

Role of the Attorney General and Assistant Attorneys General



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ROLE OF THE AAG



Role of the Attorney General

RCW 43.10.030



Attorney General shall:

- (1) Appear in all appeals in which the state is interested;
- (2) Institute and prosecute all cases which may be necessary in the execution of the duties of any state officer;
- (3) Defend all actions and proceedings against any state officer or employee acting in his or her official capacity, in any of the courts of this state or the United States; ...
- (5) Consult with and advise ... state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers;
- (6) Prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested; ...

Representation of Boards, Commissions, and Agencies



RCW 43.10.040

The attorney general shall also represent ... all ...boards ... of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all ... boards ... of the state in all matters involving legal or quasi legal questions...

Impact of Consulting With Non-AG Attorneys



- **No attorney–client privilege exists**
 - Statements/advice in public records are not exempt – emails, advice, letters;
 - No privilege in a deposition or court testimony.
- **Not an official legal opinion**
 - May not be argued in court the way the Board was told;
 - The opinion advice may be very different from what other agencies receive.
- **AAGs give objective advice, since they are not employed by the Board**
- **AAGs have approx. 500 other AAGs to consult on an issue**

Ethics in Public Service



Fundamental Ethics Principles:



When serving as a Board member you are required to act solely in the interest of the Plan membership and the trust funds



May not use your position to obtain (or *attempt* to gain) gifts, rewards, special benefits, or privileges for yourself or others

May not use trust resources for personal benefit or to benefit other personal interests

Board members have a duty to diligently protect the trust from actual and potential conflicts of interest

Use of Trust Resources



May not use trust resources for personal benefit



Trust “resources” include, among other things, its funds, office space, staff time, computers, iPads, cell phones, data and intellectual property

Categorically prohibited uses of Trust resources include:

- Any use for the purpose of promoting or benefiting an outside business, group, or financial interest;
- any lobbying or campaign purpose;
- any illegal conduct or any use that is contrary to agency policy.

De minimis use of Trust resources may be permitted only if:

- The use is not prohibited (see above);
- there is no or negligible cost to the Trust.

Prohibitions Apply to Specific Activities



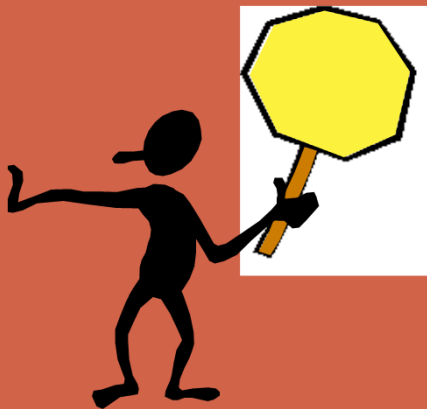
- Receipt of gifts
- Disclosure of confidential information
- Concealment of information when required to disclose
- Use of state resources for private gain or benefit
- Use of state resources for political campaigns
- Financial interest in transactions involving the state
- Outside financial interests, including compensation from outside activities
- Honoraria
- Employment of former employees
- Assisting persons in transactions involving the state

Gifts – Generally



- Cannot accept a gift if it could reasonably be expected to influence the performance or nonperformance of an officer's official duties
- Cannot accept a gift from any one source with a value in excess of \$50 a year
- Does not include:
 - items related to outside business that are customary and not related to official duties
 - gifts from friends & family
 - items donated or returned

Gifts – Caution!



- Different and more restrictive standards apply when employee is involved in regulation or acquiring goods and services
- Referred to as “Section 4” restrictions (RCW 42.52.150(4))
- Section 4 applies when the WSHS approves contracts for goods or services

Not OK Under Section 4



- Flowers
- Gifts from dignitaries
- Food and beverages
 - Even on infrequent occasions in the ordinary course of meals when related to official duties, except at a hosted reception
- Expenses (travel, room, & meals) for speech or seminar, even if reasonable
- Other gifts, even those valued at less than \$50

Meals and Travel



Trust employee and officer travel governed by rules in OFM SAAM manual;

Travel and meeting attendance must be approved in advance;

Check with Jessica Burkhart;

Request should identify any anticipated entertainment in request;

Cannot accept entertainment paid by Trust partners or contractors. Can pay your own way if no “special access” involved. Should get receipt or some other form of documentation.

Board's Confidential Information



Confidential materials and information must be used solely for authorized LEOFF 2 Plan purposes;

Information is confidential if: (1) not available to the public on request (*i.e.*, information subject to confidentiality agreement) or (2) if made confidential by law (*personal information*);

Confidential information may not be disclosed to an unauthorized person;

Confidential information includes protected attorney client privileged material.

Recusal from Board/Staff Action/Deliberation/Discussion



Board members and staff owe an absolute duty of loyalty to the Board and beneficiaries of the funds and must recuse from participation if:



- Beneficially interested, directly or indirectly, in the decision or action or the entity involved
- Accepted compensation or reward from those beneficially interested in the Board decision or action
- Motivated by other than the best interests of the Board or beneficiaries
- Soliciting, or being recruited for, employment by entity doing business with the Board

But, my position requires me to have an interest in the Plan?



RCW 42.26.715 acknowledges and requires that the LEOFF Plan 2 Board consist of members who have an interest in the Plan, but as trustees of the fund, must still act in the best interests of the Plan as a whole and not your individual interest or the group from which you are selected.

Sanctions for Ethics Violations:



Damages suffered by the state



Civil penalties of up to \$5,000 per violation or 3 times value received or sought in violation of laws or rules

May be barred from or limited in doing business with the Board

May be subject to official reprimand by Board

May be removed from Board or terminated from office or position

Contract may be rescinded without any liability to the state

Where can I find these rules?



State regulations:

WAC 292-110 (Executive Ethics);
WAC 390 (Public Disclosure Commission [PDC]);
State Agency Accounting Manual (Office of Financial Management).



Administrative guidance or decisions
(Executive and Legislative Ethics Boards and PDC)

State statutes (primarily RCW 41.04.300, 42.17A, 42.20, & 42.52) and case law on fiduciary principles

OPEN GOVERNMENT



PUBLIC RECORDS ACT
RCW 42.56

OPEN PUBLIC MEETINGS ACT
RCW 42.30

OPEN GOVERNMENT TRAINING ACT
ESB 5964

New Training Rules



- On July 1, 2014, the Open Government Training Act (ESB 5964) requires many public officials and all agency records officers to receive training.
- Required training must be completed within 90 days of July 1, 2014.
- <http://www.atg.wa.gov/OpenGovernmentTraining.aspx>



<http://www.youtube.com/watch?v=38k1XPpT9Po>