

EXECUTIVE ORDER 92-04

STANDARDS OF ETHICAL CONDUCT FOR EXECUTIVE BRANCH EMPLOYEES

I, Booth Gardner, Governor of the State of Washington, by virtue of the power vested in me, direct that the following policies, standards, and guidelines be followed as a base of professional conduct for all state agencies and their employees.

This executive order supersedes Executive Order [80-16](#), which is hereby rescinded.

POLICY

Employees of the executive branch are entrusted with the operation of state government by the citizens of this state. They are, THEREFORE, obligated to treat their offices as a public trust, using their official powers, duties, and resources only to advance the public interest. This obligation requires that employees be independent and impartial in the exercise of their duties; that the public's business be conducted through open and established processes that guarantee accountability to the public; that public office or employment be used only for public purposes and not for personal gain; that employees avoid actions that create even the appearance of using their positions for personal gain or to benefit any other private interest; and that the professional conduct of employees should strengthen public confidence in the integrity of state government.

PURPOSE

It is recognized that state agencies and their employees are dedicated to providing quality public service in accordance with high ethical and professional standards. It is also recognized that citizens of this state expect and deserve state agencies and employees that are committed to preserving and protecting the public trust.

THEREFORE, the purpose of this executive order is:

1. To establish standards and guidelines for ethical conduct and principles of public service for employees that protect the integrity of the government of the state of Washington.
2. To provide employees with information and guidance regarding ethical conduct.
3. To ensure that agency heads establish standards of ethical conduct for their employees to protect against actual and potential conflicts of interest that may apply to their agencies.

AUTHORITY AND DEFINITIONS

This executive order is adopted pursuant to authority granted to the Governor by Chapter 42.18 RCW, the "Executive Conflict of Interest Act." Employees should not rely solely on this executive order for detailed guidance regarding ethical conduct and conflict of interest. Employees should always review the appropriate state or federal law and any agency standards,

rules, and regulations that may relate to a specific activity or question regarding ethical conduct. Nothing in this executive order, including the language paraphrasing statutory provisions, is intended to alter the provisions of Chapter 42.18 RCW or other applicable statutes.

Terms used in this executive order that are defined in Chapter 42.18 RCW shall have the same meanings in this executive order as in Chapter 42.18 RCW. "Executive branch employee" or "employee" means "agency head" as defined in RCW 42.18.040 and "state employee" as defined in RCW 42.18.130.

REQUIREMENTS, STANDARDS, AND GUIDELINES FOR ETHICAL CONDUCT

1. Gifts, gratuities, and favors. RCW 42.18.200 prohibits the employee from receiving or soliciting, directly or indirectly, anything of economic value as a gift, gratuity, or favor if the employee has reason to believe that the donor would not give it except for the employee's position with the state, or if the employee has reason to believe that the donor:

- a. Has or is seeking a contractual or business relationship with the employee's agency;
- b. Conducts activities that are regulated by the employee's agency; or
- c. Has interests that may be substantially affected by the employee's performance or nonperformance of official duties.

RCW 42.18.230(2) prohibits anyone from giving, directly or indirectly, anything of economic value as a gift, gratuity, or favor to an employee if any of the above circumstances exist.

RCW 42.17.2415 requires elected officials and executive state officers who are required to file statements of financial affairs with the Public Disclosure Commission to also file a statement identifying each gift valued above specified dollar amounts that was received by the officials or officers or their immediate families.

Guidelines. The employee should reject gifts to himself or herself or to his or her family members that may cast doubt on the integrity, independence, and impartiality of the employee or state office. Gifts or benefits, no matter how insignificant, should be rejected if they could be reasonably construed to affect the official judgment or actions of the employee, create any sense of obligation to the giver, or if the purpose or motive for the gift could appear to be improper. Even monetarily insignificant gifts or favors may become significant if they are given with some frequency or come to be expected by the recipient.

In evaluating the propriety of gifts, the employee should, THEREFORE, be sensitive to the source and value of the gift, the frequency of gifts from one source, the possible motives of the giver, and the perception of others regarding the gift. Since no offsetting public good is achieved by accepting gifts that may create an appearance of impropriety, unclear or questionable situations should always be decided by rejecting gifts, gratuities, or favors that may raise questions regarding the employee's integrity, independence, and impartiality.

The following types of gifts, gratuities, and favors are exceptions to the prohibitions contained in RCW 42.18.200. They may be accepted by the employee in situations where the circumstances do not lead to the inference that the official judgment or action of the employee was intended to be influenced.

