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EXECUTIVE
ETHICS BOARD

STATE OF WASHINGTON
EXECUTIVE ETHICS BOARD
PO Box 40100 • Olympia, Washington 98504-0100

In the Matter of: Brian Bailey Respondent.	No. 99-25 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

STATEMENT OF THE CASE

On July 6, 1999, a Complaint was filed with the Executive Ethics Board (Board) against Brian Bailey, an employee of the Washington State Department of Transportation. The complaint alleged that Mr. Bailey violated provisions of the state ethics law, RCW 42.52.020, RCW 42.52.070, and RCW 42.52.160(1). On July 28, 2000, the Board entered a Determination Of Reasonable Cause finding that there was reasonable cause to believe that Mr. Bailey violated RCW 42.52.160(1). The Board also concluded that, if there was a violation, the potential penalty could exceed $500. On August 29, 2000, Mr. Bailey filed a Response To Reasonable Cause Determination denying he violated RCW 42.52.160(1) and requesting a public hearing to be conducted by an administrative law judge pursuant to RCW 42.52.430 and .500. A prehearing conference was convened by telephone October 16, 2000. The Pre-Hearing Conference Order, dated October 20, 2000, was issued after the conference. The order set the public hearing for January 12, 2001, at a location to be determined later. The order also directed the parties to confer on a discovery schedule, exchange of witness lists, filing of proposed exhibits, and filing of pre-hearing memoranda. On December 21, 2000, a Notice Of Hearing was issued, setting the location of the hearing.

The public hearing was convened at Seattle, Washington on January 12, 2001. Pursuant to WAC 292-100-160(2), the Board sat with an administrative law judge to hear the matter and enter a final order at the conclusion of the proceedings. The administrative law judge conducted the hearing and was responsible for making rulings on procedural and evidentiary matters. Administrative Law Judge Robert P. Kingsley presided over the hearing. The Board members present at the hearing were James M. Vache, Chair; Laquita Fields, Vice Chair; and Cheryl Rohret, Member. Richard McCartan, Assistant Attorney General, represented the Board staff. Hugh J. McGavick, Attorney at Law, represented Mr. Bailey. William B. Collins, Sr. Assistant Attorney General, represented the Board. Exhibits 1 through 9, S-1 through S-8, R-6 through R-8, and R-11 were admitted. Subpoenas issued in connection with the hearing were made part of the record as Exhibit 10. The proceedings were reported by Cassandra E. Ellis, CSR. At the conclusion of the hearing the parties were directed to file post-hearing briefs, the last of which was filed January 31, 2001.

Having considered the testimony, admitted exhibits, and the arguments and briefs, the Board enters the following:

FINDINGS OF FACT

1. Brian Bailey is employed by the Washington Department of Transportation (WDOT). He began his employment with WDOT in September 1997 as a Signal Tech Two. In September 1998, he was promoted to Assistant Signal Superintendent for the Northwest Region. Mr. Bailey's supervises approximately 48 FTEs, and his unit is responsible for maintaining and operating almost all of the electrical systems associated with the highway system from King County north to Canada.

2. In the fall of 1998 Mr. Bailey's daughter attended Saint Paul's School, a Catholic school that goes from kindergarten through eighth grade. The school was in the process of having two portable classrooms moved to school property. After a parent-teacher meeting he attended, Mr. Bailey spoke to the principle of the school about the electrical work connected with setting up the portable classrooms. The school had received a bid for electrical work of approximately $30,000. Mr. Bailey thought the bid was high and offered to assist the school with the electrical permitting process and help the school find a reputable contractor to do the electrical work.

3. Prior to taking a job with WDOT Mr. Bailey worked for an electrical contracting firm, D.W. Close. Mr. Bailey talked with Close about the Saint Paul's School job and they agreed to oversee the job and do part of the work. Close agreed to do the work at its shop rate, but without the usual overhead and profit. Since the school was a non-profit organization, Close could get some tax benefit from the project. To keep costs down, some of the work was to be done by volunteers. Because they were qualified electricians, Close required that the volunteers be Mr. Bailey and Kevin Canavan, another WDOT employee who previously worked for Close.

