

**BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD**

In the Matter of:

THE HONORABLE BRAD OWEN,
LIEUTENANT GOVERNOR,

Respondent.

NOS. 97-17 AND 97-26

STIPULATION AND ORDER

STIPULATION

Pursuant to WAC 292-100-090, this Stipulation is entered into between BRAD OWEN, LIEUTENANT GOVERNOR, represented by ANDREW HUFF, Attorney at Law, and the EXECUTIVE ETHICS BOARD ("the Board"), by and through JERRI L. THOMAS, Senior Counsel.

I. STIPULATED FACTS

1. The Board filed a complaint against Lt. Gov. Brad Owen on May 13, 1997 alleging violations of RCW 42.52.180 for activities related to Initiative 683. The Board filed the complaint pursuant to RCW 42.52.410(2) based on a referral from the Legislative Ethics Board.
2. On November 3, 1997, Jeffrey T. Haley, a citizen, filed an ethics complaint against Lt. Gov. Owen, alleging further violations of RCW 42.52.180 for activities related to Initiatives 683 and 685. The complaints were consolidated by the Board.
3. The main provisions of I-685¹ would:

¹ The main provisions of I-683 were identical to the provisions of I-685 with the exception that I-683 permitted "practitioners" to recommend a Schedule I controlled substance to treat a disease, or to relieve pain and suffering of seriously or terminally ill patients. The term "practitioner" was changed to "physician" in I-685.

(a) Require persons who commit violent crimes while under the influence of drugs to serve 100% of their sentences;

(b) Permit a physician, with a written second opinion of another physician, and the consent of the patient, to recommend a controlled substance included in Schedule I of RCW 69.50.204 to treat a disease, or to relieve pain and suffering of seriously or terminally ill patients;

(c) Make lawful the receipt, possession, or use of a Schedule I controlled substance by a seriously or terminally ill patient if recommended by a physician as specified above;

(d) Make prison inmates convicted only of personal possession or use of a controlled substance eligible for probation or release on parole, and place them in a drug treatment or education program;

(e) Create a drug treatment and education fund; and

(f) Establish a parents commission on drug education and prevention.

4. On February 13, 1998, the Board found reasonable cause existed to believe that Lt. Gov. Owen had committed the following violations of RCW 42.52:

a) That Lt. Gov. Owen used official stationery and equipment to copy and distribute campaign messages opposing Initiative 683/685, in violation of RCW 42.52.180;

b) That Lt. Gov. Owen used a state employee to assist a campaign to oppose I-683/685, in violation of RCW 42.52.180;

c) That Lt. Gov. Owen used a state employee to assist a campaign to oppose I-683/685, in violation of RCW 42.52.180;

References to I-683 and I-685 are, at times, used interchangeably in the complaint, investigative report and reasonable cause determination.

d) That Lt. Gov. Owen used state facilities to assist a campaign to oppose a ballot proposition, in violation of RCW 42.52.180.

5. RCW 42.52.180(1) provides that:

No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitute a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

6. RCW 42.52.180(2) sets forth exceptions to RCW 42.52.180(1). It provides that RCW 42.52.180(1) does not apply to the following activity:

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure[.]

7. The Board adopted a definition of "measurable expenditure" in WAC 292-110-030. "Measurable expenditure" means an expenditure or separately identifiable cost or specific portion of a cost incurred by the agency beyond the normal and regular expenditures or costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

The rule sets forth examples for guidance:

Example 3:

A statewide elected official received a letter from a constituent asking for the official's position on a ballot proposition. The subject of the ballot proposition does not fall within the normal and regular conduct of the official's agency nor within the official's constitutional or statutory responsibilities. The official

replies by letter explaining his or her opinion on the ballot proposition and the reason for the opinion. In the course of preparing the reply the official has the assistance of staff and uses office space, equipment, stationery and postage. The official sends copies of the reply to other individuals on the agency mailing list. This is an ethical violation. While it is permissible to reply to the constituent who inquired about the official's position (Example 1), it is improper to send copies of the response to others. There is a measurable expenditure of public funds because the cost of the paper and postage for the additional copies is a separate identifiable cost beyond the normal and regular costs incurred by the agency in responding to inquiries from the media, constituents and other persons on matters unrelated to ballot propositions.

