BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD

In the Matter of Gary Oertli, Respondent.	NO. 01-23/01-52 STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into pursuant to WAC 292-100-090(1) between the Respondent, GARY OERTLI, through and with his attorney, CLIFFORD FREED, Frank Freed Roberts Subit & Thomas, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD ("Board"), through and with its attorneys, CHRISTINE O. GREGOIRE, Attorney General, LINDA A. DALTON, Senior Assistant Attorney General and MELANIE deLEON, Assistant Attorney General. The following stipulation and 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 Mr. Oertli does not accept the Board's proposed modification(s), if any, to the stipulation.

A. Relevant Facts

1. On February 9, 2001, the Board filed a complaint in this matter against the Respondent, Gary Oertli. The complaint was based on a special audit referral from the Washington State Auditor.

2. The original complaint alleged that Mr. Oertli, while employed as President of Shoreline Community College (SCC), violated chapter 42.52 RCW, by participating in the formation, negotiation, or awarding of personal services contracts with a private consultant, Paul Mauel. The complaint alleges that Mr.

Oertli participated in the subsequent formation, negotiation or awarding of a contract to e-Werkz, a private company formed by Mr. Mauel. The complaint alleges that before leaving employment at SCC, Mr. Oertli unlawfully accepted an offer of employment with e-Werkz. The complaint alleges that the personal friendship between Mr. Oertli and Mr. Mauel influenced Mr. Oertli's decision to contract with e-Werkz. Finally, the complaint alleges that Mr. Oertli accepted gifts from Mr. Mauel.

3. Following an investigation of the complaint, the Board issued a reasonable cause determination.

4. During all times relevant to this complaint, Mr. Oertli was SCC's President. In that capacity, he was vested with the duties and powers delegated to him by the SCC Board of Trustees to manage SCC's operations.

5. In January 1999, Mr. Oertli was introduced to Mr. Mauel by two SCC employees. Mr. Mauel worked for United Parcel Service (UPS). Mr. Oertli was interested in developing a corporate partnership with UPS. Mr. Oertli developed a friendship with Mr. Mauel that continued through the remainder of Mr. Oertli's tenure as SCC's President. Mr. Mauel and Mr. Oertli socialized frequently.

Contracts between Paul Mauel/eWerkz and SCC

6. In June 1999, Mr. Oertli executed a sole source contract for Mr. Mauel to provide recommendations for developing an online bookstore for SCC. Under the contract, Mr. Mauel received $2,400 for his services.

7. In August 1999, Mr. Oertli executed a second sole source contract with Mr. Mauel. This contract was to provide a feasibility study on implementing an online bookstore in light of SCC's current computer processes. This was a more extensive project, and the contract was for $19,099. The Assistant Attorney General assigned to SCC reviewed and approved this contract as to form.

8. Mr. Oertli decided to go forward with an on-line bookstore idea. He wanted the on-line bookstore to be linked to registration. Mr. Mauel attended meetings where the RFP language and RFP scoring criterion were developed. SCC staff, including Mr. Oertli, worked with the assigned Assistant Attorney General during this development process. During this process, SCC staff, including Mr. Oertli, and the assigned Assistant Attorney General were led to believe that an issue concerning proprietary software existed and may be implicated if language in the RFP discussed the registration and on-line bookstore linkage. As a result, the RFP was issued without any reference to the registration linkage.

9. Through the two sole source contracts, Mr. Mauel gained special access to and knowledge of SCC bookstore operations, unique SCC software programs designed specifically for registration and bookstore operations, and other SCC business processes. Mr. Mauel submitted a bid for this RFP. Because Mr. Mauel had the two sole source contracts and direct involvement with RFP language development, he knew that the linkage was an important feature, but because linkage language was omitted, other potential bidders did not.

10. The Vice President of Finance selected the four members of the RFP selection committee, all of whom were SCC employees. Mr. Oertli was not on the selection committee. Before the RFP selection committee met to review the four submitted proposals, Mr. Oertli met personally with the committee and discussed with them his perspective of the 10 items that were important for the successful bidder. A part of the first item he spoke about was the concept of linkage between registration and ordering books online.

11. In September 1999, Mr. Mauel was identified as the successful bidder. Subsequent to this award, Mr. Mauel formed a company called eWerkz, which entered into agreements with SCC for the on-line bookstore.

Sidelines Pass

12. In April 1999, and before any contracts between Mr. Mauel and SCC, Mr. Oertli and Mr. Mauel began making plans to attend a Seattle Seahawks v. Green Bay Packers game in Green Bay, Wisconsin. During the formulation of their plans, Mr. Mauel offered Mr. Oertli the opportunity to sit in the stands or stand on the Seahawk sidelines. Mr. Oertli elected to stand on the sidelines. Through Mr. Mauel's friendship with the Seahawks' Director of Public Relations, Mr. Mauel was able to obtain two press passes by which he and Mr. Oertli stood on the sidelines during the game.

13. In November 1999, Mr. Oertli and Mr. Mauel attended the game. Mr. Oertli paid all of his own expenses, including airport parking, airfare, hotel and meals. Mr. Oertli told the Seahawks' Director of Public Relations that he wanted to pay for the pass. His request was declined, and Mr. Oertli was told he could not pay for it.

14. Although a pass cannot be purchased from the Seahawks, it does have significant value to fans.

Post Employment with eWerkz

15. In November 1999, the law firm representing Mr. Mauel and e-Werkz wrote to the Executive Ethics Board and requested an Advisory Opinion regarding the filling of a high-level position for marketing with eWerkz. The letter did not identify the specific state employee Mr. Mauel was considering.

