

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)
)
)
Terry Hsu)
)
)
_____)

STIPULATED FINAL ORDER

CASE NO. 22-105EHM

1. PURPOSE: The purpose of this stipulated final order is to release, settle and compromise any and all claims, allegations, and charges that have been asserted by the Oregon Government Ethics Commission (Commission) in the above-referenced case against Terry Hsu.

2. JURISDICTION: At all material times, Terry Hsu was a member and Chair of the Board of Directors (Board) for the Marion Soil and Water Conservation District (Marion SWCD). As such, Terry Hsu is a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. STIPULATED FACTS:
 - A. In early 2021, Board Chair Terry Hsu volunteered and acted as interim District Manager while Marion SWCD worked to find a District Manager. At the April 7, 2021 Marion SWCD Board meeting, the Board considered matters relating to compensation for Terry Hsu. At the July 7, 2021 Marion SWCD Board meeting, the Board considered and voted on matters relating to compensation for Terry Hsu.

 - B. An actual conflict of interest is defined in ORS 244.020(1) as arising when a public official, acting in their official capacity, participates in any action, decision, or recommendation, the effect of which would be to the private

financial benefit or avoidance of detriment for the public official. A potential conflict of interest is defined in ORS 244.020(13) as arising when a public official, acting in their official capacity, participates in any action, decision, or recommendation, the effect of which could be to the private financial benefit or avoidance of detriment for the public official.

- C. ORS 244.120(2) requires an elected public official or one serving on a board or commission, when met with an actual or potential conflict of interest, to publicly announce the nature of their conflict of interest. If the conflict of interest is potential, after making the public announcement, the official may continue to participate and vote on the matter giving rise to the conflict. If the conflict of interest is actual, after making the public announcement, the public official must refrain from participating in any discussion, debate, or vote on the issue out of which their conflict of interest arises.
- D. ORS 244.040(1) prohibits a public official from using or attempting to use their official position or office to obtain a financial benefit or avoid a financial detriment for the public official if the financial benefit or avoidance of detriment would not otherwise be available but for the public official's holding the official position.
- E. On April 7, 2021, Terry Hsu participated in the Marion SWCD Board's discussion on compensation for his volunteer time for Marion SWCD. Mr. Hsu advised the Board to consider what would be fair to him, "as well as what would be fair to employees and to the public and for perception." To compensate Mr. Hsu for his volunteer time would have a direct and certain financial impact on him; therefore, he was met with an actual conflict of interest. Because it was an actual conflict of interest, Mr. Hsu was required to make a public announcement of his actual conflict of interest and then refrain from participating in any discussion on the matter.

- F. At the April 7, 2021 Board meeting, Mr. Hsu announced a conflict of interest and recused himself from voting on his proposed compensation, but he did not refrain from participation in the discussion relating to his proposed compensation. Rather, he initiated the discussion of compensation for his volunteer time and commented on an amount that would be fair to him. By so doing, Terry Hsu violated ORS 244.120(2)(b).
- G. At the April 7, 2021 Board meeting, Terry Hsu attempted to use his official position to obtain a financial gain. He initiated the discussion of him receiving compensation for his volunteer time. The opportunity to seek such compensation would not otherwise be available to him but for the fact that he was a Board member. By using his position in this manner, Terry Hsu violated ORS 244.040(1).
- H. During the July 7, 2021 Marion SWCD Board meeting, Mr. Hsu participated in discussion and recommendations, and then voted on adoption of the interim Marion SWCD District Manager policy. This policy could financially impact him because the creation of this policy resulted in the District being able to hire Terry Hsu for the interim District Manager position. When the Board considered the policy at its July 7th meeting, Mr. Hsu failed to announce his potential conflict of interest prior to participating in the discussion and vote on the policy. By failing to announce his potential conflict of interest, Terry Hsu violated ORS 244.120(2)(a).
- I. At that July 7, 2021 meeting, after the policy was adopted, the Board then considered whether to hire Terry Hsu as the interim District Manager. Because the effect of the Board discussion and action would have a certain financial impact on Terry Hsu, he had an actual conflict of interest and was required to publicly announce his conflict of interest and then refrain from any participation in the discussion, debate or vote.

- J. While Mr. Hsu did announce a conflict of interest and recuse himself from the vote on his hiring and compensation, he did participate in the discussion and recommendations as to his salary and hours as interim District Manager. Mr. Hsu contends that in accordance with the newly adopted policy, Terry Hsu was no longer a voting member of the board at that time. Rochelle Koch was the newly appointed chair. The discussion and subsequent vote resulted in him being hired for seven weeks at a salary of \$11,900. By participating in the discussion and recommendations when he had an actual conflict of interest, Terry Hsu violated ORS 244.120(2)(b).
- K. At the July 7th Board meeting, Terry Hsu used or attempted to use his official to obtain a financial gain, by getting himself hired as the interim District Manager. The opportunity to be hired for this position, and the financial benefits that came with it, would not otherwise have been available to him but for the fact that Terry Hsu served on the Board and participated in adopting the District Manager policy and then recommending his own compensation. By taking these actions, Terry Hsu violated ORS 244.040(1).
- L. The actions described in paragraphs 3(E), (F), (H), (I) and (J) constitute one violation of ORS 244.120(2), with two equivalent actions. The actions described in paragraphs 3(G) and (K) constitute one violation of ORS 244.040(1), with two equivalent actions.
- M. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$5,000 for each violation of ORS 244.040 and each violation of ORS 244.120 set forth in paragraph 3(L).
- N. ORS 244.360 authorizes the Commission to order, in addition to the civil penalty imposed under ORS 244.350, a civil penalty equal to twice the amount Mr. Hsu realized as a result of these violations.

- O. 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 one violation of ORS 244.040(1) and one violation of ORS 244.120(2).
- P. Terry Hsu contends that his violations of ORS 244.120(2) and ORS 244.040(1) were not willful or intentional. In order to conclude this matter, however, Terry Hsu agrees to the terms and conditions in this Stipulated Final Order.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On July 8, 2022, the Commission considered information in the preliminary review phase of Case No. 22-105EHM and acted to find cause to initiate an investigation of this matter. Terry Hsu has indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- B. In lieu of a civil penalty, Terry Hsu will receive a letter of education, as authorized by ORS 244.350(5), in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, allegations and charges that have been asserted by the Commission in the above-referenced case against Terry Hsu.
- D. Terry Hsu will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

A. 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 reviewing and entering this agreement.

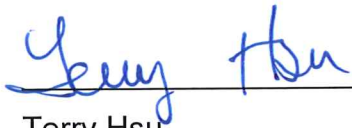
6. EFFECT:

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

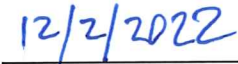
By signing this agreement, Terry Hsu agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on these matters shall become part of the record.

By signing this agreement, Terry Hsu 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.



Terry Hsu



Date



David M. Fiskum, Chairperson
Oregon Government Ethics Commission



Date