



Washington State Executive Ethics Board

2425 Bristol Court SW • PO Box 40149 • OLYMPIA WA 98504-0149

(360) 664-0871 • Fax (360) 586-3955 • <http://www.ethics.wa.gov>

PRELIMINARY INVESTIGATION AND BOARD DETERMINATION

CASE NUMBER: 09-054
DATE: July 9, 2010
RESPONDENT: Jorge Gilbert
EMPLOYING AGENCY: The Evergreen State College

I. INVESTIGATION

A. Background and Summary of Complaint

The Executive Ethics Board (Board) received a referral from the Office of the State Auditor (Auditor) alleging that Jorge Gilbert, then an employee with the Evergreen State College (TESC), may have misappropriated public funds, entered into contracts on behalf of TESC with a company owned by his family members, received financial gain from his position with the college and used state resources to benefit himself and his family members. The Board reviewed the referral and issued a complaint on September 11, 2009.

B. Scope of Preliminary Investigation and Relevant Facts

Board staff reviewed the referral, agency records, information provided by Mr. Gilbert and other documents gathered during the preliminary investigation. Board staff interviewed Maryam Jacobs, Michael Clifthorne and Lorri Moore from the Evergreen State College. The facts appear to be as follows:

1. Jorge Gilbert was a faculty member at the Evergreen State College between 1988 and December 2009. As an instructor, he offered courses related to South American history, politics, economics and his programs offered a trip to Chile in the spring.
2. Mr. Gilbert initiated the "Field School to Chile" program in 1995. In December, 1997, Mr. Gilbert incorporated a non-profit organization with the Washington Secretary of State's office, UBI 601839609, using his then wife, Renee Bourbeau, as the name of the agent and his home address as the business' address. The registration for this organization expired on December 12, 2008 and it was dissolved on April 1, 2009. Thurston County Superior Court documents indicate that Mr. Gilbert and Ms. Bourbeau obtained a dissolution of marriage under docket # 00-03-00562-9 on April 24, 2002.
3. For the times pertinent to this investigation, Mr. Gilbert took the following trips to Chile that were associated with his studies abroad program:

Year
2005

No. Students
10

2006	11
2007	no trip
2008	15

4. Mr. Gilbert used a company called "DISAL" to assist him with travel and lodging arrangements in Chile for his Field School to Chile program. According to Mr. Gilbert, he selected DISAL based upon the health and safety of his students, the exclusiveness of the resort (no other guests occupied it at the time his students were there) and the presence of security guards. The resort also included prohibitions regarding the use of drugs and alcohol by students and worked with student dietary requirements, including vegetarian diets that are not common in Chile.
5. Information gathered from the DISAL website and other on-line sites indicate that DISAL is primarily dedicated to the rental and sale of portable chemical toilets, has a home office in Santiago, Chile and 25 branches throughout Chile as well as subsidiaries in Peru and Paraguay. There is no indication that this company provides concierge travel arrangements or any type of lodging arrangements for groups or other tourists.

Company literature states that the company began in 1969 when Joseph Dieguez Martinez started the business with the removal of waste from companies and supermarkets with the aim of using the edible waste to feed pigs. DISAL grew rapidly between 1987 and 1989 to become an important player in the solid waste removal market. In 1981, brothers Raul and Victor Dieguez Martinez joined the company and began evaluating the idea of renting portable toilets in Chile. In 1991 the company consolidated with the incorporation of partners Carmen Dieguez and Sebastian Gilbert Ceballos. Sebastian Gilbert Ceballos is Jorge Gilbert's brother. Sebastian Gilbert Ceballos is married to Maria Cristina Dieguez, sister to the Dieguez Martinez brothers.

