



Cost Share and Financial Assistance Participation by

Conservation District Supervisors, Associate Supervisors & Employees

The state Code of Ethics for Municipal Officers, RCW [42.23.030](#) prohibits municipal officers from having a beneficial interest in most contracts made by, through, or under their supervision. This would typically apply to conservation district supervisors participating in cost share and financial assistance programs, but RCW 89.08.220 provides an exemption that states:

...land occupiers who are also district supervisors are not subject to the provisions of RCW 42.23.030...

However, there is not an exemption in place for associate supervisors and employees, whom can also be considered municipal officers. This district operations brief highlights some legal and policy issues that districts should carefully consider when developing a district policy on cost share and financial assistance programs pertaining to supervisors, associate supervisors, and employees.

What 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.

RCW 42.23.020(2) provides:

(2) "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...

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 a prior 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.

Avoiding prohibited beneficial interests in the district's contracts

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 \$3,000 in any calendar month."

This means it is not a violation of the Code of Ethics for Municipal Officers if a municipal officer receives \$3,000 or less in any calendar month. This \$3,000 per month exception applies to the total of all contracts, sales, leases and purchases between you and the conservation district. This is not an average amount – you cannot exceed \$3,000 in any month.

Note that the \$3,000 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, as provided:

For purposes of this subsection only, land occupiers who are also district supervisors are not subject to the provisions of RCW 42.23.030.

Therefore, for conservation district supervisors only, the limitations of the Code of Ethics for Municipal Officers do not apply for financial programs offered by the conservation district. It is not a violation of RCW 42.23 for a conservation district supervisor to receive more than \$3,000 per month in financial aid from 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 district supervisors are exempted from this provision of the Code of Ethics. This means district employees may receive up to \$3,000 – but no more – in a calendar month without violating the Code of Ethics.

Commission staff has fielded some questions 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 for RCW 42.23 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 is legal for conservation district supervisors, associates and staff to participate in financial and 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.” RCW 42.23.070. 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.

How to prevent problems

Your conservation district can adopt a policy prohibiting conservation district staff and associate supervisors from participating in district financial and cost share programs. Such a policy would help eliminate problems with appearances of self-dealing with public funds.

If a district chooses to allow conservation district staff to participate in cost share and financial assistance programs, it should adopt a procedure to fairly evaluate and prioritize all financial assistance and cost share requests. This can help you avoid charges of preferential or special treatment. For example, staff 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 have no involvement in the district’s decision to award the contract. However, if the district employee’s cost share or financial assistance rises above the statutory maximum of \$3,000 per month, such measures – while helpful – will not shield the employee from a violation.

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.)

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

Other areas of ethics and conflicts of interest

Be aware that there are many other scenarios where a conservation district supervisor, associate supervisor, or employee could encounter areas of risk with Washington State’s ethics and conflict of interest laws, including prohibited uses of public office, special privileges and exemptions, other contract interests (in addition to cost share and financial assistance), and remote interests. We recommend reading the Municipal Research & Services Center’s [webpage on ethics and conflicts of interest](#). Contact your [regional manager](#) with any questions or to discuss potential scenarios.

WSCC grant funding

WSCC grant vouchering will include a disclosure by the conservation district authorizing signatory when state funded cost share or financial assistance has been requested for conservation district supervisor, associate supervisor, or employee.

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 should not 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, Code of Ethics for Municipal Officers](#)
2. [RCW 89.08.220\(4\), Corporate status and powers of district](#)
3. [82 Wn. App. 865, BARRY v. JOHNS](#)
4. [93 Wn. App. 127, CITY OF RAYMOND v. RUNYON](#)
5. Municipal Research & Services Center, [Ethics and Conflicts of Interest Webpage](#)
6. Municipal Research & Services Center, article, [New Law Doubles Limits for Municipal Officers' Beneficial Interest in Contracts with Their Agency](#),

Questions

Contact your [WSCC regional manager](#)