BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: MERRITT LONG Respondent.	No. 01-51 STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between MERRITT LONG, Respondent, 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. RELEVANT FACTS

1. The above-referenced complaint was initiated by the Board on August 29, 2002, following a referral from the Washington State Auditor (SAO). The complaint alleges that the Respondent purchased tickets to sports events and a concert from the Lottery's advertising contractor in September 2000.

2. Mr. Long admits that he purchased event tickets from the vendor on approximately six other occasions. Mr. Long admits that he paid face value of the tickets.

3. Mr. Long indicates that the seating purchased from the vendor was general seating. He did not sit in any private suites or box seats and did not receive complementary refreshments as part of the ticket purchase.

4. One of the ticket purchases was for a sold out Barbra Striesand concert in New York City. He paid face value for the tickets and sat in a general seating area. Mr. Long describes

his seats as being in the "nosebleed" section. Mr. Long personally paid for all travel and lodging related to his attendance at the concert.

5. Mr. Long consulted with the Lottery attorney and ethics advisor to obtain approval to purchase the tickets prior to attending the concert. He was advised that as long as he paid face value for the tickets that there would not be an ethics violation.

6. The SAO's report indicates that the vendor was not in competition for the contract at the time the concert tickets were obtained. The vendor's contract was current during this time period.

7. After the above incident occurred, the Lottery subsequently issued a notice on February 2, 2001 to all agency employees prohibiting agency employees from purchasing any event tickets from vendors effective January 26, 2001.

8. Mr. Long has no previous ethics violations.

B. APPLICABLE LAW

RCW 42.52.150(4) provides that a state officer or state employee of a regulatory agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take or seek, directly or indirectly, only the items listed in this RCW from a person regulated by the agency or from whom a person who seeks to provide goods or services to the agency. None of the listed items are applicable to this case.

C. AGGRAVATING & MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, Board staff reviewed the criteria in WAC 292-120-030. In the case at hand the violation was not intentional as Mr. Long sought advice from the agency attorney, who was also the ethics advisor for the Lottery. See Finding of Fact #5 above.

D. RESOLUTION

1. Mr. Long admits that he purchased tickets to a sold out event from an agency vendor, in violation of RCW 42.52.150(4).

2. Recognizing that is personally responsible for his conduct, Mr. Long will accept a letter of instruction from the Executive Ethics Board, comply with all terms and conditions of this Stipulation and Order, and commit no further violations of chapter 42.52 RCW. The letter is attached to this Stipulation and Order as Attachment A.

3. On September 14, 2001, subsequent to the subject case, the Executive Ethics Board issued Advisory Opinion 01-05, advising that if an event is sold out, the Board presumes that the value of the ticket exceeds the face price of the ticket by $50; thus rendering it a prohibited gift under RCW 42.52.150(4) unless specific evidence shows otherwise.

E. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Merritt Long 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) that 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.

F. RELEASE/EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Merritt Long from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts

contained in this complaint. Merritt Long 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 Merritt Long and the Washington State Lottery, the State of Washington, or other third party, which are now in existence or 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.

G. CERTIFICATION

I, Merritt Long, hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

Merritt Long 12/23/02

Merritt Long, Respondent Date

Stipulated to and presented by:

B. R. Mal 19 Dec 02

Brian R. Malarky, Executive Director 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 Merritt Long.

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_____

_____

DATED this 10th day of January, 2003.

James M. Vaché, Chair

Marilee Scarbrough, Vice Chair

Sutapa Basu, Member

Laquita Fields, Member

Paul Zellinsky, Member

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

Merritt Long, Respondent

Date