6. Information regarding DISAL indicated that Mr. Gilbert's brother, Sebastian Gilbert Ceballos, is a Director within DISAL. Mr. Gilbert stated that while his brother works in the company, he did not consult with him regarding financial matters related to his students. However, Mr. Gilbert did work directly with his sister-in-law, who actually signed the contract between Mr. Gilbert and DISAL.
7. On April 4, 2008 Maria Cristina Dieguez, Program Coordinator for DISAL, and Jorge Gilbert signed a "Memorandum of Agreement between Jorge Gilbert and DISAL-Chile" delineating that DISAL agreed to operate the educational program know as "Field School to Chile 2008" in Santiago, Chile. This agreement stated that Jorge Gilbert would provide the academic portion of the program and DISAL was responsible for making all of the in-country transportation arrangements, providing room and board for students and faculty for the period of April 5 – May 5, 2008.
8. For the services rendered per this agreement, Jorge Gilbert would pay DISAL \$31,500 (US), which included room and board for 15 students for 30 days, classrooms and taxes required by Chile; the total cost would be \$70 per student per day. Mr. Gilbert had the students pay him directly for the cost of the trip, which was \$ 3,150 for the 2008 trip, including the cost of the plane ticket. For students making their own flight arrangements, the cost of the trip was \$2,150. Mr. Gilbert purchased tickets for the students from a travel agent of his choosing.

9. While in Santiago, Chile, the students stayed at the Sports Club Officials of the Comptroller General, a resort apparently owned through an association of employees of the Chilean government.
10. Mr. Gilbert received \$11,950 via a petty cash voucher from TESC for program and student expenses for the Field School in Chile program in 2005; \$10,928 in 2006; and \$13,150 in 2008. These funds were to pay his personal travel expenses and provide him with per diem and lodging while he was abroad for the 30-day program. According to TESC, instructors who receive funds for lodging must provide receipts along with their travel voucher. Mr. Gilbert did not provide itemized receipts for his personal lodging and expenses to validate the expenditure of funds.
11. According to TESC Academic Financial Support Services Manager, the college collects funds from the students who will be traveling abroad. These funds are deposited at the Evergreen Cashier's office and are monitored through the college's finance system. The faculty initiates an agreement with a vendor abroad and the agreement is written up and sent to the vendor for signature. The agreement is supposed to be returned to Evergreen where, prior to the 2009-2010 academic year, it was signed by the Vice President for Finance and Administration. Then payment is made according to the terms of the agreement; most often the payment was made via wire transfer into the vendor's foreign bank account.

In the past, TESC had allowed the students to pay the vendor directly as sometimes the charges varied depending on what the students were doing once they arrived in the foreign country. For example, some may have had home stay arrangements and some may not and also home stays could be charged at various amounts. Occasionally the faculty would use a tour company to facilitate the travel and the students would pay the tour company directly. In the situation at hand, Mr. Gilbert indicated that the students would be paying the vendor directly for the services provided. In reality, the students paid Mr. Gilbert directly, not the vendor.
12. On November 13, 2008; TESC commenced a special audit of the academic travel programs of Jorge Gilbert because: 1) Mr. Gilbert did not follow the college's cash handling policies; 2) Mr. Gilbert used a travel agency, unbeknownst to the college, to purchase the students' tickets, but the agency did not buy the tickets, instead the funds were lost when the agency went bankrupt; and 3) Mr. Gilbert would not provide documents and financial records requested by an Academic Dean.

The audit highlighted the following issues:

