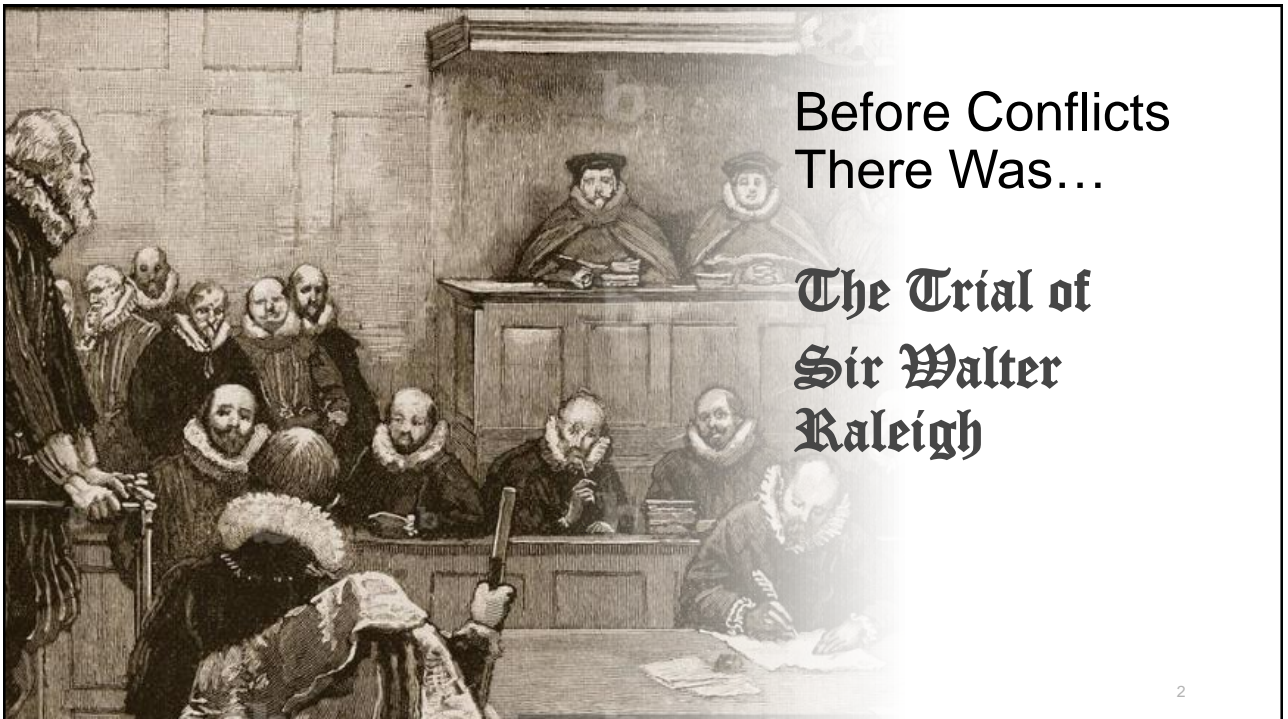


Identifying, Preventing and Resolving Conflicts of Interest for Washington Municipal Officials and Staff

AWC Annual Conference
June 19, 2024
Vancouver WA

Judge Matthew J. Segal (ret.),
Pacifica Law Group

1



2



Washington's History of Conflict Management

Privileges & Immunities

Gifts of Public Funds

Stock Ownership &
Investment

“Logrolling”

Recall

3

What is a conflict of interest?

... (generally courts of last resort) on some legal
... principal or application of law. May also refer to dis-
... erity between authorities on a subject. *See also* Choice
... of law; Conflict of laws.

