What You Need to Know About the State's Ethics Law
A Guide for State Board and Commission Members

Overview of the State Ethics Law

The state's ethics law is founded on the principle that public position, whether filled through election, appointment, or by hiring, may not be used for personal gain or benefit. State officers are expected to maintain high ethical standards and to conduct the business of the state only in a manner that advances the public's interest.

The standards established under the state's ethics law, chapter 42.52 RCW, are based on four key ideas:

- State officers and employees should not have financial or other interests, or engage in business or professional activities, that conflict with the performance of their official duties;
- State officers and employees should not use their state positions to secure special privileges or exemptions for themselves or any other person;
- State officers and employees should not receive compensation from a source other than the State of Washington for the performance or non-performance of an official duty; and,
- State officers and employees should not receive a gift if it could be reasonably expected to influence or reward the performance of their official duties.

These key ideas form the basis for ethical guidelines relating to conflicts of interest, use of state resources, political activities, confidential information, receipt of gifts, and post-state employment. Guidelines for outside employment do not apply to board and commission members who serve without compensation, or who only receive reimbursement or a predetermined amount for expenses.

Conflicts of Interest

Conflicts of interest may arise in many areas during the course of your service with the state. While some conflicts of interest are clear–you cannot bid to perform work on a state contract under your supervision–others are more complex. For example, would you have a conflict if you serve on the board of directors for a company that does business with the state? The answer depends on your official duties for the state of Washington.

Conflicts of interest involve the concepts of *benefit* and *bias*. Questions to ask yourself when evaluating a potential conflict of interest include:

- Will your interests benefit as a result of your official action?
- Would a reasonable person conclude that a private or personal interest impairs your independent and impartial judgment in the exercise of your official duties?

Some conflicts of interest are clearly defined in the state's ethics law. These are:

- Having or acquiring a beneficial or financial interest in a contract, sale, lease, purchase or grant that is under your authority or supervision as a state officer.
- Accepting compensation, a gratuity, or a reward from someone else who is beneficially interest in a contract, sale, lease, purchase or grant under your authority or supervision.
- Acting in a state matter or transaction involving an entity or person in which you own a beneficial interest, or an entity in which you serve as an officer, agent, employee, or member.
- Assisting other persons, or sharing in compensation, in transactions involving

the state when you had responsibility for these transactions as a state officer.

Other types of conflicts are not so obvious and are determined on a case-by-case basis after careful analysis of the facts. These conflicts include:

- Non-financial interests, professional or business activities, or obligations that conflict with the performance of official duties.
- Use of your official state position to secure or convey a special privilege or exemption for yourself or others.

Dealing with Conflicts of Interest

Most conflict of interest issues can be resolved easily and without resort to more drastic measures such as removal from position or resignation. The resolution of conflicts depends on *disclosure* and *recusal*.

If you have a private or personal interest that could benefit from your actions, or bias your judgment as a state officer, disclose the interest at a public meeting of your board or commission. Once you disclose the interest, recuse or abstain from participation in discussions or voting on a matter that affects this interest.

If the conflict would affect your board's or commission's ability to perform its statutory responsibilities by causing a lack of a quorum, for example, a member need only publicly disclose his or her interest.

Many boards and commissions have their own conflict of interest policy. Consult this policy if you have any questions about how to proceed. If there is no conflict of interest policy, consult your assigned Assistant Attorney General or the administrative office of the Executive Ethics Board.

Use of State Resources

The state's ethics law protects and limits the use of state resources–including equipment, office and conference room space, vehicles, supplies, postage, and personnel–for the conduct of official state business. The law allows narrow exceptions to this standard as determined by the Executive Ethics Board.

Exceptions may be found in chapter 292-110-010 of the Washington Administrative Code (WAC). *De minimis*, or minimal, unofficial use is allowed under this rule provided the use results in no cost to the state, does not interfere with the performance of official duties, and is brief in duration and accumulation.

State resources may <u>never</u> be used to support an outside business, whether or not operated for profit; for commercial activities like advertising or selling; for illegal or inappropriate uses; or, for political activities unless explicitly authorized (see next section).

The following standards govern the use of specific state resources:

- *Phones.* Local telephone calls to conduct reasonable personal business (medical and dental appointments, child care arrangements, transportation arrangements, etc.) are permitted. Long distance calls must be placed using a personal calling card. *Cell phones* are limited to business use.
- *E-mail.* Occasional personal e-mail messages are permitted provided they do not relate to a prohibited use, e.g., an outside business.
- *Internet.* Internet use, other than to transmit e-mail messages, is restricted to official business purposes only.

"Reimbursing" costs associated with a personal use of state resources does not mitigate the personal use.

State Resources and Political Campaigns

A state agency's facilities, property, and personnel may not be used to assist in a campaign for the election of a person to any office, or to promote or oppose a ballot

proposition. Supervisors who acquiesce in the use of state resources for these purposes violate the ethics law.

A statutory exception to this prohibition exists for activities that are the normal and regular conduct of an agency. For example, an agency may respond to a public records request from a campaign that supports or opposes a ballot proposition.

State officers may participate in political campaigns outside of working hours. For an explanation of working hours, *see WAC 292-110-020*. Separate restrictions exist for lobbying activities under chapter 42.17 RCW. Contact the Public Disclosure Commission for more information.

The misuse of state resources for political campaigns is a serious ethics issue. If you have questions about what you can or cannot do as a board or commission member, consult with your Assistant Attorney General or the Executive Ethics Board for guidance.