4. Mr. Bailey and Mr. Canavan did preliminary work at the school site. They ran conduit from the primary electrical vault in the basement of the school outside and up over the roof of the building toward the area where the portable classrooms would be located. The school paid Mr. Bailey and Mr. Canavan for this work at the rate of $25 per hour. The work was not done on WDOT time and no WDOT equipment or supplies were used in this work.

5. After this preliminary work was done, the portable classrooms were delivered. The remainder of the job called for the installation of two telephone poles to bring the conduit

from the roof of the school to the portable classrooms. Luminaries were also to be installed. Luminaries are lights. At this point, Close limited its participation in the project. Close intended to bring the two telephone poles from another project along with the equipment to install the poles. But the other project was delayed so Close could no longer do this part of the project. Mr. Bailey tried to find another company to do the work, but he was unable to find a reputable contractor who would undertake the project. One contractor told Mr. Bailey that the job was to small to bid on. Another contractor would not even return Mr. Bailey's telephone calls. At this point, there was no prospect that the project could be completed in a timely manner by a private contractor. Mr. Bailey suggested to the school principal that the WDOT might be able to install the telephone poles and complete the project.

6. Mr. Bailey recognized that there might be ethical problems with WDOT doing work for a private school attended by his daughter. WDOT had provided ethics training to its employees. According to the training, a WDOT employee with an ethics problem should disclose the problem and consult with the employee's supervisor. If the supervisor is unable to resolve the ethics problem, it should be taken to the next level of supervision. Mr. Bailey had received this ethic training.

7. In line with his ethics training, Mr. Bailey consulted with his supervisor, Kurt Schleichert. Mr. Schleichert is the Maintenance Superintendent. Mr. Bailey fully explained the situation. He told Mr. Schleichert his daughter attended Saint Paul's School and that the school needed two telephone poles installed to bring electrical power to two portable classrooms and that luminaries needed to be installed. He also explained that the school's project was unrelated to transportation or the WDOT's right-of-way. After discussing the project, Mr. Schleichert told

Mr. Bailey that he did not believe it would be proper for the WDOT to do the project, because it was off the WDOT right-of-way. Mr. Schleichert was also concerned because the work would be done for a private school.

8. Mr. Bailey was not satisfied with his supervisor's conclusion that WDOT could not do the project. He and Mr. Schleichert discussed other ways to determine whether the project was proper. One idea was to seek a JA number from the accounting division of WDOT. There is some conflict in the testimony over who suggested this idea. Based on the credibility of the evidence and the demeanor of the witnesses, the Board finds that Mr. Bailey suggested the idea on the theory that if the project was improper the request for a JA number would be turned down.

9. WDOT uses a "JA" account when WDOT wants to recoup costs that are expended for other agencies or for organizations or entities outside the agency. When a developer or other entity is building something that effects the WDOT right-of-way, WDOT may do some of the work on the right-of-way in connection with the project. When this happens, WDOT and the developer or private entity enter into an agreement to reimburse WDOT for the work it does on the project. The accounting section of WDOT sets up an account and provides a "JA" number for the project to ensure that the private entity is billed and the agency receives payment for all of the WDOT work.

10. Mr. Bailey completed the form to have a JA account number assigned to the Saint Paul's School job. The form identified the title of the project as "St. Paul School Luminarie". The description of work was "install 2 timber poles and luminaries and associated electrical circuits". The form provided the location of the project and an estimated cost of $3,000. The form also provided that WDOT would be reimbursed by Saint Paul's School and provided the

school's federal ID number. As part of this process, Mr. Bailey entered into an agreement with Saint Paul's School that the school would pay WDOT for the work performed at the school.

11. Mr. Bailey submitted the form to Roberto Diaz. Mr. Diaz worked in accounting and did not supervise Mr. Bailey or Mr. Schleichert. In his submission to Mr. Diaz, Mr. Bailey did not disclose that his supervisor, Mr. Schleichert, thought that the project was improper or that there was any kind of ethics issue related to the project. Mr. Bailey also did not disclose that his daughter attended Saint Paul's School, that he had worked on the project as a paid volunteer, or that the project was unrelated to transportation or the WDOT's right-of-way.

