

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

MARK MILLBAUER,

Respondent.

NO. 04-044

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, MARK MILLBAUER, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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 June 13, 2004, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Mark Millbauer, an employee of the Green River Community College, brought nine personal vehicles into the college Auto Body Shop for repair from September 1999 through September 2003. During an October 2003 SAO audit, the college could not locate documentation showing payment for \$977 or more in parts for one of the vehicles. The parts were purchased during July 2002. During a November 3, 2003 interview of Mr. Millbauer by the SAO, Mr. Millbauer conceded he had not paid for the parts and acknowledged that he should do so. The Board reviewed this referral and initiated a complaint on July 9, 2004.

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. Mark Millbauer 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. Mark Millbauer recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Millbauer 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. Mark Millbauer 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 Mark Millbauer 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. Millbauer 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. Millbauer 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 Mark Millbauer does not accept the Board's proposed modification(s), if any, Mr. Millbauer 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. Millbauer 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 Green River Community College employed Mark Millbauer as an Auto Body Instructor in the college's Trades Division.

2.2. During October 2003, the SAO conducted an audit of Green River Community College. During that audit, it was discovered that Mark Millbauer had made extensive use of the college auto body shop to repair nine personal vehicles between September 1999 and September 2003.

2.3. In July 2002, Mr. Millbauer ordered, through the college auto shop, \$977.03 in parts to fix one of his personal vehicles. During the October 2003 audit, it was discovered that Mr. Millbauer had not reimbursed the college for the cost of those parts.

2.4. During a November 4, 2003 interview of Mr. Millbauer by the SAO, Mr. Millbauer admitted that he had not paid for those parts.

2.5 On February 4, 2004, Mr. Millbauer paid \$1,787.56 in restitution to Green River Community College. That total included reimbursement for \$977.03 in parts, and \$810.53 in supplies and sales tax.

2.6 Mr. Millbauer is still employed by Green River Community College as an Auto Body Instructor.

2.7 The college took no disciplinary action against Mr. Millbauer.

Section 3: CONCLUSIONS OF LAW

3.1 Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Mark Millbauer 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 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.”

3.4 Based on Findings of Fact 2.2 through 2.4, Mark Millbauer used state resources in violation of RCW 42.52.160.

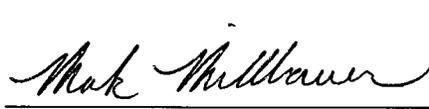
3.5 The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 92-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors. It is a mitigating factor that Mr. Millbauer paid \$1,787.56 in restitution to Green River Community College.

Section 4: AGREED ORDER

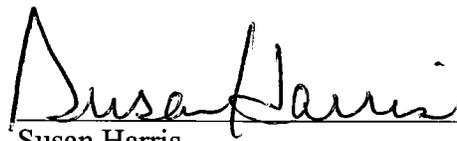
4.1. Mr. Millbauer will pay a civil penalty in the amount of one thousand dollars (\$1,000). The civil penalty of \$1,000 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

I, Mark Millbauer, 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 voluntarily agree to this Stipulation.

 11/16/05
Mark Millbauer Date
Respondent

Stipulated to and presented by:

 11/18/05
Susan Harris Date
Executive Director

