



STATE OF WASHINGTON

OFFICE OF THE INTERAGENCY COMMITTEE  
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June 6, 2006

**TO:** IAC Members & Designees  
**FROM:** Laura Johnson, Director   
**SUBJECT:** Item # 9 – Ethics Overview and Discussion

**Enclosed:** An outline of the State's Ethics in Public Service rules, and draft Model Rules. Prepared by Paul Silver, Assistant Attorney General.

**Who:** Mr. Silver is the attorney for the State Investment Board, which decides major investments for the state's pension funds. Susan Thomsen, our general counsel, will also be present.

**Board Session:** Paul will give a brief review of the overall ethics requirements, but he will focus on identifying and avoiding conflicts-of-interest issues. The questions and scenarios several IAC Board members posed earlier will be specifically addressed, at the meeting. Paul may also suggest the IAC consider adopting the Model Rules.

**Board Action Sought:** Participation and discussion. Identify further questions. If appropriate, direction to staff for future rule or guideline adoption.

**Other background:** The statute that creates IAC defines its membership as follows:

There is created the interagency committee for outdoor recreation consisting of the commissioner of public lands, the director of parks and recreation, and the director of fish and wildlife, or their designees, and, by appointment of the governor with the advice and consent of the senate, five members from the public at large who have a demonstrated interest in and a general knowledge of outdoor recreation in the state. .... RCW 79A.25.110

We look forward to an interesting and interactive session with Paul and Susan.

# Ethics in Public Service Law Principles

## IAC Presentation

### June 23, 2006

#### Primary Principles

- May not use IAC public position for personal gain or private advantage—for self or others.
- May not receive anything, except the state, for performing, omitting, or deferring the performance of any official IAC duty.

#### General Guidelines on Gifts—Food, Beverages, Travel Expenses

- General rules on gifts. May not solicit or receive a gift, gratuity or favor, if it reasonably could be expected to influence or be considered a reward for the performance or non-performance of official duties. (A “gift” is anything of economic value obtained where “no consideration” is given in return.)
- May not accept multiple gifts from a single source, or a single gift from multiple sources, with an aggregate value in excess of \$50 in a calendar year. Gifts to family members (i.e. spouse; dependent children; other dependent relatives if living in the household) are counted unless there is an independent basis for the gift.
- Travel expenses. Generally, payment of meeting or conference fees or costs, as well as related travel expenses, may not be made by an entity which has or seeks to have a business arrangement with the IAC (e.g. grant, grant recommendation, and the like).
- Gift of Food and Beverages. Except in potential conflict of interest situations, may accept:
  - food and beverages at a hosted reception where attendance is related to official duties;
  - food and beverages at events sponsored by or in conjunction with a civic, charitable, governmental, or community organization;
  - unsolicited token beverages (other than alcoholic beverages), such as coffee, tea, water or juice, which are made available free of charge to visitors; and,
  - food and beverages, on infrequent occasions, in the ordinary course of meals, at gatherings where attendance is related to official duties.
- Although food and beverages generally do not count against the \$50 calendar year gift limit, they must be reported if value exceeds \$50 on a single occasion.

#### Restrictions on the Acceptance of Gifts in Potential Conflict of Interest Situations

- Persons involved in IAC grants or grant recommendations are restricted from accepting certain items from those involved in or seeking to be involved in those grants, or grant recommendations.
- The following may **not** be accepted in potential conflict of interest situations involving persons or entities doing business with or wanting to do business with the IAC:
  - payment of expenses incurred in connection with a speech, presentation, or appearance;
  - payment for seminars and educational programs;
  - food and beverages, even in the ordinary course of meals; and,
  - flowers, plants, and floral arrangements.

### **Confidential Information**

- "Confidential information" means specific information, rather than generalized knowledge, that is not available to the general public on request, in addition to information made confidential by law.
- May not disclose or use confidential information obtained through official position for personal gain or benefit, or the gain or benefit of another.
- May not accept employment or engage in any business or professional activity which might reasonably require or induce disclosure of confidential information acquired through official position.

### **Use of State Resources**

- May not employ or use any person, money, or property under official control, direction, or custody for the private benefit or gain of the IAC officer or employee or the benefit or gain of another person or entity.
- May not use state resources to assist a campaign for a person or the promotion or opposition to a ballot proposition. Knowing acquiescence of such a violation by a person with authority to direct, control, or influence actions of another is also a violation.
- Some use of state resources may be permitted if there is no cost to the state; or, if the IAC finds it benefits the public and the cost to the state is negligible.

### **Non-state Compensation for Outside Activities**

- May not receive anything of economic value under any grant outside of official duties.
- May receive compensation under a grant only if each of the following conditions is met:
  - Grant is legitimate and is actually performed.
  - Performance or administration of grant is not within official duties or supervision.
  - Performance of grant does not violate prohibition against assisting persons in transactions involving the state, and laws or rules governing outside employment.
  - Grant may not be performed for or be compensated by a person or entity from whom the IAC officer or employee could not accept a gift.
  - Grant is not expressly created or authorized in official capacity.
  - Grant would not require the disclosure of confidential information.
- Additional competitive bidding requirements apply if an IAC officer or employee seeks to have a beneficial interest in a contract with or grant from another state agency.

### **Honoraria**

- General rule. May not accept honorarium from those seeking or reasonably expected to seek business with the IAC, or those seeking or opposing (or reasonably likely to seek or oppose) enactment of legislation, adoption of administrative rules or actions, or policy changes by or affecting the IAC.