8. The Board has adopted a definition of "de minimis" in regard to the use of state resources in WAC 292-110-010. The cost to the state is de minimis if "the actual expenditure of state funds is so small as to be insignificant or negligible."

9. A hearing on the allegations described in paragraph 4(a)-(d) is scheduled for January 19, 20 and 21, 1999. The parties agree to this Stipulation in order to avoid the time and expense to both parties of a lengthy administrative hearing on these issues.

II. STIPULATIONS REGARDING ALLEGED ETHICS VIOLATIONS

1. Stipulation Regarding Allegation 4(a):

(a) The Board acknowledges that the letter to members of the legislature dated April 2, 1997 regarding Initiative 683 was prepared and distributed to members of the legislature after the Lieutenant Governor sought advice from Senate Counsel as to whether or not the letter would violate the state ethics law. The Lieutenant Governor was told it would not.

(b) Lt. Gov. Owen acknowledges that he was also advised by Senate Counsel that multiple or widespread distribution of the April 2, 1997 letter to persons who had not requested information on the ballot proposition could be viewed as a significant use of resources and therefore would not be permitted under RCW 42.52.180(2)(d), which permits only a "de minimis" use of state facilities to

express views on ballot propositions. Nonetheless, after receiving numerous inquiries, Lt. Gov. Owen distributed the letter to members of the legislature and others in a belief that in his position, it was appropriate for him to communicate with members of the legislature and others on a matter of public policy.

- (c) Lt. Gov. Owen acknowledges that a press release dated April 2, 1997, which announced the issuance of the April 2, 1997 letter to legislators referencing the marijuana-as-medicine debate, and documents known as "Today's Pot Shots" dated April 17, 1997 and April 24, 1997 were produced using official stationery and state equipment. Lt. Gov. Owen also distributed the "Today's Pot Shots" to members of the legislature as a communication from him on a matter of public policy.

2. Stipulation Regarding Allegation 4(b) and (c):

- (a) Lt. Gov. Owen acknowledges that state employees developed and disseminated the press release in conjunction with the April 2, 1997 letter to members of the legislature. Lt. Gov. Owen also acknowledges that the press release was developed on state time at his direction.
- (b) Lt. Gov. Owen further acknowledges that the press release was disseminated to members of the media who had not specifically requested information on Initiative 683 because of the large number of inquiries he had received.

3. Stipulation Regarding Allegation 4(d)

- (a) The Office of the Lieutenant Governor received a HIDTA (High Intensity Drug Trafficking Area) grant which was authorized by the Cascade HIDTA Executive Committee. The purpose of the grant was to develop a Marijuana Awareness and

Education Effort (MAEE). The grant funds were used in part to plan, develop and conduct five workshops which took place in August, 1997. Funds were used to develop and print a workbook for the workshops, a pamphlet entitled *Marijuana: Say it Straight, Myth Versus Reality* and a video of the same name.

Lt. Gov. Owen acknowledges that state facilities, state employees, and HIDTA grant funds were used to produce these materials and the workshops.

III. MITIGATING FACTORS

The following mitigating factors are present in this matter::

1. Lt. Gov. Owen sought advice from then-Senate Counsel Tony Cook regarding the preparation and distribution of an April 2, 1997 letter to members of the legislature on the subject of I-683.
2. Because Lt. Gov. Owen is recognized in the legislature as knowledgeable in the area of substance abuse and his opinion on this topic is routinely sought out, he received numerous inquiries relative to I-683/685 from legislators, the media and others.
3. Lt. Gov. Owen took reasonable steps to keep the MAEE activities separate from any potential campaign activities by cautioning his staff and by drawing a distinction between permissible and impermissible materials for the workshops and the conduct of the presenters, including, but not limited to:
 - (1) Rejecting workshop materials which directly advocated a position on I-685; and
 - (2) Reducing the role of a zealous anti-drug presenter at the workshops.

4. Lt. Gov. Owen has been speaking out on substance abuse and has been engaged in anti-drug prevention efforts with children for many years.
5. Lt. Gov. Owen has no prior violations of RCW 42.52.
6. Lt. Gov. Owen cooperated in the investigation of these complaints.

