

WASHINGTON STATE TRANSPORTATION COMMISSION**POLICY & PROCEDURE**


Transportation Commission Chair

Policy & Procedure No. 9
Effective Date: 8/20/98

Compliance With Executive Ethics Act

APPROVED
Executive Ethics Board

Introduction and Statement of Purpose

Date: 7/17/98

The Transportation Commission strives to meet its responsibilities in a manner that assures the highest level of ethical conduct and minimizes any possibility of even an appearance of impropriety in the conduct of the affairs of the Commission or the Department of Transportation. Commissioners, as volunteers, bring with them a broad and varied perspective based on their professional and life experiences and the geographic region from which they are selected. While the day to day operations of the Department of Transportation are the responsibility of the Secretary of Transportation, the Commission does select and supervise the Secretary in carrying out his functions. That responsibility, the Commission's primary role of policy making and transportation planning, the range of interests that individual Commissioners bring to their tasks, the extent to which the state transportation system affects the lives of all Washingtonians (including those who happen to be Commissioners), combine to create a risk that some Commission or Departmental action might be perceived as influenced by the private interests of one or more Commissioners.

This policy is designed to facilitate the conduct of Commission business without unduly restricting those who might be asked to serve, and at the same time, establish safeguards against the appearance or reality of a Commissioner misusing his or her position for personal benefit.

Procedure

1. At least once a year, each Commissioner shall file with the Administrator of the Commission a report in writing reflecting any interest he or she has as an owner, officer, agent, employee or member of an entity that transacts business directly or indirectly with the Department or the Commission. The written report may be in the same format as the reports Commissioners are required to file with the Public Disclosure Commission, or in any other format that serves the intent of full disclosure of potential perceived or actual Commissioner beneficial interests in Departmental or Commission activities. Such reports shall be supplemented at any time there is a

change of circumstances such that the existing report no longer adequately reflects the level of beneficial interest a Commissioner may have in a transaction with either the Commission or the Department of Transportation. All such reports shall be maintained by the Administrator in the Commission Office and be available for public inspection at all times during normal business hours.

2. When a Commissioner 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 or the Department of Transportation, 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, and announce the reasons for the recusal;
 - b. Recuse him or herself from any vote on the specific contract, sale, lease, purchase or grant; and
 - c. Refrain from attempting to influence the remaining Commissioners in their discussion and vote regarding the specific contract, sale, lease, purchase or grant; and
 - d. Refrain from using his or her position as a Commissioner to obtain any special benefit from such transaction.
3.
 - a. Under paragraph 2, "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.
 - b. The reference to an "indirect beneficial interest" in paragraph 2 does not include the shared interest that all Washingtonians have in an effective and efficient transportation system.
4. When a Commissioner 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 or the Department of Transportation, the member shall:
 - a. Recuse him or herself from the Commission discussion regarding the specific transaction and announce the reasons for the recusal;

- b. Recuse him or herself from the Commission vote on the specific transaction; and
 - c. Refrain from attempting to influence the remaining Commissioners in their discussion and vote regarding the specific transaction; and
 - d. Refrain from using his or her position as a Commissioner to obtain any special benefit from such transaction.
5. a. "Transaction involving the Commission or Department" 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:
- (1) Is, or will be, the subject of Commission or Department action; or
 - (2) Is one to which the Commission or Department is or will be a party; or
 - (3) Is one in which the Commission or Department has a direct and substantial proprietary interest.
- b. "Transaction involving the Commission or Department " 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 or Department that is the basis for the claim, case, or lawsuit. Rulemaking or other legislative or quasi-legislative decision making that affects Washingtonians generally is not a "transaction involving the Commission or Department."
6. "Commission or Department action" means any action on the part of the Commission or Department 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.
7. Any Commissioner who believes that one or more Commissioners should recuse themselves from consideration of an item before the Commission pursuant to paragraphs 2 or 4 of this policy, and have failed to do so, shall raise the issue before any Commission action or discussion has taken place. In the event the purportedly

disqualified Commissioner continues to refuse to recuse himself or herself, the matter shall be resolved by a vote of the Commission. The purpose of this provision is to give the Commission an opportunity to resolve the issue. The vote of the Commission is not binding upon other agencies that may have occasion to review the issue, including without limitation the Executive Ethics Board.

8. The Secretary is directed to take such reasonable steps as are necessary to assure that Departmental activities are conducted free of influence in favor of individual Commissioners' private interests. Any concerns that an individual Commissioner is attempting or may be perceived as attempting to utilize his or her position for private gain shall be reported to the Chair of the Commission, or in the event that the Chair is the subject of the report, to the Vice Chair of the Commission.

Examples:

1. A Commissioner has an ownership interest in a company that sells goods or provides services to the Department. The contracts for such goods or services are handled by Department staff administratively and do not come before the Commission for action. This does not violate the Executive Ethics Act, because the Commissioner's beneficial interest is not in a transaction under his or her supervision. However, pursuant to the disclosure requirement of Paragraph 1 of this policy, the Commissioner would have to disclose the beneficial interest and by both paragraph 2.d. of the Policy and RCW 42.52.070, the Commissioner would be precluded from using his or her position as Commissioner to obtain special consideration.
2. A Commissioner lives in an area that is served by the Washington State Ferry System operated by the Department of Transportation. The Commission considers a budget proposal to the Legislature that will provide for an increased level of service for people living in the same geographic area as the Commissioner. The Commissioner does not have an 'indirect beneficial interest' under Paragraph 5 because he or she will be affected in the same manner as the citizenry generally, and this does not constitute a 'transaction involving the Commission or Department' under paragraph 4.
3. Same facts as Example 2, but the proposal contemplates establishing a new ferry terminal in a location where the Commissioner owns real property, the value of which would be enhanced by the establishment of the new ferry service. Under this additional circumstance, the Commissioner would have a beneficial interest and would have to recuse him or herself.
4. The Department disposes of real estate that it owns but no longer needs pursuant to a statute requiring that prospective buyers submit sealed bids. The process is handled administratively by the Department and does not come before the Commission for

action. A Commissioner submits a sealed bid to acquire a particular parcel that the Department is offering for sale in accordance with the statutory procedures. This does not violate the Executive Ethics Act, because the Commissioner's beneficial interest is not in a transaction under his or her supervision. However, pursuant to the disclosure requirement of Paragraph 1 of this policy, the Commissioner would have to disclose the beneficial interest when the bid is submitted. In addition, pursuant to both paragraph 2d of the Policy and RCW 42.52.070, the Commissioner would be precluded from using his or her position as Commissioner to obtain special consideration.

5. A Commissioner has an ownership interest in a company that owns and operates a trucking service shipping goods throughout Washington and interstate. Policy questions come before the Commission from time to time that involve making judgments about how much state support should be given to various components of the state transportation system. The Commissioner does not have an 'indirect beneficial interest' under Paragraph 5 because he or she will be affected in the same manner as the citizenry generally, and this does not constitute a 'transaction involving the Commission or Department' under paragraph 4.
6. Same facts as number 5, and the Commissioner takes the additional step of attempting to persuade Department employees to allocate funds to improve the state highway where his or her business is located. This would be a violation of RCW 42.52.070, as he or she would be attempting to use his or her position as Commissioner for private gain.