BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: Michael J. Murphy	NO. 00-32 STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between Michael J. Murphy, through his attorney, W. Dale Kamerrer, and the EXECUTIVE ETHICS BOARD ("Board") through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS AND LAW

1. FACTS

a. The Washington State Executive Ethics Board filed the above referenced complaint on October 13, 2000, against Michael J. Murphy, the Washington State Treasurer. The complaint was issued pursuant to a referral from the State Auditor.

b. Michael Murphy is a statewide elected officer subject to the jurisdiction of the Washington State Executive Ethics Board under RCW 42.52.360.

c. The Washington Finance Officers Association ("WFOA") is a 501(c)(3) non-profit association of state and local government finance officers in Washington State with affiliated members from private businesses and professions.

d. WFOA maintains an Internet web-site, which includes a WFOA member business address list. The WFOA member business address list includes the business e-mail addresses of some members and is available to any Internet user who accesses the WFOA site. Of the 582 WFOA member business e-mail addresses listed on the WFOA website, 527 are associated with

the work address of a state or local government officers and employees. At least fifty-five addresses are associated with persons not employed by any government agency.

e. On September 30, 2000, Michael Murphy sent an e-mail to a list of business e-mail addresses derived from the WFOA member address list. Mr. Murphy's e-mail originated from murphymj@uswest.net, which is the published e-mail address of the Mike Murphy for State Treasurer campaign. The Mike Murphy campaign site is maintained on a private computer using a private e-mail service. Comparing the address list that the September 30, 2000 e-mail was sent to with the WFOA member address list indicates that Mr. Murphy removed the business e-mail addresses of certain state employees, including WFOA members who were employed by the Office of the State Treasurer and the State Auditor. Nevertheless, Mr. Murphy's September 30, 2000 e-mail was sent to the business address of at least seven state employees.

f. An e-mail message sent to the business e-mail address of a state employee is saved on a state agency owned computer or e-mail server until accessed by the recipient. Forwarding an e-mail message, automatically or manually, to his or her home e-mail address also requires the state employee to use an agency owned computer or e-mail server. In addition, a state employee must normally use state agency owned facilities, i.e., computer and monitor, to review or forward an e-mail message sent to his or her business address.

g. Mr. Murphy's September 30, 2000 e-mail has a subject line, which reads "Mike Murphy for State Treasurer" and is addressed "Dear Colleagues". The first paragraph reads:

> Could you please forward this message to your home-mail and then send to everyone on your personal e-mailing list.... Please ask them to forward to everyone on their list, etc., etc.... Sorry to have sent this to your work address. Thanks, Mike Murphy.

The last two paragraphs read:

> More importantly, remember to cast your vote for Mike Murphy in the Nov. 7 election. Thanks for your support.
>
> Mike Murphy, Your Washington State Treasurer
> Murphymj@uswest.net
> 360/357-4620
> www.mikemurphy2000.com

h. Attached to Mr. Murphy's September 30, 2000 e-mail message are a two-page document entitled *Highlights of Washington State Treasurer* and a two-page biography and photograph.

2. APPLICABLE LAW

a. RCW 42.52.180(1) states:

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

b. "Facilities of an agency" include the state owned and operated e-mail system and the agency computers and other equipment upon which the e-mail system operates.

c. WAC 292-110-010(3) allows state officers to make occasional but limited personal use of state resources in certain limited circumstances. WAC 292-110-010(4)(c), however, prohibits even an "occasional and limited" use of state resources if that use is for "any campaign or political" purpose.

B. RESOLUTION

1. Michael J. Murphy acknowledges that if this matter went to public hearing, the Board would conclude that Michael J. Murphy violated provisions of chapter 42.52 RCW by knowingly sending an e-mail, which advocated the support of Mr. Murphy's campaign for election to a state-wide public office, to the work address of at least seven state employees thus using the facilities of the agencies which employed the state employees to advocate support for his campaign for election to a state-wide public office, as outlined above. However, Michael J. Murphy maintains that his sending of the e-mail message to those work addresses was unknowing and inadvertent.

2. Michael J. Murphy will pay a civil penalty in the amount of one thousand two hundred dollars ($1,200.00). The amount is payable to the state Executive Ethics Board within ten (10) days of approval of this Stipulation and Order by the Board.

C. CONCLUSIONS OF LAW

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

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2) which states in part:

> The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

D. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Michael J. Murphy from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty owed in the amount of $1,200.00 and compliance with all other conditions of this Stipulation. Michael J. Murphy 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 and Order.

2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Michael J. Murphy and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

4. If this Stipulation and Order is not accepted, it shall be null and void, and may not be used for any purpose in connection with the above entitled action.

E. CERTIFICATION

I, Michael J. Murphy, hereby certify that I have read this Stipulation and Order in its entirety; that my counsel has fully explained its legal significance; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

Michael J. Murphy
Respondent

1/4/01
Date

W. Dale Kamerrer
Attorney for Respondent

1/4/01
Date

Stipulated to and presented by:

Brian R. Malarky
Executive Director

January 5, 2001
Date

Jerri L. Thomas
Senior Counsel, Assistant Attorney General
Counsel for the Executive Director

Jan. 11, 2001
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 following modifications are approved by _____.

_____

_____

_____

_____

DATED this 11th day of January, 2008.

James M Vaché

James M. Vaché, Chair

Laquita Fields

Laquita Fields, Vice Chair

Cheryl L J Rohret

Reverend Cheryl Rohret, Member

_____

Sutapa Basu, Member

I, _____, accept/do not accept (circle one) the proposed modification.

_____ _____

Respondent Date

_____ _____

Attorney for Respondent Date