



Washington State Executive Ethics Board

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PRELIMINARY INVESTIGATION AND BOARD DETERMINATION

CASE NUMBER: 2014-047
DATE: September 12, 2014
RESPONDENT: Chris Voigt, Executive Director
EMPLOYING AGENCY: Washington State Potato Commission

I. INVESTIGATION

A. Background and Summary of Complaint

On July 10, 2014, the Executive Ethics Board (Board) received an anonymous complaint alleging that Chris Voigt, Executive Director, Washington State Potato Commission (WSPC) may have violated the Ethics in Public Service Act by using state resources to assist in a political campaign.

B. Scope of Preliminary Investigation and Relevant Facts

Board staff reviewed documents received in the complaint, including several emails and reviewed the response from the respondent.

Based upon the preliminary investigation, staff offer the following:

1. Mr. Voigt was working as the Executive Director of the Washington State Potato Commission, a state agency, for all times pertinent to this investigation.
2. The complaint alleges that Mr. Voigt sent and received several emails in an effort for him to assist two political candidates.
3. Mr. Voigt does not deny sending/receiving the emails. He felt that the few emails sent/received were allowed under his agency policy and the Ethics Act. He was not aware that using state resources for political purposes was one of those strictly prohibited uses.
4. The WSPC policy regarding the use of state resources states the following:

Private Use of Commission Equipment – While Commission property is not intended for private use, State de minimis rules and WSPC policies allow that some personal use of phones, copiers, computer email and other equipment is permissible if it does not cost the Commission in supplies or staff time. Employees issued

that would prohibit him from allowing the use of his official title in campaign material. He indicated that he further checked with some of his trusted associates in lobbying and government affairs. He was shown examples of elected officials using their titles in campaign materials. He was not aware of the legal distinction between “elected officials” and “non-elected state officials.”

13. The evidence shows that on May 19, 2014, the Dan Newhouse campaign posted a comment made by Mr. Voigt to the Dan Newhouse – U.S. Representative Campaign Facebook page. The post quotes Mr. Voigt’s support for Dan Newhouse and concludes with, “Thank you Chris!!!” Prior to the quote Mr. Newhouse writes, “I am please to receive this strong endorsement of my campaign from Chris Voigt of the Washington State Potato Commission”. Nowhere in his quote does Mr. Voigt identify himself as working for the WSPC or anyone else.
14. Mr. Voigt indicated in his response that he did give permission to the Dan Newhouse campaign to use his quote but, was never asked his permission to use his state title or photo.
15. On Tuesday September 9, 2014, EEB staff received an email which included a 71 page document containing approximately 158 additional emails that were either sent or received by Mr. Voigt using his state email account. All of the emails were related to the support and promotion of the Dan Newhouse for US Representative Campaign. Many of these emails were not clearly readable and EEB staff requested that a paper copy be sent to the EEB. On Thursday, September 11, 2014, a package was received from UPS containing the 71 pages of emails.

II. APPLICABLE LAW AND ANALYSIS

The complaint alleges violations of the following sections of the Ethics in Public Service Act:

RCW 42.52.160(1) – Use of persons, money, or property for private gain, 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.

WAC 292-110-010 Use of state resources states, in part:

- (1) **Statement of principles - stewardship.** The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Responsibility and accountability for the appropriate use of state resources ultimately rests with the

individual state officer or state employee, or with the state officer or state employee who authorizes such use. State officers and employees should ensure that any personal use of state resources permitted by this section is the most efficient in terms of overall time and resources.

(2) The following are permitted uses:

- (a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.
- (b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.
- (c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.
- (d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:
 - (i) There is little or no cost to the state;
 - (ii) Any use is brief;
 - (iii) Any use occurs infrequently;
 - (iv) The use does not interfere with the performance of any officer's or employee's official duties; and
 - (v) The use does not compromise the security or integrity of state property, information, or software.

(3) Permitted use of computers, electronic mail, the Internet, and other technologies.

A state officer or employee may use equipment such as the telephone, the Internet, and electronic mail provided such use conforms to ethical standards under subsection (2) of this section, and the use is not otherwise prohibited under subsection (5) of this section...

(5) Prohibited uses.

- (a) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private business, or a political party, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee;
- (c) Any use 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. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);
- (d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);
- (e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and

(f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

RCW 42.52.180 – Use of public resources for political campaigns.

(1) 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 constitutes 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.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(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;

(c) The maintenance of official legislative web sites throughout the year, regardless of pending elections. The web sites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative web sites of legislators seeking reelection shall not be altered between June 30th and November 15th of the election year. The web site shall not be used for campaign purposes;

(d) Activities that are part of the normal and regular conduct of the office or agency;
and

(e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions

Commission vehicle and cell phones will have a fixed amount deducted from each pay check to cover permitted personal use.