- Records indicated that Mr. Gilbert may have overcharged students for the study abroad program. The audit concluded that he personally profited from this over charging in the amount of \$50,000.
- Mr. Gilbert had students deposit travel funds into his personal bank account. College policies allowed students to deposit funds into third party accounts, but not an instructor's personal account.
- Mr. Gilbert would not provide an itemized listing of travel expenses after repeated requests by the college. Instead, he produced a one-page invoice from DISAL that listed all costs at a macro-level.
- A review of the files in the Academic Budgeting office indicated that Mr. Gilbert used DISAL for all of his trips to Chile. No contracts were found between the college and DISAL and each year, Mr. Gilbert always submitted a one-page macro-level invoice from DISAL.
- Mr. Gilbert had not provided TESC with all of the student waivers required for overseas travel.
- The Financial Manager of Academic Budget was not aware that Mr. Gilbert's family was involved in the management and leadership of DISAL, the company he used to coordinate all of the student's in-county travel, room and board while in Chile.
- One of the prior academic deans had travelled to Chile in 2004 with Mr. Gilbert and his class had visited DISAL and met Mr. Gilbert's family members who were introduced to him as owners of the company.
- An audit of Mr. Gilbert's personal financial records revealed four accounts:
 - 1) Field School to Chile account. This account was used to deposit student funds received from Evergreen students and was held at West Coast Bank. The account was opened 9/24/04 and Jorge Gilbert was the sole signatory on the account. The account was registered as tax-exempt.
 - 2) Chile Relief Account. Mr. Gilbert was the acting Chilean Consul in Olympia. Mr. Gilbert was the only signatory for the account. It was opened 6/14/02 and registered as an "unincorporated" business account. A search of Washington businesses did not reveal any business matching this description. This account consisted of deposits of checks written to the "Chile Consulate" and cash. Withdrawals from this account exactly matched deposits into Mr. Gilbert's personal savings and checking accounts. The auditor could not find any evidence that any of these funds were being sent to the Chilean government or any other outside party. This information was provided to local law enforcement for further investigation.
 - 3) Personal checking.

4) Personal savings. The audit of this account revealed many large deposits and withdrawals. For example, on 4/19/05 there is a \$85,000 withdrawal to DISAL. On 5/24/05 there is a \$90,000 withdrawal to an investment account. On 12/5/05, Mr. Gilbert withdrew \$100,000 to purchase a CD. On 5/22/06, Mr. Gilbert transferred \$50,000 to an investment account. On 5/22/07, he withdrew \$8,500 to send to DISAL. Interestingly, the 2007 trip had not been approved by the college. The last entry on the account at the time it was audited showed a balance of \$142,873.72 as of 9/17/08.

- A review of three trips to Chile through the academic program revealed that at least prior to the 2008 trip Mr. Gilbert had been told by the Dean's office and Academic Budgeting office that he could not collect fees directly from students; that all funds had to be deposited to the College. Following these exchanges, Mr. Gilbert paid \$1200. to the college for all of the deposits he had collected from the students (\$150 per student). While Mr. Gilbert indicated that he was not collecting monies from the students directly, and that they were instructed to deposit the funds into a "DISAL" account, the evidence indicates that the "DISAL" account was really the Field School to Chile account managed solely by Mr. Gilbert. Mr. Gilbert made a payment to DISAL in 2008 for the amount of \$31, 500 (\$70 per student (15 students) per day x 30 days).
- No contract was found to be in place between DISAL and Evergreen prior to the trips being taken as was required by college policy. In 2008, after the trip was over, Mr. Gilbert submitted a contract that he had signed although he was not authorized to enter into such an agreement on behalf of the college. The agreement had not been signed or reviewed by the Academic Dean's office, the Provost's office the Academic Budget office or the Vice President of Finance as required.
- An audit of the financial records for the 2006 trip to Chile indicated the Mr. Gilbert received a total of \$42,193.00 from the students and TESC, but there was only one payment made to DISAL in the amount of \$3,863.00. Other itemized expenses for this trip totaled \$15,476.97, leaving \$26, 716.03 unaccounted for.
- An audit of the financial records for the 2005 trip to Chile showed that Mr. Gilbert received \$31,467.00 from the college and students for the trip. He made one payment to DISAL in the amount of \$2,155.00. Other trip expenses totaled \$9066.15, leaving \$20,245.85 unaccounted for.

13. On July 14, 2009, eleven Evergreen students who had participated in the 2008 Field School to Chile trip with Mr. Gilbert sent a letter through a private attorney to TESC President, Dr. Purce seeking reimbursement from TESC for losses they incurred as a result of this trip. These students sought a total refund of \$22,816 for excessive daily chares and a partial tuition refund because they claimed that Mr. Gilbert had not delivered the academic content that was promised.

