

## ADVISORY OPINION

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REFERENCES: RCW 42.52.020, RCW 42.52.030,  
RCW 42.52.903

SUMMARY OF CHANGES: Updated format and statutory references.

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### **Conflict of Interest/Board Membership**

#### **QUESTIONS**

1. Can venture capitalists, management consultants, patent attorneys, officers writing initial public offerings, and others appointed to the Washington Technology Center Board and its advisory committees avoid violations of RCW 42.52 by following the model rules of procedure in Advisory Opinion 96-09?

2. May Washington Technology Center members recuse themselves from discussing and voting on matters on which there is no existing conflict of interest in order to preserve potential future business opportunities?

#### **ANSWERS**

1. Yes. Given that the Washington Technology Center has adopted conflict of interest rules that comply with and incorporate the guidelines in Advisory Opinion 96-09, and the model rules in Supplemental Advisory Opinion 96-09A, potential conflict of interest concerns for both members of the Washington Technology Center's Board and its advisory committees appear to be effectively addressed.

2. Yes, if recusal can occur without effect on the performance of official duties as a WTC board member. Otherwise, recusal in such circumstances may be incompatible with the performance of official duties.

## ANALYSIS

The Washington Technology Center (WTC) is established pursuant to RCW 28B.20.285<sup>1</sup> to perform and commercialize research on a state-wide basis for the benefit of the state's economic vitality; and, to strengthen university-industry relationships through the conduct of research that is primarily of interest to Washington-based companies or state economic development programs.

The WTC is governed by a board of directors that includes fourteen members associated with or employed by technology-based industries; eight members from the state's universities with graduate science and engineering programs; and four other state officers. The board's duties include responsibilities that may create potential conflicts of interest under one or more provisions of RCW 42.52. Among these are (1) establishing priorities for the selection and funding of research projects; and, (2) approving and allocating funding for research projects conducted by the WTC based on the recommendations of its advisory committees. RCW 28B.20.289(3)(a-k)<sup>2</sup>.

Although the WTC has a conflict of interest policy that includes disclosure and recusal requirements, the WTC has asked the Board to determine whether the model rules of procedure in Advisory Opinion 96-09 can be effectively adopted by the WTC board and its advisory committees, and, whether the model rules can be used to preserve future business opportunities.

### **1. Can venture capitalists, management consultants, patent attorneys, officers writing initial public offerings, and others appointed to the Washington Technology Center Board and its advisory committees avoid violations of RCW 42.52 by following the model rules of procedure in Advisory Opinion 96-09?**

In Advisory Opinion 96-09, the Board agreed that a rule that requires board or commission members to disclose their interests, to abstain from voting on matters where a conflict may be present, and to refrain from attempting to influence other members on matters where a conflict may be present, would effectively resolve conflict of interest issues under Chapter 42.52 RCW. The Board approved the adoption of model rules incorporating disclosure, recusal, and abstention from attempts to influence in Supplemental Advisory Opinion 96-09A, provided that the membership of a board or commission meets the standards of RCW 42.52.903 which provides that:

Nothing in this chapter shall be interpreted to prevent a member of a board, committee, advisory commission, or other body required or permitted by statute to be appointed from any identifiable group or interest, from serving on such body in accordance with the intent of the legislature in establishing such a body.

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<sup>1</sup> RCW 28B.20.287 was repealed in 2011.

<sup>2</sup> RCW 28B.20.289 was repealed in 2011.

RCW 28B.20.289(2)<sup>3</sup> establishes the membership of the WTC board, and its members are clearly appointed to represent identifiable groups and interests. Given that the WTC has adopted conflict of interest rules that incorporate the Board's guidelines in Supplemental Advisory Opinion 96-09A, potential conflict of interest concerns for the WTC Board and its advisory committees would appear to be effectively addressed.

**2. May Washington Technology Center members recuse themselves from discussing and voting on matters on which there is no existing conflict of interest in order to preserve potential future business opportunities?**

There is no provision in the state's ethics law that prevents members of boards and commissions from recusing when there is no conflict of interest; however, recusal may be incompatible with the performance of official duties. RCW 42.52.020 provides that no state officer or state employee:

may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

For example, if a board or commission requires the participation or action of a member to fulfill its statutory responsibilities, and the member recuses merely to preserve an outside business or financial interest, the effect of a recusal would be to enhance prospects for a future business opportunity at the expense of the performance of official duties. Members may not use recusal as a means to take advantage of proprietary information gained by virtue of their board membership for the benefit of a future business opportunity.

The Board agrees, however, that if an interest is reasonably foreseeable, and recusal can occur without effect on the performance of official duties as a WTC board member, it may be possible to preserve future business opportunities without risking a conflict of interest or competitive advantage based on prior participation in a transaction with the WTC board.

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<sup>3</sup> RCW 28B.20.289 was repealed in 2011.