### **Employment and Transactions after State Service**

- One-Year Restriction: May not accept employment or compensation from an employer within one year of termination of IAC membership to work on grants with the IAC in potential conflict with the IAC's interest.

- **Two-Year Restriction:** Cannot have, within two years following the termination of state employment, a direct or indirect beneficial interest in a grant which was expressly authorized or funded by executive action of the IAC in which the former IAC officer or employee participated.
- **Restrictions without Time Limits.**
  - May not accept an offer of employment or receive compensation from an employer knowing, or having reason to believe, or under circumstances which would lead a reasonable person to believe, that the offer of employment or compensation was intended in any way to influence, compensate, or reward the performance or nonperformance of official duties.
  - May not assist another, whether or not for compensation, in any transaction in which the former IAC officer or employee personally participated while employed by the state.
  - May not accept employment or engage in any business or profession which might reasonably require or induce disclosure of confidential information acquired through official position.

**Assisting Others in State Transactions Outside of Official Duties**

- **General Rule:** May not assist a person or entity with a transaction involving the state except in the course of official duties.
- Even if no compensation is received, may not use position or IAC facilities, equipment, or supplies to assist another in a transaction involving the IAC, or use influence over the IAC to obtain, or attempt to obtain, private gain or advantage for the person or entity seeking to transact business with the IAC.

**Personal or Private Financial Interest in IAC Transactions**

- May not be beneficially interested, directly or indirectly, in a grant or grant recommendation that is made by, through, or is under supervision of the IAC.
- May not accept any compensation, gratuity, or reward from any other person or entity beneficially interested in a grant or grant recommendation by the IAC.
- May not participate, in official capacity, in a transaction involving the IAC, if the IAC officer or employee is beneficially interested in the transaction.
- May not participate, in official capacity, in a transaction involving the IAC, with a private party or entity where the IAC officer or employee is also an officer, agent, employee, or member of the private entity dealing with the IAC.

**Recusal from Participation in IAC action**

**Recusal required if a IAC officer or employee:**

- is beneficially interested, directly or indirectly, in a grant or grant recommendation by the IAC.
- either owns a beneficial interest in, or is an officer, agent, employee or member of, an entity which is seeking a grant or grant recommendation by the IAC.
- accepts, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested in such a grant or grant recommendation.

Recusal procedures:

- Must not participate in any discussion or vote by the IAC or any IAC Committee regarding specific decision or other transaction in which there is a conflict of interest.
- Must refrain from attempting to influence any IAC member in any discussion or vote regarding the specific decision or transaction in which there is a conflict of interest.
- Must disclose to the public the reasons for recusal from any IAC discussion or action, at or prior to the time recusal occurs.

Sanctions for Violation of Ethics in Public Service Law

Sanctions and remedies include but are not limited to the following:

- Damages sustained by the State.
- Civil penalties of up to \$5,000 per violation **or** 3 times the value of any thing received or sought in violation of the Ethics Law (whichever is greater).
- Grant may be rescinded, without any liability to the State.
- Costs of investigating and bringing the action.
- May be subject to action by a citizen, or by the Attorney General.

For June 23, 2006 Discussion

Note: Below are three model rules suggested by the Executive Ethics Board for Boards and Commissions which may have members from entities that may be interested in the decisions (e.g. grants or grant recommendations) which may be made by such a Board or Commission. The model rules have been edited and tailored to fit the circumstances of the IAC.

**Model Rule #1—grant recommendations, grants:**

(1) When an IAC Board or staff member is beneficially interested, directly or indirectly, in a grant that may be recommended or made by, through, or is under the supervision of the IAC, in whole or in part, or when a member accepts, directly or indirectly, any compensation, gratuity, or reward from a person or entity beneficially interested in such a grant recommendation or grant, the member shall:

- (a) Recuse himself or herself from the IAC discussion regarding the specific grant recommendation or grant;
- (b) Recuse himself or herself from the IAC vote on the specific grant recommendation or grant; and
- (c) Refrain from attempting to influence the other IAC members in their discussion and vote regarding the specific grant recommendation or grant.

(2) The prohibition against discussion set forth in subsections (1)(a) and (1)(c) above shall not prohibit the member of the IAC from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1), a person or entity has a beneficial interest in a grant recommendation or grant when the person or entity applies or competes for or otherwise seeks to be recommended by the IAC for a grant or awarded a grant by the IAC.

**Model Rule #2—other transactions:**

(1) When an IAC Board or staff member, as an individual, or as a person who owns a beneficial interest in or is an officer, agent, employee or member of an entity which is engaged in a transaction involving the IAC, the IAC member shall:

- (a) Recuse himself or herself from the IAC discussion regarding the specific transaction;
- (b) Recuse himself or herself from the IAC vote on the specific transaction; and

(c) Refrain from attempting to influence the other IAC members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsections (1)(a) and (1)(c) above shall not prohibit the IAC member from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the IAC" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the IAC member in question believes, or has reason to believe:

(i) Is, or will be, the subject of IAC action; or

(ii) Is one to which the IAC is or will be a party; or

(iii) Is one in which the IAC has a direct and substantial proprietary interest.

(b) "Transaction involving the IAC" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the IAC that is the basis for the claim, case, or lawsuit. Rulemaking also is not a "transaction involving the IAC."

### **Model Rule #3—recusal process**

If recusal by an IAC Board member occurs pursuant to model rule #1 or #2, the IAC Board member shall disclose to the public the reasons for his or her recusal from the IAC action when recusal is made. The IAC shall memorialize each recusal and the basis for the recusal.