BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: DEAN REINMAN Respondent.	NO. 00-05 FINAL ORDER

I. APPLICABLE PROCEDURAL HISTORY

1. On February 20, 2001, Judge John M. Gaffney conducted a hearing in the above-entitled matter. On March 7, 2001, Judge Gaffney issued his *Initial Order*.
2. On March 16, 2001, pursuant to WAC 292-100-170(1)(b), Assistant Attorney General Marc Defreyn submitted a *Petition for Review* of Judge Gaffney's *Initial Order*.
3. Dean Reinman, Respondent, having been served a copy of the *Initial Order* and the *Petition for Review*, failed to submit a response to the Mr. Defreyn's *Petition for Review*, or a cross petition for review of the *Initial Order*.

II. ORDER

Having reviewed the Judge Gaffney's *Initial Order* and Mr. Defreyn's *Petition for Review*, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-170(4)(b), HEREBY ORDER that the *Initial Order* is modified to state in Conclusion of Law 5 that "[a]ppellant sent an e-mail to more than 23,000 people on his last day of work, January 31, 2000," and adopt Judge Gaffney's *Initial Order*, as modified, as the Final Order of the Board.

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DATED this 20 day of April, 2001.

James M. Vaché, Chair

Laquita Fields, Vice Chair

Sutapa Basu, Member

Reverend Cheryl Rohret, Member

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: DEAN REIMAN Respondent.	NO. 00-05 PETITION FOR REVIEW OF INITIAL ORDER

Comes now the State of Washington and Marc Defreyn, Assistant Attorney General Prosecutor, before the Executive Ethics Board, and submits the following petition for review of the *Findings of Fact, Conclusions of Law and Initial Order* dated March 7, 2001. This motion is brought pursuant to WAC 292-100-170(1)(b).

I. APPLICABLE PROCEDURAL FACTS

On February 20, 2001, Judge John M. Gaffney conducted a hearing in the above-entitled matter. On March 7, 2001, Judge Gaffney issued his *Initial Order*.

II. ASSIGNMENT OF ERROR

Conclusion of Law 5

Conclusion of Law (CL) 5 states that "[a]ppellant sent an e-mail to more than 23,000 people on his last day of work, January 31, 2001."

As noted in *Finding of Fact 5*, the e-mail was sent on – and Mr. Reiman's last day of work was – January 31, 2000. *See* Exhibit 2. The *Final Order* should properly reflect the correct date of January 31, 2000. The Board should adopt Judge Gaffney's *Initial Order* with the corrected date in CL 5.

III. CONCLUSION

The undersigned requests that the Board adopt Judge Gaffney's Initial Order with the noted correction and issue a *Final Order* consistent with this request.

RESPECTFULLY SUBMITTED this 16th, day of March, 2001.

MARC D. DEFREYN
Assistant Attorney General

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE EXECUTIVE ETHICS BOARD

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EXECUTIVE
ETHICS BOARD

IN THE MATTER OF

Dean Reiman

COMPLAINT NO.: 00-05
DOCKET NO.: 2000-EEB-0004

INITIAL ORDER

STATEMENT OF THE CASE

On February 20, 2001, a hearing was conducted in the above-entitled matter by John M. Gaffney, Administrative Law Judge. The Appellant, Dean Reiman, represented himself at the hearing. Tim Abbey, a former co-worker of the Appellant, appeared as a witness on behalf of the Appellant. Marc Defreyn, Assistant Attorney General, appeared and represented the Executive Ethics Board. The only testimony at the hearing was from the Appellant and Mr. Abbey.

Also appearing at the hearing was Brian Malarky, Executive Directive of the Executive Ethics Board, Gail Swanson, Ethics Advisor, Employment Security Department, Debbie O'Dell, Training and Information Specialist, Lawrence McKnight, Investigator, Bob McGuire, Investigator, and Jerri Thomas, Senior Counsel Executive Ethics Board. The hearing was conducted by telephone.

ISSUE

Did the Appellant's e-mail of January 31, 2000, violate RCW 42.52.070, RCW 42.52.160, and WAC 292-110-010?

RESULT

Appellant's e-mail of January 31, 2000, did violate RCW 42.52.070, RCW 42.52.160, and WAC 292-110-010.

FINDINGS OF FACT

1. Appellant began working for the State of Washington Department of Social & Health Services (hereinafter Department) in the fall of 1983. Appellant last worked as a Social Worker 4 for the Department. Appellant supervised approximately seven individuals at the Department.

2. Appellant's wife also worked for the Department. Appellant's wife left state service on April 5, 2000.

3. Appellant and his wife currently reside in Cannon Beach, Oregon. As of late January 2000, the Appellant was very close to completing a financial transaction in which he and his wife would purchase a business in Cannon Beach known as "The Wine Shack". The deal did not actually close until March 9, 2000.

