Chapter 287-04 WAC
CONFLICT OF INTEREST

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

287-04-030 Rules of conduct. [Statutory Authority: RCW 43.33A.-110. WSR 81-23-012 (Order 81-1), § 287-04-030, filed 11/10/81.] Repealed by WSR 93-04-008, filed 1/22/93, effective 2/22/93. Statutory Authority: RCW 43.33A.110.

WAC 287-04-010 Promulgation. Pursuant to section 4, chapter 219, Laws of 1981 the board promulgates the following rules relating to conflict of interest and ethical conduct appropriate to the specific needs of the board.

[Statutory Authority: RCW 43.33A.110. WSR 81-23-012 (Order 81-1), § 287-04-010, filed 11/10/81.]

WAC 287-04-020 Purpose. The board finds that the trusteeship and investment management of the state's trust and retirement funds demand the highest degree of confidence from the beneficiaries of the funds and the public in general, and the establishment of rules regarding conflict of interest and ethical conduct will promote and sustain public trust and maintain integrity in government.

[Statutory Authority: RCW 43.33A.110. WSR 81-23-012 (Order 81-1), § 287-04-020, filed 11/10/81.]

WAC 287-04-029 Rules of conduct. WAC 287-04-031 through 287-04-039 are promulgated pursuant to RCW 43.33A.110 and 42.52.200 to ensure compliance with chapter 42.52 RCW (Ethics in public service) and the code of conduct, as adopted by the board. All employees of the board and board members must comply with the code of conduct.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-029, filed 12/19/97, effective 1/19/98.]

WAC 287-04-031 Gifts. (1) "Gifts" and "thing of economic value"

(a) No employee of the board or member of the board shall receive, accept, seek or solicit, directly or indirectly, any gift as defined in RCW 42.52.010(18) if such employee or member of the board has reason to believe that it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

(b) No employee of the board or member of the board shall accept gifts, except those specified in RCW 42.52.150 (2) and (5), with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources.

(c) Notwithstanding the above exception found in RCW 42.52.150 (2) and (5), a board member or an employee of the board who participates in the acquisition of goods and services cannot accept things of economic value from a person who seeks to provide goods or services to the board, except for those items specifically listed in RCW 42.52.150(4).

(2) No employee of the board or board member may accept honorarium under the circumstances set forth in RCW 42.52.130. An employee or board member may accept honorarium if all of the following are met:

(a) The employee or board member will not be carrying out their agency duties nor engaging in activity which focuses specifically on the board's responsibilities, policies or programs;

(b) The honorarium is not being offered because of the employee's or board member's official position in the board;

(c) The topic is such that it does not appear that the employee or board member could have used information acquired in the course of employment or membership on the board;

(d) The honorarium is not being offered by a person or entity which does business with or can reasonably be expected to seek business with the board; and

(e) No use of government time or resources was used by the employee or board member to produce the materials or prepare for the article, appearance, or item for which the honorarium is being given.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-031, filed 12/19/97, effective 1/19/98. Statutory Authority: RCW 43.33A.110. WSR 95-15-081, § 287-04-031, filed 7/18/95, effective 8/18/95; WSR 93-04-008, § 287-04-031, filed 1/22/93, effective 2/22/93.]

WAC 287-04-032 Personal investments. (1) The following definitions apply to this section:

(a) "Permissible investment" means any mutual fund or deposit account, certificate of deposit or money market fund maintained with a bank, broker, or other financial institution, any security publicly traded in an organized market if the interest in the security at acquisition is ten thousand dollars or less or an interest in real estate unless such interest involves a related party transaction.

(b) "Other investment" means any investment not defined as a permissible investment in (a) of this subsection.

(c) "Immediate family" includes the spouse, dependent children, other dependent relatives if living in the household and any other household member, whether or not related.

(2) Board members and employees may purchase "permissible investments" without prior approval.

(3) No employee of the board shall or shall permit any member of his or her immediate family to, purchase any "other investment," without the written prior approval of the executive director or his or her designee. The executive director shall not purchase or permit any member of his or her immediate family to purchase any "other investment," without the prior written approval of the chair or his or her designee who shall report to the board any approval granted or denied. No member of the board shall or shall permit any member of his or her immediate family to purchase any "other investment," without the prior written approval of the executive director or his or her designee, who shall report to the board any approval granted or denied.

(4) No employee of the board or board member shall participate in an LBO or venture capitol IPO of which the board has an interest until such shares are available to the general public.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-032, filed 12/19/97, effective 1/19/98.]

WAC 287-04-033 Additional prohibitions. (1) No board member or employee shall borrow from investment managers, outside service providers, professional advisors or consultants, banks, or other financial institutions with which the board has a business relationship, except and unless such entities are normally engaged in such lending in the usual course of their business, and then only on terms offered to others under similar circumstances.

(2) Confidential information shall be used solely for the board's purposes and under no circumstances revealed to unauthorized persons, except as may be otherwise required to be disclosed as a public record pursuant to the requirements of chapter 42.17 RCW. If a document is subject to disclosure pursuant to chapter 42.17 RCW, there is an affirmative duty to properly release the document upon request.

(3) No board member or employee shall divulge state agency or board information or proprietary information in the board's possession, whether labeled confidential or not, to any unauthorized person or in advance of the time prescribed for its authorized issuance, or otherwise making use of, or permitting others to make use of, information not available to the general public.

