

Introduction:

The Citizen Commission for Performance Measurement of Tax Preferences was established by the Legislature in 2006 under RCW 43.136.035. The Commission exists to provide advisory comments to the Legislature on tax preference reviews that are conducted independent from the Commission by staff to the Joint Legislative Audit and Review Committee (JLARC).

Under the statute, the voting Commissioners should encompass certain interests via their knowledge and expertise. Specifically, the statute says Commissioners should have a basic understanding of state tax policy, government operations, and public services, and should have knowledge and expertise in performance management, fiscal analysis, strategic planning, economic development, performance assessments, or closely related fields. In addition, the non-voting Commissioners are designated as the State Auditor and Chair of the Joint Legislative Audit and Review Committee.

Accordingly, the Commission is proposing to adopt the following policies using the Model Rules promulgated by the Executive Ethics Board Advisory Opinion 96-09A, since the Commissioners are required to be appointed from identifiable groups or interests.

Policy 23-01: Individual Commissioner's Interests in Commission Contracts/Sales/Leases/Purchases/Grants

(1) When a member of the Commission is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the Commission, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase, or grant, the member shall:

(a) Recuse him or herself from the Commission discussion regarding the specific contract, sale, lease, purchase, or grant;

(b) Recuse him or herself from the Commission vote on the specific contract, sale, lease, purchase, or grant; and

(c) Refrain from attempting to influence the remaining Commission members in their discussion and vote regarding the specific contract, sale, lease, purchase, or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) shall not prohibit the member of the Commission 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), "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase, or grant.

Policy 23-02: Individual Commissioner's Interests in Commission Approvals

(1) When a member of the Commission either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual which is engaged in a transaction involving the Commission, the member shall:

- (a) Recuse him or herself from the Commission discussion regarding the specific transaction;
- (b) Recuse him or herself from the Commission vote on the specific transaction; and
- (c) Refrain from attempting to influence the remaining Commission members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) shall not prohibit the member of the Commission 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 Commission" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:

- (i) Is, or will be, the subject of Commission action; or
- (ii) Is one to which the Commission is or will be a party; or
- (iii) Is one in which the Commission has a direct and substantial proprietary interest.

(b) "Transaction involving the Commission" 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 Commission that is the basis for the claim, case, or lawsuit. Rulemaking is not a "transaction involving the Commission."

(4) "Commission action" means any action on the part of the Commission, including, but not limited to:

- (a) A decision, determination, finding, ruling, or order; and
- (b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

EXAMPLE 1:

Each year the Commission adopts or amends a 10-year schedule to determine which specific tax preferences will be reviewed in particular years by JLARC staff and therefore subject to future comment by the Commission.

Under RCW 43.136.045, the Commission is required to develop a schedule to accomplish an orderly review of all tax preferences over ten years. This is an administrative function to schedule the work of the JLARC staff and the Commission, and the action does not involve discussion of the merits of any of the tax preferences. Since this is purely an administrative function for scheduling future reviews and does not address any substantive matters about a tax preference (i.e. no deliberations about whether or not that tax preference should be maintained or terminated), the action therefore does not rise to the level of meeting the definition of a transaction involving the Commission in Subsection (3) above. Accordingly, the provisions of Subsections (1) and (2) above do not apply to Commissioners when they adopt or amend a review schedule.

EXAMPLE 2:

The Commission is considering a comment on a Legislative Auditor's recommendation related to a tax preference targeted for manufacturing widgets. Commissioner Jones works for a widget manufacturer benefiting from the tax preference. Since Commissioner Jones is an employee of an entity engaged in a transaction involving the Commission, Commissioner Jones should follow the restrictions in Subsections (1) and (2) above.

EXAMPLE 3:

The Commission is considering a comment on a Legislative Auditor's recommendation related to a tax preference targeted for manufacturing widgets. Commissioner Johnson works for an entity that supplies parts to the widget manufacturer that benefits from the tax preference. Since Commissioner Johnson does not own a beneficial interest in or is not an employee, officer or agent of the widget manufacturer, the restrictions in Subsections (1) and (2) would not apply to Commissioner Johnson.

EXAMPLE 4:

The Commission is considering a comment on a Legislative Auditor's recommendation related to a tax preference widely available to all Washingtonians who own personal property. Every Commissioner likely benefits from the availability of this tax preference, and arguably has a beneficial interest in a transaction involving the Commission. However, the Commissioners do not receive a special benefit otherwise not available to others. Since Commissioners would not benefit from this tax preference more than others Commissioners are not required to follow the restrictions in Subsections (1) and (2) above.

EXAMPLE 5:

The Commission is considering a comment on a Legislative Auditor's recommendation related to a tax preference targeted at manufacturing solar powered cars. A company manufacturing solar cars previously paid Commissioner Smith to advocate for the legislation authorizing the tax preference. The company is no longer paying Commissioner Smith and there is no current or pending arrangement to compensate Commissioner Smith for further action to endorse this tax preference. However, since Commissioner Smith previously received financial benefit working on a topic that is a transaction before the Commission, Commissioner Smith should follow the restrictions in Subsections (1) and (2) above.

EXAMPLE 6:

The Commission is considering a comment on a Legislative Auditor's recommendation related to a tax preference targeted at manufacturing solar powered cars. Sun Auto is a beneficiary of this tax preference. Commissioner Doe, a tax consultant, has not done prior work on this tax preference. Commissioner Doe is working as a consultant to Sun Auto on different issues unrelated to the tax preference. Since Commissioner Doe's consulting work and compensation are not connected to the tax preference, the restrictions in Subsections (1) and (2) would not apply to Commissioner Doe.

Policy 23-03: Disclosure of Reasons for Recusal

(1) If recusal occurs pursuant to Policy 23-01 or 23-02, Commissioners shall disclose to the public the reasons for their recusal from any Commission action whenever recusal occurs. The Commission staff shall record in the minutes each recusal and the basis for the recusal.