

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Thomas Kuehn

Respondent.

No. 2013-043

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, THOMAS KUEHN, 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 15, 2012, the Executive Ethics Board (Board) received a referral from the Office of Superintendent of Public Instruction (OSPI) alleging that Thomas Kuehn, School Facilities and Organization Administrator, may have violated the Ethics in Public Service Act by using state resources to conduct and promote his outside business.

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

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under the Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

1.3. Thomas Kuehn 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. Thomas Kuehn 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. Thomas Kuehn 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 Thomas Kuehn 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. Thomas Kuehn 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 Thomas Kuehn 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 Thomas Kuehn 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 Thomas Kuehn 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, Thomas Kuehn 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. Kuehn has worked for OSPI since March 17, 2008. At the time of the alleged violations, he was the Facilities and Organization Administrator.

2.2. As the Facilities and Organization Administrator, Mr. Kuehn would assist the Facilities and Organization Director in the planning, design, construction, and maintenance management of K-12 school facilities statewide. In this position, Mr. Kuehn provided guidance and training to the three regional coordinators.

2.3. In December of 2012, OSPI became aware of Mr. Kuehn's use of state resources to promote his outside business when he sent an e-mail to legislative staff promoting his

invention called "School Safe". On December 21, 2012, Mr. Kuehn responded to these allegations by sending an e-mail indicating that he had not used school resources to promote "School Safe", but did apologize for making mention of his product in the e-mail. He also indicated that he would refrain from any further comments about it in the future.

2.4. On March 20, 2013, *The Olympian* newspaper printed an article regarding School Safe and its inventor, Thomas Kuehn. The article identified Mr. Kuehn as the Facilities and Organization Program Administrator for OSPI. As a result of that article, OSPI decided to initiate an investigation to ensure that Mr. Kuehn had filed an outside employment request as required by OSPI policy and that he was not using state resources to promote his outside business.

2.5. OSPI subsequently hired a private investigator to conduct an investigation into the allegation that Mr. Kuehn was inappropriately using state resources to promote his outside business Global Innovations Coterie, LLC and his product called "Safe School".

2.6. The investigation revealed that between December 21, 2012 and March 21, 2013, that Mr. Kuehn continued using state resources for his outside business even after he assured OSPI management that he would stop. The investigation revealed over 300 emails that were sent/received by Mr. Kuehn regarding his outside business.

2.7. Mr. Kuehn sent approximately 155 e-mails from his state computer regarding his outside business between February 2009 and December 21, 2012.

2.8. Mr. Kuehn admitted to using the state printer to produce documents in support of his outside business because his printer at home did not have the ability to make two-sided copies or the ability to scan documents.

2.9. Mr. Kuehn would send via e-mail or download outside employment documents, (PowerPoint, Excel) to his work computer because it was set up with double monitors. He indicated that his computer at home was not set up with two monitors and having two monitors made it easier to view and work on the documents. Many of these outside employment documents (Word, Excel, PowerPoint) were located on Mr. Kuehn's work computer.

2.10. Sometime in 2011, Mr. Kuehn installed a "Safe School" device on one of the stairwell doors of an OSPI facility to document how well the device would hold up to repeated use. It was not until after the Sandy Hook shooting and the publicity surrounding it that he showed it to three or four people who were interested in the Safe School product.

2.11. A review of the OSPI fax log revealed the following:

- On December 27, 2011, at 1:35 pm, Mr. Kuehn received a fax consisting of documents from a bank in Hamilton, Montana, regarding property Mr. Kuehn was attempting to sell. At 2:29 pm, Mr. Kuehn faxed the documents back to the bank.
- On January 31, 2012, at 7:43 am, Mr. Kuehn sent a fax to the U.S. Patent and Trademark Office located in Virginia.
- On February 17, 2012, at 7:55 am, Mr. Kuehn sent a fax to the U.S. Patent and Trademark Office located in Virginia.

2.12. Mr. Kuehn never submitted a request to OSPI for authorization for outside employment as required by OSPI's Outside Employment Policy.

2.13. Mr. Kuehn retired from state service.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Thomas Kuehn 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 his or her position with the state to secure a special privilege. RCW 42.52.070(1) states:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

3.4. Based on Findings of Fact 2.7 through 2.11, Thomas Kuehn received a special privilege for his private benefit or gain.

3.5. 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.

3.6. Based on Findings of Fact 2.3 through 2.11, Thomas Kuehn used state resources for his personal benefit.

3.7. 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. Aggravating factors are that Mr. Kuehn was in a supervisory position within OSPI; these types of violations significantly reduce the public respect and confidence in state government employees, the violation was continuing in nature (2009 to 2013), and Mr. Kuehn benefitted financially because of these violations. It is a mitigating factor that Mr. Kuehn retired from state service.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Thomas Kuehn will pay a civil penalty in the amount of two-thousand, seven-hundred, and fifty dollars (\$2,750.00).

5.2 The civil penalty of \$2,750 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, Thomas Kuehn, 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.

Thomas Kuehn 1-9-14
THOMAS KUEHN Date
Respondent

Stipulated to and presented by:


Melanie deLeon 1-9-14
Melanie deLeon Date
Executive Director

II. ORDER

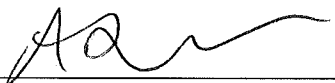
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

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):

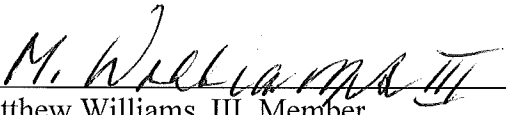
DATED this 10th day of January, 2014



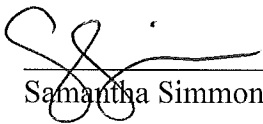
Lisa Marsh, Chair



Anna Dudek Ross, Vice-Chair



Matthew Williams, III, Member



Samantha Simmons, Member

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

THOMAS KUEHN, Respondent Date