Conflict of interest. Term used in connection with
public officials and fiduciaries and their relationship to
matters of private interest or gain to them. Ethical
problems connected therewith are covered by statutes in
most jurisdictions and by federal statutes on the federal
level. The Code of Professional Responsibility and Model
Rules of Professional Conduct set forth standards for
actual or potential conflicts of interest between attorney
and client. Generally, when used to suggest disqualifi-
cation of a public official from performing his sworn
duty, term “conflict of interest” refers to a clash be-
tween public interest and the private pecuniary interest
of the individual concerned. *Gardner v. Nashville
Housing Authority of Metropolitan Government of
Nashville and Davison County, Tenn., C.A.Tenn., 514
F.2d 38, 41.* A situation in which regard for one duty
tends to lead to disregard of another. *U.S. v. Miller,
C.A.Mass., 463 F.2d 600, 602.*

A conflict of interest arises when a government em-
ployee's personal or financial interest conflicts or ap-
pears to conflict with his official responsibility. 18
U.S.C. § 203 et seq.

4

Remote Interests


Erickson also argues that the trial court had a conflict of interest which prevented it from being fair and impartial. Erickson contends that the investments in judicial pensions rely on the success of mortgage financial companies and therefore the trial court here was motivated to rule against her. Nothing in the record supports Erickson's claims about judicial pensions nor does the record evince any judicial bias during the proceedings of the case. Erickson's argument fails.

Erickson v. Stenman, 26 Wn. App. 2d 1044, 2023 WL 3477896, at *3 (2023)



5

Drawing the Line



“[W]e elect our legislators precisely to carry out agendas and promote causes with full knowledge that ‘their own personal predilections and preconceptions’ will affect their decisions.”

Barry v. Johns, 82 Wn. App. 865, 870, 920 P.2d 222 (1996) (citing *Evergreen Sch. Dist. No. 114 v. Clark County Comm. on Sch. Dist. Org.*, 27 Wn. App. 826, 833, 621 P.2d 770 (1980)).

6

Balancing Conflicts and “Remote” Interests

The purpose of chapter 42.23 RCW is to “revise and make uniform the laws of the state concerning the transaction of business by municipal officers ... in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote....”

RCW 42.23.010



7

A scenic photograph of a sunset over a calm lake. The sun is low on the horizon, creating a bright orange and yellow glow that reflects on the water. The sky is filled with soft, colorful clouds. The foreground is framed by the dark silhouettes of evergreen trees.

State Standards Regarding Conflicts of Interest



8

State Law: Municipal Code of Ethics (ch. 42.23 RCW)

Establishes *minimum* standards for “municipal officers” -- RCW 42.23.020(2); RCW 42.23.060

Often incorporated into a municipal code, along with more extensive and specific provisions

Stricter requirements in a City or County Charter will control over the state law -- RCW 42.23.060



9

Key Definitions

“Municipality” shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington.... RCW 42.23.020(1)

"Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer RCW 42.23.020(2)

10

Privileges and Immunities

No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

RCW 42.23.070(1)



11

Privileges and Immunities

“A special privilege or exemption is a privilege or exemption to which the person is not legally entitled. A special privilege involves being allowed to do something that would otherwise be prohibited, while a special exemption involves being relieved from doing something that would be otherwise mandated.”

Wash. Att'y Gen. Op. 2010 NO. 3 (2010) (citing *In re the Recall of Feetham*, 149 Wn.2d 860, 867-70, 72 P.3d 741 (2003))



12

Privileges and Immunities

“We... hold that RCW 42.23.070(1) creates a valid public policy in favor of prohibiting municipal officers from granting special privileges or exemption to others. In so holding, we recognize the burden this may place on public officials. However, because public officials serve the interests of the citizens of Washington, consistent with the Ethics in Public Service Act, we find it appropriate to hold them to a high standard.”

Hubbard v. Spokane County, 146 Wn.2d 699, 712-13, 50 P.3d 602 (2002) (overruled on other grounds by *Rose v. Anderson Hay & Grain Co.*, 184 Wn. 2d 268, 286, 358 P.3d 1139 (2015))



