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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)	Docket No. 13-0069
)	
BOYS & GIRLS CLUBS OF BENTON)	FINDINGS OF FACT,
AND FRANKLIN COUNTIES,)	CONCLUSIONS OF LAW,
)	AND FINAL ORDER
Exempt organization.)	

TO: Brian Ace, Executive Director
Boys and Girls Clubs of Benton and Franklin Counties
P.O. Box 1322
Pasco, WA 99301

COPY TO: Mike Kreidler, Insurance Commissioner
James T. Odiorne, Chief Deputy Insurance Commissioner
Kate Reynolds, Staff Attorney, Legal Affairs Division
Charles Brown, Acting Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons, the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 10:00 a.m. on April 17, 2013, by telephone pursuant to RCW 34.05.449(3) and there being no objection by the OIC. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner was represented by Kate Reynolds, Esq., Staff Attorney

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in his Legal Affairs Division. Brian Ace, Executive Director, appeared on behalf of the Boys & Girls Clubs of Benton and Franklin Counties.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether a \$750 fine should be imposed against the Boys & Girls Clubs of Benton and Franklin Counties ("Boys & Girls Clubs" or "Organization"), based on the Washington State Insurance Commissioner's ("OIC") allegation that the Organization failed to timely submit its Annual Report and Actuarial Certification relative to its charitable gift annuities. The Commissioner proposed a Consent Order Levying a Fine, No. 13-0069, to the Boys & Girls Clubs which included the imposition of a fine in the amount of \$750.00 against the Organization. On March 4, 2013, the Boys & Girls Clubs rejected the proposed Consent Order and demanded a hearing in order to explain the circumstances of the alleged violation and to contest the severity of the proposed fine.

FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW, and regulations pursuant thereto.
2. The Boys and Girls Clubs of Benton and Franklin Counties is a youth-based mission providing activities and mentorship to youth in the community. The Organization is properly classified by the OIC as an Exempt Organization issuing Charitable Gift Annuities pursuant to RCW 48.38.010. As such, this Organization is required under RCW 48.38.010(10) to submit its Annual Report of Exempt Organizations issuing Charitable Gift Annuities including Actuarial Certification ("Report") within sixty days of the end of its fiscal year. [Testimony of Steven Drutz, Financial Examiner with the OIC's Company Supervision Division.] The Organization's fiscal year ended on August 31, 2012, and therefore the OIC requires that it file its 2012 Report by October 30, 2012. [Testimony of Drutz.]
3. By November 30, 2012, the OIC had not received this Organization's 2012 Report, and therefore sent an email to the Organization advising that the OIC had not received the Report, advising that it had been due by October 30, 2012. In response, by email sent December 12, Brian Ace, President of the Organization, asked the OIC to advise him what dates the audited

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financial statement and Form 990 were most recently filed with the OIC, and advised that once he had this information he would submit the Report. On December 12 the OIC provided this information to the Organization. [OIC Ex. 2, email from OIC to Organization, Organization's response, and OIC's reply.]

4. On December 14, 2012 the Organization mailed its completed 2012 Report to the OIC, disclosing its charitable gift annuity to be in the amount of some \$40,000. Said 2012 Report was received by the OIC on December 18. [OIC Ex. 3, 2012 Report.] Therefore, the Organization submitted its 2012 Report approximately six weeks late. (On December 21 the OIC requested the Organization to send an additional bank statement with a revised time period, which the Organization submitted to the OIC on December 27 with an adequate explanation.) [OIC Ex. 5, email from OIC to organization, Organization's response with revised statement.]

5. On February 21, 2013 the OIC offered a Consent Order Levying a Fine to the Organization which proposed the imposition of a \$750 fine on the Organization for filing its 2012 Report six weeks late. The Organization rejected this offer.

6. The Organization admits that the deadline for filing its 2012 Report was October 30, 2012 and therefore it filed its 2012 Report six weeks late. However, the Organization argues, and it is here found, that the Organization's prior Executive Director, Gregory Faulk, resigned his position and the Organization hired a new Executive Director, Brian K. Ace, beginning part-time on May 1, 2012 and full-time beginning August 1, 2012. At the same time, the Organization also moved forward with an organization restructuring plan in an effort to increase ownership and stewardship. Specifically, the Organization first eliminated the Vice President of Operations position, saving the Organization \$55,000 in overhead cost. Next, the Organization eliminated its Director of Finance position, then held by Katie Johnson, effective October 1, 2012 (deciding to outsource the Director of Finance's responsibilities effective on that date). [Organization Ex. 2, document entitled Organization Restructuring Plan, Director of Finance, August 15, 2012 executed on August 15, 2012 by both the Organization's then Director of Finance Katie Johnson and Executive Director Brian Ace; Testimony of Brian Ace.]

