

MEMORANDUM

State of Alaska
Department of Law

TO: Bruce M. Botelho
Attorney General

DATE: June 28, 1999

FILE NO: 663-96-0391

TEL. NO.: (907) 465-4682

SUBJECT: In the Matter of Steven Baden;
Executive Branch Ethics Act
Proceeding

FROM: Doug Gardner
Assistant Attorney General

On December 22, 1998, the litigation in •In the Matter of Steven Baden• came to a final resolution by way of a settlement. As you know, this case consisted of a significant number of violations of the Executive Branch Ethics Act (AS 39.52)(•Act•) alleged in two separate complaints. It may be useful to designated ethics supervisors, state employees, and members of the public to have access to this settlement as a way of better understanding how the Act is applied and the types of conduct that may give rise to violations of the Act. Accordingly, I have been asked to submit the attached Stipulation to Dismiss Ethics Act Accusation for publication as a way to work with designated ethics supervisors to improve the standards of public service and, ultimately, promote and strengthen the faith and confidence of the people in state government.

EXECUTIVE BRANCH ETHICS ACT PROCEEDING
BEFORE THE PERSONNEL BOARD
STATE OF ALASKA

In the Matter of)
)
 Steven Baden,)
)
 Respondent.)
_____) File No. 663-96-0391

NOTICE OF SETTLEMENT

On December 17, 1998, a hearing was held in this matter, and the issue of settlement was discussed. The hearing officer's order of December 18, 1998, required the attorney general to report to the hearing officer the status of settlement discussions by the close of business on December 23, 1998.

The purpose of this pleading is to notify the hearing officer and the Personnel Board that this case has settled. The attached Stipulation to Dismiss Ethics Act Accusation contains the terms of the settlement. It is the attorney general's opinion that the terms contained in this settlement uphold the policies underlying the Executive Branch Ethics Act set out at AS 39.52.010, particularly the policies in AS 39.52.010(a)(2) (discouraging officers from acting upon personal or financial interests). The attorney general believes the resolution in this case will serve to provide guidance to other state officers, improve standards of public service, and strengthen the faith and confidence of the people of the state in their public officers.

Accordingly, the attached Stipulation to Dismiss Ethics Act Accusation constitutes a final resolution of all claims under the Ethics Act currently pending in the Attorney General's Second Amended Accusation filed before the Personnel Board on June 15, 1998.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:

Doug Gardner
Assistant Attorney General

**EXECUTIVE BRANCH ETHICS ACT PROCEEDING
BEFORE THE PERSONNEL BOARD**

STATE OF ALASKA

In the Matter of)
)
 Steven Baden,)
)
 Respondent.)
_____)

File No. 663-96-0391

STIPULATION TO DISMISS ETHICS ACT ACCUSATION

Pursuant to AS 39.52 and AS 44.23.020(7), Attorney General Bruce Botelho and Respondent Steve Baden stipulate to dismissal of the Second Amended Ethics Act Accusation filed before the Personnel Board on June 15, 1998. The parties stipulate to the following statement of facts and terms and conditions for dismissal.

I. STATEMENT OF FACTS

1. Respondent Steven Baden is a former state employee who worked for the State of Alaska for 18 years prior to resigning on September 1, 1995. Mr. Baden has worked with Alaska's energy programs since 1977.

2. On July 1, 1992, Mr. Baden transferred from the Department of Community and Regional Affairs to the Alaska Housing Finance Corporation (•AHFC•) along with the transfer of the Energy Rated Homes of Alaska program.

3. During Mr. Baden's last two years at AHFC, the Energy Rated Homes of Alaska program was administered by AHFC, but the marketing of the program and other field work was

performed by an outside contractor, Barbara Collins who did business as Innovative Communications. Ms. Collins received a grant from AHFC to fund the work she performed.

4. As Program Manager of AHFC's Energy Programs, Mr. Baden served as program manager of AHFC's grant to Innovative Communications for the operation of the Energy Rated Homes of Alaska program. As program manager, Mr. Baden's job was to assure that AHFC's grants were administered to further AHFC's policies of promoting energy efficient to private and public housing, and to develop and promote home energy ratings. Mr. Baden had almost daily contact with Ms. Collins evaluating the progress she was making on her work plan to market the Energy Rated Homes of Alaska program to prospective home buyers and commercial lenders.

