BEFORE THE SEATTLE ETHICS AND ELECTIONS COMMISSION

In the Matter of

JEFFREY BRITSCH,

Case No. 10-1-1117-1

PROPOSED DETERMINATION AND ORDER

The Commission makes the following determination:

FINDINGS OF FACT

1. Jeff Britsch was a commercial vehicle enforcement officer (CVEO) with the Seattle Department of Transportation (SDOT) between October 1990 and his resignation effective December 3, 2010.

2. As a CVEO, Britsch was a commissioned Seattle Police Department officer who enforced vehicle safety regulations pertaining to commercial trucks. In that capacity, he could issue warnings, citations and notices of noncompliance as they related to the Seattle Municipal Code, the Revised Code of Washington and the Code of Federal Regulations for commercial vehicles. When a CVEO stops a truck they can issue a warning, issue a citation (fines for overweight trucks can exceed $1,000), or place a truck out of service for a safety violation and suspend its operation until the offense is remedied.
3. Britsch's job responsibilities also included weighing and measuring trucks to determine compliance with load and size limitations; ensuring Seattle truck permit compliance; assisting in traffic control and investigating commercial vehicle accidents; and escorting oversized loads safely into and out of Seattle.

4. Britsch also performed inspections, for pay, for Pacer Cartage (Pacer), a Florida-based trucking company with an office in South Seattle. Britsch was asked to local Pacer trucks at a rate determined by the local safety officer. Britsch performed inspections for Pacer on his personal time.

5. For inspections of Pacer's fleet performed between January 7, 2009 and October 20, 2010, Britsch was paid $9,750. Britsch was paid $50 per truck and inspected:
   - 99 trucks in the first half of 2009
   - 17 in the second half of 2009
   - 44 in the first half of 2010, and
   - 35 in the second half of 2010.

6. On November 10, 2010, Britsch sent an e-mail to Pacer's Assistant Vice President for Safety and Compliance in Florida. (The complete e-mail is attached.) After introducing himself as a CVEO for the City of Seattle, the e-mail states that "[t]he last two days I have stopped two of your tractors," and that "[b]oth vehicles could have been written citations which have a negative impact upon your safety rating." The e-mail goes on to "question the quality of [Pacer's quarterly] inspections," and ask "[i]f I were to stop other Pacer Cartage vehicles what type of violations would I find?" The e-mail further states "I feel that there needs to be better quality inspections performed on your vehicles and even random inspections done to make sure that drivers are properly maintaining their vehicles which your company use [sic] to do under a
previous safety director. I would also suggest that if you used a local company to do your
inspections that that company could do a better job of following up when there are vehicles that
have violations. If there is anything I can do to assist your company please don’t hesitate to
ask.”

7. The Assistant Vice President forwarded the e-mail to SDOT, saying that he was
“concerned about the potential bias against Pacer Cartage being motivated by previous business
dealings not working out.” The Assistant Vice President referred to Pacer’s July 2009 decision
to “cancel the use of Mr. Britsch’s services because we were not satisfied with the quality of
inspections.” (In fact, while Pacer’s Seattle operation stopped relying on Britsch to conduct
quarterly inspections in July of 2009, the Seattle office continued to hire Britsch to perform spot
inspections.)

8. Early in his SDOT career, Britsch received a written warning for conducting
private inspections. The July 1, 1994, warning states: “I am concerned about a possible conflict
of interest between your private business and your duty with the City. Your duties with the City
consist of Commercial Vehicle Enforcement and you are responsible for issuing citations to
commercial vehicles for safety related problems. Conversely, in your private business you act as
a certified inspector and sign-off the official inspection forms related to the DOT Federal
Highway Administration inspection requirements....[I]t could appear that your private business
is in conflict with our Code of Ethics.”

9. In January 2001, the then-Executive Director of the Seattle Ethics and Elections
Commission issued an opinion concluding that the “Code of Ethics would prohibit City
Commercial Vehicle Enforcement Officers from soliciting or accepting employment with the
contractors who are subject to their jurisdictions [sic].” Britsch was familiar with this opinion.
10. Britsch filed for bankruptcy in 2007, and his plan was approved in 2008. He will emerge from bankruptcy at the end of 2013.

CONCLUSIONS OF LAW AND DETERMINATION

1. Mr. Britsch was afforded due process and given the opportunity to present his case to the Commission.

2. Prior to July 21, 2009, the Seattle Ethics Code, SMC 4.16.070.1.c provided that no City officer or employee shall “[f]ail to disqualify himself or herself from acting on any transaction which involves the City and any person who is, or at any time within the preceding twelve (12) month period has been a private client of his or hers, or of his or her firm or partnership.”

3. Effective July 21, 2009, the Seattle Ethics Code, SMC 4.16.070.1.b, provides that a Covered Individual may not “[p]articipate in a matter in which a person that employed the Covered Individual in the preceding 12 months, or retained the Covered Individual or his or her firm or partnership in the preceding 12 months, has a financial interest.”

4. The Seattle Ethics Code, SMC 4.16.070.2.a states that no Covered Individual may “use or attempt to use his or her official position for a purpose that is, or would to a reasonable person appear to be primarily for the private benefit of the Covered Individual or any other person, rather than primarily for the benefit of the City.”

5. Mr. Jeffrey Britsch was a City employee at all times relevant to this determination, and therefore a Covered Individual, subject to the City’s Ethics Code under the Code sections quoted above.

6. Mr. Britsch used his City position for other than a City purpose in violation of SMC 4.15.070.2.a when he sent an e-mail to an executive at Pacer that caused the executive to
"concerned about the potential bias" against Pacer due to Mr. Britsch’s previous business dealings with the company. A reasonable person could also view the e-mail as an attempt to secure more business from Pacer for Mr. Britsch.

7. I. Mr. Britsch violated SMC 4.16.070.1.c [prior to the July 2009 amendment] and SMC 4.16.070.1.b [following the July 2009 amendment] when he participated in matters in which Pacer Cartage, a company for which he had performed work in the previous 12 months, had a financial interest. Every time he made the decision to stop a Pacer truck, or to allow a Pacer truck to proceed unimpeded, Mr. Britsch participated in matters in which Pacer had a financial interest.

ORDER

Mr. Britsch is ordered to pay a monetary fine totaling $14,750 for his Ethics Code violations, which represents the sum of his earnings from Pacer for 2009 and 2010, plus an additional $5,000. The penalty reflects Mr. Britsch’s misuse of his position as a regulator entrusted with protecting the public’s health and safety, and his decision to ignore prior warnings and advice. The Commission authorizes the Executive Director to work with Mr. Britsch to develop a mutually agreeable payment plan.

Dated April 16, 2011.

Robert Mahon, Chair
Ethics and Elections Commission