

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

GARY BERRELL

Respondent.

NO. 01-01

STIPULATION AND ORDER

THIS STIPULATION is entered into under WAC 292-100-090 between the Respondent, Gary Berrell, and the EXECUTIVE ETHICS BOARD (“Board”) through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

I. STIPULATION

A. FACTS

1. On February 10, 2000, the State Auditor’s Office (SAO) referred a Whistleblower complaint regarding Gary Berrell to the Executive Ethics Board.

2. From 1987 to 1995, Mr. Berrell was employed by the Twin Harbors Community Coalition (THCC), a nonprofit organization, and served as its Executive Director. Mr. Berrell continued to be employed as the Executive Director of THCC, but from August 1996 through June 1997, and from July 1998 through June 1999, he worked under contracts between the State of Washington Employment Security Department (ESD) and THCC, and his salary was paid by ESD.

3. A State of Washington classification questionnaire dated October 19, 1998, described Mr. Berrell's job duties with THCC and classified him as a Job Service Specialist 4, a state job classification. His immediate supervisor was an ESD employee.

4. On June 1, 1999, ESD notified Mr. Berrell that ESD was undergoing a reduction in force and was eliminating his position as a Job Service Specialist 4. Mr. Berrell was eligible to be placed on the agency's reduction in force register and in the RIF transition pool with the Washington State Department of Personnel. On June 30, 1999, the contract between THCC and ESD ended, and Mr. Berrell was notified that ESD was not renewing the contract due to lack of funds. Mr. Berrell's ESD position was eliminated and he no longer works for ESD or the State of Washington.

5. THCC routinely paid Christmas bonuses to its employees, and Mr. Berrell was the recipient of such bonuses in 1995 and 1997 while he was employed solely by THCC. On December 3, 1998, while employed by ESD under contract, Mr. Berrell accepted one hundred dollars from THCC as a Christmas Bonus.

6. On June 13, 2002, Mr. Berrell made a charitable contribution in the amount of fifty dollars (\$50.00) to the Northwest Carriage Museum in Raymond, Washington.

B. APPLICABLE LAW

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. . . .

RCW 42.52.010(19) defines a "state employee" as follows:

"State employee" means an individual who is employed by an agency in any branch of state government. . . .

Based on the facts regarding Mr. Berrell's employment status as outlined in paragraphs 2 through 4 above, at the time of the conduct alleged in the Whistleblower complaint, Mr. Berrell, was employed by (ESD) and was subject to the Board's jurisdiction under RCW 42.52.360.

C. AGGRAVATING AND MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, Board staff reviewed criteria in WAC 292-120-030. In the case at hand: (1) Mr. Berrell was cooperative, and the violation was unintentional. WAC 292-120-030(4)(d).

2. In addition, it is a mitigating factor that Mr. Berrell has made a charitable donation of the excess amount he would have been allowed to accept as a gift. WAC 292-120-030(4)(e).

3. There are no aggravating factors.

D. RESOLUTION

1. Mr. Berrell admits that he unintentionally violated provisions of RCW 42.52.150 by accepting a Christmas bonus from THCC in excess of fifty dollars. The violation was unintentional because Mr. Berrell's overall employment status changed when THCC contracted with ESD, but his job duties remained the same.

2. Mr. Berrell will pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The Board agrees to suspend the entire amount on the condition that Mr. Berrell complies with all the terms and conditions of this Stipulation and Order and commits no further violations of Chapter 42.52 RCW.

II. CONCLUSIONS OF LAW

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Gary Berrell and over the subject matter of this complaint.

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2) which states 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.

III. RELEASE / EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges Gary Berrell from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to compliance with all other conditions of this Stipulation. Gary Berrell 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 Order.


2. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between Gary Berrell and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

3. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

4. If this Stipulation and Order is not accepted, it shall be null and void, and may not be used for any purpose in connection with the above-entitled action.

IV. CERTIFICATION

I, Gary Berrell, hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntarily agree to this Stipulation.

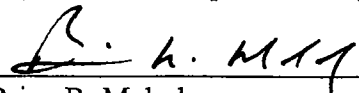


Gary Berrell
Respondent

08/16/02

Date

Stipulated to and presented by:



Brian R. Malarky
Executive Director

14 August 2002

Date

V. 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;

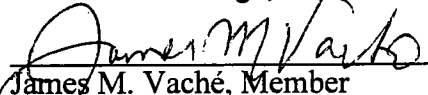
*MODIFIED. This Stipulation will become the Order of the Board if the following modifications are approved by _____

DATED this 13th day of September, 2002.

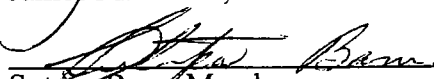
Laquita Fields, Chair




Marilee Scarbrough, Vice-Chair



James M. Vaché, Member



Sutapa Basu, Member



Paul Zellinsky, Member

I, _____, accept/do not accept (circle one) the proposed modification.

Respondent

Date