Confidential Information

Some board and commission members may serve in positions where they have access to confidential information. If you have access to confidential information, this information may not be disclosed unless provided for by law or by an agreement between the agency and the person seeking the information. Confidential information may also not be used for personal benefit, or to benefit of others.

The obligation to safeguard confidential information is an obligation you take with you upon leaving state service.

Receipt of Gifts, Gratuities, and Favors

There are two circumstances under which gifts, gratuities, and favors may not be accepted:

- If the gift, gratuity, or favor could reasonably be expected to influence the performance or nonperformance of official duties; and,
- If the gift, gratuity, or favor could be considered as part of a reward for action or inaction in the performance of official duties.

When neither of these conditions is present, you may accept a gift or gifts up to $50 in value per calendar year from a single source, or a single gift with a value of up to $50 from multiple sources. Gifts given to family members are subject to the $50 limit, unless the family member has an independent family, business, or social relationship with the gift donor.

The state's ethics law also provides for the acceptance of certain items that are either (a) not included in the definition of "gift", or (b) items that are gifts but are not presumed not to influence unless circumstances indicate otherwise. *These items are not subject to the $50 limit.*

More restrictive gift limitations exist for state officers who participate in regulatory activities, or who contract for goods and services.

Gifts and Items You May Accept

Items excluded from the definition of gift:

- Items from family members when not intended to influence official action;
- Items related to an outside business that are customary and not related to the performance of official duties;
- Items exchanged among state officials or employees or a social event hosted by a state officer or state employee for coworkers;
- Items that are authorized by law;
- Items returned to the donor within thirty days of receipt or donated to a charitable institution;
- Campaign contributions that are legally reported;
- Discounts available to you as a member of a broad-based group or occupation; and,
- Awards, prizes, scholarships or other items provided in recognition for academic or scientific achievement.

If your duties for the state do not include regulation or contracting for goods and services, you may also accept:

- Payments by a governmental or nongovernmental entity of reasonable expenses (travel, lodging, and subsistence) incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity; and,
- Payments of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a governmental or nonprofit professional, educational, trade, or charitable association or institution.

Gifts not subject to the $50 limit (presumed not to influence)

- Unsolicited flowers, plants, and floral arrangements;
- Unsolicited advertising or promotional items of nominal value;
- Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- Unsolicited items received for the purpose of evaluation or review;
- Informational material, publications, or subscriptions related to the performance of official duties;
- Food and beverages at hosted receptions where attendance is related to official duties;
- Admission to and the cost of food and beverages at events sponsored by or in conjunction with civic, charitable, governmental, or community organizations;
- Unsolicited gifts from dignitaries in another country or state that are personal in nature.
- Food and beverage on infrequent occasions where attendance is related to the performance of official duties.

In addition to these gifts, you may accept all items excluded from the definition of gifts.

Gift Limitations for Those Who Regulate or Contract

- Unsolicited advertising or promotional items of nominal value;
- Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;
- Unsolicited items received for the purpose of evaluation or review;
- Informational material, publications, or subscriptions related to the performance of official duties;
- Food and beverages at hosted receptions where attendance is related to official duties;
- Admission to and the cost of food and beverages at events sponsored by or in conjunction with civic, charitable, governmental, or community organizations;

You may also accept those items excluded from the definition of "gift", except for payment of expenses for a speech, appearance, trade mission, etc., and payment of course fees and travel for seminars and education programs. You may not accept other gifts, even if valued at less than $50.

Post-State Employment

Under some circumstances, a board or commission member may be affected by the post-state employment restrictions designed to prevent former state officers and state employees from personally benefiting as a result of actions and decisions made while serving the public. Like other conflicts of interest, a determination of whether post-state employment guidelines could apply to you is made on a case-by-case basis.

The post-state employment provisions prevent former state officers and employees from:

- Acquiring a beneficial interest in a contract or grant for two years after leaving state service if they participated in the state action that authorized or funded the contract or grant

- Assisting any person at any time in a state action if they participated in such action while employed by the state.

Additional restrictions exist for accepting employment when employment was offered for the purpose of influencing or rewarding the performance of official duties; or when related to the fulfillment of a contract the officer or employee negotiated or administered while in state service.

Where to Go When You Have Questions

We hope you have found the information provided in this pamphlet useful. For further information we invite you to visit our agency web site at http://www.wa.gov/ethics. You can also call our office at (360) 664-0871.

Relevant Advisory Opinions

Advisory Opinion 96-09 and 96-09A

Can a state board whose members are required by statute to be appointed from identified groups adopt rules that require members to disclose their interests and abstain from voting on certain matters as a way of addressing ethical prohibitions in the law?

Advisory Opinion 97-12

Whether the state's ethics law prohibits a board member from participating in a proceeding when the member owns stock in a person who appears before the board, and when the member was appointed to represent a particular interest on the board?

Does the ethics law require disclosure of a board member's holdings prior to the commencement of proceedings?

Does the ethics law require divestiture to allow a board member's participation in proceedings, or are alternative measures available to ensure compliance?

Advisory Opinion 98-08

Can board members recuse themselves from discussing and voting on matters on which there is no existing conflict of interest in order to preserve potential future business opportunities?

Advisory Opinion 99-01

Applies to the Washington State School Directors' Association board of directors and discusses "normal and regular conduct" under the exception to the prohibition against the use of state resources for political campaigns under RCW 42.52.180(2)(c).

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