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Oregon
Kate Brown, Governor

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May 20, 2016

Keith Heck
c/o Tracy McGovern, Attorney at Law
Frohnmayer, Deatherage, et al.
2592 East Barnett Road
Medford, OR 97504

RE: Keith Heck
Case No. 15-104XDG

Dear Mr. Heck:

Enclosed is a copy of the stipulated final order, which has been signed by all parties. The terms in the settlement require a letter of education as sanction. Once the letter of education has been issued, the matter is concluded and the case is closed.

Please contact our office in the future if you have questions concerning your case or compliance with the laws under the jurisdiction of the Commission.

Sincerely,

Ronald A. Bersin
Executive Director

Enclosure

RAB/dg

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of	)	
	)	
	)	**STIPULATED FINAL ORDER**
Keith Heck	)	
	)	**CASE NO. 15-104XDG**
	)	

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges in the above case by the Oregon Government Ethics Commission (Commission) against Keith Heck.

2. JURISDICTION: At all material times, Keith Heck was a member of the board of county commissioners for Josephine County. As the governing body of a public body, the members of the board of county commissioners are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 to ORS 192.685.

3. STIPULATED FACTS:

   A. ORS 192.660 contains the limited topics that a governing body of a public body is authorized to consider in executive session, once all the statutory prerequisites are satisfied.

   B. On the advice of legal counsel, Keith Heck participated in an executive session on 1/7/15 when a discussion took place regarding possible repercussions if the Sheriff took certain personnel actions. The statutory authority cited for this topic in County records was ORS 192.660(2)(h), to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

C. On the advice of legal counsel, Keith Heck participated in an executive session on 1/14/15 when a discussion took place concerning a possible change to the County's vehicle use policy. The statutory authority cited for this topic in County records was ORS 192.660(2)(h), to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

D. On the advice of legal counsel, Keith Heck participated in an executive session on 1/21/15 when a discussion took place concerning the County's public records policy. This topic was described in County records as "Matters from Commissioners" and no provision of ORS 192.660(2) was cited as authorizing this topic. Mr. Heck contends that the mention of public records during executive session did not rise to the level of a discussion, but Mr. Heck acknowledges that public records policy is not an authorized topic for executive session.

E. On the advice of legal counsel, Keith Heck participated in an executive session held on 2/4/15 when a discussion took place of issues related to the proposed renewal of a Cable franchise agreement. The statutory authority cited for this topic in County records was ORS 192.660(2)(f) and (h), to consider information or records that are exempt by law from public inspection and to consult with legal counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

F. The long standing practice of Josephine County is that all executive sessions held by the Josephine County commission are scheduled, noticed and placed on the agenda by County legal counsel. Josephine County legal counsel historically included "Matters from Commissioners" as an agenda item for potential executive session topics. No provision of ORS 192.660 was publicly cited or published in County records as authorizing the topics that may have been discussed under this category at any given executive session since the practice began. After the preliminary review in this case was initiated, the governing body ceased the

practice of using the term "Matters from Commissioners" to describe topics that might be considered in executive session.

G. ORS 244.350(2) authorizes the Commission to assess civil penalties of up to $1,000 for each violation of ORS 192.660 unless the violation occurred when the governing body was acting on the advice of the public body's legal counsel.

H. It is the Commission's position that the results of a 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 one or more violations of ORS 192.660.

I. The Commission alleges the executive session discussions described in paragraphs 3B through 3E above were not allowed under any of the executive session provisions of Oregon Public Meetings law. By participating in these discussions, Mr. Heck violated ORS 192.660(2). Mr. Heck contends that only the discussion described in paragraph 3C violated the executive session provisions of Oregon Public Meetings law.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

A. On 10/23/15, the Commission acted to bring the investigative phase to a close by making a preliminary finding of four violations of ORS 192.660(2) as a prelude to a negotiated settlement or a contested case hearing. The Commission's action is not a final conclusion regarding violations of Oregon Public Meetings law by Keith Heck. Mr. Heck, through his attorney, indicated that he desired to negotiate a settlement of this matter. To conclude this matter, Mr. Heck agrees to the terms and conditions described in this stipulated final order.

B. The governing body was acting on advice of the public body's legal counsel when the executive sessions described in paragraphs 3B through 3E occurred. The governing body was also acting on advice of the public body's legal counsel when executive sessions were held on other occasions historically when topics described in County records as "Matters from Commissioners" or other impermissible topics may have been discussed. When acting on the advice of legal counsel, ORS 244.350(2)(b) prevents the Commission from imposing a civil penalty on Mr. Heck for violations of ORS 192.660(2).

C. While Mr. Heck does not agree with the Commission's allegations that he violated ORS 192.660 on each occasion described above, he agrees to the terms of this settlement in order to dispose of this matter.

D. Mr. Heck acknowledges that even though the public body's legal counsel may recommend a topic be discussed in executive session, it is his responsibility, as a member of the governing body of Josephine County, to ensure compliance with the executive session provisions of Oregon Public Meetings law.

E. Mr. Heck will receive a letter of education in lieu of a civil penalty for the conduct described in paragraph 3C above and for any instances historically when, under the advice of legal counsel, he may have participated in an executive session when a topic was discussed which may not have been authorized under ORS 192.660.

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

G. Mr. Heck 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, Mr. Heck 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, Mr. Heck 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.

Keith Heck — 4/15/16 Date

Charles S. Tauman, Chairperson
Oregon Government Ethics Commission — 5/20/16 Date