9. Ms. Andrews stated that it is also noteworthy that both Ms. Maxwell and the junior Communications staff member are new to their respective roles at UTC. UTC hopes that these contributing factors will be considered by the Board, as UTC requires additional ethics training of its staff. UTC is confident that this situation will not be repeated. Ms. Andrews states that Ms. Maxwell has accepted responsibility for the lack of a thorough review as Executive Director prior to releasing the communication.

10. Ms. Andrews said that the Commission has a strong desire to protect its reputational interest and would like to point out that, to their knowledge, no UTC employee before has faced a complaint for a violation of the Act.

11. In a written response to Board Staff, Ms. Maxwell said that UTC had been working for several years to improve their culture particularly related to EDI. She said they have made a commitment to their staff to include an EDI perspective in their operations, communications, and decisions to ensure that the agency is an inclusive, safe, and trauma-informed workplace.

12. She said that on November 19, 2021, an EDI Committee member brought the Rittenhouse verdict to their attention as a national event that may affect agency employees, especially employees of color. The all-staff email was drafted by a newer member of their Communications Team, an equity and engagement specialist, whose role is to normalize concepts of racial and social equity in the agency's internal and external communications.

13. Ms. Maxwell said that the email brought forward in the complaint was one of the first she reviewed as UTC's Executive Director. She said that this occurred at a time when the agency was without an ethics advisor after that employee resigned in late October 2021.

14. Ms. Maxwell said that this has been remedied with the hire of a Human Resources Director in January 2022, and she wants to assure the Board that the HR Director will receive

proper ethics training, and she will work closely with that employee in the future on all-staff communications.

15. Ms. Maxwell said that in reviewing the draft email, she did confirm that the linked page content did not advocate for or against a ballot initiative or political candidate and because the organization was approved as a registered Combined Fund Drive charity. Ms. Maxwell said she came to the conclusion that it was not a violation of state ethics laws to provide the same link that appears on www.cfd.wa.gov.

16. Ms. Maxwell said that in retrospect, she can see that including the word “donate” as part of a list of resources and opportunities for employees to explore can create the perception of a request, but she said that this was not her intention.

17. Ms. Maxwell said she has no personal or financial interest in the ACLU, nor was it her intention to solicit or imply that employees should make a donation to that organization. She believed there was nothing in her email that applied pressure or coercion on any UTC employee.

18. Ms. Maxwell said that as a 13-year Washington State employee, she wants to express to the Board how seriously she takes compliance with state ethics laws. She said she has maintained an impeccable employment record in both conduct and ethics.

19. Ms. Maxwell said that it is her hope that the Board will acknowledge that the language that is the subject of this complaint was not coercive and did not benefit her personally or financially. However, she recognizes in hindsight, that her inclusion of this language was ill advised and will not be repeated. Ms. Maxwell said that if the Board decides to proceed with the complaint, she is prepared to take full responsibility for her actions.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from Use of persons, money or property for private gain. RCW 42.52.160 states:

No state officer or state employee may employ or use any person, money, or property under the officers or employees official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee or another.

WAC 292-110-010 Use of state resources, states, in part:

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

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

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

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. In the matter at hand, there are no mitigating factors.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Amanda Maxwell 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. Amanda Maxwell 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. Amanda Maxwell 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. Amanda Maxwell 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. Amanda Maxwell 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 Amanda Maxwell 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 Amanda Maxwell 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 Amanda Maxwell 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, Amanda Maxwell 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. Amanda Maxwell agrees to pay a civil penalty in the amount of one-thousand dollars (\$1,000) associated with violations of RCW 42.52. The Board agrees to suspend two-hundred-fifty dollars (\$250) on the condition that Amanda Maxwell complies with all terms and conditions

of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The civil penalty in the amount of seven-hundred-fifty dollars (\$750) 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, Amanda Maxwell, 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.

Amanda Maxwell 4/14/22
Amanda Maxwell Date
Respondent

Presented by:

L. Reynolds 5/3/2022
KATE REYNOLDS Date
Executive Director