5. The complaint also alleges that Mr. Voigt used a state vehicle to transport campaign signs to a fellow political supporter's home.
6. Again Mr. Voigt does not deny that he did transport some political signs in his state assigned vehicle to another supporter's home. He stated in his response that he believed that because a fixed amount of money is deducted from his paycheck he was allowed de minimis personal use.
7. The WSPC policy regarding the use of assigned state vehicles states in part:

Motor Vehicle Usage, Maintenance, and Safe Driving Policy – Designated WSPC employees will be provided a vehicle by WSPC. The WSPC pays for purchase/lease, licenses, insurance, fuel and maintenance of the vehicles. The employee is responsible for having the vehicle serviced and maintained in good appearance. Employees issued WSPC vehicles may use the vehicle to get to and from the office, home, and for personal errands during the workday. Except for those situations, where personal use is prohibited. (Emphasis added)

8. Mr. Voigt has \$33 per pay period deducted from his salary for his personal de minimis use of his state vehicle.
9. Email evidence would support the allegation that Mr. Voigt transport political signs in his state assigned vehicle on two occasions to the same supporter. On June 9, 2014 Mr. Voigt transported two political signs and dropped them off at a supporters residence and then either later on the 9th or in the morning of the 10th he delivery a "few more".
10. The complaint also alleges that Mr. Voigt used his state position and title in support of the Dan Newhouse for Congress campaign.
11. The evidence shows that on May 23, 2014, The Daily Sun News, a local newspaper published an article titled, "Newhouse names county campaign chairs". In the article Chris Voigt is identified as one of the two Grant County campaign chairs. As a part of his identification his current occupation is listed as Executive Director, Washington Potato Commission. The other nine (9) Chairs are also identified with their current job title. Nowhere in the article is Mr. Voigt quoted.
12. Mr. Voigt acknowledges that he gave permission to the Newhouse campaign to use his name and official state title in the news release but, indicated that he was not aware of any restrictions on the use of his title in campaign materials. Mr. Voigt did however, do some checking before giving his consent. He checked the Public Disclosure Commission's website. He indicates that he was unable to find anything on their website

that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

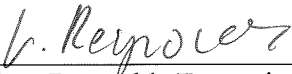
(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17A.555.

There is evidence that Mr. Voigt used state resources to assist in the campaigns of United States Senator Patty Murray and Dan Newhouse for Congress by sending and receiving emails from the state email system and using a state vehicle to transport political campaign signs in support of Dan Newhouse to a Dan Newhouse supporter in violation of RCW 42.52.160, WAC 292-110-010, and RCW 42.52.180.

II. RECOMMENDATION

WAC 292-100-050(2) provides that upon receipt of the board staff's preliminary investigation report and recommendation, the board shall determine whether or not there is reasonable cause to believe that a violation of chapter 42.52 RCW has occurred.

Based on the preliminary investigation, the Executive Director recommends that the Board enter a finding of reasonable cause to believe a violation or violations of RCW 42.52 have occurred, and the penalty may be more than \$500.



Kate Reynolds Executive Director
Executive Ethics Board

V. BOARD DETERMINATION AND ORDER

Based upon the preliminary review, we, the Washington State Executive Ethics Board determine the following:

Dismissal

Pursuant to RCW 42.52.425, IT IS HEREBY ORDERED that the complaint is DISMISSED for the following reason:

_____ Any violation that may have occurred is not within the jurisdiction of the board

_____ The complaint is obviously unfounded or frivolous

_____ Any violation that may have occurred does not constitute a material violation because it was inadvertent and minor, or has been cured, and, after consideration of all of the circumstances, further proceedings would not serve the purposes of this chapter.

Reasonable Cause

Pursuant to RCW 42.52.420, IT IS HEREBY ORDERED

_____ There IS reasonable cause to believe that violation(s) of RCW 42.52 have been or are being committed and the penalty may be:

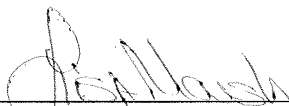
GREATER THAN \$500

\$500 OR LESS

NONMONETARY

_____ There IS NOT reasonable cause to believe that violation(s) of RCW 42.52 have been or are being committed and the complaint is CLOSED.

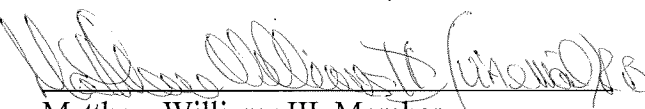
DATED this 12th day of September, 2014

 RB


Lisa Marsh, Chair (VIA EWSO)

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Anna Dudek Ross, Vice-Chair

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Matthew Williams III, Member

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Samantha Simmons, Member (VIA EWSO)

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Sumeer Singla, Member (VIA EWSO)