

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

James A. Mutnick

Respondent.

No. 2011-034

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, JAMES A. MUTNICK, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through MELANIE DeLEON, 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 October 20, 2011, the Executive Ethics Board (Board) received a Whistleblower Investigative Report from the State Auditor's Office (SAO) alleging that James Mutnick, a former IT Technician, Department of Personnel (DOP), currently Department of Enterprise Services, may have violated the Ethics in Public Service Act by using state resources for personal gain.

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. James Mutnick 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. James Mutnick recognizes that the evidence available to the Board staff is such that the Board may conclude he 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. James Mutnick 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions 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 James Mutnick 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. James Mutnick 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 James Mutnick 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 James Mutnick does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and James Mutnick waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, James Mutnick 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. Mr. Mutnick worked as a Technology Specialist 4 for the Department of Personnel (DOP) from July 16, 2007 until he resigned on April 21, 2011.

2.2. On November 9, 2010, Mr. Turner requested Mr. Mutnick's phone records for his assigned telephone number. These records indicated that although Mr. Mutnick had not made any Scan calls, it appears that he made excessive calls to his spouse and others, which do not appear to be work related. Some examples are listed below:

- Sarah Mutnick (wife) – 964 calls
- Laurie and Mike Crose – 45 calls
- Kris Rietmann – 72 calls
- Studio West – 70 calls

2.3. A DOP's internal investigation and analysis of Mr. Mutnick's computer revealed the following internet usage:

- Local dance studio (Studio West) – 272 visits
- A web site for mobile phones (TalkGadget) – 187 visits.
- Mr. Mutnick's personal website (MutnickMedia) – 80 visits.
- Ebay – 38 visits.
- A photo and video sharing website (Tumbir) – 18 visits.
- Other non-work related sites – 105 visits.

2.4. As a part of the Agency's response to this current allegation it was revealed that in June of 2008, prior to this investigation, Mr. Mutnick received a Letter of Reprimand for installing unauthorized software on his work computer. At that time, Mr. Mutnick had installed unauthorized software which introduced a computer virus into the agency computer network.

2.5. As a consequence of Mr. Mutnick's violation in June of 2008, he was ordered to attend DOP Ethics Training, retake the On-line training – Protect Information Technology Security, and to review DOP policy – Information Technology Acceptable use Guidelines (Policy # 4.09) with his supervisor.

2.6. When asked about his use of state resources to conduct business for Studio West Dance Academy and Crystal Ball Photography by DOP investigators, Mr. Mutnick stated that he was not conducting business for either company when he accessed their internet sites.

2.7. A few days after meeting with DOP investigator's Mr. Mutnick voluntarily contacted his supervisor, Scott Turner. Mr. Mutnick told Mr. Turner that he had met with DOP investigators regarding his inappropriate use of state resources. Mr. Mutnick went on to tell Mr. Turner, that he did conduct work on the websites of Studio West and Crystal Ball Photography from his work computer, but that he did not receive financial or personal gain, he was just helping out friends.

2.8. Mr. Mutnick told Mr. Turner that there was no one else to blame but himself and that he was aware that he was wasting state time by working on these projects.

2.9. Mr. Mutnick resigned from his position with DOP on April 12, 2011.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over James Mutnick 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. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

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.

3.4. Based on Findings of Fact 2.1 through 2.9, James Mutnick used state resources to conduct his outside business and use the state phone system to make personal calls, in violation of RCW 42.52.160 and WAC 292-110-010.

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 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

Section 4: AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is an aggravating factor that: 1) the violations were continuing in nature, 2) the violations significantly reduced the public respect for, and the confidence in, state

government employees, and 3) Mr. Mutnick had received discipline in the past for similar activities. It is a mitigating factor that Mr. Mutnick resigned from his position with DOP.

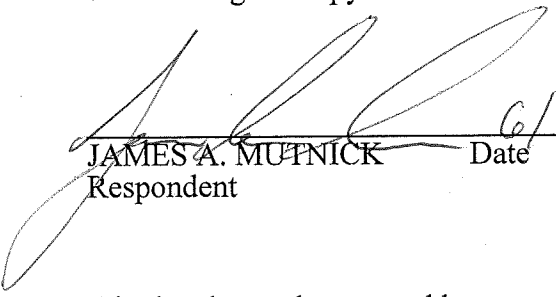
Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, James Mutnick will pay a civil penalty in the amount of, One thousand, five hundred dollars (\$1,500.00).

5.2 The civil penalty of \$1,500.00 is payable in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

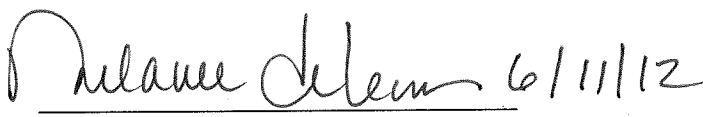
I, James A. Mutnick, hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts the Stipulation and Agreed Order, I understand that I will receive a signed copy.



JAMES A. MUTNICK
Respondent

6/7/12
Date

Stipulated to and presented by:



Melanie deLeon
Executive Director


6/11/12
Date

II. ORDER

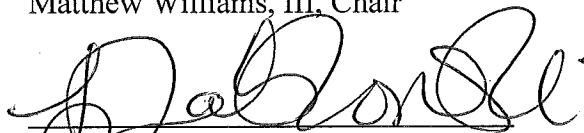
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is


✓ ACCEPTED in its entirety;
 REJECTED in its entirety;
 MODIFIED. This Stipulation will become the Order of the Board if the Respondent approves* the following modification(s):

DATED this 13th day of July, 2012.


Matthew Williams, III, Chair


Lisa Marsh, Vice-Chair


Linnaea Jablonski, Member


Anna Dudek Ross, Member


Michael Bahn, Member

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

JAMES A. MUTNICK, Respondent Date