



## Washington State Conservation Commission

<b>Policy #</b>	09-02 Cost Share Participation by Conservation District Municipal Officers including Employees and Associate Supervisors
<b>Applies to:</b>	All Conservation Districts
<b>Effective Date:</b>	May 21, 2009

**Policy:**

Cost share funding using state funds for conservation projects proposed or sponsored by conservation district municipal officers including district employees and/or associate supervisors or a business entity in which a district employee or associate supervisor have an interest, will be allowed only if the district board has considered the ethics requirements for municipal officers set forth in RCW 42.23.030 and RCW 42.23.070 (information paper attached). A determination that funding the proposal is consistent with those requirements must be made by the district board and the determination reported in the board meeting minutes. A copy of the minutes shall be sent to the WSCC.

WSCC cost share agreement forms for projects proposed by a district employee, associate supervisor, or a business in which the employee or Associate Supervisor has an interest, will include an informational section on cost share funding participation by district employees and associate supervisors and a signature block for designated district official to acknowledge receipt of information regarding the ethics requirements for a municipal officer.

# District Cost Share Participation by Conservation District Municipal Officers Including Supervisors, Associate Supervisors & Employees

Can conservation district supervisors, associate supervisors and staff participate in district cost-share programs? District supervisors can participate in cost share programs as a result of a change in Revised Code of Washington 89.08 a few years ago. Conservation district associate supervisors and staff were not included in the changed legislation, and are also considered municipal officers subject to the Code of Ethics for municipal officers. There are some legal and policy issues that districts should carefully consider when developing a district policy on cost share participation by supervisors, associate supervisors and staff.

## Who is a municipal officer?

Chapter 42.23 RCW contains the Code of Ethics for Municipal Officers. A conservation district is a "municipality" for the purposes of RCW 42.23.

A municipal officer includes all elected and appointed officers of a conservation district, 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.

Clearly, elected and appointed board supervisors meet the definition of a municipal officer. We know from an audit finding that associate supervisors are also municipal officers. And many employees act as deputies and assistants to the board, so many conservation district employees are municipal officers.

According to RCW 42.23.030, municipal officers are prohibited from being beneficially interested in a contract. Contract is defined in RCW 42.23.020 as "...any contract, sale, lease or purchase."

"Beneficial interest" has been defined by the courts to include financial interests.

There is a general exception to the prohibition of having a beneficial interest. This is explained in RCW 42.23.030: "This section shall not apply in the following cases...The letting of any other contract in which the total amount received under the contract or contracts by the municipal officer or the municipal officer's business does not exceed one thousand five hundred dollars in any calendar month."

This means it is not a violation of RCW 42.23.030 if a municipal officer receives \$1,500 or less in any calendar month. This \$1,500 per month exception applies to the total of all

contracts, sales, leases and purchases between the district employee or an associate supervisor and the conservation district. This is not an average amount – you cannot exceed \$1,500 in any month.

Note that the \$1,500 per month exemption is the Legislature's way of striking a balance between public responsibility and ensuring that individuals may serve their communities.

## If you are a district board supervisor...

Chapter 89.08.220(4) RCW authorizes a conservation district to furnish financial aid to land occupiers. A few years ago the Conservation District Law was amended to say, in part, "For purposes of this subsection only, land occupiers who are also district supervisors are not subject to the provisions of RCW 42.23.030."

So for conservation district supervisors only, the prohibitions of RCW 42.23.030 do not apply for financial programs offered by the conservation district. It is not a violation of RCW 42.23.030 for a conservation district supervisor to receive more than \$1,500 per month pursuant to a contract with the conservation district.

**RCW 42.23.030: "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."**

## If you are not a district supervisor...

The exemption granted to district supervisors in RCW 89.08.220(4) **does not** apply to associate supervisors, district staff or any other municipal officers. Only the elected and appointed supervisors are exempted from the requirements of RCW 42.23.030. This means those district employees considered municipal officers may receive up to \$1,500 – **but no more** – in a calendar month without violating RCW 42.23.030.

Commission staff has fielded some questions from districts about delegation of authority as a way to shield individuals from the restrictions of RCW 42.23. The courts have spoken to this issue and have directed that a municipal officer cannot avoid the dictates of RCW 42.23.030 by delegating contract management duties to a subordinate.

Similarly, the contract need not be solely with a district employee considered to be a municipal officer for RCW 42.23.030 to apply. A contracting party includes any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.

## Even though you can, should you?

Even though it may be permissible under RCW 42.23.030 for conservation district supervisors, associates and employees to participate in cost-share programs (at least to some degree), should you? From the outside looking in, such participation can look like you are receiving preferential treatment.

In addition, the Code of Ethics also provides more generally that “no municipal officer may use his or her position to secure special privileges or exemptions for himself, herself or others. Given the broad language of both this provision and the beneficial interest provision, it is recommended that districts take measures to protect their employees from problems arising from the Code of Ethics.

## Penalties

Penalties for violation of chapter are outlined in RCW 42.23.050.