7. Because of their positions with the Organization, former Executive Director Faulk and Director of Finance Johnson were the individuals who were knowledgeable about the Organization's requirement of filing its 2012 Report by October 30, 2012. Former Director of Finance Johnson, whose position was eliminated effective October 1, 2012 had the primary responsibilities of accounting and bookkeeping, including filing the 2012 Report by October 30, 2012. Upon the departure of these two individuals during this same period, that institutional knowledge regarding the requirement to file annual Reports to the OIC within 60 days of the end of the Organization's fiscal year was lost. [Testimony of Ace; Organization Ex. 2.]

8. No party argues, and it is cannot be found here, that the Organization had any wrongful intent in failing to file its 2012 Report on time. [Testimony of Drutz; Testimony of Ace; Hearing Ex. 1.]

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9. The Organization's Charitable Gift Annuity began in 2009, and the Organization has not been late in filing its Annual Report of Exempt Organizations issuing Charitable Gift Annuities including Actuarial Certification with the OIC in any of the years in which annual this Report was required to be filed.

10. Steve Drutz, Financial Examiner for the OIC, appeared by telephone as a witness on behalf of the OIC. Mr. Drutz presented his testimony in a detailed and credible manner and presented no apparent biases.

11. Brian Ace, Executive Director of the Boys & Girls Clubs of Benton and Franklin Counties, appeared by telephone as a witness on behalf of the organization. Mr. Ace presented his testimony in a detailed and credible manner and presented no apparent biases.

12. Based upon the above Findings of Facts, including particularly the circumstances surrounding the period of time in which the 2012 Report was due and the fact that the Organization has never been late in its filings with the OIC before, it is reasonable that the OIC's decision to impose a fine of \$750 upon the Boys & Girls Clubs of Benton and Franklin Counties for the activities alleged herein should be set aside.

CONCLUSIONS OF LAW

Based upon the above Findings of Facts, it is hereby concluded:

1. The adjudicative proceeding herein was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

2. Boys and Girls Clubs of Benton and Franklin Counties is a charitable organization registered under Chapter 48.38 RCW holding Certificate of Exemption No. 500376 to issue charitable gift annuities in the State of Washington.

3. Boys and Girls Clubs of Benton and Franklin Counties is required, under RCW 48.38.010(10) to submit its Annual Report and Actuarial Certification on or before October 30, 2012 for the preceding fiscal report year.

4. Boys and Girls Clubs of Benton and Franklin Counties filed its 2012 Report on or about December 14, 2012, six weeks after the October 30, 2012 deadline. Thereby, Boys and Girls Club of Benton and Franklin Counties violated RCW 48.38.010(10).

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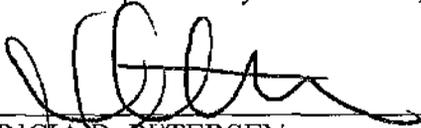
5. RCW 48.38.050 permits the OIC to fine an organization up to \$10,000 per violation of the Insurance Code in addition to or in lieu of revocation or suspension of any certificate of exemption. While the OIC seeks to impose a fine of \$750 on Boys and Girls Clubs of Benton and Franklin Counties, given the circumstances found above it is most reasonable that no fine or other disciplinary action should be imposed for this violation.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's decision to impose a fine or other disciplinary action upon the Organization for the violation alleged herein is set aside and no fine or other disciplinary action is imposed for this violation.

ENTERED AT TUMWATER, WASHINGTON, this ²⁶ day of June, 2013, pursuant to Title 48 RCW and specifically RCW 48.04, Title 34 RCW, and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief Presiding Officer

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Brian Ace, Mike Kreidler, James T. Odiorne, Kate Reynolds, Esq., and Charles Brown, Esq.

DATED this ^{26th} day of June, 2013.



KELLY A. CAIRNS