

FINAL REPORT  
EXECUTIVE CONFLICT OF INTEREST DTF

The Conflict of Interest DTF was charged by the Interim Provost, Russ Lidman, in October 1991 to review the Executive Branch Conflict of Interest Act of the State of Washington as well as the conflict of interest policies of other institutions of higher education in Washington. Based on that review, the DTF's task was to propose language which translated the statute into a policy for the College. We understood that the policy would be a guide to faculty and staff in how to operate within the Conflict of Interest law.

The DTF reviewed, in addition to the Act, the conflict of interest policies of the University of Washington and Central Washington University and summaries of relevant memoranda written by the Education Division of the Office of the Attorney General of Washington. The DTF also consulted widely inside and outside the College. In addition to consulting with faculty and staff, we met with Jan Frickelton, Assistant Attorney General, and Mas Jones, the College's Internal Auditor. We sought comments regarding a preliminary draft at meetings of faculty and staff.

After the DTF had produced the preliminary draft, Governor Booth Gardner issued Executive Order 92-04, implementing the Executive Conflict of Interest Act. Six months later, newly-elected Governor Mike Lowry rescinded that order and issued his own, Executive Order 93-02. Because this order succinctly interprets the Act and provides useful guidelines, we have incorporated a substantial part of it verbatim into the proposed policy.

This DTF has taken more than a year longer than we originally had envisioned for the completion of our task. This was primarily due to the complexity of the issues involved, particularly as they relate to an academic setting. We tried to be particularly mindful of the need to protect the right to academic freedom, which is so vital to intellectual inquiry.

From time to time, complex questions will arise about how the conflict of interest laws affect specific academic situations. In most such situations, the College will need to research the question before a conclusion is reached. A decision may then be made to amend this policy to give guidance to College employees regarding that issue.

One such question which the DTF believes needs further research and investigation before any attempt is made to include it in this policy is the relationship of faculty to external private entities, particularly professional academic organizations. As President Jane Jervis states in her memorandum of November 30, 1992, the issue is complex. Much more research and investigation is needed before clarity can be brought to this issue vis-a-vis the conflict of interest laws. However, because the Evergreen community is expressing great need to have a Conflict of Interest

Policy in place as soon as possible, the DTF has decided not to hold up this report because of this one issue, however important. We believe, however, that research on this issue must continue and that ultimately the policy should be amended to reflect the findings. Of course, answers to conflict of interest questions regarding this or any other academic issue not specifically addressed in Part II (Standards and Guidelines Specific to Evergreen) of the policy must be found in the Act itself or in the Governor's executive order.

## PROPOSED CONFLICT OF INTEREST POLICY

### INTRODUCTION

The Executive Branch Conflict of Interest Act (Chapter 42.18 RCW) prohibits state employees from using their power, authority or positions for private gain. The Act prohibits state employees from obtaining for themselves or their families any special privileges, exemptions or thing of economic value (other than their salaries) that they would not be able to secure but for their state employee status. The Act also prohibits state employees from participating in transactions in which their judgment in official matters may be affected by circumstances of personal interest.

This Policy of The Evergreen State College is divided into two parts. The first part, titled "The Governor's Executive Order," quotes the most relevant sections of an Executive Order (EO 93-02), issued by the Governor of the State of Washington to establish standards of ethical conduct for all state agencies and their employees. These standards are based on the Act. The second part, titled "Standards and Guidelines Specific to Evergreen," addresses standards of ethical conduct unique to the responsibilities and conditions of staff and faculty at The Evergreen State College. These standards are based on the Act, the Executive Order and memorandum opinions of the Attorney General.

College employees should not rely solely on this Policy for detailed guidance regarding ethical conduct and conflict of interest. Employees should always review the Act itself, as well as the full text of the Governor's Executive Order and relevant federal law. Nothing in this Policy, including the language paraphrasing statutory provisions, is intended to alter the provisions of the Executive Order, Chapter 42.18 RCW or other applicable statutes.

