

Chapter 262-02 WAC
EXECUTIVE CONFLICT OF INTEREST ACT

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WAC 262-02-010 Promulgation. (This promulgation relates to WAC 262-02-010 through 262-02-030).

I, James L. Kirschbaum, Chair, Washington State Housing Finance Commission, P.O. Box 2665, Spokane, Washington 99550, by virtue of the authority vested in me under chapter 42.18 RCW and Executive Order 80-16, after due notice as provided under chapters 42.32 and 34.04 RCW, and a public hearing held in Seattle, Washington on July 24, 1985, do hereby promulgate the following regulations relating to conflict of interest appropriate to the specific needs of the Washington state housing finance commission.

[Statutory Authority: RCW 42.18.250. WSR 85-18-031 (Resolution No. 85-55), § 262-02-010, filed 8/28/85.]

WAC 262-02-020 Purpose. (1) Certain provisions of chapter 154, Laws of 1994, "Ethics in public service" require interpretation through regulation to protect the Washington state housing finance commission (the "commission") and its commissioners and employees from violations of law. As provided in RCW 42.52.200, the commission may adopt rules consistent with law, for use within the commission.

(2) The legislature intended that commissioners appointed to the commission have experience with and expertise in housing matters, including housing construction and finance, and that they represent various industry and consumer groups. RCW 43.180.040(2). The commission intends that its commissioners actively participate in and lend their expertise to the deliberations of the commission. These regulations are intended to insure that decisions of the commission are based on the expertise and unbiased judgment of these commissioners and not on their self-interest.

(3) The commission issues bonds to provide a secondary market for the financing of housing and nonprofit facilities. As a result, commissioners and commission employees work closely with private sector lenders, underwriters, mortgage bankers, financial advisors, lawyers and accountants. While the commission is regularly engaged in private sector transactions, it is a public entity established by the legislature. The legislature has determined that certain activities that may be common to professional relationships in the private sector may be inappropriate or illegal when conducted by commissioners and commission employees. These regulations are intended to insure that the activities of commissioners and commission staff are consistent with the highest degree of professional conduct for public appointees and employees. Also, these regulations recognize the importance of maintaining public trust in the commission's unbiased expertise and impartial decision making. The regulations are intended to ensure that commissioners and commission staff exercise their discretion in a manner that does not create even a perception of bias.

[Statutory Authority: Chapters 43.180 and 42.52 RCW. WSR 97-16-020, § 262-02-020, filed 7/28/97, effective 8/28/97. Statutory Authority: RCW 42.18.250. WSR 85-18-031 (Resolution No. 85-55), § 262-02-020, filed 8/28/85.]

WAC 262-02-030 Rules of conduct. (1) Activities incompatible with public duties; financial interests in transactions. No commissioner or commission employee may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the commissioner or commission employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant.

No commissioner or commission employee may participate, in his or her official capacity, in a transaction involving the state with a partnership, association, corporation, firm or other entity of which the commissioner or commission employee is an officer, agent, employee or member, or in which the commissioner or commission employee owns a beneficial interest.

A commissioner may participate in a general discussion with respect to a method or system of financing for housing or nonprofit facilities which could benefit an industry or interest group which includes an entity of which the commissioner is an officer, agent, employee or member or in which the commissioner owns a beneficial interest: Provided, That such commissioner shall announce or otherwise make known such involvement at the time of such discussion, and: Provided further, That such commissioner's participation be limited to providing general expertise and not include any attempt to influence the votes of other commission members in favor of the entity with which such commissioner is so involved. A commissioner shall abstain from any vote taken by the commission to approve a transaction involving the commission with an entity with which the commissioner is so involved, and if a commissioner abstains from voting because of such involvement such commissioner shall announce for the record his or her reason for his or her abstention.

The commission may contract with a partnership, association, corporation, firm or other entity of which the commissioner is an officer, agent, employee or member or in which the commissioner owns a beneficial interest so long as each commissioner so involved with such entity abstains from voting and the reason for such abstention is announced for the record at the time of such vote.

Example 1. A commissioner serves as an officer and member of the board of directors of a savings and loan company. The commission is considering a program involving the issuance of bonds to provide for the acquisition of mortgage loans originated by mortgage lenders across the state. The commissioner may participate in a general discussion of the commission's program for financing mortgage loans and the commission may enter into a contract for the origination and sale of mortgage loans with the savings and loan company on whose board the commissioner sits: Provided, That (a) at the time of the discussion, the commissioner informs the other commissioners of his/her involvement with the savings and loan company, (b) the commissioner abstains from any vote approving any contract between the commission and the

savings and loan company, and (c) at the time of such vote, the commissioner explains the reason for his/her abstention.

Example 2. A commissioner and a commission employee serve without compensation on a housing advisory committee established by the Federal National Mortgage Association. The commissioner and the commission employee may participate fully in the consideration and approval of contracts between the Federal National Mortgage Association and the commission for the purchase and sale of commission bonds and for the credit enhancement of single-family and multifamily mortgages, because neither the commissioner nor the commission employee has any direct or indirect interest in the Federal National Mortgage Association as a member of an advisory committee and their participation in discussions and approval of such arrangements is in the public interest.

(2) Limitations of gifts. No commissioner or commission employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the commissioner or employee, or be considered as part of a reward for action or inaction.