- a. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value may be accepted.
- b. Gifts, gratuities, and favors may be accepted when they stem from family relationships (such as those between parents, children, or spouse of the employee and the employee) or personal relationships that are unrelated to the employee's official duties when the circumstances make it clear that those relationships, rather than the business of the giver, are the motivating factors.
- c. Food and refreshment of nominal value may be accepted on infrequent occasions in the ordinary course of a breakfast, lunch, or dinner meeting or reception where the attendance of the employee is a part of the employee's official duties.
- d. With the approval of the agency head, bona fide reimbursement for travel expenses and other necessary subsistence may be accepted when the travel is related to the official duties of the employee and for which no state payment or reimbursement is made. Examples include, but are not limited to, reimbursement by other governmental entities or professional associations. Reimbursement should not exceed the amount the employee would be eligible to receive if the state were reimbursing the employee. The employee should reject payment for personal living expenses, entertainment, and travel costs in any case where acceptance may raise questions regarding the employee's integrity. The employee should, THEREFORE, avoid situations where such expenses are paid for by any person or organization that has a substantial interest in the official duties of the employee and where acceptance might create a reasonable perception that the object of the payment is to provide a personal vacation or other benefit for the employee.
- e. Loans from banks and other financial institutions may be accepted on customary terms to finance the proper and usual activities of the employee, such as the purchase of housing or motor vehicles. Business discounts that are made available to employees as a group may be accepted. Loans and other transactions on terms and conditions not generally available to the public or other employees are prohibited gifts and should be rejected.
- f. The employee may accept unsolicited gifts of nominal value from foreign or domestic dignitaries or commemorating official occasions, where custom or etiquette so requires. Any gifts of more than nominal value received under such circumstances shall be reported to the employee's agency head, who shall direct the appropriate disposition of them.

2. Outside employment and compensation. RCW 42.18.190 prohibits the employee from engaging in outside employment and receiving compensation for his or her services from sources other than the state of Washington if: (a) the services are not actually performed by the employee; (b) the services are within the course of the employee's official duties; (c) the services involve transactions with the state that the employee may not assist in because they relate to the

employee's official state duties (see RCW 42.18.170); or (d) the employee has reason to believe that the outside employment involves a person who:

- (1) Has or is seeking to obtain a contractual or other business relationship with the employee's agency;
- (2) Conducts operations or activities that are regulated by the employee's agency; or
- (3) Has interests that may be substantially affected by the employee's performance or nonperformance of official duty.

RCW 42.18.213 prohibits the employee from asking for or receiving, directly or indirectly, any compensation, gratuity, or reward, or promise of such benefit, other than the employee's normal compensation, for performing or not performing an official duty.

RCW 42.18.215 prohibits an employee from having a direct or indirect interest in any contract, sale, lease, or purchase over which the employee has any supervision. The employee is also prohibited from accepting, directly or indirectly, any compensation, gratuity, or reward from another person who has an interest in such a contract, sale, lease, or purchase.

Guidelines. Whether a given type of outside employment is allowable depends upon the specific duties of the employee and the actual or potential relationship between the outside employer and the employee's agency. Under no circumstances may an employee use his or her agency's personnel, time, material, facilities, equipment, telephones, information, or other resources in connection with outside employment. Nor may the employee use his or her official position to influence any client of his or her agency to secure compensated services from the employee or the employee's outside employer. The employee may not engage in outside employment if the demands of such employment would detract from his or her ability to perform state duties in a satisfactory manner. The employees should not accept honoraria for services when the services are ordinarily performed in the course of his or her official duties.

Agency heads shall provide specific policies, standards, and procedures to ensure that outside employment does not conflict with the proper performance of assigned duties nor is inconsistent with Chapter 42.18 RCW and this executive order. Agency policies, standards, and procedures may be more restrictive than provisions of this executive order. Such policies, standards, and procedures may require the employee to notify his or her agency and receive prior approval from the agency head before engaging in outside employment. Agency heads shall examine positions within their agencies to determine if such notification and prior approval of outside employment should be required. The employee should be aware that approval of outside employment is required under the circumstances set forth in RCW 42.18.190 (1)(d).

The following types of outside compensation are exceptions to the prohibitions contained in RCW 42.18.190:

- a. The employee may receive compensation from another governmental entity pursuant to RCW 42.18.190 (2).

b. The employee may continue in a bona fide pension, retirement, group life, health or accident, or other employee benefit plan maintained by a former employer if the former employer makes no contributions on behalf of the employee during the employee's state employment. However, the employee may continue in such plans and receive contributions on his or her behalf from former employers under the following conditions: (1) If the plan qualifies under the Internal Revenue Code; (2) if contributions by the former employer to a plan are not made for periods longer than five consecutive years of state employment or an aggregate of five years out of the preceding ten; or (3) if the plan is provided by a former employer who is a governmental entity.

c. The employee may maintain his or her rights acquired under a bona fide profit-sharing or stock bonus plan maintained by a former employer and qualified under the Internal Revenue Code if no employer contributions are made on behalf of the employee based on profits attributable to any portions of the period of state employment.