12. Mr. Diaz was an accountant. He was not responsible for determining whether projects, which were the subject of JA requests, were proper. His job was to make sure the documentation on a JA form was correct to ensure that WDOT would be paid for its work on a particular project. The JA account number was assigned so WDOT could track payments and the history of the project. The fact that the JA form submitted by Mr. Bailey referred to Saint Paul's School did not concern Mr. Diaz, because he frequently dealt with private companies and private schools, which have projects that impact the WDOT right-of-way. After reviewing the documentation on the JA form submitted by Mr. Bailey and concluding that it was complete, Mr. Diaz assigned the project a JA number.

13. Mr. Bailey was determined to do the project at Saint Paul's School. When his supervisor, Mr. Schleichert, said the project was improper, Mr. Bailey did not drop the idea. In continuing to pursue the project, Mr. Bailey did not follow WDOT ethics training. According to the WDOT ethics training, if an employee's supervisor is unable to resolve the ethics problem, it should be taken to the next level of supervision—in this case Mr. Schliechert's

supervisor. Mr. Diaz was not Mr. Schliechert's supervisor, and Mr. Bailey did not seek the advice of Mr. Schliechert's supervisor.

14. Even if it had been proper under WDOT policy to resolve the ethics issue by applying for a JA, Mr. Bailey did not use the JA form for this purpose. He did not explain that he was submitting the JA form to resolve an ethics issue. When Mr. Bailey fully explained the project to his supervisor, Mr. Schleichert said it was improper. In contrast to his candor when he discussed the project with Mr. Schleichert, when Mr. Bailey applied for the JA number, he did not fully explain the project. The JA form submitted by Mr. Bailey provided minimal information. He did not explain his relationship to the school or the nature of the project, which was unrelated to transportation or the WDOT right-of-way. Thus, Mr. Bailey sought to obtain a JA number to do the project without actually disclosing the ethics issue related to the project.

15. Mr. Bailey intended to use WDOT resources to perform the project at Saint Paul's School. Mr. Bailey cannot justify his conduct based on WDOT approval of the project because he concealed essential facts from WDOT, which would have alerted the agency to the ethical problem involved.

16. When Mr. Bailey received the JA number from Mr. Diaz, he assigned it to a crew to begin work. WDOT provided two surplus telephone poles to the school. The crews installed the poles and conductors to feed the two portables and strung overhead cable for power. They also installed hardware on the poles. While the work was being performed, the project expanded. In addition to providing electrical power to the classrooms, the WDOT crew hung the messenger for data lines, computer lines, the fire alarm, the cable t.v., and telephone, and all the low voltage circuits required by the buildings. This work was performed during October,

November, and December 1998. During this time, five WDOT employees worked a total of 136 hours on the project. Two other employees spent some time working on the project, but the amount of time is undetermined. The crew used WDOT supplies, tools and equipment, including an aerial man lift truck and a pole truck and trailer. The pole truck is used to drill holes to install the telephone poles, and the trailer hauls the poles.

17. Saint Paul's School was billed for all the labor, materials, and equipment that went into the project, except for the two telephone poles and a small amount of time of two members of the crew. The bill also included a component for overhead. The total amount billed to the school was $6,742.35. Saint Paul's School paid this amount to the WDOT. St. Paul's School was not billed for the two poles. The value of the two poles was $1,600. At the time the project was done, WDOT did not charge for surplus telephone poles that were used in a project for a private entity related to transportation or the WDOT right-of-way.

18. The primary mission of the WDOT is to serve the transportation needs of the State of Washington. WDOT does not perform work for private entities, unless the work is related to transportation or the WDOT right-of-way. The only exception is during natural disasters or emergencies. In those situations, when the WDOT employees are working to keep the highway system operational, they sometimes perform work off the highway system to save property or life. Since the work for the Saint Paul's School was unrelated to transportation and the WDOT right-of-way, it was not a proper use of WDOT resources to perform the Saint Paul's School project.

19. The Saint Paul's School project was harmful to the moral of the work group and members of the crew who worked on the project were upset about the assignment. For some

crewmembers, the concern was minimized by the issuance of a JA number. Others thought the project was wrong even though a JA number had been issued. Two members of the crew were so concerned that they refused to bill the time they worked on the project to the assigned JA number.

