

Role of the Attorney General and Assistant Attorneys General



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**SO, WHY DOES THE
BOARD HAVE AN 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 can give a more objective opinion, since they are not employed by the Board
- AAGs have approx. 500 other AAGs to consult on an issue

Non- AG Attorneys



- The Director is an inactive attorney
- A staff member is a licensed attorney
- A Board member is a licensed practicing attorney
- Counties and Cities have attorneys
- Unions, Associations and Guilds have attorneys
- Friends or family may be attorneys

Ethics in Public Service



Will address these issues and applicable rules:



Use of LEOFF Plan 2 trust (trust) resources

Gifts, meals, and travel expenses

Use of the Board's confidential information

Campaign contributions

Open Public Meetings Act

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

For management/supervisors, knowing acquiescence of an ethics law violation by a person under your direction, control, or influence actions of another is itself an ethics violation



Where do all these rules come from?



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

Use of Trust Resources



May not use trust resources for personal benefit or to benefit others



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

Most commonly reported resource misuse cases:



Employee use of agency technology resources for outside business purpose or personal use including:

- Storing personal or business documents on hard drives
- Visiting pornographic, travel, or shopping websites
- Sending jokes or inappropriate content by email
- Using email to conduct outside or personal business
- Using internet bandwidth to listen to music or watch videos
- Using state cell phone for personal calls



Executives using agency staff for personal or outside business

Personal or outside business use of state cars or car repair facilities

Using state credit cards for personal use

Promotion of campaigns via state email

Theft

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: If you want it, you probably can't have it ...



A Board Member cannot seek or accept anything of economic value that could reasonably be expected to influence or reward performance of your duties

Your ability to accept valuable things that *aren't* designed to influence or reward depends on your status, the status of the giver and the nature of the gift

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

Still more on gifts ...



Other considerations:



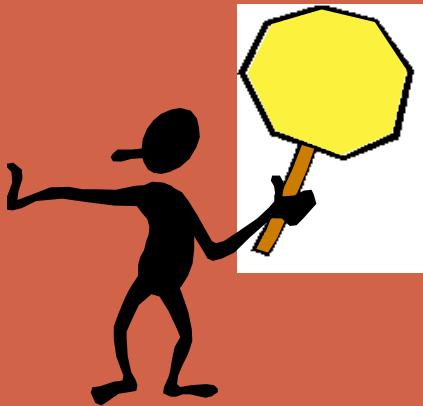
Even if gift is legal, employees and Board members should evaluate the propriety of accepting a gift

Nothing good comes from an ethics rule violation or the appearance of a violation

Close cases should always be decided by rejecting gifts

When in doubt, decline the gift, return it, or donate it within 30 days

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

OK under Section 4



- Advertising and promotional items (tokens)
- Plaques and awards of appreciation
- Items received for purpose of evaluation, if no beneficial interest (samples of products)
- Publications related to official duties
- Food and beverages at hosted receptions
- Admission to a charitable event
- And . . . there's more

Also OK under Section 4



- Items from family & friends, if clear purpose was not to influence
- Customary items related to outside business
- Items exchanged at social events by coworkers
- Items permitted by law
- Items returned or donated to charity within 30 days
- Lawful campaign contributions
- Discounts available to individual as a member of a broad based group

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
- 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.

What about campaign contributions?



Reported contributions are not “gifts” – RCW 42.52.010(10)(h)

If there is a quid pro quo involved, a contribution from a contractor could be considered as “compensation, gratuity, or reward” from an entity interested in state business (RCW 42.52.030; RCW 42.52.110;

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 requested Board decision or action

Beneficially interested in the entity or group seeking business from the Board

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, by my position requirements I 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 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.

Example: Excess Compensation:



The Board may be asked to take a position on a legislative proposal. A Board member must weigh

- the impact on members who may be denied opportunities for overtime
- the impact on the fund of providing additional retirement compensation
- the potential impact on employers who may be charged for additional retirement payments incurred by granting excess compensation during the relevant time frame.
- A Board member may not just consider the impact of the proposal on one group.

Most commonly reported non- resource violations:



State employee awarding contract to affiliated business;

State employee negotiating contract and future employment with contractor simultaneously;

State employees accepting gifts from contractors



How do ethics violations come to light?



Staff, co-worker, or subordinate whistleblower complaints

State Auditor's Office audits

Employee performance investigations

Uncovered during the course of another investigation

Reports by the public or media



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

May be subject to action by a citizen, or by the Attorney General

Open Public Meetings



Open Public Meetings Act (OPMA) (RCW 42.30):



By statute, all Board meetings are open to the public and official notice must be provided



A meeting occurs whenever six Board members gather to transact official business including but not limited to:

- the receipt of public testimony;
- deliberations;
- reviews;
- evaluations;
- considerations; and
- discussions

OPMA recurring questions



Can an email exchange constitute a non-public meeting?

Yes, if it involves a quorum of the board in an exchange of views

Not if it is a one-way communication

Emails exchanged during a public meeting are public records



Can a Board member attend the meeting of a Committee of which he or she is not a member?

Yes, members have the same right to attend and observe as any member of the public;

However if a voting member participates in the discussion of Board business with five other voting members, there would be an unnoticed Board meeting

When may Board go into executive session?

Only when allowed by statute:

Public contract negotiations;

Candidate or employee evaluations;

Litigation or legal matters;

Valuable financial or commercial information related to investment

Links to some additional resources:



State travel reimbursement regulations:

<http://www.ofm.wa.gov/policy/10.htm>

Answers to ethics FAQs from Executive Ethics Board:

<http://www.ethics.wa.gov/RESOURCES/FAQ.htm>

Training aids on recurring ethics topics for supervisors:

http://www.ethics.wa.gov/TRAINING/Ethics_Manual.htm

AGO legal memorandum on use of agency resources for campaigns:

<http://www.ethics.wa.gov/RESOURCES/public%20fund%20memo%202009.pdf>