5. In late 1993 and early 1994, the U.S. Department of Energy (•DOE•) announced that it would promote the formation of home energy rating systems. Mr. Baden notified his supervisor at AHFC--Mr. Brean--that Alaska had been selected as a DOE pilot state in this project. In order to participate in person in the pilot states meetings sponsored by DOE, Mr. Baden requested permission to travel to Philadelphia on March 7 and 8, 1994. Mr. Brean denied Mr. Baden's travel request because of budget limitations, and because he thought Mr. Baden's travel was having an adverse impact on Mr. Baden's program responsibilities at AHFC.

6. On February 11, 1994, Mr. Baden applied to Dr. Barbara Farhar at the National Renewable Energy Laboratory office for a stipend to cover his airfare and lodging for the March 7 meeting and other subsequent pilot states meetings. In his letter submitted on AHFC stationary, Mr. Baden stated:

The State of Alaska wishes to name Barbara Collins and myself to be its representatives on the working group. Alaska is nominating two members because of its commitment to the process. Barbara Collins, as the Program

Coordinator of Energy Rated Homes of Alaska, is the lead person in the state on fostering energy efficient mortgages. Due to the Alaska Housing Finance Corporation's keen interest in and commitment to energy efficient mortgages, it is appropriate that I also participate in the process to present a state housing finance agency's perspective. We understand, that due to your budget limitations, you will only be able to fund one representative from each state to travel to Washington to attend the meetings.

7. Prior to leaving on his DOE financed trip to Philadelphia, Mr. Baden filed an Ethics Disclosure Form on March 1, 1994, that described his proposed activities as:

Non-paid volunteer to U.S. Department of Energy on developing national home energy rating system. Will devote some travel directly paid by DOE but take place on my personal leave. Tasks include review of position papers and serving on advisory committee.

8. Mr. Baden attended the initial March 7 and 8 pilot states meeting in Philadelphia before DOE. Mr. Baden did not disclose to DOE's representative, Mr. Kaminsky, that he was present at these meetings or any other subsequent meetings in his own personal capacity to represent his own personal interests.

9. Mr. Baden noted in his memorandum of March 9, 1994, to Mr. Brean, that his participation in the pilot states meetings before DOE •directly relate[d] to [his] job responsibilities. • In addition, in his trip report memorandum of March 11, 1994, Mr. Baden notified Mr. Brean that •[s]ignificant federal funding can be expected to be awarded to AHFC through this effort. • Mr. Baden reported to Mr. Brean that ADOE estimates it will result in \$300,000 per year for Alaska beginning in 1996.

10. During the pilot states meetings, Mr. Baden took the position that, rather than providing direct funding to AHFC's energy department, DOE should provide funding directly to home energy rating systems operating as nonprofits. Mr. Baden assured DOE that Ms. Collins •

nonprofit was the state's designated nonprofit and had the state's approval to apply for the pilot states grant from DOE. AHFC never authorized Mr. Baden to take that position. Ms. Collins received a benefit from Mr. Baden's action.

11. Based in part on the positions taken by NASEO and the approval of Mr. Baden, DOE made the decision to fund a nonprofit home energy rating system in Alaska rather than awarding funding to AHFC.

12. During late May or early June of 1994, Barbara Collins consulted with Mr. Baden, AHFC's energy programs manager, and notified him of her plan to incorporate a new nonprofit using the name Energy Rated Homes of Alaska, Inc. Mr. Baden did not oppose Ms. Collins incorporating as Energy Rated Homes of Alaska, Inc. Mr. Baden did not receive authorization from AHFC to allow the use of the Energy Rated Homes program name by a private nonprofit.

13. As a result, Ms. Collins's private organization was eligible for \$135,000 in DOE funding. AHFC was not eligible for this funding. AHFC management was unaware that AHFC was no longer eligible for this benefit.

14. On November 4, 1994, the home energy rating system representatives from the pilot states--with the exception of California--signed a Memorandum of Agreement with DOE. Ms. Collins signed the Memorandum of Agreement on behalf of Alaska.

15. After the DOE agreement was signed, Ms. Collins asked Mr. Baden if he would like to work in a private capacity for her firm. Mr. Baden was dissatisfied with his job at AHFC and had considered leaving AHFC as early as July, 1994. Mr. Baden agreed in principle to work

for Barbara Collins on the DOE grant to Energy Rated Homes of Alaska, Inc., in November, 1994.