16. In May 2000, Mr. Oertli advised SCC's Board of Trustees that he was resigning from SCC to accept a job offer from eWerkz. Mr. Oertli signed an employment contract with eWerkz on June 30, 2000. In accepting employment with eWerkz, Mr. Oertli relied upon the Executive Ethics Board's Advisory opinion.

B. Applicable Law

In March 2002, the Board issued a Reasonable Cause Determination identifying the following provisions of the Act as potentially violated by Mr. Oertli:

1. RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. RCW 42.52.040(1) states:

1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

3. RCW 42.52.070 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 other persons.

4. RCW 42.52.080 states in pertinent part:

(1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

5. RCW 42.52.150(1) states in pertinent part:

(1) No state officer or state employee may accept gifts . . . with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars.

6. RCW 42.52.160(1) states:

(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.

C. Conclusions of Law

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

2. Based upon the facts as stipulated above, Mr. Oertli recognizes that if the facts regarding his involvement with the eWerkz contract and Mr. Mauel, as well as the sidelines pass, were to be presented at hearing before the Board, the Board would likely conclude that he violated the state ethics law, even if unintentionally. Additionally, Mr. Oertli recognizes that if the Board concluded that he had violated the state ethics law, the Board would impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to $5000, 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. Finally, he recognizes that the Board would also likely order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

3. Mr. Oertli did not violate the state ethics law as it pertains to his post-employment with eWerkz.

D. Aggravating and Mitigating Circumstances

1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 was reviewed. In the case at hand: (1) the alleged violation would have impaired a function of SCC (WAC 292-120-030(2)(d)); and (2) the alleged violation would have significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)).

2. In addition, it is an aggravating factor that: (1) Mr. Oertli had significant official, management and supervisory responsibility and discretion (WAC 292-120-030(3)(d)) and (2) Mr. Oertli incurred no other sanctions as a result of the violations (WAC 292-120-030(3)(f)).

3. It is a mitigating factor that: (1) Any violations relating to Mr. Oertli's involvement with the eWerkz contract and Mr. Mauel, as well as the sidelines pass were unintentional (WAC 292-120-030(4)(d)); and (2) Mr. Oertli sought and relied upon the advice and counsel of the Assistant Attorney General assigned to SCC (WAC 292-120-030(4)(e).

E. Resolution

1. The parties wish to resolve this matter by means of a Stipulation and Order in the interest of achieving an expeditious and less costly resolution to this matter.

2. Mr. Oertli and the Board agree to be bound by the terms and conditions of this Stipulation and Order.

3. There are differences of opinion between Mr. Oertli and the Executive Ethic's Board's Staff regarding interpretation of the state ethics laws and whether Mr. Oertli violated such laws.

4. Mr. Oertli will pay a civil penalty in the amount of thirty thousand dollars ($30,000), plus investigation costs in the amount of ten thousand dollars ($10,000) for those violations associated with the contracts between Mr. Manuel and SCC as well as the sidelines pass Mr. Oertli received from Mr. Manuel. The payment of investigation costs shall not reduce the penalty amount owed. Twenty thousand dollars ($20,000) of the penalty, will be suspended upon the condition that Mr. Oertli commit no future violations of the State Executive Ethics Act. Payment of the remaining penalty and the investigation costs shall be made to the State of Washington Executive Ethics Board within 30 days of the Board's approval of this Stipulation and Order.

5. The parties agree that the allegations regarding Mr. Oertli's subsequent employment with e-Werkz are being dismissed without any sanction to Mr. Oertli.

6. Mr. Oertli 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 WAC 292-100-090(1). The parties have the authority to resolve this matter under the terms contained herein, subject to Board approval under WAC 292-100-090(2), which states in relevant 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.

F. Release/Effect of Order

1. If the Board accepts this stipulation, the Board agrees to release and forever discharge Gary Oertli from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the complaint, subject to payment in full of the $30,000 civil penalty (with $20,000 suspended) and $10,000 in investigation costs and compliance with all other conditions of this stipulation. Mr. Oertli, in turn, agrees to release and forever discharge the Board, its officers, agents, and employees from any and all claims, damages, and causes of action arising out of the complaint, its investigation and proceedings and this stipulation and order through the date of this Order.

2. If the Board rejects this stipulation, or if Mr. Oertli does not accept the Board's proposed modification(s), if any, Mr. Oertli waives any objection to participation at the hearing by any Board member to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. Oertli understands and agrees that this proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

CERTIFICATION

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

Gary Oertli 3/30/03
Gary Oertli Date
Respondent

3/31/03
Clifford Freed, WSBA #14248 Date
Attorney for Respondent

Stipulated to and Presented by:

Apr 3, 2003
Brian R. Malarky Date
Executive Director

Linda A Dalton 4/1/03
Linda A. Dalton, WSBA #15467 Date
Senior Assistant Attorney General

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

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Linda A. Dalton, WSBA #15467 Date
Senior Assistant Attorney General

II. ORDER

Having reviewed the foregoing Stipulation, the WASHINGTON STATE EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDERS that the Stipulation is

_____ ACCEPTED in its entirety;

_____ REJECTED in its entirety;

__X__ MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s): _____

Strike paragraph 3 on page 8.

DATED this 11th day of April, 2003.

James M. Vache, Chair

Marilee Scarbrough, Vice Chair

Laquita Fields, Member

Paul Zellinsky, Member

*I, _____, accept / do not accept (circle one) the Board's proposed modification(s) of the Stipulation.

_____ _____
Gary Oertli, Respondent Date

_____ _____
Clifford Freed, Attorney for Respondent Date