20. The reasonable cost to investigate this matter was $3,848.

21. As of the date of the hearing, Mr. Bailey has not been subject to any sanction by the WDOT in connection with the Saint Paul's School project.

CONCLUSIONS OF LAW

1. There is jurisdiction to hear this matter pursuant to RCW 42.52.360(1), which authorizes the Board to enforce RCW 42.52, including RCW 42.52.160(1), with respect to employees in the executive branch of state government. The Board has jurisdiction over Mr. Bailey. He is an employee in the executive branch of state government. The complaint was filed in accordance with RCW 42.52.410, the Board found reasonable cause pursuant to RCW 42.52.425, and the public hearing was conducted pursuant to RCW 42.52.430 and .500. All the required procedural notices have been provided.

2. Under RCW 42.52.430(5), a violation of RCW 42.52.160(1) must be established by a preponderance of the evidence.

3. RCW 42.52.160(1) provides:

> (1) 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.

4. Mr. Bailey's conduct falls within RCW 42.52.160(1). He used persons and property under his control to perform work for Saint Paul's School. This included seven

crewmembers for over 136 hours, plus two telephone poles and other supplies, equipment, and vehicles. Finding of Fact (FOF) 16. This work provided a private benefit to the school. At the time D.W. Close withdrew from the project, Mr. Bailey was unable to find another contractor to perform the work. If WDOT had not completed the work, the project would not have been completed in a timely manner. FOF 5.

5. RCW 42.52.160(2) provides:

> This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

6. Under RCW 42.52.160(2), there is no violation of RCW 42.52.160(1), if it is part of an employee's official duties to use public resource to benefit another. Mr. Bailey's use of WDOT resources to perform the Saint Paul's School project does not fall within RCW 42.52.160(2). WDOT does not perform work for private entities unless the work is related to transportation or the WDOT right-of-way. FOF 18. The school project was unrelated to transportation or the WDOT right-of-way. The project consisted of bringing electrical power and other lines to two portable classrooms. FOF 16. Mr. Bailey's use of WDOT resources to do the school project was not part of his official duties.

7. RCW 42.52.160(3) provides:

> The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

8. Under RCW 42.52.160(3), some private use of state resources that might be prohibited by RCW 42.52.160(1) is permissible, if authorized by the Board. The Board has

adopted WAC 292-110-010, which governs occasional use of resources by state employees. WAC 292-110-010 provides in part:

> (3) Notwithstanding the prohibition in subsection (2) of this section, a state officer or employee may make occasional but limited use of state resources only if:
>
> (a) There is no cost to the state; and
>
> (b) The use of state resources does not interfere with the performance of the officer's or employee's official duties;
>
> (c) The use is brief in duration and does not disrupt or distract from the conduct of state business due to volume or frequency[.]

9. Mr. Bailey's use of WDOT resources to perform the Saint Paul's School project does not fall within WAC 292-110-010(3). The use of those resources interfered with the performance of employee's official duties. While working on the school project the resources were unavailable to do the work of the WDOT. The use of the resources was also not brief in duration. The project involved seven crewmembers for 136 hours during a three-month time period. FOF 16.

10. Mr. Bailey contends that he did not violate RCW 42.52.160(1), because the person who filed the complaint did so to retaliate against him. Unless the complainant is a witness whose credibility must be judged, the complainant's motive is irrelevant in determining whether RCW 42.52 has been violated. In this case, the complainant was not a witness against Mr. Bailey. Thus, even if the motive behind the complaint was retaliation, it would not give Mr. Bailey license to violate RCW 42.52.160(1) and use WDOT resources to benefit a private party.

11. RCW 42.52 does not require intent as an element to establish a violation. Mr. Bailey contends that the Board must read an intent requirement into the law under the criteria set out in *State v. Bash*, 130 Wn.2d 594, 605-06, 925 P.2d 978 (1996), and that he cannot be held to have violated RCW 42.52.160(1) unless he knew and intended his conduct to violate that statute. The *Bash* criteria do not require an intent element to be read into RCW 42.52. Four criteria in particular compel this conclusion.