13

Privileges and Immunities

...Jacobson's alleged conduct is not substantial because there is no evidence that Jacobson sought to exclude others from using the town-owned lots and he did not receive any property. Wainwright's declaration, if accepted as true, establishes only that a Cathlamet staff member denied a town resident permission to park a trailer on the town-owned lots in 2017; Jacobson himself approved Wainwright's 2018 request to park a boat on the lots. Moreover, while Jacobson admits that he utilized the town-owned lots to park "up to four vehicles," he maintains that "there is plenty of additional parking space available for others to use," which is "frequently used by fishermen to park their vehicles and boat trailers while they are fishing."... **Jacobson is not securing special privileges for himself because the right to park on the town-owned lots is one that is held in common by local residents and visitors.**

In re Recall of Burnham, 194 Wn.2d 68, 81, 448 P.3d 747 (2019) (emphasis added)



14

Confidential Information

No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

RCW 42.23.070(3), (4)



15

Confidential Information

The term “confidential information” for purposes of RCW 42.23.070(4) therefore means: “(a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.” RCW 42.52.010(5). Information learned during a properly convened executive session fits within both possible definitions.

Wash. Att’y Gen. Op. 2017 NO. 5 (2017)



16

Gifts & Gratuities

No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.

RCW 42.23.070(2)

17

Gifts & Gratuities

“[T]he Commission opines that State Law would not prohibit the 1992 exemption stated by the Commission for elected official receiving tickets and or meals valued at less than \$50 provided (1) the events are not focused on specific issues, ordinances or actions; (2) the events inform the officials about the sponsoring organization or provide an opportunity for citizens to meet the officials; or (3) there is no nexus between the free tickets and or meals and the official's services that would lead a reasonable person to believe they were given as an enticement, payment or reward for official services.”

Opinion of the Seattle Ethics & Elections Commission, 1995 WL 870068

18

Contractual Conflicts

RCW 42.23.030

Interest in contracts prohibited—exceptions

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.



19

Contractual Conflicts: Safe Harbor

“Remote Interests”:

- (1) That of a nonsalaried officer of a nonprofit corporation;
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- (3) That of a landlord or tenant of a contracting party; [and]
- (4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

RCW 42.23.040



20

Appearance of Fairness

The appearance of fairness doctrine applies when local government decision-makers are acting in a quasi-judicial capacity on specific land use decisions.

See RCW 42.36.010; *see also* *Raynes v. City of Leavenworth*, 118 Wn.2d 237, 245, 821 P.2d 1204 (1992).

The doctrine requires a hearing that is actually fair and appears fair.

The test: “whether a disinterested person, having been apprised of the totality of the decision-maker’s personal interest, would be reasonably justified in thinking that partiality may exist.”

Swift v. Island County, 87 Wn.2d 348, 361, 552 P.2d 175 (1976).



Identifying & Resolving Conflicts



The Sacred & the Profane

Red Flags

- Public vs. political
- Day job
- Family relationships
- Property ownership
- Investments

Faux Conflicts

- Differences of opinion
- Personal vendettas
- Entrapment

Preempting Weaponization

- What is a conflict, and what is a legitimate dispute?
- Avoid conflicts in resolving conflicts
- Protect your staff
- Avoid undue incentives
- Be clear & precise
- Public trust & confidence (remember the *appearance* of impropriety)



23

23

Conflicts Checklist

Fill gaps in state law and avoid ambiguity.

Consider a detailed ordinance, code or charter section – and keep it current!

Establish neutral procedures to address claims of conflict, including who will review and decide issues.

Have an advisory or consulting process.

Identify key remedies in advance (e.g., requirements to disclose or recuse).

Train and educate.



24

Remember the Remedies

Civil or criminal penalties

Forfeiture of office

Legal action against the municipality

Voiding of interested contracts

Invalidation of municipal action

Professional licensure

25

On the other hand...

Identification, investigation and resolution

Transparency & disclosure

Recusal if necessary

Informed & valid municipal action

Mitigate any appearance of unfairness

26

Final Thought

What is the public interest?

How much, if at all, does the individual's interest differ from the public's interest?



27

27



Identifying, Preventing and Resolving Conflicts of Interest for Washington Municipal Officials and Staff

QUESTIONS?

AWC Annual Conference
June 19, 2024
Vancouver WA

Judge Matthew J. Segal (ret.),
Pacifica Law Group

28