3. Use of official authority for personal gain. RCW 42.18.210 prohibits an executive branch employee from using the power and authority of his or her office to induce or coerce another person to provide the employee with any thing of economic value, directly or indirectly.

4. Use of state resources for personal benefit. RCW 42.18.217 prohibits the employee from using state personnel, money, or property for private benefit of the employee or another.

Guidelines. State property, equipment, personnel, money, services, or time are for public purposes only and shall not be appropriated for personal or private use. This prohibition includes use of office space, typewriters, computers and related supplies and systems, paper, pens and pencils, telephones, postage, stationery, photocopying, vehicles, and other state resources.

Managers and supervisors should not require or suggest that an employee under their supervision perform personal tasks for them. Not only is such use of state personnel improper, but it also demeans the importance of the employee's official duties.

5. Assisting in transactions involving the state. RCW 42.18.170 prohibits an employee from assisting another person, whether or not for compensation, in any transaction in which the employee has participated or in any transaction which is, or has been, under the employee's supervision unless the assistance is provided in the course of the employee's official duties. Transactions include any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case, or other matter in which the state has a substantial proprietary interest, which will be subject to state action, or in which the state is or will be a party.

Under RCW 42.18.180, certain transactions are exempted from this prohibition, including those transactions (a) when the employee is acting as a guardian, executor, administrator, trustee, or personal fiduciary (with certain specified limitations) for family members and others, (b) when the employee is assisting another employee involved in disciplinary or other personnel proceedings, or (c) when the employee is giving testimony under oath.

6. Employment restrictions for former employees. RCW 42.18.221 prohibits a former executive branch employee from:

- a. Assisting another person in a transaction involving the state in which the employee participated during employment with the state. Exceptions to this prohibition are provided in RCW 42.18.221(6).
- b. Sharing compensation received by another person for assisting that person in rendering services that the employee is prohibited from providing.
- c. Within one year of the employee's termination date, accepting employment or receiving compensation from a private business if during the previous two years, on behalf of the state agency, the employee negotiated, administered, or had discretionary decision making influence over contracts with that business worth more than \$10,000; and the former employee's duties with the private business involve fulfilling or implementing the contracts.
- d. Accepting an employment offer or receiving compensation from a private business if the employee knows or believes the offer or compensation is intended as a reward for performance or nonperformance of a state duty.

These prohibitions do not apply if a former employee works for an employee organization.

Guidelines. These prohibitions are only a summary of RCW 42.18.221. To avoid conflicts of interest, the current employee who contemplates doing business with the state after he or she leaves state employment and former employees who wish to engage in such business activity should thoroughly review RCW 42.18.221 and related statutes and seek legal advice.

7. Use of public office for political purposes. RCW 42.17.130 prohibits an executive branch employee from using state agency property and personnel to support the election of any individual or for the promotion or opposition of any ballot proposition. Exceptions are allowed for elected legislative bodies to express a collective position on a ballot proposition, statements by elected officials in support or opposition to ballot propositions at an open press conference, and activities that are part of the "normal and regular conduct" of the office or agency.

RCW 42.17.190 prohibits an executive branch employee from using any state facilities, directly or indirectly, to support or oppose an initiative to the legislature.

RCW 41.06.250 protects an employee from being forced to make contributions for partisan, political purposes. Also, solicitation of contributions for partisan, politic-at purposes on state property is forbidden.

Guidelines. State offices, equipment, personnel, and other resources are to be used only for official public purposes. Use of such resources for political purposes or to influence the outcome of a ballot election is not only illegal, but also may create an unfair advantage in the election process and is a misuse of public funds. This prohibition applies to political party activities, campaigning, distribution and display of campaign material, and fund raising.

While state resources and personnel may not be used to influence an election, the employee, on his or her own time, has specific rights to engage in partisan political activities and election campaigns. Exceptions include: (a) the classified civil service employee, who may not hold part-time public office in a political subdivision of the state if such office is "incompatible with, or substantially interferes with," the discharge of official state duties; and (b) the employee whose position is financed totally or primarily by federal grant-in-aid funds is subject to federal regulations regarding political activity. (See RCW 41.06.250)

PRINCIPLES OF PUBLIC SERVICE

1. Duty to support open government. To ensure public confidence in the integrity of state government, the employee must conduct the public's business in an open manner and through legally established processes that guarantee accountability and visibility. This entails an understanding of and a strict adherence to both the spirit and the letter of laws relating to the Administrative Procedure Act (Chapter 34.05 RCW), open public records (RCW 42.17.250 - 340), the Open Public Meetings Act (Chapter 42.30 RCW), the reporting of public officials' financial affairs (RCW 42.17.240 - 243), employee whistleblower protections (Chapter 42.40 RCW), and merit system employment (Chapters 41,06 and 28B. 16 RCW).