14. On or about November 12, 2009, TESC, the United Faculty of Washington State, the United Faculty of Evergreen and Jorge Gilbert entered into a settlement agreement and release to resolve all disputes and claims relating to Mr. Gilbert's employment as an Evergreen College faculty member. As a result of this agreement, Mr. Gilbert would resign and retire, effective December 15, 2009, receiving all salaries and benefits up to that point. Mr. Gilbert would also reimburse the

college \$23,579 for monies refunded by the college to the students who had participated in the 2008 Field School to Chile program.

II. APPLICABLE LAW AND ANALYSIS

The Ethics in Public Service Act, chapter 42.52 RCW, governs the conduct of state officers and employees. A state employee is restricted from having an interest or engaging in an activity or transaction where there is a conflict with the performance of official duties. 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.

The Ethics and Public Service Act, RCW 42.52.030(1) states:

No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

A state officer or employee is prohibited under RCW 42.52.070 from using his or her position to "secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons."

Jorge Gilbert violated the Ethics in Public Service Act when he

- ignored college procedures requiring obtaining waivers for all students travelling abroad placing the students at risk
- entered into contracts regarding the study abroad program offered through the Evergreen State College without the college's permission or knowledge
- entered into contracts with companies owned or managed by family members
- deposited student funds directly into his personal bank accounts contrary to college policy and benefitting him financially.

III. RECOMMENDATION

WAC 292-100-050(2) provides that upon receipt of the board staff's 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.

Board staff recommends that the Board find reasonable cause to believe that a violation of the Ethics in Public Service Act occurred and the amount of the civil penalty is greater than \$500.



Melanie de Leon,
Executive Director
Executive Ethics Board

IV. DETERMINATION

Based upon the above analysis and conclusions, and pursuant to RCW 42.52.420, we, the State of Washington Executive Ethics Board, determine the following:

Dismissal

- 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
 - Cured

Reasonable Cause

- There IS reasonable cause to believe that a violation of the Ethics in Public Service Act has been or is being committed.
- There IS NOT reasonable cause to believe that a violation of the Ethics in Public Service Act has been or is being committed.

V. POTENTIAL PENALTY

- We believe that one or more violations of RCW 42.52 may have occurred, and the penalty may be MORE THAN \$500.00.
- We believe that one of more violations of RCW 42.52 may have occurred, and the penalty may be LESS THAN \$500.00.

VI. CONCLUSION

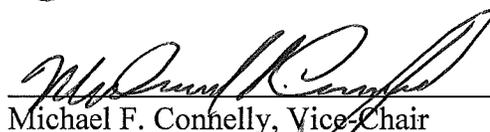
- This matter is hereby dismissed based upon the Dismissal Determination found above.
- Upon finding there IS reasonable cause to believe that violation(s) of RCW 42.52 have occurred, IT IS HEREBY ORDERED that the Executive Director of the Board schedule a public hearing on the merits of the complaint.

_____ Upon finding there IS reasonable cause to believe that violation(s) of RCW 42.52 have occurred and that penalty and costs no greater than \$500.00 will be assessed for these violations, IT IS HEREBY ORDERED that the Executive Director of the Board schedule a brief adjudicative proceeding under WAC 292-100-190 on the merits of the complaint.

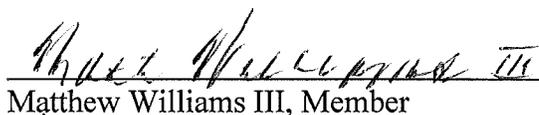
_____ Upon finding there IS NOT reasonable cause to believe that violation(s) of RCW 42.52 have occurred, IT IS HEREBY ORDERED that the complaint is DISMISSED

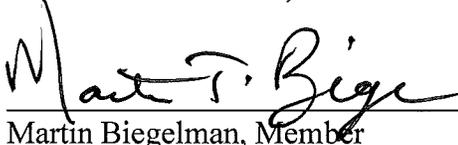
DATED this 9th day of July, 2010.


Linnaea Jablonski, Chair


Michael F. Connelly, Vice-Chair


Neil Gorrell, Member


Matthew Williams III, Member


Martin Biegelman, Member

