BEFORE THE WASHINGTON STATE EXECUTIVE ETHICS BOARD

In the Matter of:	EEB Case No. 03-027
KIM WHEELER,	ORDER AND JUDGMENT
Respondent.	

I. APPLICABLE PROCEDURAL ISSUES

1.1 On January 14, 2005, the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, Kim Wheeler, violated the Ethics in Public Service Act while employed at the University of Washington, Tacoma Campus. Notice of the Reasonable Cause Determination and the right to request a hearing was served upon Mr. Wheeler by certified mail on January 29, 2005.

1.2 On January 10, 2006, Board staff served Mr. Wheeler with another copy of the reasonable cause determination entered by the Board on January 14, 2005.

1.3 More than 30 days have passed since notice of the Reasonable Cause Determination and of the right to request a hearing was served upon Mr. Wheeler. He has not responded to the notice, either by filing an answer, requesting an adjudicative proceeding, or otherwise.

1.4 On April 14, 2006, Board staff served Mr. Wheeler with notice by regular and certified mail at his University work address and last known residence address of the Board's Order of Default and Temporary Adjournment of Further Proceedings entered on April 14, 2006. 1.5

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Pursuant to WAC 292-100-060(4) Mr. Wheeler was allowed 10 days to request vacation of the Order of Default. Mr. Wheeler has not moved to vacate the order entered on April 14, 2006.

II. FINDINGS OF FACT

2.1 When the complaint in this matter was filed, and at all times material hereto, the University of Washington (University) employed Kim Wheeler as a Safety and Security Manager for the Tacoma Campus. Mr. Wheeler has held this position since April 2001.

2.2 At the time of Mr. Wheeler's initial interview for his University position, Mr. Wheeler informed the University that he intended to run for Mayor of the town of Ruston later that year. Mr. Wheeler was elected Mayor and received a salary of $500 per month.

2.3 The University has a Board-approved policy requiring approval of an employee pursuing outside work and does not allow use of state equipment for outside employment. University Policy No. 47.3 states in part:

> University facilities and equipment are not to be used in outside consulting or part-time work. No staff employee may designate their University office, email address, Web site, letterhead, phone number, or fax number as their outside consulting or business office, email address, Web site, letterhead, phone number, or fax number ...

2.4 Mr. Wheeler's state computer was reviewed. The computer had a folder marked "Town Mail". On October 10, 2002, the Town mail folder contained 104 messages that pertained to business involving the town of Ruston and Mr. Wheeler's role as its mayor. Mr. Wheeler had messages in his "sent mail" folder indicating that he had sent messages involving business concerning Ruston and his role as mayor from his state computer using his state e-mail address. There were also personal e-mails sent and received by Mr. Wheeler. While these emails were related to his position as mayor, the messages do not appear to be related to his campaign for mayor.

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2.5 Mr. Wheeler also used his state computer to access the National Football League (NFL) Internet website to check football scores because he was participating in a football betting pool. There is no evidence that Mr. Wheeler organized or ran the football pool.

2.6 University Administrative Policy Statements 47.2 also addresses the personal use of University resources. This policy states:

> University facilities and equipment are to be used to support its teaching, research, and administrative functions. University employees may not use state resources including any person, money or property under their official control or direction or in their custody for their private benefit or gain, or the private benefit or gain of any other person...
>
> University resources may not be used for the following purposes:
> Conducting an outside business;
>
> Supporting, promoting, or soliciting for an outside organization or group unless otherwise provided by law . . .

III. APPLICABLE LAW

RCW 42.52.160(1) 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.

IV. CONCLUSIONS OF LAW

4.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Kim Wheeler and over the subject matter of this complaint.

4.2 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.

4.3 A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

4.4 In Advisory Opinion 02-05 the Board stated that gambling activity, including conducting a sports pool, is a private activity that is incompatible with official state duties. The Board further stated that: "Allowing even an occasional or limited use of state facilities to

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facilitate such activities undermines public confidence in state government. ... While some gambling activity may not violate state law, the Board notes that the Ethics in Public Service Act prohibits private activities that are incompatible with public duties."

4.5 EEB Advisory Opinion 98-07 states that while outside employment may be permissible under RCW 42.52.120, a state officer of employee may not use state resources to conduct the outside business.

4.6 WAC 292-110-010 (6) (a) explicitly prohibits at all times the use of state resources for "the purpose of conducting an outside business or private employment." WAC 292-110-010 (6) states:

> The state Constitution, state and federal laws, and the Ethics in Public Service Act strictly prohibit certain private activity and certain uses of state resources. Any use of state resources to support such activity clearly undermines public confidence in state government and reflects negatively on state employees generally. This rule explicitly prohibits at all times the following private uses of state resources. (a) Any use for the purpose of conducting an outside business or private employment; (b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to: A private business, a nonprofit organization, or a political party (unless provided for by law or authorized by an agency head or designee); (c) Any use 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. . . .

4.7 The Ethics in Public Service Act allows for de minimis personal use of state resources. WAC 292-110-010(4) states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards and the employee's agency has adopted a policy authorizing Internet access consistent with the Board's de minimis rule.

4.8 The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

V. AGGRAVATING AND MITIGATING FACTORS

5.1 In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. In the case at hand, aggravating factors are: (1) the violations were

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continuing in nature (WAC 292-120-030(2)(a)) and (2) the violations significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)(e)).

5.2 There are no mitigating factors.

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VI. ORDER AND JUDGMENT

6.1 Based on the foregoing Findings of Fact and Conclusions of Law, we, the Executive Ethics Board, hereby find that Kim Wheeler has violated RCW 42.52.160(1), and order him to pay a civil penalty in the amount of One thousand dollars.

6.2 Payment of the civil penalty of $ 1000.00 shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

IT IS SO ORDERED this 12th day of May, 2006.

Trish Akana, Chair

Approved via telephone
Evelyn Yenson, Vice-Chair

Paul Zellinsky, Member

Judith K Golberg
Judith Golberg, Member

Neil Gorrell, Member

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