No commissioner or commission employee may accept gifts other than those specified below:

(a) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(b) Unsolicited items received for the purpose of evaluation or review if the commissioner or commission employee has no personal beneficial interest in the eventual use or acquisition of the item by the commission;

(c) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(d) Food and beverages consumed at hosted receptions where attendance is related to the official duties of the commissioner or the commission employee;

(e) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;

(f) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(g) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(h) Items exchanged among commissioners and commission employees or a social event hosted or sponsored by a commissioner or commission employee for coworkers;

(i) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence with respect to the commission;

(j) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(k) Campaign contributions reported under chapter 42.17 RCW;

(l) Discounts available to an individual as a member of an employee group, occupation or similar broad-based group;

(m) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement; and

(n) Items a commissioner or commission employee is authorized to accept by law.

A commissioner or commission employee is specifically prohibited from accepting the following items from a person or entity who seeks to provide goods or services to the commission:

(i) Payments of expenses incurred in connection with a speech, presentation, appearance or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide nonprofit professional, education, or trade association, or charitable institution; or

(iii) Flowers, plants and floral arrangements.

Example 1. Following the successful closing of a bond transaction, an underwriter, a bond attorney, a commissioner and two commission employees go to a restaurant to celebrate. Neither the commissioner nor the commission staff may permit the underwriter or the bond attorney to host the celebration, because the underwriter is potentially seeking to provide services to the commission and none of the exceptions applicable to accepting food or beverages, i.e., a hosted reception or a civic event, apply. The commissioner and commission employee may attend the closing celebration and, at their own expense (or, if appropriate, at the expense of the commission), may pay for their meals.

Example 2. During a recess in the commission's public meeting, an underwriter, a commissioner and two commission employees go to a restaurant for lunch and discuss, among other things, commission matters. Neither the commissioner nor the commission staff may permit the underwriter to buy their lunch.

Example 3. In the course of an all day session to review bond documents, bond counsel orders sandwiches for underwriters, attorneys, and commission staff. Commission staff may accept such lunch only if it is ultimately paid by the commission from bond proceeds as a cost of issuing the bonds or from an alternative source of commission funds.

Example 4. Commissioners and commission staff attend a national convention of state housing authorities. The commissioners, commission staff and their spouses are invited to a cocktail reception, followed by a sit-down dinner, for all convention attendees. The reception and dinner are co-sponsored by several underwriters. At the cocktail reception, the co-hosts provide food and beverages, including substantial hors d'oeuvres. There are some tables where guests may be seated but most people stand. Commissioners and commission staff may attend the cocktail reception. Because the event is co-hosted, it does not create any perception that the attendees are favoring a particular business entity. Also, the event involves a diverse group of people, rather than solely commissioners, commission staff, and persons who provide goods and services to the commission. Finally, even though tables and chairs are provided, it is not a sit-down meal. Commissioners and commission staff may not attend the dinner following the cocktail reception (without compensating the hosts for the cost of the dinner) because it is a sit-down dinner rather than a hosted reception.

Example 5. An underwriter invites a commissioner with whom he has enjoyed a personal friendship to a holiday open house at his home. The commissioner and her spouse may attend the party and partake of food and beverage since the underwriter enjoys a friendship with the commissioner and it is clear beyond a reasonable doubt that the gift of food and beverage in the context of a holiday open house was not designed to gain or maintain influence.

Example 6. At a national convention for state housing authorities, a commission employee is invited to accept a T-shirt on which there is printed the logo of an underwriter. The employee may accept such gift because it is advertising material of nominal value.

Example 7. Fannie Mae offers a commission employee a scholarship to attend a series of educational classes. The class material is relevant to the employee's responsibilities. The employee cannot accept the scholarship because Fannie Mae is an entity who seeks to provide services to the commission.

Example 8. A commission employee is invited to participate in a panel discussion before a housing industry group. The lunch of each panel member is paid for by the host organization. The commission employee may not accept such lunch (without compensating the hosts for the cost of the lunch) because it is a sit-down lunch rather than a hosted reception. Because participation in such a panel discussion is likely to promote the interests of the commission, the commission employee is encouraged to seek reimbursement for the costs of such meal from the commission.

Discussion. The purpose of the rule and the statute on which it is based is to prevent the acceptance of gifts by commissioners and commission employees that could influence commission decision making. Thus, the rule recognizes the importance of ensuring the commission's impartiality.

The rule also ensures that commissioners and commission staff with experience and expertise in housing matters are able to contribute this experience and expertise to the commission's work in an unbiased manner.

Finally, the rule stresses the importance of maintaining the public trust in this impartiality. Therefore, the rule prohibits the acceptance of gifts that could be interpreted as influencing such decision making. Although it would be difficult to believe that any commissioner or commission employee would be influenced by the acceptance of gifts or a sit-down meal, the commission seeks to regulate the acceptance of gifts that could be inappropriately interpreted as influencing commission decision making.

The rule is not designed to prevent commissioners, commission staff and those with whom the commission contracts from eating together, being social friends or in certain appropriate public situations attending as representatives of the commission hosted receptions at which refreshments are served.

[Statutory Authority: Chapters 43.180 and 42.52 RCW. WSR 97-16-020, § 262-02-030, filed 7/28/97, effective 8/28/97. Statutory Authority: RCW 42.18.250. WSR 85-18-031 (Resolution No. 85-55), § 262-02-030, filed 8/28/85.]