### I. THE GOVERNOR'S EXECUTIVE ORDER (EXCERPTS)

#### Policy

State government derives its authority from the citizens and exercises that authority solely for their benefit. The citizens have entrusted employees of executive branch agencies with the operation of state government and the stewardship of its human and environmental resources. ...Employees are, therefore, obligated to treat their offices as a public trust, using their official powers and duties and the resources of the state only to advance the public interest. This obligation requires that all employees:

1. Be independent and impartial in the exercise of their duties, avoiding actions that create even the appearance of using their positions for personal gain or private benefit;
2. Strengthen public confidence in the integrity of state government by demonstrating the highest standards of personal integrity, fairness, honesty, and compliance with both the spirit and the letter of the law;

3. Create a work environment that is free from all forms of unlawful discrimination and harassment;
4. Manage human and environmental resources for the benefit and enjoyment of both current and future generations;
5. Conduct the public's business openly and to the maximum extent consistent with existing law, resolve doubtful cases in favor of free public access;
6. Serve the public with respect, concern, courtesy, and responsiveness, recognizing that service to the public is the primary mission of state government;
7. Promote an environment of public trust free from fraud, abuse of authority, and misuse of public property;
8. Protect the integrity of the decision making process by recognizing and avoiding conflicts between their public duties and private interests and activities; and
9. Respect and protect privileged information to which employees have access in the course of their official duties.

#### Requirements, Standards and Guidelines for Ethical Conduct

1. Gifts, gratuities, and favors. RCW 42.18.200 prohibits the employee from receiving or soliciting, directly or indirectly, anything of economic value as a gift, gratuity, or favor if the employee has reason to believe that the donor would not give it except for the employee's position with the state, or if the employee has reason to believe that the donor:
  - a. Has or is seeking a contractual or business relationship with the employee's agency;
  - b. Conducts activities that are regulated by the employee's agency; or
  - c. Has interests that may be substantially affected by the employee's performance or nonperformance of official duties.

RCW 42.18.230(2) prohibits anyone from giving, directly or indirectly, anything of economic value as a gift, gratuity, or favor to an employee if any of the above circumstances exist.

. . .

Guidelines. The employee should reject gifts to himself or herself or to his or her family members that may cast doubt on the integrity, independence, and impartiality of the employee or state office. Gifts

or benefits, no matter how insignificant, should be rejected if they could be reasonably construed to affect the official judgment or actions of the employee, create any sense of obligation to the giver, or if the purpose or motive for the gift could appear to be improper. Even monetarily insignificant gifts or favors may become significant if they are given with some frequency or come to be expected by the recipient.

In evaluating the propriety of gifts, the employee should, therefore, be sensitive to the source and value of the gift, the frequency of gifts from one source, the possible motives of the giver, and the perception of others regarding the gift. Since no offsetting public good is achieved by accepting gifts that may create an appearance of impropriety, unclear or questionable situations should always be decided by rejecting gifts, gratuities, or favors that may raise questions regarding the employee's integrity, independence, and impartiality.

The following types of gifts, gratuities, and favors are exceptions to the prohibitions contained in RCW 42.18.200. They may be accepted by the employee in situations where the circumstances do not lead to the inference that the official judgment or action of the employee was intended to be influenced.

- a. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, or other items of nominal value may be accepted.
- b. Gifts, gratuities, and favors may be accepted when they stem from family relationships (such as those between parents, children, or spouse of the employee and the employee) or personal relationships that are unrelated to the employee's official duties when the circumstances make it clear that those relationships, rather than the business of the giver, are the motivating factors.
- c. Food and refreshment of nominal value may be accepted on infrequent occasions in the ordinary course of a breakfast, lunch, or dinner meeting or reception where the attendance of the employee is a part of the employee's official duties.
- d. With the approval of the agency head, bona fide reimbursement for travel expenses and other necessary subsistence may be accepted when the travel is related to the official duties of the employee and for which no state payment or reimbursement is made. Examples include, but are not limited to, reimbursement by other governmental entities or professional associations. Reimbursement should not exceed the amount the employee would be eligible to receive if the state were reimbursing the employee. The employee should reject payment for personal living expenses, entertainment, and travel costs in any case where acceptance may raise questions regarding the employee's integrity. The employee should, therefore, avoid situations where such expenses are paid for by any person or organization that has a substantial interest in the official duties of the employee and where acceptance might create



a reasonable perception that the object of the payment is to provide a personal vacation or other benefit for the employee.