16. On December 15, 1994, Mr. Baden met with Assistant Attorney General Joe McKinnon regarding the Executive Branch Ethics Act. Among other things, Mr. Baden told Mr. McKinnon that he had not talked to anyone about post-service employment, that no one had contacted him about post-state employment, and he had not made any decision to leave AHFC.

17. Mr. Baden did not disclose to Mr. McKinnon his offer of employment from Ms. Collins and his agreement in principle to work for her, or his involvement in the DOE pilot states grant for Energy Rated Homes of Alaska, Inc.

18. On January 12, 1995, Energy Rated Homes of Alaska, Inc., submitted a grant application to DOE in Seattle that included a program description and a budget narrative. Mr. Baden reviewed Energy Rated Homes of Alaska, Inc.'s program description. Mr. Baden was also aware that he was included in the budget justification portion of the grant application. The application identifies Mr. Baden as a sole source contractor under the Energy Rated Homes of Alaska, Inc., grant for a contract not to exceed \$65,000 as follows:

There is only one potential contractor in Alaska who possesses this extensive experience and knowledge. The contractor, Steve Baden, is a nationally recognized expert on HERS and EEMs. He served on the joint collaborative of the U.S. Dept. of Energy and U.S. Dept. of Housing and Urban Development on HERS and EEMs. He is a member of the Board of Directors of Energy Rated Homes of America. He also has extensive experience in other energy programs having served as the director of the Alaska Energy Office for over ten years. He is already completely familiar with the ERH Alaska energy rating software. He is also already proficient in the knowledge of the energy financing programs offered by AHFC, FHA, VA, FNMA, and FHLMC. There is currently no other potential contractor who has knowledge and experience as extensive as that required in both residential energy efficiency and residential energy financing programs.

19. During the time Energy Rated Homes of Alaska, Inc.'s, application was pending before DOE, Mr. James, DOE Program Manager, and Julie Riel, Contracting Officer and Deputy Director of the Seattle Office received numerous telephone calls during the business day from Mr. Baden.

20. On May 4, 1995, Mr. Baden notified AHFC by filing an ethics disclosure form, that he had •secured• a business license for Alaska Residential Energy Services. Mr. Baden noted that his work for Alaska Residential Energy Services would include speeches, developing marketing plans, historical research and developing business plans for out-of-state residential programs.

21. Mr. Baden's last day as an AHFC employee was September 1, 1995. On September 11, 1995, Mr. Baden signed a contract with Barbara Collins of Energy Rated Homes of Alaska, Inc. The contract specified that Mr. Baden was to provide up to \$20,000 in services for work on DOE's pilot states grant to Energy Rated Homes of Alaska, Inc.

22. Mr. Baden began work on his contract with Energy Rated Homes of Alaska, Inc., shortly after he signed the contract on September 11, 1995.

23. On August 2, 1995--three weeks before Mr. Baden's last day of employment with AHFC--Mr. Baden drafted letters using state time, equipment, stationery, envelopes and postage, to announce that he would no longer be working at AHFC. Mr. Baden attached a copy of his private business card to each letter. In Mr. Baden's letter of August 2, 1995, to an energy department official in Puerto Rico, he concluded by stating, •I hope that we have the opportunity to work together again in the near future.•

24. On August 14, 1995--two weeks before Mr. Baden left his employment at AHFC--Mr. Baden and Ms. Barbara Collins traveled to Juneau for discussions with Alaska Electric Light and Power officials and other electrical energy user groups regarding home energy ratings and energy conservation. Mr. Baden's travel was paid for by AHFC, and he represented AHFC at all times during his visit to Juneau on August 14, 1995.

25. During working hours on August 14, 1995, Mr. Baden and Ms. Collins met with DCRA Commissioner Mike Irwin who also was a member of the AHFC Board. Mr. Baden represented himself to Commissioner Irwin as an AHFC employee. The purpose of Ms. Collins and Mr. Baden's visit was to lobby Commissioner Irwin regarding the use of money known as stripper well funds. Ms. Collins and Mr. Baden advocated for a five-year dedication of stripper well funding for the Energy Rated Homes of Alaska program (that would be run by Energy Rated Homes of Alaska, Inc.) and the Alaska Craftsman Home Program.