11.1. RCW 42.52 is a public welfare offense that does not involve moral turpitude. RCW 42.52 is not a criminal law. It is a civil code governing the conduct of state officers and employees. The law is designed for the protection of the public, to ensure that "public employment, whether elected or appointed, may not be used for personal gain or private advantage". RCW 42.52.900. The law sets out objective standards of conduct to protect the public. An employee who breaches the standards violates RCW 42.52, even if there is no actual corruption or moral turpitude involved in the employee's conduct.

11.2 A strict liability reading of the statute would not encompass entirely innocent behavior because RCW 42.52 sets out objective standards of conduct. Behavior that violates those standards is not innocent. To adopt the intent requirement advocated by Mr. Bailey—that employees intend their conduct to violate RCW 42.52—will encourage employees to remain ignorant of the law and defeat the legislative purpose in enacting the ethics code.

11.3. The penalty for violating RCW 42.52 is not unduly harsh. RCW 42.52 is a civil law, not a criminal law. Therefore, there is no criminal conviction associated with an ethics violation. The maximum penalty for each violation of RCW 42.52 is $5,000 or three times the economic value of anything received or sought in violation. RCW 42.52.480. The penalty for

violating RCW 42.52 is less than the maximum penalty for a misdemeanor or gross misdemeanor, both of which include imprisonment. The maximum penalty for a gross misdemeanor is imprisonment for one year and a $5,000 fine. RCW 9A.20.021(2). The maximum penalty for a misdemeanor is imprisonment for 90 days and a $1,000 fine. It is true that three times the economic value of anything received or sought in violation of RCW 42.52 could result in a penalty in excess of $5,000. But the penalty only increases if the significance of the violation increases.

11.4. Violation of RCW 42.52 results in serious harm to the public. "Ethics in government are the foundation on which the structure of government rests." RCW 42.52.900. Violations of RCW 42.52 undermine citizens' trust and confidence in their government. The purpose in enacting the ethics law was to restore public trust and confidence in government.

12. Although intent is not an element necessary to establish a violation of RCW 42.52, intent is an important factor in establishing the penalty. RCW 42.52.360(2)(g) requires the Board to establish criteria regarding the level of civil penalty for violations of RCW 42.52. Under the Board's rule, the question of intent goes to the aggravating and mitigating circumstances in determining the penalty. WAC 292-120-030 provides in part:

> In determining the appropriate sanction, including the amount of any civil penalty, the board may consider the nature of the violation and the extent or magnitude or severity of the violation, including:
>
> . . . .
>
> 3) Aggravating circumstances including whether the violator:
>
> (a) Intentionally committed the violation with knowledge that the conduct constituted a violation;

. . . .

(4) Mitigating factors including:

. . . .

(c) The unethical conduct was approved or required by the violator's supervisor or agency;

(d) The violation was unintentional[.]

13. Even if the Board read an intent requirement into the RCW 42.52, the Board finds that Mr. Bailey intended to use WDOT resources to benefit Saint Paul's School. FOF 15. One is presumed to intend the natural and probable consequences of his acts. An employee cannot justify his or her conduct based on agency approval, if the employee conceals essential facts from the agency, which would alert the agency to the ethical problem involved. Here, Mr. Bailey acted to conceal the ethics issue related to the school project. Based on his supervisor's comments, Mr. Bailey knew there was a problem with the project. FOF 7. After that, Mr. Bailey did not follow WDOT ethics training to resolve the ethics question. When his supervisor said the project was improper, Mr. Bailey did not take the issue up the WDOT chain of command to the next level of supervision. FOF 13. When Mr. Bailey applied for the JA number he did not disclose that it was being submitted to resolve an ethics issue, and he did not disclose the full nature of the project that might raise questions about the proper use of WDOT resources. FOF 14. Mr. Bailey knew his use of WDOT resources might violate the ethics law and he intended to get a JA number so he could complete the school project without regard to whether the use of WDOT resources was proper.

14. By a preponderance of evidence, Mr. Bailey violated RCW 42.52.160(1) by using WDOT resources to benefit a private party—Saint Paul's School.

15. Under RCW 42.52.480(1)(b) and (c), the Board may impose a civil penalty or costs, including reasonable investigation costs, of up to $5,000 per violation or three times the economic value of any thing received or sought in violation of this chapter or rules adopted under it, whichever is greater. In this case there is one violation of RCW 42.52.160(1). The maximum penalty that can be imposed is $5,000 or three times the economic value of the WDOT resources received by Saint Paul's School, which is $25,026. FOF 17.