- e. Loans from banks and other financial institutions may be accepted on customary terms to finance the proper and usual activities of the employee, such as the purchase of housing or motor vehicles. Business discounts that are made available to employees as a group may be accepted. Loans and other transactions on terms and conditions not generally available to the public or other employees are prohibited gifts and should be rejected.
- f. The employee may accept unsolicited gifts of nominal value from foreign or domestic dignitaries or commemorating official occasions, where custom or etiquette so requires. Any gifts of more than nominal value received under such circumstances shall be reported to the employee's agency head, who shall direct the appropriate disposition of them.

2. Outside employment and compensation. RCW 42.18.190 prohibits the employee from engaging in outside employment and receiving compensation for his or her services from sources other than the state of Washington if: (a) the services are not actually performed by the employee; (b) the services are within the course of the employee's official duties; (c) the services involve transactions with the state that the employee may not assist in because they relate to the employee's official state duties (see RCW 42.18.170); or (d) the employee has reason to believe that the outside employment involves a person who:

- (1) Has or is seeking to obtain a contractual or other business relationship with the employee's agency;
- (2) Conducts operations or activities that are regulated by the employee's agency; or
- (3) Has interests that may be substantially affected by the employee's performance or nonperformance of official duty.

RCW 42.18.213 prohibits the employee from asking for or receiving, directly or indirectly, any compensation, gratuity, or reward, or promise of such benefit, other than the employee's normal compensation, for performing or not performing an official duty.

RCW 42.18.215 prohibits an employee from having a direct or indirect interest in any contract, sale, lease, or purchase over which the employee has any supervision. The employee is also prohibited from accepting, directly or indirectly, any compensation, gratuity, or reward from another person who has an interest in such a contract, sale, lease, or purchase.

Guidelines. Whether a given type of outside employment is allowable depends upon the specific duties of the employee and the actual or

potential relationship between the outside employer and the employee's agency. Under no circumstances may an employee use his or her agency's personnel, time, material, facilities, equipment, telephones, information, or other resources in connection with outside employment. Nor may the employee use his or her official position to influence any client of his or her agency to secure compensated services from the employee or the employee's outside employer. The employee may not engage in outside employment if the demands of such employment would detract from his or her ability to perform state duties in a satisfactory manner. The employees should not accept honoraria for services when the services are ordinarily performed in the course of his or her official duties.

Agency heads shall provide specific policies, standards, and procedures to ensure that outside employment does not conflict with the proper performance of assigned duties nor is inconsistent with Chapter 42.18 RCW and this executive order. Agency policies, standards, and procedures may be more restrictive than provisions of this executive order. Such policies, standards, and procedures may require the employee to notify his or her agency and receive prior approval from the agency head before engaging in outside employment. Agency heads shall examine positions within their agencies to determine if such notification and prior approval of outside employment should be required. The employee should be aware that approval of outside employment is required under the circumstances set forth in RCW 42.18.190(1)(d).

[See Part II, below, for Evergreen's specific policies, standards and procedures regarding outside employment.]

The following types of outside compensation are exceptions to the prohibitions contained in RCW 42.18.190:

- a. The employee may receive compensation from another governmental entity pursuant to RCW 42.18.190(2).
- b. The employee may continue in a bona fide pension, retirement, group life, health or accident, or other employee benefit plan maintained by a former employer if the former employer makes no contributions on behalf of the employee during the employee's state employment. However, the employee may continue in such plans and receive contributions on his or her behalf from former employers under the following conditions: (1) if the plan qualifies under the Internal Revenue Code; (2) if contributions by the former employer to a plan are not made for periods longer than five consecutive years of state employment or an aggregate of five years out of the preceding ten; or (3) if the plan is provided by a former employer who is a governmental entity.
- c. The employee may maintain his or her rights acquired under a bona fide profit-sharing or stock bonus plan maintained by a former employer and qualified under the Internal Revenue Code if no

employer contributions are made on behalf of the employee based on profits attributable to any portions of the period of state employment.