4. As of late January 2000, claimant's wife spent a great deal of time traveling and was not often at the Wenatchee home. Claimant himself was unaware where he would be residing in Cannon Beach. Claimant used an e-mail address of a local provider while in Wenatchee. Claimant was unaware of what his e-mail address would be once he moved to Oregon.

5. Appellant's last day of work was January 31, 2000. On that day Appellant sent the following e-mail on his work computer through the state e-mail system. That e-mail was as follows:

> Subject: Good-bye
>
> Friends and colleagues,
>
> Today is my last day with this agency. It has been a good run but it is time to move on. To those of you that I've actually worked with along the way, thank you for the honor of your company. To those others that I've never met, you're probably better off. Getting too close to Wenatchee can be dangerous, after all.
>
> If your travels take you to the Oregon coast, please stop by our new store in Cannon Beach. Its [sic] called The Wine Shack. I can also be found later this spring at beachwine.com.
>
> Good luck to you all.
>
> Dean Reiman
> Wenatchee DSFS

6. Appellant considered sending the e-mail to a small select group of people with whom he had become acquainted during his many years of service with the Department. Instead, Appellant went into his address book that was part of the e-mail system. Appellant highlighted 230 different groups to which the e-mail would be sent. Each group had more than 100 individuals. Appellant sent the e-mail to more than 23,000 individuals.

7. Appellant was well aware that his e-mail went to 230 different mailing lists. Appellant maintained that he was unaware at the time that his e-mail would reach anywhere near 23,000 people.

8. At the hearing and in various documents, Appellant continually asserted that his e-mail of January 31, 2000, was not advertising or enticement of any sort for The Wine Shack. Appellant maintained that he was simply listing a place where individuals who knew him could contact him in the future.

9. Appellant and his wife did take over The Wine Shack on March 10, 2000. The company currently advertises over the Internet.

10. An anonymous complaint was filed concerning the e-mail in question by a person requesting nondisclosure pursuant to RCW 42.17.310(1)(e). As a result of that complaint the Executive Ethics Board (hereinafter Board) began an investigation. An Investigative Report was filed by investigator Lawrence W. McKnight on June 5, 2000. Exhibit 2. That Investigative Report indicated that there was reasonable cause to believe that Appellant violated the state ethics laws by issuing the e-mail on January 31, 2000.

11. A Reasonable Cause Determination was issued by the Board on June 16, 2000. Exhibit 3. That document concluded that Appellant had violated RCW 42.52 and ordered that the executive secretary of the Board schedule a public hearing on the merits of the complaint. That document further indicated that there was a potential penalty of less than $500.

12. The Appellant filed a response to the Reasonable Cause Determination on July 25, 2000. Exhibit 4. That document also served as a request for hearing.

13. On November 2, 2000, the Board requested that the Office of Administrative Hearings conduct a hearing on the matter. Exhibit 5.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to Revised Code of Washington (RCW) 42.52.500 and WAC 34-05 and WAC 292-100.

2. **RCW 42.52.070** Special privileges.

> 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.

3. **RCW 42.52.160** Use of persons, money, or property for private gain.

(1) 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.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

4. **WAC 292-110-010** Use of state resources.

(1) State officers and state employees are obligated to conserve and protect state resources for the benefit of the public interest, rather than their private interests. When use of state resources supports organizational effectiveness, is reasonable and of negligible cost, and does not violate an ethics law or this rule, such use would not undermine public trust and confidence. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer and state employee, or with the state officer or state employee who authorizes such use.

(2) State officers or state employees may not use state resources including any person, money, or property under the officer's or employee's official control or direction or in his or her custody for private benefit or gain of the officer or employee or any other person. This prohibition does not apply to the use of public resources to benefit another person as part of the officer's or employee's official duties.

(4) Occasional and limited use of state resources does not include the following private uses of state resources:

(a) Any use for the purpose of conducting an outside business;
(b) A use for the purpose of supporting, promoting, or soliciting for an outside organization or group unless provided for by law or authorized by an agency head or designee;
(c) Any campaign or political use;
(d) Commercial uses such as advertising or selling; or
(e) An illegal activity.

5. The facts in the present case are not in dispute. Appellant sent an e-mail to more than 23,000 people on his last day of work, January 31, 2001. The Appellant made the

conscious decision to send this e-mail to 230 mailing lists. Appellant knew or should have known the e-mail would reach thousands of state employees. The e-mail also invited individuals to stop by the Appellant's store in Cannon Beach. The name of the store was listed, as well as the Web address for the store. WAC 292-110-010(4)(d) prohibits "commercial uses such as advertising or selling" when using state resources. Although the e-mail did not list prices of wine, the undersigned concludes that the e-mail was an advertisement. For that reason, there was a violation of WAC 292-110-010(4).

6. RCW 42.52.070 prohibits state employees from securing special privileges for himself or herself. The Appellant was able to send this advertisement of sorts to over 23,000 individuals. As a private individual, the Appellant would not have had this luxury. The undersigned concludes that there was a violation of RCW 42.52.070.