(4) No board member or employee shall use his or her position or employment with the board, or use board facilities, equipment, or supplies, to obtain or attempt to obtain private gain or advantage, either for themselves or for other persons.

(5) No board member or employee shall use his or her position or employment with the board, or use board facilities, equipment, or supplies, to assist another in a transaction involving the board, or use his or her influence over the board to obtain or attempt to obtain gain or advantage for the person or entity seeking to transact business with the board.

(6) No member of the board or its staff shall accept employment or engage in business or professional activity which he or she might reasonably expect would require or induce him or her to disclose confidential information acquired by him or her by reason of his or her official position.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-033, filed 12/19/97, effective 1/19/98.]

WAC 287-04-034 Recusal. (1) A member or employee of the state investment board shall comply with subsection (2) of this section when the following circumstances apply or it is reasonably foreseeable that they will apply:

(a) The member or employee is beneficially interested, directly or indirectly, in an investment decision, investment agreement, contract, sale, lease, purchase, or any other acquisition or disposal of an asset, goods or services made by, through, or under the supervision of the board, in whole or in part; or

(b) The member or employee either owns a beneficial interest in, or is an officer, agent, employee or member of, an entity which is engaged in a transaction involving the board; or

(c) A member or employee accepts, directly or indirectly, any compensation, gratuity or reward from any other person beneficially interested in such investment decision, investment agreement, contract, sale, lease, purchase, or any other acquisition or disposal of assets, goods or services; or

(d) A member or employee's participation in a board discussion or vote is motivated by something other than the best interests of the board, its members and beneficiaries, in violation of that person's duty of loyalty.

(2)(a) If required by subsection (1) of this section, the member or employee shall:

(i) Recuse him or herself from discussions by the board, or any committee of the board, regarding the specific investment decision or other transaction; and

(ii) Recuse him or herself from any vote by the board, or any committee of the board, upon the specific investment decision or other transaction; and

(iii) Refrain from attempting to influence any other board member or employee in any discussion or vote regarding the specific investment decision or transaction.

(b) If recusal by a member or employee occurs pursuant to this subsection, the member or employee shall disclose to the public the reasons for his or her recusal from any board discussion or action at or prior to the time recusal occurs. The board staff shall record each such recusal and basis for the recusal.

(c) The prohibitions contained in this subsection do not prohibit the member or employee from using his or her general expertise to educate and provide general information on the subject area to other members or employees.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-034, filed 12/19/97, effective 1/19/98.]

WAC 287-04-038 Definitions. The following definitions apply to this chapter:

(1) "Transaction involving the board" means a proceeding, application, investment decision, investment agreement, contract, sale, lease, purchase or any other acquisition or disposal of any asset, goods or services, request for a ruling or other determination, claim, case or similar matter that the member or employee in question believes, or has reason to believe:

(a) Is, or will be the subject of board action; or

(b) Is one to which the board is or will be a party; or

(c) Is one in which the board has a direct and substantial proprietary interest.

"Transaction involving the board" 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 employee; or a claim, case, lawsuit, or similar matter if the member or employee did not participate in the underlying transaction involving the board that is the basis for the claim, case or lawsuit. Rule making is not a "transaction involving the board."

(2) "Board action" means any action on the part of the board including, but not limited to:

(a) A decision, determination, finding, ruling, or board order; and

(b) An investment decision or approval of an investment decision, an investment contract or approval of an investment contract, any other contract or approval of such contract, or any other transaction or approval of such transaction, sanction, denial of a transaction or request, or failure to act with respect to a decision, determination, finding, ruling or order.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-038, filed 12/19/97, effective 1/19/98.]

WAC 287-04-039 Violation of code. (1) A board member or employee who is found by the board to have violated the code of conduct set forth in WAC 287-04-031 through 287-04-034 may be subject to official reprimand by vote of the board. In the event that the board determines a violation of the code to be so egregious or apparent as to constitute malfeasance, misfeasance, inefficiency, neglect of duty, incapacity, or unfitness to perform his or her fiduciary duties and responsibilities in the exclusive interest of the board and its beneficiaries, and if the offending person is:

(a) A voting board member: The board, in its sole discretion, may refer the matter to the proper appointing authority or the attorney general, as deemed appropriate; or if

(b) A nonvoting board member: The board, in its sole discretion, may take the appropriate steps necessary to and remove the offending member from the board; or if

(c) The executive director: The board, in its sole discretion, may take the appropriate steps to remove the director in compliance with RCW 43.33A.100; or if

(d) An employee of the board governed by the merit systems rules: The executive director may take such disciplinary action as authorized under Title 356 WAC up to and including termination of employment; or if

(e) An exempt employee of the board: The executive director may take whatever disciplinary action deemed appropriate, up to and including termination of employment.

(2) The board may refer the alleged violation to the executive ethics board for further investigation as provided under RCW 42.52.360.

[Statutory Authority: RCW 43.33A.110 and 42.52.200. WSR 98-01-138, § 287-04-039, filed 12/19/97, effective 1/19/98.]

WAC 287-04-040 Conflict of employment. No board or staff member shall accept employment which will adversely affect the performance of that member's official duties, discredit the board or result in a conflict of interest.

[Statutory Authority: RCW 43.33A.110. WSR 81-23-012 (Order 81-1), § 287-04-040, filed 11/10/81.]