IV. STIPULATED CONCLUSIONS OF LAW

1. The Executive Ethics Board has jurisdiction over Lt. Gov. Owen and the subject matter of this complaint.
2. Although Lt. Gov. Owen believes that the normal and regular conduct of the Lieutenant Governor's Office includes drug prevention efforts as part of his administration, he agrees to stipulate that a reasonable person could find the appearance of a violation of RCW 42.52.180 regarding the letters and press releases which are the substance of the reasonable cause determinations referenced in paragraphs 4.(a), (b) and (c).

V. STIPULATED SETTLEMENT

1. Based on the foregoing stipulated facts and conclusions of law, Lt. Gov. Owen agrees to accept and abide by a letter of direction from the Board. The letter will give additional direction beyond that already provided in the statute and rules for the future conduct of the Lieutenant Governor as it relates to assisting a campaign for the promotion of or opposition to a ballot proposition under RCW 42.52.180.

Lt. Gov. Owen agrees to reimburse the Board for costs incurred in the investigation of these complaints in the amount of \$7,000 (seven thousand dollars). The check for \$7,000 shall be made payable to the *State of Washington* and is due within 90 days of acceptance of this Stipulation by the Board.

2. Lt. Gov. Owen understands that this Stipulation is not final and binding on him or the Board unless and until the Executive Ethics Board enters an Order accepting it. Lt. Gov. Owen understands that the Board is free to approve, reject or modify this Stipulation.
3. If the Board accepts this Stipulation and Order, then the Board agrees to release and discharge Lt. Gov. Owen from any and all ethics proceedings under the Board's jurisdiction arising out of Executive Ethics Board Complaints #97-17 and 97-26.
4. Lt. Gov. Owen understands that this agreement is between Lt. Gov. Owen and the Board and does not purport to settle any other claims between Lt. Gov. Owen and the state of Washington, or any other third party which are now in existence or may be filed in the future.
5. If the Board accepts this Stipulation, Lt. Gov. Owen knowingly and voluntarily waives his right to a hearing in this matter.
6. If the Board accepts this Stipulation, Lt. Gov. Owen agrees to release and discharge the Board, its officers, agents, and employees from all claims, damages and causes of action arising out of Executive Ethics Board Complaints #97-17 and 97-26 and this Stipulation.
7. If the Board proposes to modify this Stipulation, Lt. Gov. Owen has the right to approve or reject the modification.
8. If the Board rejects this Stipulation, or proposes to modify this Stipulation and Lt. Gov. Owen rejects the modification, then the normal administrative process will continue and this Stipulation will be void and inadmissible for any purpose in this proceeding or any other proceeding involving Lt. Gov. Owen, the state, and/or third parties aligned with the state.

I, LT. GOV. BRAD OWEN, hereby certify that I have read this Stipulation and Order in its entirety; that I have had the option of reviewing this agreement with legal counsel so that I

fully understand its legal significance and consequence; that I fully understand and agree to all of it; and that I have signed it voluntarily.



LT. GOV. BRAD OWEN

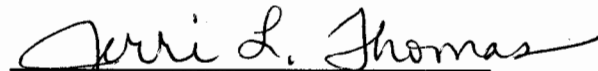
12/18/98
Date



ANDREW HUFF

Attorney for Lt. Gov. Brad Owen
12-18-98
Date

Stipulated to and presented by:



JERRY L. THOMAS

Senior Counsel

12/18/98
Date

ORDER

Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON

EXECUTIVE ETHICS BOARD, HEREBY:

ACCEPT this Stipulation in its entirety;

REJECT this Stipulation in its entirety;

*MODIFY this Stipulation. This Stipulation will become the Order of the Board

if the following modifications are approved by Lt. Gov. Owen:

DATED this 21st day of December, 1998.

PAUL GILLIE, Chair

Janet Lim for
JANET LIM, Vice Chair

Janet Lim for
REV. CHERYL ROHRET, Member (per telephone authorization)

Janet Lim for
GWENDOLYN FOYD, Member (per telephone authorization)

Janet Lim for
SUTAPA BASU, Member (per telephone authorization)