

ADVISORY OPINION

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REFERENCES: RCW 42.52.80, RCW 42.52.050

SUMMARY OF CHANGES: Updated format only.

Post-State Employment

QUESTIONS

1. Can a former Director of the Department of Personnel (DOP) apply for, compete for, and complete consulting work for state agencies under an ongoing Consultant Request for Proposal program (Consultant RFP) that is administered by DOP, but was created and independently funded prior to the former Director's employment at DOP?
2. Can a former DOP Director provide human resource consulting services to state agencies, i.e., perform work that was similar in nature to the service provided by DOP to those state agencies?
3. Can a former Director of DOP apply for, participate in and, if selected, contract with state agencies under pre-qualified personnel investigator or human resources consultant lists that are maintained by the General Administration¹ agency?

ANSWERS

1. Yes, the two year prohibition against obtaining a beneficial interest in a contract that was expressly authorized or funded by specific executive action in which the former Director participated, under RCW 42.52.080(2), is not violated if the former Director did not participate in the executive action that authorized and funded the Consultant RFP program.

¹ General Administration was merged into the Department of Enterprise Services (DES) in 2011 along with all, or portions of, Printing, Personnel, Information Services, and the Office of Financial Management (OFM).

2. Yes, assuming that the post-state employment consulting services would not require or induce the disclosure of confidential information² and the former Director did not participate in an agency's decision to contract for such services, the former Director may perform post-state employment consulting services that involve the services similar in nature to those provided by DOP.

3. Yes, assuming that the post-state employment consulting services would not require or induce the disclosure of confidential information and the former Director did not participate in an agency's decision to contract for such services, the former Director may apply for, participate in, and contract under a list of pre-qualified consulting services providers that is administered by the General Administration agency.

ANALYSIS

The Director of DOP plans to retire in the first quarter of 2001. The Director of DOP directs and supervises the DOP's administrative and technical activities in accordance with the state civil service law and rules adopted under it. Specifically, the Director oversees the state human resource management system, including compensation, classification, recruitment and assessment, employee and management training, labor relations, performance management and productivity, personnel and payroll information systems, and human resource policy development.

The Director has been employed by DOP for the last seven years. After retirement, the Director plans to perform consulting work, both within the private and public sectors, including state agencies, in the areas of workplace investigations, executive recruitment, executive coaching, and other human resources work. The Director's post-state employment consulting services would not require or induce the disclosure of confidential information and the DOP Director has not participated in an agency's decision to contract for such services.

1. A Former DOP Director May Consult for State Agencies, Under the Consultant RFP Program, Directly After He Leaves State Employment.

Approximately fifteen years ago DOP established, through executive and legislative action, the "in-house" Consultant RFP program. Under the program, DOP selects a pre-qualified pool of human resources consultants using an on-going RFP evaluation process. These consultants provide consulting services directly to DOP client agencies.

The consultant proposals are evaluated by DOP personnel for compatibility to state government needs. Individual state agencies may either select consultants from the Consultant RFP list or conduct a separate selection process. The DOP Director did not participate in the initial establishment of the Consultant RFP program and the program is funded through charge backs to the state agencies which use the consultants.

² In EEB Advisory Opinion 97-07, the Board advised that RCW 42.52.050(1), which prohibits state officers and employees from accepting employment if it might reasonably require or induce the disclosure of confidential information, applies to post-state employment.

The Ethics in Public Service Act prohibits former state officers from improperly acquiring a beneficial interest in a state contract as a direct result of having participated in the decision to authorize or fund the contract. RCW 42.52.080(2) provides that:

No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

In EEB Advisory Opinion 00-07, the Board advised that a former state employee could conduct work on a federal grant project funded by his former state agency that was similar to his state work on that project. In that opinion, the Board advised that because the state employee had not participated in agency decisions relating to the application of the federal grant, nor in the decision to use these grant monies to fund the new contract, completing the new contract would not violate a RCW 42.52.080(2).

As noted above, the Consulting RFP process was established eight years before the Director joined DOP and is independently funded by state agency charge backs. Therefore, the DOP Director did not participate in DOP's, or the state's, decision to establish the Consultant RFP process and would not violate RCW 42.52.080(2) if after leaving the state he provided consulting services to state agencies under the Consultant RFP program.

2. A Former DOP Director May Provide Human Resources Consulting Services for State Agencies.

The post-state employment provisions of the Ethics in Public Service Act do not address the type of work that former state officers or employees may provide to state agencies after state employment. Generally, the post-state employment provisions are transactional in nature and prohibit former state employee and their employers from improperly benefiting from grant or contracting decisions made while state employees.

As noted above, the Director's post-state employment consulting services would not require or induce the disclosure of confidential information. Therefore, so long as the Director has not participated in an agency's decision to contract for human resource services, the Director may perform post-state employment consulting services that involve services similar in nature to those provided by DOP.

3. A Former DOP Director May Provide Human Resource Consulting Services for State Agencies, Under a Pre-Qualification Program Established by Another State Agency.

As noted above, the DOP Director's participation, after leaving state employment, in a RFP consultant selection process conducted by his former state agency, would not violate RCW 42.52.080(2). Similarly, participating in a pre-qualification consultant referral program that is administered by another state agency, which was not under his official direction, would not

violate RCW 42.52.080(2).

The DOP Director may participate in and, if selected, contract with state agencies under the General Administration agency's consultant pre-qualification program. As discussed above, participation in the pre-qualification program may not result in consultant contracts that require or induce the disclosure of confidential information and the Director may not contract with an agency if he participated in that agency's decision to contract for human resources services.