

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Thomas Lowry
Respondent.

No. 2014-035

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, THOMAS LOWRY, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, 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. This stipulation is based on the following:

A. STIPULATED FACTS

1. On May 22, 2014, the Executive Ethics Board (Board) received a complaint alleging that Thomas Lowry, Shift Supervisor Department of Corrections (DOC), may have violated the Ethics in Public Service Act by using state resources for his personal benefit and conducting activities incompatible with his official duties when he purchased a vehicle from one of his subordinates.

2. During all pertinent times to this investigation, Mr. Lowry was either the acting sergeant or permanent sergeant of the graveyard shift at DOC.

3. The complaint received by the Board alleges that Mr. Lowry purchased a vehicle from one of his subordinates, that he was always asking his subordinates to work on his personal vehicles during work hours, and that he spent more time than is allowable searching the internet for his personal benefit.

4. Mr. Lowry acknowledges the purchase of the vehicle from a subordinate. He indicated that at the time of the purchase he was an "acting supervisor" and was not aware that it would become a permanent position.

5. The subordinate/seller confirmed that Mr. Lowry purchased a VW Jetta from him. He stated that when they first started talking about the purchase they were co-workers. When the sale was completed, Mr. Lowry was his supervisor in a temporary status.

6. A subordinate of Mr. Lowry told Board staff that Mr. Lowry asked him to look at one of Mr. Lowry's vehicle for mechanical issues. The subordinate stated he did so during work hours but only during times when things were slow.

7. Mr. Lowry acknowledges that a subordinate did look at his vehicle during a break and that the subordinate identified the issue as a "blown fuse". The subordinate did not replace the fuse.

8. Board staff requested an iPrism internet use report for Mr. Lowry from DOC. The iPrism report covered a period of April 30, 2014 through May 31, 2014. The report showed the following, among other things:

iPrism Report (4/3/2014 through 5/31/2014)

- Armlist.com – 10 hours:54 minutes
- Craigslist.org – 2 hours:10 minutes
- Amazon.com - :23 minutes
- Surplusammo.com – :16 minutes
- Tacticrepublic.com – :13 minutes
- Magaarms.com – :10 minutes
- Rainierarms.com – :09 minutes

Total time = 14 hours: 15 minutes

9. Total time spent on the internet for the time examined totaled 43 hours and 20 minutes. Of that, 14 hours and 15 minutes of personal use represents at least 32.88 % of his total time using the internet. This represents 9.3 % of his total hours worked from 4/30 to 5/31, assuming he work 152 hours for that period. To break it down even more, this would total 43 to 45 minutes for each day worked.

10. Mr. Lowry acknowledges his personal use of the internet.

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from conducting activities incompatible with their public duty (Conflict of Interest). RCW 42.52.020 states:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

2. Based on the stipulated facts above, Mr. Lowry conducted activities incompatible with his public duty in violation of RCW42.52.020.

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.

4. Based on the stipulated facts above, Mr. Lowry used state resources for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

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.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is an aggravating factor that Mr. Lowry was in a supervisory position within the DOC. Additionally, the types of violations at hand significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that at the time of the purchase of the vehicle Mr. Lowry was not a permanent supervisor, the initial discussing of the sale of the vehicle occurred when Mr. Lowry and the seller were co-workers, and Mr. Lowry was not aware that he would soon become the subordinate's permanent supervisor. Any violation of the Act in regards to the purchase of the vehicle was unintentional.

D. STIPULATION AND AGREED ORDER

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

2. Under RCW 34.05.060, the Board can 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.

3. 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.

4. Thomas Lowry agrees that if any or all of the alleged violations were proven 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).

5. Thomas Lowry further agrees that the evidence available to the Board 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.

6. Thomas Lowry 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).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Thomas Lowry from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts 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 stipulation. Thomas Lowry 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.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Thomas Lowry and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

10. If the Board rejects this stipulation, or if Thomas Lowry does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Thomas Lowry waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Thomas Lowry understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing unless otherwise agreed by the parties.


11. Thomas Lowry agrees to pay a civil penalty in the amount of two thousand, five hundred dollars (\$2,500). The Board agrees to suspend one thousand five hundred (\$1,500) on

the condition that Thomas Lowry complies with all terms and conditions of this stipulation and commits no further violations of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The non-suspended civil penalty of one thousand (\$1,000) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.

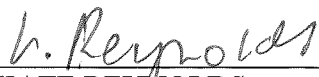
II. CERTIFICATION

I, Thomas Lowry, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify 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, I understand that I will receive a signed copy.


THOMAS LOWRY
Respondent

10-7-14
Date

Presented by:


KATE REYNOLDS
Executive Director

10-23-14
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 14th day of November 2014

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

Matthew Williams III
Matthew Williams III, Member

Absent
Samantha Simmons, Member

Absent
Sumeer Singla, Member

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

Thomas Lowry, Respondent Date