**RCW 42.23.050 “Any officer violating the provisions of this chapter is liable to the municipality of which he or she is an officer for a penalty in the amount of five hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon the officer by law.”**

**“In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.”**

## How to prevent problems...

If a district chooses to allow conservation district staff or associate supervisors to participate in cost-sharing, it should adopt a procedure to fairly evaluate and prioritize all cost-share requests. This can help you avoid charges of preferential or special treatment. For example, staff or an associate supervisor who will receive cost-share should be screened as much as possible from any involvement with their particular contract. It is particularly important that district staff or an associate supervisor have no involvement in the district’s decision to award the contract. When the Board votes on the contract, the interest of the district employee or associate supervisor should be disclosed to the Board and noted in the meeting minutes. However, if the district employee’s or an associate supervisor’s cost-share rises above the statutory maximum of \$1,500 per month, such measures – while helpful – will not shield the employee from a violation. If a project requiring several months to complete is anticipated, a work plan with timeline should be developed.

In addition, even though elected and appointed district supervisors are exempted from RCW 42.23.030, these supervisors may be able to protect themselves from appearances of self-dealing by a similar screening process and by not voting on their own contracts. (This is known as recusing oneself from a vote.). The recusing action and reason why should be included in the meeting minutes.

One of the most common pitfalls is awarding cost-share to people “in the know” before others have a chance to participate. To avoid this, districts should market their cost-share opportunities as widely as possible, and test each cost-share application against the district’s

conservation priorities in its annual and long-range plans.

## **Procedures for WSCC Grant Funding**

Conservation Districts will be responsible for notifying the WSCC each time any cost share applications involve conservation district employees or associate supervisors. The notification will include minutes from a district board meeting where the board has approved cost share participation by a district employee or Associate Supervisor after considering the ethics requirements for municipal officers set forth in RCW 42.23.030 and RCW 42.23.070.

### **This is not legal advice...**

Although we make reference to the relevant provisions of the Revised Code of Washington and court cases, the information contained herein cannot be construed as legal advice. For questions and concerns involving the interpretation and application of law, districts, supervisors and staff should seek qualified legal advice. This is especially true for this issue as potential violations of the Code of Ethics are subject to the penalty provisions of the statute.

### **References to more information...**

1. RCW 42.23, available through <http://www.leg.wa.gov/>
2. RCW 89.08.220(4), available through <http://www.leg.wa.gov/>
3. Auditing finding 60060, available at <http://www.sao.wa.gov/reports/findings/60060.doc>.
4. 82 Wn. App. 865, BARRY v. JOHNS, available at <http://www.mrsc.org/mc/courts/appellate/82wnapp/82wnapp865.htm>
5. 93 Wn. App. 127, CITY OF RAYMOND v. RUNYON, available at <http://www.mrsc.org/mc/courts/appellate/93wnapp/93wnapp127.htm>
6. Municipal Research & Services Center of Washington, article on Conflicts of Interest, available at <http://www.mrsc.org/Subjects/Legal/conflict/conflict.aspx>

## **Questions:**

Contact your WSCC Regional Manager



# Washington State Conservation Commission

## Frequently Asked Questions

### Cost Share Participation by District Employees or Associate Supervisors

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#### **Who is responsible for the compliance with the ethics requirements for municipal officers set forth in RCW 42.23.030 and RCW 42.23.070 and the associated contracts?**

The Conservation District Board is ultimately responsible. The conservation district must keep track of all payments on contracts that involve municipal officers of the district regardless of source. The conservation district is responsible for sending notification in the form of minutes to the WSCC.

#### **Why weren't district employees and associate supervisors exempted from these requirements at the same time as district supervisors?**

At the time, it was not known that associate supervisors and some district employees were considered municipal officers.

#### **When a municipal officer is an owner or member of an entity, do the provisions of RCW 42.23.030 apply?**

RCW 42.23.030 states: "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..." Generally, it is axiomatic that when an officer is a member or owner of an entity, the officer has a beneficial interest in that entity and the same analysis that would apply to the individual officer would also apply to the entity to which the officer belonged. Accordingly, the same exceptions would apply. Thus, the entity in which the officer was a member would be eligible to receive a contract in the amount of \$1,500 per month or less. However, because supervisors are exempt from 42.23.030 altogether, if the officer is also a supervisor there is a very good argument that any entity in which the supervisor has an interest is also exempt from the restrictions of RCW 42.23.030.

#### **What is the maximum per-month payment to a municipal officer who is not a district supervisor?**

\$1,500 per month

#### **Can higher cost projects be spread over multiple months?**

Not if the purpose is to avoid the \$1,500 per month cap

#### **What about cost shared projects that require multiple months to complete?**

The \$1,500 per month cap still applies for projects that can be completed in a month no matter what the total cost of the project is. At no time should the district attempt to avoid the \$1,500 per month cap by spreading work over several months that could logically be completed in a month period. A work plan identifying the significant tasks in sequence of a multi-month project would be beneficial to all parties if project work is appropriately spread over one month.