BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of: ROGER MARSHALL, Respondent.	NO. 07-033 STIPULATED FACTS, CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ROGER MARSHALL, 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 February 21, 2007, the Executive Ethics Board received a complaint alleging that on February 21, 2007, Roger Marshall, an employee of the Washington State Department of Revenue (DOR), used his state computer to send an e-mail to approximately 11,500 state employees regarding pending legislation. Mr. Marshall encouraged the state employees to contact their senator to vote in favor of the Senate bill.

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. Roger Marshall 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. Roger Marshall recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. Marshall 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. Roger Marshall waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or 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 Roger Marshall 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. Marshall 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 Roger Marshall 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 Roger Marshall does not accept the Board's proposed modification(s), if any, Mr. Marshall 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. Marshall understands and agrees that, if this proposed Stipulation is rejected by Mr. Marshall, with any applicable modification by the Board, this 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, DOR employed Roger Marshall as a Property Acquisition Specialist 3.

2.2. On February 21, 2007, Mr. Marshall used his state computer to send an e-mail to to approximately 11,500 state employees: all employees in the Department of Agriculture, Department of Financial Institutions, Department of Information Systems, Department of Health, Department of Licensing, Department of Personnel, Department of Retirement Systems, Department of Veterans' Affairs and all staff within the following divisions of the Department of Social and Health Services: Aging and Disability Services Administration, Children's Administration, Division of Vocational Rehabilitation, Division of Child Support, Financial Services Administration, and Health and Recovery Services Administration, with the subject line *Take a look at this!*. The e-mail stated:

> The following legislation is very important to any Pers 1 employee. We are asking anyone in Pers 1 retirement system to contact your Senator to vote in favor of this Senate Bill 6093.

The e-mail included a copy of the Senate Bill under discussion.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Roger Marshall 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. WAC 292-110-010(6) explicitly prohibits the private uses of state resources for the purposes of supporting, promoting the interest of or soliciting for an outside organization or group, assisting in a campaign for the promotion or opposition to a ballot proposition, participating in or assisting in an effort to lobby the state legislature or a state agency head, or any use related to conduct that is prohibited by a law or rule or a state agency policy.

3.5. Mr. Marshall sent an e-mail to numerous state employees encouraging them to contact their State Senator and vote in favor of a Senate bill. Based on Findings of Fact 2.1 through 2.2, Mr. Marshall used state resources in violation of RCW 42.52.160 and WAC 292-110-010 .

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. Aggravating factors in this matter include: 1) the violation tended to significantly reduce public respect for or confidence in state government or state government officers or employees, 2) involved personal gain, and 3) encouraged other state employees to use state resources to lobby their State Senators.

Section 4: AGREED ORDER

4.1. Mr. Marshall will pay a civil penalty in the amount of five hundred dollars ($500.00). The civil penalty 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, Roger Marshall, 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.

Roger Marshall 5/31/2007

Roger Marshall Date
Respondent

Stipulated to and presented by:

Susan Harris 6/4/07

Susan Harris 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

X ACCEPTED in its entirety;

_____ REJECTED in its entirety;

_____ MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

_____

_____

_____

DATED this 13th day of July, 2007.

Evelyn P. Yenson, Chair

Judith K. Golberg, Vice-Chair

Trish Akana, Member

Neil Gorrell, Member

Kyle B. Usrey, Member

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

_____

Roger Marshall, Respondent Date