26. The position regarding the use of stripper well funds advocated by Mr. Baden and Ms. Collins during their meeting with Commissioner Irwin was financially beneficial to Energy Rated Homes of Alaska, Inc. Their position on this issue had not been approved by AHFC.

27. On February 24, 1995, a DOE notice of competitive financial assistance was published in the federal register. The notice informed the public of the availability of DOE funds for updating state and local government building energy codes. In response to the notice, AHFC obtained a copy of the grant solicitation which was directed to states that were developing, implementing, or enforcing building energy code compliance. Mark Romick, Mr. Baden's

supervisor in the Planning Department, gave him a copy of the solicitation and asked him to review it and make a recommendation on whether AHFC should apply for the grant.

28. On March 15, 1995, Mr. Baden received a telephone call at AHFC from Dave McNeil, an Energy Program Specialist with the Nevada State Energy Office (•NEO•). Mr. McNeil informed Mr. Baden that the NEO received the notice of funding availability from DOE. Mr. McNeil told Mr. Baden that the NEO was interested in applying for the grant. Mr. McNeil asked Mr. Baden to assist the NEO in the preparation of its grant application.

29. From March 15th through March 21, 1995, Mr. Baden, Ms. Collins and Mr. McNeil communicated by telephone and through fax transmissions to prepare the Nevada grant application. They used state communications equipment and state office space. Mr. Baden, Mr. McNeil and Ms. Collins agreed, that if the application were successful, NEO would contract with Energy Rated Homes of Alaska, Inc., for \$75,000 to assist in both the program design and marketing of the Nevada HERS program. It was also agreed that Mr. Baden would act as a subcontractor to Energy Rated Homes of Alaska, Inc.

30. On March 17, 1995, Mr. Baden sent a memorandum to Mr. Romick strongly recommending *against* AHFC applying for the energy codes grant, despite Mr. Baden's conclusion that AHFC was •technically eligible• for the grant. Based on Mr. Baden's recommendation, Mr. Romick decided AHFC should not apply for the energy codes grant.

31. On March 21, 1995, the NEO submitted its grant application to DOE. On the cover page of the application, Energy Rated Homes of Alaska, Inc. was referred to as NEO's principal partner. In the application itself, NEO stated that it would contract with Energy Rated Homes of Alaska, Inc., for \$75,000 to assist it in both program design and marketing. NEO

emphasized the involvement of Mr. Baden and Ms. Collins and stated they would be •the lead persons for all tasks• performed under the grant. The application also included resumes of both Steve Baden and Barbara Collins.

32. On May 17, 1995, DOE issued a notice of award to the Nevada Energy Office notifying it that Nevada would receive an energy codes grant. The grant agreement was signed by the Nevada Energy Office on July 27, 1995.

33. On August 30, 1995, Ms. Collins, on behalf of Energy Rated Homes of Alaska, Inc., applied for a \$75,000 noncompetitive grant from NEO as a sub-recipient under NEO's federal energy codes grant. As a result of the application, Energy Rated Homes of Alaska, Inc., entered into a grant agreement with NEO effective October 1, 1995.

34. On February 10, 1996, Mr. Baden, doing business as Alaska Residential Energy Services, signed a contract with Energy Rated Homes of Alaska, Inc. The contract specified that Mr. Baden was to provide up to \$34,600 in professional services for work on the Nevada grant. Mr. Baden began work on the project shortly after signing the contract.

35. Mr. Baden's job responsibilities at AHFC included representing the State of Alaska at an organization consisting primarily of representatives from state energy offices called the National Association of Energy Officials (•NASEO•). In Mr. Baden's letter of June 5, 1995, Mr. Baden informed his supervisor, Mr. Romick, that •during the past two years [he] served as the chair of the NASEO HERS/EEM Committee.• NASEO expanded the membership of the committee to include state housing financing agencies, home energy rating operating systems, state weatherization offices, and change it [sic] name to RESNET.

36. On March 14, 1995, Mr. Baden sought authorization from Ms. Barbara Baker-- his supervisor at AHFC--to attend •high-level meetings with representatives of the U.S. Environmental Protection Agency (EPA), the National Association of State Energy Officials (NASEO) . . . • During April 10-11 in Washington, D.C., Mr. Baden informed Ms. Baker that he had already been working with the •NASEO and EPA in funding a national marketing campaign for home energy ratings and energy efficient mortgages . . . • Mr. Baden noted in his request for travel that on April 11, 1995, the •afternoon will focus on working out the details and work plan for EPA funding of the national marketing and technical assistance effort. • On April 11, 1995, Mr. Baden attended a meeting in Washington, D.C., at EPA as AHFC's representative. Mr. Baden signed the attendance sheet for this meeting as AHFC's representative. During this meeting, Mr. Baden was elected as the Chairman of the NASEO/ERHAM/EPA program entitled Residential Energy Services Network (•RESNET•).

