BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: GERALD M. NEVIN, Respondent.	No. 03-146 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Gerald (Jerry) Nevin, through his attorney, Michael Rosenberger of Yarmuth Wilsdon Calfo, 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 December 11, 2003, the Executive Ethics Board initiated an investigation based on information alleging that in March 2001 and on other occasions, the University's Director of Football Operations Jerry Nevin accepted free transportation for himself and his family members to attend various University and private functions. A University supporter, Wayne Gittinger, provided the transportation on a private jet. Mr. Gittinger is a partner at a Seattle-based law firm. A privately held corporation, JBW Aircraft Leasing Company, Inc. ("JBW") owns the jet. Mr. Gittinger is one of three equal shareholders in JBW.

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.

1.3. Jerry Nevin 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. Jerry Nevin denies that he violated State ethics laws, but he recognizes that the Board may conclude that his actions, in accepting the free transportation for himself and his spouse, violated the Ethics in Public Service Act. The Board recognizes that Mr. Nevin asserts a defense under RCW 42.52.010(10) and that he denies any wrongdoing of any kind. 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. Jerry Nevin 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 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge Mr. Nevin 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. Nevin 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 Mr. Nevin 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 Mr. Nevin does not accept the Board's proposed modification(s), if any, Mr. Nevin 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), except James M. Vaché, who has recused himself. Further, Mr. Nevin 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. At all times material hereto, the University of Washington Athletic Department ("ICA") employed Mr. Nevin as the ICA Director of Football Operations. Mr. Nevin's University employment began in January 1999. The Director of Football Operations ("Football Director") reports to the Head Football Coach and manages all administrative and logistical aspects of the University football program. The Football Director also serves as a liaison between the University football program and other ICA or University staff. In addition, the Football Director often travels

to away game sites in advance of the team party in order to ensure all logistical requirements. The Football Director has no formal duties related to University fundraising.

2.2. Mr. Nevin's University employment contract provides compensation in the form of spousal travel only to post season games. Paragraph 4 entitled compensation provides, in relevant part:

> Whenever Employee attends a post-season athletic event because his/her team is participating in the event, or because the Director of Intercollegiate Athletics requires his/her attendance, he/she may elect to bring his/her spouse or partner and dependent children to the event and related activities.

2.3. Wayne Gittinger is a partner in the firm Lane, Powell, Spears, Lubersky in Seattle. Mr. Gittinger and his wife Anne have been substantial supporters of, and financial contributors to, the University of Washington and the ICA for many years.

2.4. JBW owns a Canadair CL-600-2B16 twin-engine jet aircraft. The aircraft seats ten passengers and two crewmembers. In addition to using JBW's jet for personal travel, JBW leases the jet to its shareholders, who pay a fair rental charge to JBW for that use. In 2003, that rate was $2,700.00 per hour plus fuel and aircrew costs.

2.5. There appear to be no current contracts or other business agreements between the ICA and JBW.

2.6. Mr. Nevin first met Mr. Gittinger soon after accepting his University position. In the weeks after his family moved to the Seattle area, Mr. Nevin met with the Gittingers on several occasions, including looking for housing in the Seattle area. At around the same time, the Gittingers also met and became friends of the University's Head Football Coach Rick Neuheisel and his spouse. Over the next several months the Nevins, Gittingers, and Neuheisels developed a close personal friendship, which included extensive private socializing. From 1999 through 2003, the relationship included mutual exchanges of gifts on ceremonial occasions; private meals, social

events, overnight stays at each other's homes, and taking trips or vacationing together. On numerous occasions, Ms. Nevin, Ms. Gittinger, or Ms. Neuheisel would meet socially, attend social events together, or attend their children's plays. On several occasions, the Gittingers met and socialized with Mr. Nevin's parents and Mr. Neuheisel's parents.

2.7. On at least three occasions, Mr. Neuheisel invited Mr. Gittinger and Mr. Nevin to make up his foursome at an annual golf event held at the Pebble Beach Golf Course in Carmel, California. While Pebble Beach is a public course, attendance at the event was by invitation of a Pacfic-10 Conference Head Coach only. All green fees and accommodations were the responsibility of each invitee. On each of these occasions, the three couples, and one other, would fly to Carmel on the JBW jet. On at least one occasion, Mr. Nevin, Mr. Neuheisel, and Mr. Gittinger flew on the JBW jet to a golf event near Pittsburgh, Pennsylvania.

