BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: RON WILLHITE, Respondent.	No. 02-003 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Ron Willhite, through his attorney, John F. Bury, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through BRIAN R. MALARKY, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. On March 28, 2002, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Ron Willhite, an employee of the State of Washington, Department of Corrections (DOC), used his state position to secure special privileges and exemptions by using inmates and facilities to perform work in support of a non-profit entity of which he was the director. The Executive Ethics Board reviewed this referral and issued a complaint on May 10, 2002.

1.2. The Board is authorized under RCW 34.05.060 to 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.

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established such procedures under WAC 292-100-090.

1.3. Ron Willhite understands that if Board staff proves any or all of the alleged violations 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).

1.4. Ron Willhite recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Willhite 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 set forth below.

1.5. Ron Willhite 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 the provisions of WAC 292-100-090(2) which provides 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.6. If the Board accepts this stipulation, the Board will release and discharge Ron Willhite from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint 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 agreed order. Mr. Willhite 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 and agreed order.

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

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

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

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, the State of Washington, DOC, employed Ron Willhite as a Chaplain assigned to Walla Walla Penitentiary. Mr. Willhite left state employment in July 2001.

2.2. Ron Willhite is also the Secretary-Treasurer for Kids at Risk, a 501(c)(3) non-profit corporation that repairs, upgrades and installs basketball hoops throughout the western United States at schools and parks. Mr. Willhite purchases material and equipment for the hoops or receives donations from local businesses.

2.3. On November 23, 1993, in a letter to the Manager of Correctional Industries, Ron Willhite requested permission to continue to have inmates repair/retrofit used basketball hoops. Mr. Willhite indicated that by having the inmates work on the hoops, he saved money. Although a written approval of this request could not be found, it appears that DOC management knew that Mr. Willhite would use inmates and state facilities for this purpose.

2.4. In June 1994, the Washington State Penitentiary approved an "Institutional Support Positions Payroll" form, requesting allocation of an inmate worker to "repair replacement basketball hoops for schools, city parks, low income housing area, and local community." The form further stated that: "Funds for payroll will be from Mr. Willhite." Mr. Willhite's request for inmate assistance was approved by his supervisor, the department head, the associate superintendent, the plant manager, the business manager, the superintendent and the inmate accounts supervisor.

2.5. DOC determined that the inmate labor used in support of Kids at Risk was to be coded under the Department's Class III work program for institutional support, which supports positions vital to the operation of the correctional facility. DOC Policy 700.100 limits Class III wages to $55 per month, with no additional wages paid for inmates who "volunteer or are required to work in excess of routine work hours per month."

2.6. In approximately 1997, DOC instructed Ron Willhite that he did not need to pay for the inmate's labor anymore as the inmates were welding the hoops on their own time and it was not part of their regular job. No written documentation containing this directive could be found. The Associate Superintendent confirms that Mr. Willhite was directed not to pay the wages for the inmates.

2.7. The SAO report indicates that 5,718 hoops and 550 backboards were installed. The value of the inmate wages to Kids at Risk amounted to $3,962.52 based on wage rates. Mr. Willhite has paid $919.21, leaving a total of inmate wages of $3,043.31, according the SAO estimations. However, this calculation did not take into account that not all hoops and backboards were built by the inmates.

2.8. Mr. Willhite asserts that only about half of hoops and backboards were produced at the Penitentiary; the other half were old hoops that were repaired. Of the 5,718 total hoops, about 500 were built at another manufacturing plant. Of the remaining 5,218, half were new construction, half were rebuilt.

2.9. Ron Willhite asserts that of the 2,609 hoops rebuilt at .5 inmate hours each (1305 hours); 2609 new at 2.0 inmate hours (5,210 hours); the cost would be 6,515 hours or 46.53 months at $55 per month, totaling $2,559.46. Mr. Willhite has already paid $919.21 leaving a balance of $1,640.25 due as wages for the inmates. In return for providing access to state resources to the Kids At Risk organization, DOC received consideration in the form of inmate training, employment and work experience.

2.10. DOC did not keep time records of the inmate hours spent on the hoops.

2.11. Board staff reviewed the yearly Kids at Risk tax returns from 1997-2000 that list donations of DOC facilities to Mr. Willhite's non-profit organization. Those returns showed donations totaling $14,470. Mr. Willhite asserts that this amount is indicative of (a) an in-kind donation, not money, and (b) retail value, not actual inmate rates. The state did not provide any materials or tools, only space and some inmate labor.

2.12. Guidelines for DOC employees who have employment or participate in volunteer activities outside of DOC are governed by DOC Policy 854.025 which states in pertinent part:

> Employees may hold *outside employment* provided such employee does not utilize Department resources or create undue financial obligations for the Department, interfere with proper performance of assigned duties, or be in conflict with provisions of RCW 42.18 which establishes a code of ethics for public officers and employees. ...
>
> Under no circumstances may an employee use Department time, material, facilities, equipment, telephones or other services in connection with outside employment or volunteer activities.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ron Willhite and over the subject matter of this complaint.

3.2. 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.

3.3. The Ethics in Public Service Act prohibits a state employee's use of their position to obtain special privileges. 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 himself or herself, or his or her spouse, child, parents, or other persons.

3.4. State employees are also prohibited from using state resources for private benefit or gain. RCW 42.52.160 states:

> 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.

3.5. Based on Findings of Fact 2.1 through 2.12, Ron Willhite secured a special benefit for his non-profit corporation when he: (a) used facilities for the benefit of the non-profit corporation and (b) used inmate labor to restore basketball hoops, without fully paying for such services.

3.6. 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. It is a mitigating factor that: (1) DOC management told Mr. Willhite he was not required to pay the inmates for their labor, (2) DOC management knew of the use of inmates and state facilities for the Kids at Risk program; and (3) Mr. Willhite paid the wages until he was instructed not to.

Section 4: AGREED ORDER

Ron Willhite will pay $1,640.25 to the DOC for inmate wages and investigative costs in the amount of $250 to the Board. Mr. Willhite will also pay a civil penalty in the amount of five hundred dollars ($500). The Board agrees to suspend the entire civil penalty on the condition that Ron Willhite complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW. The $250 amount due for investigative costs is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

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

1-22-04

Ron Willhite Date
Respondent

John F. Bury Date 1/26/04
Attorney for Respondent

Stipulated to and presented by:

1/28/04

Brian R. Malarky Date
Executive Director

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

_____ 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):

The $1640.25 payment is eliminated, a civil penalty of $500.00 is imposed with $250.00 suspended, and ~~an~~ investigative ~~penal~~ costs of $250.00 is imposed, for a total imposition payable of $500.00

DATED this 13th day of February, 2004.

Marilee Scarbrough, Chair

Paul Zellinsky, Vice Chair

James M. Vaché, Member

Trish Akana, Member

* I, Ron Willhite, accept/~~do not accept~~ (circle one) the proposed modification(s).

Ron Willhite, Respondent — Date 2-20-04

John F. Bury, Attorney for Respondent — Date 2/24/04