37. Mr. Baden reviewed sections of the NASEO proposal that was submitted to EPA on April 27, 1995. Mr. Baden reviewed a draft of the April 27, 1995, proposal on February 28, 1995. On April 27, 1995, NASEO submitted its proposal to EPA. On June 29, 1995, EPA issued a Commitment Notice dedicating \$350,000 for the market development for home energy rating systems and energy efficient mortgages. On September 1, 1995--Mr. Baden's last day at AHFC--Frank Bishop, Director of NASEO and Chester Smith of ERHAM signed a consulting agreement naming Mr. Baden as the principal investigator for RESNET pursuant to the EPA/NASEO/ERHAM grant. Mr. Baden signed an initial contract for \$21,000 with ERHAM to continue his work on RESNET as a contractor to ERHAM on September 22, 1995. On

October 17, 1995, Mr. Baden signed a second contract with Chester Smith of ERHAM for \$54,000 to perform work as RESNET coordinator.

38. On June 15, 1998 the state filed a 15 count Ethics Act accusation against Mr. Baden. In the state's view, Mr. Baden had violated his duty of loyalty to his employer, AHFC. The state alleged that Mr. Baden had violated his duty of loyalty to his employer, AHFC. The state alleged that Mr. Baden had taken official action that benefited himself and provided unwarranted benefits to a third party, Ms. Collins. The state further alleged that Mr. Baden had failed to report his conflicts of interest, and had violated the "revolving door statute" by working on prohibited matters after leaving state service.

39. Mr. Baden denied that he took state action with the purpose or intent of violating the Ethics Act.

II. TERMS AND CONDITIONS OF DISMISSAL

After consultation with his attorney, and being duly advised of his rights, Mr. Baden acknowledges and agrees to the following terms and conditions:

1. Mr. Baden will pay a fine of \$5,000 within 10 business days of the date of execution of this stipulation.

2. Mr. Baden acknowledges that the facts described in paragraphs 1-39 are true and correct, to the best of his knowledge.

3. Mr. Baden acknowledges that the Ethics Act prohibits a state official from taking official action that results in a benefit to the official's personal or financial interest. He also acknowledges that the Ethics Act prohibits a state official from taking official action that provides an unwarranted benefit to any person. He further acknowledges that the Ethics Act

prohibits a former state official from taking employment or working on matters which that former official took substantial official action while still employed with the state.

4. Mr. Baden maintains that he did not intend to violate the Ethics Act with regard to the facts set out in paragraphs 1-39. Despite his belief that he did not intend to violate the Ethics Act, Mr. Baden acknowledges that his actions set out in paragraphs 1-39 resulted in violations of the Act. Further, Mr. Baden acknowledges that he and Ms. Collins benefited from his actions as described in paragraphs 1-39.

5. If the conditions to this agreement are fulfilled, the state agrees that this Stipulation and Agreement shall constitute a final resolution of all claims under the Ethics Act pending in the Second Amended Accusation filed before the Personnel Board on June 15, 1998. The state agrees that it will not pursue any action under the Executive Branch Ethics Act related to Mr. Baden's official action on the matters contained in Accusations and Complaints filed against Mr. Baden in this matter that were replaced by the filing of the Second Amended Accusation of June 15, 1998.

6. Mr. Baden agrees to release the State of Alaska, the Alaska Housing Finance Corporation, the Alaska Department of Law, and all state employees from any claims that he may have arising out of his employment, the investigation, filing and litigation of the matters contained in the Second Amended Accusation filed before the Personnel Board on June 15, 1998.

7. Mr. Baden agrees, that he will not seek or assist another in seeking any contract with the State of Alaska or any of its political subdivisions, nor will he seek employment with the State of Alaska or any of its political subdivisions for a period of five years from the date of the execution of this agreement.

Dated this 22nd day of December, 1998.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:
Doug Gardner
Assistant Attorney General