3. Use of official authority for personal gain. RCW 42.18.210 prohibits an executive branch employee from using the power and authority of his or her office to induce or coerce another person to provide the employee with any thing of economic value, directly or indirectly.
4. Use of state resources for personal benefit. RCW 42.18.217 prohibits the employee from using state personnel, money, or property for private benefit of the employee or another.

Guidelines. State property, equipment, personnel money, services, or time are for public purposes only and shall not be appropriated for personal or private use. This prohibition includes use of office space, typewriters, computers and related supplies and systems, paper, pens and pencils, telephones, postage, stationery, photocopying, vehicles, and other state resources.

Managers and supervisors should not require or suggest that an employee under their supervision perform personal tasks for them. Not only is such use of state personnel improper, but it also demeans the importance of the employee's official duties.

5. Assisting in transactions involving the state. RCW 42.18.170 prohibits an employee from assisting another person, whether or not for compensation, in any transaction in which the employee has participated or in any transaction which is, or has been, under the employee's supervision unless the assistance is provided in the course of the employee's official duties. Transactions include any proceeding, application, submission, request for a ruling, or other determination, contract, claim, case, or other matter in which the state has a substantial proprietary interest, which will be subject to state action, or in which the state is or will be a party.

Under RCW 42.18.180, certain transactions are exempted from this prohibition, including those transactions (a) when the employee is acting as a guardian, executor, administrator, trustee, or personal fiduciary (with certain specified limitations) for family members and others, (b) when the employee is assisting another employee involved in disciplinary or other personnel proceedings, or (c) when the employee is giving testimony under oath.

6. Employment restrictions for former employees. RCW 42.18.221 prohibits a former executive branch employee from:
  - a. Assisting another person in a transaction involving the state in which the employee participated during employment with the state. Exceptions to this prohibition are provided in RCW 42.18.221 (6).
  - b. Sharing compensation received by another person for assisting that



person in rendering services that the employee is prohibited from providing.

- c. Within one year of the employee's termination date, accepting employment or receiving compensation from a private business if during the previous two years, on behalf of the state agency, the employee negotiated, administered, or had discretionary decision making influence over contracts with that business worth more than \$10,000; and the former employee's duties with the private business involve fulfilling or implementing the contracts.
- d. Accepting an employment offer or receiving compensation from a private business if the employee knows or believes the offer or compensation is intended as a reward for performance or nonperformance of a state duty.

These prohibitions do not apply if a former employee works for an employee organization.

Guidelines. These prohibitions are only a summary of RCW 42.18.221. To avoid conflicts of interest, the current employee who contemplates doing business with the state after he or she leaves state employment and former employees who wish to engage in such business activity should thoroughly review RCW 42.18.221 and related statutes and seek legal advice.

- 7. Use of public office for political purposes. RCW 42.17.130 prohibits an executive branch employee from using state agency property and personnel to support the election of any individual or for the promotion or opposition of any ballot proposition. Exceptions are allowed for elected legislative bodies to express a collective position on a ballot proposition, statements by elected officials in support or opposition to ballot propositions at an open press conference, and activities that are part of the "normal and regular conduct" of the office or agency.

RCW 42.17.190 prohibits an executive branch employee from using any state facilities, directly or indirectly, to support or oppose an initiative to the legislature.

RCW 41.06.250 protects an employee from being forced to make contributions for partisan, political purposes. Also, solicitation of contributions for partisan, political purposes on state property is forbidden.

Guidelines. State offices, equipment, personnel and other resources are to be used only for official public purposes. Use of such resources for political purposes or to influence the outcome of a ballot election is not only illegal, but also may create an unfair advantage in the election process and is a misuse of public funds. This prohibition applies to political party activities, campaigning, distribution and display of campaign material, and fund raising.