16. The Board evaluates the penalty under WAC 292-120-030.

17. With regard to the monetary costs of the violation under WAC 292-120-030(1), there was little cost to the WDOT, because Saint Paul's School paid all of the costs billed to it by WDOT. The school did not pay for the two telephone poles because it was not billed for them in accordance with WDOT policy at the time. FOF 16. The reasonable cost to investigate this matter was $3,848. FOF 20.

18. With regard to the nature of the violation under WAC 292-120-030(2), Mr. Bailey's violation went on for three months, but did not continue beyond the project at Saint Paul's School. FOF 15. The project used substantial WDOT resources, including seven employees for over 136 hours over a three-month period. The project also used WDOT equipment, supplies, and vehicles. FOF 16. The project was not motivated by financial gain, and did not involve criminal conduct. The violation did impair the function of the agency to the extent that WDOT resources used on the school project were not available to be used for WDOT work. The violation was also disruptive to the morale of the working group. Some employees of

WDOT felt the project was an improper use of WDOT resources, and the use of state resources for private benefit also tends to reduce public respect for and confidence in state government. FOF 19. Mr. Bailey received personal benefit from the project since his daughter attended the school. FOF 2.

19. With regard to aggravating circumstances under WAC 292-120-030(3), Mr. Bailey intended to commit the violation by using WDOT resources to perform the Saint Paul's School project while concealing the ethics issue related to the project. FOF 15. Mr. Bailey also has supervisory responsibility for 48 FTEs. FOF 1. As of the date of the hearing, Mr. Bailey has not been subject to any sanction by the WDOT in connection with the Saint Paul's School project. FOF 21.

20. With regard to mitigating factors under WAC 292-120-030(4), WDOT recovered the costs of the project billed to the school. However, the fact that Mr. Bailey received a JA number for the project does not constitute mitigation that the unethical conduct was approved by the WDOT. Mr. Bailey received the JA number because he did not fully reveal the ethics issue involved in the school project. FOF 13, 14. For the same reason, there is no mitigation on the grounds that the violation was unintentional. FOF 15.

21. There are two other mitigating factors. First, when the violation occurred, Mr. Bailey had only been a supervisor for about a month and had only been a WDOT employee for a little over one year. FOF 1. This does not excuse Mr. Bailey's violation, but his lack of experience was a contributing fact. Second, Mr. Bailey's supervisor did not provide strong guidance to Mr. Bailey and did not require him to follow WDOT ethics policy to resolve ethical

issues. The responsibility for the violation rests with Mr. Bailey, but lack of strong guidance from his supervisor contributed to the violation.

22. The maximum potential penalty in this case is $25,026 or $5,000. Conclusion of Law (COL) 15. These maximum penalties are not appropriate. This is based on the fact that Saint Paul's School paid the amounts it was billed by WDOT. COL 17, 20. This conclusion is also supported by the fact that the project constituted a single violation that was not motivated by financial gain. COL 18. Mr. Bailey's inexperience and the lack of guidance by Mr. Bailey's supervisor also mitigate against the maximum penalties. COL 21.

23. Although it is not appropriate to impose the maximum penalty, Mr. Bailey committed a significant violation. The violation used substantial WDOT resources. The violation impaired the function of the agency, adversely affected the morale of the work group, and is the kind of violation that reduces public respect for and confidence in state government. Mr. Bailey also received a personal benefit from the project. COL 18. Mr. Bailey was a supervisor, and the violation was intentional and was not approved by WDOT. COL 19. The reasonable investigative costs related to this matter were $3,848. COL 17. In light of these factors, the appropriate penalty is $4,000. Of this amount, $3,848 represents the recovery of the reasonable cost of the investigation pursuant to RCW 42.52.490(1)(c).

ORDER

Based on the foregoing Findings Of Fact And Conclusions Of Law, it is hereby ordered that Brian Bailey violated RCW 42.52.160(1), and he is ordered to pay a penalty in the amount of $4,000, which includes $3,848 of costs for the reasonable investigation costs for this matter.

SERVED on the date of mailing.

DATED this 27th day of April, 2001.