7. RCW 42.52.160 prohibits state employees from using state property for private benefit or gain. By sending this advertisement to over 23,000 people, there was private benefit to the Appellant. There was a violation of RCW 42.52.160.

8. **WAC 292-120-020** Provides: Board may impose sanctions.

If the board finds a violation of chapter 42.52 RCW or rules adopted under it, the board may impose one or more of the following sanctions:

(1) Reprimand, either by letter of instruction or formal reprimand;

(2) Recommend to the appropriate authorities suspension, removal from the position, or prosecution or other appropriate remedy;

(3) A civil penalty of up to five thousand dollars per violation three times the economic value of any thing sought or received in violation of chapter 42.52 RCW or rules adopted under it, whichever is greater. Payment of the civil penalty shall be reduced by the amount of costs paid pursuant to subsection 5;

(4) Payment of damages sustained by the state that were caused by the violation and were not recovered by the state auditor;

(5) Costs, including reasonable investigative costs, that do not exceed the amount of any civil penalty;

(6) Recommend to the governor and the appropriate agency that they request the attorney general bring an action to cancel or rescind action taken by the violator, upon a board finding that:

(a) The violation has substantially influenced the state action; and

(b) Interests of the state require cancellation or rescission.

9. **WAC 292-120-030** Criteria for determining sanctions.

In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the nature of the violation and the extent or magnitude or severity of the violation, including:

(1) The monetary cost of the violation including:

(a) The cost of the violation to the state;
(b) The value of anything received or sought in the violation;
(c) The amount of any damages incurred by the state as a result of the violation;
(d) The costs incurred in enforcement, including reasonable investigative costs;

(2) The nature of the violation including whether the violation:
(a) Was continuing in nature;
(b) Was motivated by financial gain;
(c) Involved criminal conduct;
(d) Impaired a function of the agency;
(e) Tended to significantly reduce public respect for or confidence in state government or state government officers or employees;
(f) Involved personal gain or special privilege to the violator;

(3) Aggravating circumstances including whether the violator:
(a) Intentionally committed the violation with knowledge that the conduct constituted a violation;
(b) Attempted to conceal the violation prior to the filing of the complaint;
(c) Was untruthful or uncooperative in dealing with the board or the board's staff;
(d) Had significant official, management, or supervisory responsibility;
(e) Had committed prior violations found by the board;
(f) Incurred no other sanctions as a result of the violation;

(4) Mitigating factors including:
(a) Prior corrective action taken against the violator;
(b) Prior recovery of damages to the state;
(c) The unethical conduct was approved or required by the violator's supervisor or agency;
(d) The violation was unintentional;
(e) Other mitigating factors deemed relevant by the board.

(5) For purposes of this section, each act which violates one or more provisions of chapter 42.52 RCW, or rules adopted under it, may constitute a separate violation.

10. The state of Washington asked for a penalty of less than $500 in accordance with WAC 292-100-050(4).

11. The issue remains as to the amount of the civil penalty. In examining the sections of WAC 292-120-030 there was no continuing violation or criminal conduct. The Appellant made no attempt to conceal the matter. The Appellant was not uncooperative and there were no prior violations. There were no prior corrective actions. On the other hand,

Appellant's actions were intentional and could have reduced respect for or confidence in state government. The undersigned concludes that the fine in this matter will be $200.

ORDER

The Appellant's e-mail of January 31, 2000 violated RCW 42.52.070, RCW 42.52.160 and WAC 292-110-010. A monetary fine of $200.00 is imposed pursuant to WAC 292-120-020.

DATED at Spokane, Washington, this 7th day of March, 2001.

John M. Gaffney
Administrative Law Judge
Office of Administrative Hearings
134 S. Arthur
Spokane, WA 99202-2246
(509) 533-2110

PETITION FOR REVIEW OF INITIAL ORDER

WAC 292-100-170 Review of initial orders by an administrative law judge.

(1) This Initial Order by the Administrative Law Judge shall become the final order of the board within twenty days of the initial order unless:

(a) The board, upon its own motion, determines that the initial order should be reviewed;

(b) A party files a petition for review of the initial order within twenty days of the entry of the initial order.

(2) The petition for review will specify the portions of the initial order to which exception is taken and will refer to the evidence of record relied upon to support the petition.

(3) Petitions for review shall be filed with the executive secretary and served on all other parties. The party not filing the petition for review shall have twenty days to reply to the petition for review. The reply shall be filed with the executive secretary and copies of the reply shall be served on all other parties or their counsel at the time the reply is filed, and may cross-petition for review. If the reply contains a cross-petition, it shall specify portions of the initial order to which exception is taken by the replying party, and shall refer to the evidence of the record relied upon to support the reply.

(4) The board shall personally consider the whole record or such portions of it as may be cited by the parties.

(a) The board shall afford each party an opportunity to present written argument and may afford each party an opportunity to present oral argument.
(b) The board shall enter a final order disposing of the proceeding.
(c) The board shall serve copies of the final order on all parties, the complainant, and the employing agency.

Mailed to the following:

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