2. Avoidance and disclosure of conflicts and withdrawal in certain cases. The employee may at times face unavoidable conflicts of interest between public duties and private interests. In these situations, the employee is responsible for protecting the integrity of the decision making process. In some cases, that may mean disclosing the conflict and, if necessary, voluntarily withdrawing from the decision. In other cases, the situation may require the employee to eliminate the interest that creates the conflict.

At times, an employee's relationship with, or position within, a private organization may be perceived as affecting the employee's independence and impartiality on the job. The employee should, THEREFORE, examine such relationships and avoid those that involve organizations whose interests relate directly to the employee's official duties.

3. it of public trust. All employees, and particularly agency heads and managers, should contribute to an ethical work place environment. This involves (a) working toward elimination of all forms of illegal discrimination in employment practices, including discrimination based on age, sex, marital status, race, creed, color, national origin, sexual orientation, or the presence of any sensory, mental or physical handicap (RCW 49.60.180 and EO 91-06); (b) creating a work environment free from sexual harassment (EO 89-01); and (c) informing employees of their rights under the state's whistleblower law and encouraging employees to disclose instances of waste, mismanagement, fraud, and abuse of public authority (Chapter 42.40 RCW).

4. Adherence to public agency lobbying restrictions. An executive branch employee is granted specific authority to engage in certain kinds of lobbying. RCW 42.17.190(3) restricts publicly funded lobbying to providing information, communicating on matters pertaining to official agency business, and advocating the official position or interests of the agency. The employee must report certain expenditures and time dedicated to lobbying the legislature to the Public Disclosure Commission. No public funds may be spent as a direct or indirect gift or campaign

contribution to an elected official, officer, or employee. An executive branch employee who lobbies is treated differently than other lobbyists under the law. As such, he or she is held to higher standards of conduct in dealings with the legislature. It is, THEREFORE,, the duty of the employee who lobbies to know what is permissible. Certain behavior that may be acceptable for private sector lobbyists may be neither appropriate nor legal for an executive branch employee.

RESPONSIBILITIES OF AGENCY HEADS

1. Each agency head shall:
 - a. Establish written standards for conflicts of interest that address any special responsibilities and conditions of employment that may apply to their agencies. Agency standards may provide for additional restrictions that are appropriate for the duties of the individual agency, including, but not limited to, disclosure of potential conflicts of interest. Copies of such standards and any revisions thereto shall be filed with the Office of the Governor. (See RCW 42.18.250)
 - b. Establish internal procedures so that (1) an employee may obtain advice regarding potential conflict of interest issues, and (2) complaints relating to violations of the Executive Conflict of Interest Act are reviewed, investigated, and acted upon. The procedures shall specify to whom requests for advice and complaints shall be submitted.
 - c. Take appropriate steps to inform their employees of the contents of this executive order and related statutes, standards of ethical conduct for their agency, and appropriate internal procedures. Agency managers are encouraged to discuss these standards with their employees.
2. Each agency head shall be responsible for the administration and enforcement within their agency of the Executive Conflict of Interest Act and any standards of ethical conduct adopted pursuant to that act or this executive order.

RESPONSIBILITIES OF THE GOVERNOR'S OFFICE

1. The Office of the Governor has the following responsibilities:
 - a. Establish appropriate standards to protect against actual or potential conflicts of interest on the part of state employees. In carrying out this responsibility, the Office of the Governor shall periodically review this executive order and the standards of ethical conduct adopted by state agencies and make recommendations for changes that would strengthen the integrity of state government.
 - b. Maintain and make available on request opinions and rulings relating to questions and issues regarding conflicts of interest, including Attorney General opinions, letter opinions, advisory opinions issued by agency directors and the Office of the Governor, and other formal, authoritative opinions and rulings on conflict of interest questions.
 - c. Maintain a file of agency standards for conflicts of interest submitted by agency heads.

2. In those instances where a potential conflict of interest question cannot be resolved by an agency head, the Governor may use his authority to designate a panel of experts to review questions of potential conflict of interest under Chapter 42.18 RCW submitted by agency heads. Such panels may include representation from the Office of the Attorney General and the Office of the State Auditor. Agency heads should, however, make every effort to respond to and resolve conflict of interest questions relating to their employees at the agency level. Opinions issued by such panels shall be advisory and deal only with hypothetical situations. The responsibility for appropriate ethical conduct rests with the employee.

3. As provided in RCW 42.18.240, the Governor has specific responsibility to enforce the Executive Conflict of Interest law as it applies to agency heads and employees of the Office of the Governor.

IN WITNESS WHEREOF, I have hereunto set
my hand and caused the seal of the State of
Washington to be affixed at Olympia this
21st day of July A.D., Nineteen hundred and ninety-two.

Booth Gardner
Governor of Washington

BY THE GOVERNOR:

Secretary of State