While state resources and personnel may not be used to influence an election, the employee, on his or her own time, has specific rights to engage in partisan political activities and election campaigns. Exceptions include: (a) the classified civil service employee, who may not hold part-time public office in a political subdivision of the state if such office is "incompatible with, or substantially interferes with," the discharge of official state duties; and (b) the employee whose position is financed totally or primarily by federal grant-in-aid funds is subject to federal regulations regarding political activity. (See RCW 41.06.250)

### Principles Of Public Service

1. Duty to actively support open government. To ensure public confidence in the integrity of state government, the employee must conduct the public's business in an open manner and through legally established processes that guarantee accountability and visibility. This entails an understanding of and a strict adherence to both the spirit and the letter of the following laws: the Administrative Procedure Act (Chapter 34.05 RCW); open public records (RCW 42.17.250 - 340), which requires agencies to adopt rules that provide for the fullest assistance to requesters of records and timely action on requests; the Open Public Meetings Act (Chapter 42.30 RCW); the reporting of public officials' financial affairs (RCW 42.17.240 - 243); employee whistleblower protections (Chapter 42.40 RCW); and merit system employment (Chapters 41.06 and 28B.16 RCW).
2. Avoidance and disclosure of conflicts and withdrawal in certain cases. The employee may at times face unavoidable conflicts of interest between public duties and private interests. In these situations, the employee is responsible for protecting the integrity of the decision making process. In some cases, that may mean disclosing the conflict and, if necessary, voluntarily withdrawing from the decision. In other cases, the situation may require the employee to eliminate the interest that creates the conflict.

At times, an employee's relationship with, or position within, a private organization may be perceived as affecting the employee's independence and impartiality on the job. The employee should, therefore, examine such relationships and avoid those that involve organizations whose interests relate directly to the employee's official duties.

3. Creating an environment of public trust. All employees, and particularly agency heads and managers, shall contribute to an ethical work place environment. This involves (a) eliminating all forms of illegal discrimination in employment practices, including discrimination based on age, sex, marital status, race, creed, color, national origin, sexual orientation, or the presence of any sensory, mental or physical handicap (RCW 49.60.180 and EO 91-06); (b) creating a work environment free from sexual harassment (EO 89-01); and (c) informing employees of

their rights under the state's whistleblower law; encouraging employees to disclose instances of waste, mismanagement, fraud, and abuse of public authority; and protecting whistleblowers from retaliation (Chapter 42.40 RCW).

4. Adherence to public agency lobbying restrictions. An executive branch employee may engage in publicly funded lobbying only when the lobbying is restricted to providing information, communicating on matters pertaining to official agency business, and advocating the official position or interests of the agency. The employee must report certain expenditures and time dedicated to lobbying the legislature to the Public Disclosure Commission. No public funds may be spent as a direct or indirect gift or campaign contribution to an elected official, officer, or employee. An executive branch employee who lobbies is treated differently than other lobbyists under the law. As such, he or she is held to higher standards of conduct in dealings with the legislature. It is, therefore, the duty of the employee who lobbies to know what is permissible. Certain behavior that may be acceptable for private sector lobbyists may be neither appropriate nor legal for an executive branch employee.

#### Responsibility of all employees

The responsibility for appropriate ethical conduct rests with the employee.

## II. STANDARDS AND GUIDELINES SPECIFIC TO EVERGREEN

This section of the Policy sets guidelines for those potential conflict of interest situations most likely to arise in an academic setting.

### Outside Employment

1. Faculty and staff must take care to ensure that outside employment does not create a conflict of interest with their positions as state employees. While College employees may engage in such outside activities as lectures, workshops, courses and performances, and may receive such compensation as travel reimbursements and honoraria, they must take care not to allow this work from detracting from the proper discharge of their official duties as state employees.
2. The College's policy on Outside Employment (Policy and Procedures Manual, Section VI, A-11) states:
  - a. No part of the college, including the facilities and its employees' positions with the college, may be used for personal, financial or political gain outside of official work assignments or contractual agreements.
  - b. Outside employment must take place outside the work day and the work place. All employees of the college must avoid use of state

resources for personal gain. This includes personal use of such things as the telephone and stationery, as well as holding meetings on campus or having personal contacts with other employees during working hours.