James M. Vaché, Chair

Laquita Fields, Vice Chair

Sutapa Basu, Member

Reverend Cheryl Rohret, Member

Marilee Scarbrough, Member

DATED this 30th day of April, 2001.

James M. Vaché, Chair

Laquita Fields

Laquita Fields, Vice Chair

Sutapa Basu, Member

Reverend Cheryl Rohret, Member

Marilee Scarbrough, Member

DATED this 25th day of April, 2001.

James M. Vaché, Chair

Laquita Fields, Vice Chair

Sutapa Basu, Member

Cheryl L J Rohret

Reverend Cheryl Rohret, Member

Marilee Scarbrough, Member

APPEAL RIGHTS

Pursuant to WAC 292-100-210 a party may seek reconsideration of this Final Order upon written request served at the office of the Board and upon the parties no later than ten (10) days after service of this Final Order. The office of the Board is located at the Highways-Licenses Building, 1125 Washington Street SE, 5th Floor, P.O. Box 40100, Olympia, Washington 98504-0100. A request will be deemed served at the office of the Board upon actual receipt during office hours. WAC 10-08-110(1). Service on the parties may be made personally or by first-class mail, registered mail, or certified mail, by fax *and* same-day mailing of copies, or by a commercial parcel delivery company. WAC 10-08-110(2). A request for reconsideration shall specify the grounds therefor. After a request for reconsideration has been received, the Board shall act upon the request at the next meeting at which it practicably may do so.

This Final Order of the Board is subject to judicial review pursuant to RCW 34.05. RCW 42.52.440. A petition for judicial review of this Final Order may be instituted by paying the fee required under RCW 36.18.020 and filing a petition in the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of the petitioner's residence or principal place of business, or (c) in any county where the property owned by the petitioner and affected by the contested decision is located. RCW 34.05.514. This Final Order may also be directly reviewed by the court of appeals. RCW 34.05.518. A petition for judicial review shall be filed with the court and served on the agency, the office of the attorney general, and all parties of record within thirty days after service of the final order. Service of the petition on the agency shall be by delivery of a copy of the petition to the office of the director, or other chief administrative officer or chairperson of the agency, at the principal office of the agency. Service of a copy by mail upon the other parties of record and the office of the attorney general shall be

deemed complete upon deposit in the United States mail, as evidenced by the postmark. Failure to timely serve a petition on the office of the attorney general is not grounds for dismissal of the petition. Service upon the attorney of record of any agency or party of record constitutes service upon the agency or party of record. RCW 34.05.542. A petition for review must set forth:

(1) The name and mailing address of the petitioner;

(2) The name and mailing address of the petitioner's attorney, if any;

(3) The name and mailing address of the agency whose action is at issue;

(4) Identification of the agency action at issue, together with a duplicate copy, summary, or brief description of the agency action;

(5) Identification of persons who were parties in any adjudicative proceedings that led to the agency action;

(6) Facts to demonstrate that the petitioner is entitled to obtain judicial review;

(7) The petitioner's reasons for believing that relief should be granted; and

(8) A request for relief, specifying the type and extent of relief requested. RCW 34.05.550.

CERTIFICATION OF MAILING

This certifies that a copy of the above Findings Of Fact, Conclusions Of Law And Final Order was served upon the parties or their representatives on April 30, 2001, by depositing a copy of same in the United States mail, postage prepaid, addressed to the following:

Brian Bailey
4710 Morris Avenue south
Renton, WA 98055

Brian Malarky, Executive Secretary
Washington State Executive Ethics Board
PO Box 40100
Olympia, WA 98504-0100

Richard McCartan
Assistant Attorney General
PO Box 40109
Olympia, WA 98504-0109

Hugh J. McGavick
Attorney at Law
2415 Pacific Avenue Suite A
Olympia, WA 98501

Robert P. Kingsley
Administrative Law Judge
Office of Administrative Hearings
600 University Street Suite 1500
Seattle, WA 98101-1129

State of Washington)
) ss.
County of Thurston)

I certify that I have this day served a copy of this document upon all parties in this proceeding, as listed, by mailing a copy thereof, properly addressed and postage prepaid, to each party to the proceeding or his or her attorney or agent.

Olympia, Washington, this 30th day of April, 2001.

Wendy R. Otto