

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)
)
) **STIPULATED FINAL ORDER**
JOHN A. KITZHABER)
) **CASE NO. 14-190EDT**
)
)
_____)

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Dr. John Kitzhaber.

2. JURISDICTION: At all material times, John Kitzhaber was the Governor of Oregon. Dr. Kitzhaber was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. STIPULATED FACTS:
 - A. John Kitzhaber was the Governor of Oregon from January 2011 to February 2015, when the events relevant to this case occurred.

 - B. Dr. Kitzhaber listed 3E Strategies, the company owned by his partner, Cylvia Hayes, as a source of income as required in ORS 244.060(3) on his annual verified Statements of Economic Interest filed on April 15 in 2012, 2013, and 2014, which required disclosure of his financial interests for 2011, 2012, and 2013.

- C. 3E Strategies was a business with which Dr. Kitzhaber, through Ms. Hayes, was associated, as defined in ORS 244.020(3).
- D. During the period 2011-2013, 3E Strategies received payment to advocate, write, and speak on issues of clean energy, ocean acidification, and a clean economy. The payments were received from the following sources: the Clean Economy Acceleration Fellowship through the Clean Economy Development Center (2011, 2012), the Energy Foundation (2013), Resource Media (2013), and Demos (2013).
- E. During calendar year 2011, Dr. Kitzhaber was met with potential conflicts of interest when making policy decisions and public appearances in his official capacity as Governor of Oregon where those policies and appearances overlapped with the issues for which 3E Strategies was receiving payment for its advocacy, writing, and speaking. Dr. Kitzhaber was met with potential conflicts of interest because his policy decisions and public appearances could have resulted in a financial benefit or detriment to 3E Strategies.
- F. Dr. Kitzhaber contends that he failed to perceive the potential conflicts of interest described in Paragraph E because he understood that Ms. Hayes's work, through 3E Strategies, for various non-profit organizations was not directed at trying to shape or influence state policy but, rather, to be an educator and storyteller in those areas to which she had committed her professional career. Dr. Kitzhaber also contends that he conferred with counsel to the Office of the Governor regarding Ms. Hayes's work, through 3E Strategies, for various non-profit organizations, and that he was not advised that any of his policy decisions or public appearances presented conflicts of interest arising from 3E Strategies' sources of income. Moreover, Dr. Kitzhaber contends that he referred matters regarding potential conflicts arising from Ms. Hayes's work to general counsel and believed Ms. Hayes would comply with general counsel's advice.

- G. When met with a potential conflict of interest, ORS 244.120(2) requires an elected public official to make a public announcement of the nature of the potential conflict of interest prior to taking any official action on the matter.
- H. When Dr. Kitzhaber was met with the potential conflicts of interest described in paragraph E, he did not make public announcements of the nature of his potential conflicts of interest as required by ORS 244.120(2) prior to taking action in his official capacity as Governor on the matters.
- I. Dr. Kitzhaber's failure to make public announcements—through press releases, for instance—of the nature of his potential conflicts of interest related to 3E Strategies during 2011 constituted a violation of ORS 244.120(2).
- J. During calendar year 2012, Dr. Kitzhaber was met with potential conflicts of interest when making policy decisions and public appearances in his official capacity as Governor of Oregon where those policies and appearances overlapped with the issues for which 3E Strategies was receiving payment for its advocacy, writing, and speaking. Dr. Kitzhaber was met with potential conflicts of interest because his policy decisions and public appearances could have resulted in a financial benefit or detriment to 3E Strategies.
- K. Dr. Kitzhaber contends that he failed to perceive the potential conflicts of interest described in Paragraph J because he understood that Ms. Hayes's work, through 3E Strategies, for various non-profit organizations was not directed at trying to shape or influence state policy but, rather, to be an educator and storyteller in those areas to which she had committed her professional career. Dr. Kitzhaber also contends that he conferred with counsel to the Office of the Governor regarding Ms. Hayes's work, through 3E Strategies, for various non-profit organizations, and that he was not

advised that any of his policy decisions or public appearances presented conflicts of interest arising from 3E Strategies' sources of income. Moreover, Dr. Kitzhaber contends that he referred matters regarding potential conflicts arising from Ms. Hayes's work to general counsel and believed Ms. Hayes would comply with general counsel's advice.