- c. Nothing in the above precludes employees from outside employment; however, any decision as to the propriety of the outside employment by regular employees must rest with the appropriate vice-president.
3. The Faculty Handbook (Consulting and External Work, Section 6.600) further states:

Evergreen generally encourages faculty involvement in off-campus projects which enhance the reputation of the college. No financial support or secretarial support is provided, however. Consulting work or other work for remuneration which would require more than a half-day per week in a given quarter needs to be approved by the academic deans. Even in cases where the half-day per week limit is not reached, it is advisable for a faculty member to keep his or her dean (of group) informed in order to allow for quick responses to questions which may be raised by the public or the press.

#### Grants to Support Outside Activities

Faculty and staff who apply for and receive grants to support off-campus activities must take care to ensure that receipt of grant monies and the activities they support do not create a conflict of interest with their positions as state employees. They must also take care to ensure that such activities do not violate the College's policies on Outside Employment and Consulting and External Work, printed above.

#### Intellectual Property

The use of College resources for individual unremunerated scholarship that is connected with the academic mission of the College does not violate conflict of interest laws. This may lead employees to produce intellectual property (such as books, pamphlets, articles, papers, audio and visual materials, computer software and inventions). It is only when employees use College resources to produce such intellectual property for private financial benefit that a conflict of interest is created. College employees who produce intellectual property must also take care to follow the College's policies on Patents, Copyrights and Royalties. See the next section for policies on the use of intellectual property in the classroom.

### Required Student Purchase of Employee-Produced Intellectual Property

1. Faculty and staff may use at the College (in or out of the classroom) any intellectual property which they have written, created or produced (such as books, pamphlets, articles, papers, audio and visual materials, software and inventions), so long as the following conditions are met:
  - a. Employees may not receive royalties or other revenues from the sale of their work if they are responsible for its selection and students are required to purchase it.
  - b. Employees may not receive royalties or other revenues from the sale or rental of their work if they are responsible for its selection and it is being purchased or rented with College funds.
  - c. Employees may not receive royalties or other revenues from the rental or purchase of their work for general College use (as by the library or any other division) if they are in a position as state employees to authorize the rental or purchase.
2. This policy does not preclude faculty or staff in other circumstances from receiving royalties or other revenue from their work. The following are some examples in which a College employee may receive such royalties or other revenue:
  - a. A faculty team of which Faculty Member A is not a member decides to use Faculty Member A's published book.
  - b. A campus organization wishes to purchase or rent from company X a video produced by Faculty Member B. Faculty Member B was not responsible for selecting the video nor for authorizing its purchase or rental.

In those cases where College employees are precluded from receiving royalties or other revenue from their work which is purchased, sold or rented, they must sign a waiver of royalties form, available in the bookstore. The bookstore will then notify the publisher of the employee's wish either to forego the royalties on the number of copies purchased by the author's students or to have the royalties for those copies sent to a specified nonprofit organization.

In the event that a publisher is unable or unwilling to separate out those royalties requiring this special handling, the College employee nonetheless has the obligation either to return those royalties to the publisher or to donate them to a nonprofit organization in which the author has no financial interest. The College, including the academic program in which the employee is teaching, and The Evergreen Foundation, would be appropriate beneficiaries of such royalties.



3. In the case of self-published materials, only actual out-of-pocket expenses may be recuperated by the College employee who requires that students purchase the materials. Out-of-pocket expenses do not include remuneration for the time the employee has spent on the production of the materials.

#### Complaint Procedure

If there is reason to believe that an employee is in violation of this policy, the employee's immediate supervisor shall be notified; for faculty members, this means one of the Academic Deans. If the alleged violation is not resolved at that point, the immediate supervisor or the employee shall refer it to the appropriate Vice President for academic, student or financial affairs. If the matter is still not resolved at that level, the Vice president or the employee shall refer it to the College's Internal Auditor for investigation. At each such level of referral, the employee shall be given the opportunity to respond and, if appropriate, to resolve the conflict.

#### Advice Regarding Conflict of Interest

Where the possibility of a conflict may exist, advice should be sought from the appropriate vice president for academic, student or financial affairs.