2.8. On several occasions between March 2000 and March 2003, Mr. Nevin and his spouse traveled with the Gittingers on the JBW jet to a University-sponsored event in Palm Desert, California called Dog Days in the Desert (Dog Days). The scheduled events included fundraising dinners that benefited the University, including the ICA. In addition, Mr. Nevin and his spouse traveled with the Gittingers on the JBW jet to several regular season away games, including travel to Columbus, Ohio on Friday, August 29, 2003 to watch a football game against Ohio State University the following day. On several occasions, Mr. Nevin would return from a trip on the University charter airplane while Ms. Nevin returned with the Gittingers on the JBW jet. The University of Washington's contract with Mr. Nevin does not provide for spousal travel to regular season away games, although the ICA has a practice of providing one trip to away games.

2.9. Mr. Nevin contends that Mr. Gittinger's provision of free transportation was not a gift because it was based a personal friendship and not "made as any part of any design [by

Mr. Gittinger] to gain or maintain influence in the [University of Washington]," per RCW 42.52.010(10)(a). Mr. Nevin also contends that he and his wife had an "independent social relationship" with the Gittingers, as that phrase is used in RCW 42.52.150(1).

2.10. University records indicate that Mr. Nevin attended a 1.5 hour ethics training in July 1999. The training included a brief discussion of gifts. At the training, all participants received a listing of permissible gifts under RCW 42.52.150.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jerry Nevin 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.

3.5. The Ethics Act prohibits receipt of any "gift" as defined in RCW 42.52.010 with a value greater than $50, even if the gift would not be reasonably expected to influence state officers and employees, except for certain specified items. RCW 42.52.150(1) states:

> No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, 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. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

3.6. In EEB Advisory Opinion 01-05, the Board advised that use of a private suite at a sporting venue has an economic value that exceeds the face price of the ticket by at least $50. The Board further advised that this value shall hold, unless the state employee can provide specific evidence that shows otherwise. Similarly, travel in a private jet holds an economic value that

exceeds the first class fair on a commercial air carrier going to the same destination. Like the private suite, the presumption of a gift may be overcome by determining the actual value of the gift (or in this matter the commercial value of travel on the JBW aircraft).

3.7. If Jerry Nevin accepted free personal or official travel for himself or family members on the JBW jet, then he may have accepted gifts in violation of RCW 42.52.150(1). The established fair market value of travel on the JBW jet is at least $270.00 per hour ($2,700.00/10 seats) and based on Findings or Fact 2.4, Mr. Nevin accepted at least seven free trips on the JBW jet.

3.8. RCW 42.52.010, however, provides an exemption which is pertinent in this matter. RCW 42.52.010(10)(a) provides that "Gift" does not include:

> Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

3.9. If the Board found that Mr. Nevin violated RCW 42.52.150, it could impose sanctions pursuant to RCW 42.52.360. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 would be reviewed.

3.10. It is a mitigating factor that: (1) the Nevins and Gittingers maintained a close personal relationship outside of the University setting; (2) the University had an informal practice of using privately owned aircraft for travel related to official University or ICA business; and (3) Mr. Nevin was not aware that the JBW jet was owned by a corporation.

Section 4: AGREED ORDER

4.1. Mr. Nevin denies any wrongdoing and specifically asserts that the exemption from gifts from friends and family at RCW 42.52.010(10)(a) applies in this matter, but acknowledges that

the Board could conclude that Mr. Nevin's acceptance of free transportation violated RCW 42.52.150.

4.2. Mr. Nevin will pay a civil penalty of two thousand five hundred dollars ($2,500), which includes reimbursement to the Board for reasonable investigative costs in the amount of one thousand five hundred dollars ($1,000.00). The civil penalty is payable within forty-five (45) days of the entry of this Order.

CERTIFICATION

I, Jerry Nevin, 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.

9/29/04

Jerry Nevin
Respondent

Date

9/30/04

Michael Rosenberger Date
Attorney for Respondent

Stipulated to and presented by:

9/30/04

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

_____ 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):

$5,000 civil penalty which includes reimbursement to the Board for reasonable investigative costs in the amount of $1,500

DATED this 10th day of September 2004.

Marilee Scarbrough, Chair

Paul Zellinsky , Vice Chair

Trish Akana, Member

Evelyn Fenson, Member

*I, Jerry Nevin, accept/do not accept (circle one) the proposed modification(s).

Jerry Nevin, Respondent — Date 10/18/04

Michael Rosenberger — Date 10/19/04
Attorney for Respondent