- L. When Dr. Kitzhaber was met with the potential conflicts of interest described in paragraph J, he did not make public announcements of the nature of his potential conflicts of interest as required by ORS 244.120(2) prior to taking action in his official capacity as Governor on the matters.
- M. Dr. Kitzhaber's failure to make public announcements of the nature of his potential conflicts of interest related to 3E Strategies during 2012 constituted a violation of ORS 244.120(2).
- N. During calendar year 2013, Dr. Kitzhaber was met with potential conflicts of interest when making policy decisions and public appearances in his official capacity as Governor of Oregon where those policies and appearances overlapped with the issues for which 3E Strategies was receiving payment for its advocacy, writing, and speaking. Dr. Kitzhaber was met with potential conflicts of interest because his policy decisions and public appearances could have resulted in a financial benefit or detriment to 3E Strategies.
- O. Dr. Kitzhaber contends that he failed to perceive the potential conflicts of interest described in Paragraph N because he understood that Ms. Hayes's work, through 3E Strategies, for various non-profit organizations was not directed at trying to shape or influence state policy but, rather, to be an educator and storyteller in those areas to which she had committed her professional career. Dr. Kitzhaber also contends that he conferred with counsel to the Office of the Governor regarding Ms. Hayes's work, through 3E Strategies, for various non-profit organizations, and that he was not

advised that any of his policy decisions or public appearances presented conflicts of interest arising from 3E Strategies' sources of income. Moreover, Dr. Kitzhaber contends that he referred matters regarding potential conflicts arising from Ms. Hayes's work to general counsel and believed Ms. Hayes would comply with general counsel's advice.

- P. When Dr. Kitzhaber was met with the potential conflicts of interest described in paragraph N, he did not make public announcements of the nature of his potential conflicts of interest as required by ORS 244.120(2) prior to taking action in his official capacity as Governor on the matters.
- Q. Dr. Kitzhaber's failure to make public announcements of the nature of his potential conflicts of interest related to 3E Strategies during 2013 constituted a violation of ORS 244.120(2).
- R. During the period January 2011-February 2015, Dr. Kitzhaber was credited frequent flier miles on one known occasion when he traveled representing state government. This settlement resolves any and all claims that Dr. Kitzhaber may have received frequent flier miles when representing state government.
- S. ORS 244.040(1) prohibits any public official from using their official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses. Pursuant to ORS 292.230(2), the use of travel awards obtained while conducting state business for personal travel constitutes personal gain from state employment and violates ORS 244.040.
- T. Dr. Kitzhaber's acceptance of frequent flier miles earned while representing state government constituted a violation of ORS 244.040(1).

U. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$20,000 as a result of these four (4) violations.

V. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 244.040(1) and ORS 244.120(2).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

A. On 7/14/17, the Commission considered information in the preliminary review phase and found cause to initiate an investigation of these matters. Dr. Kitzhaber, through his attorney, indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.

B. John Kitzhaber will pay a civil penalty, as authorized by ORS 244.350, in the amount of \$1000 in order to settle and compromise this matter.

C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against John Kitzhaber within the scope of the above-referenced proceedings.

D. John Kitzhaber will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into

by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

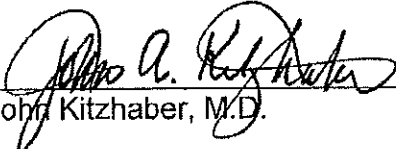
6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, John Kitzhaber agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, John Kitzhaber agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.



John Kitzhaber, M.D.

7 November 2011
Date

Daniel T. Golden, Chair
Oregon Government Ethics Commission

Date