

ADVISORY OPINION

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REFERENCES: RCW 42.52.020, RCW 42.52.030,
RCW 42.52.040, RCW 42.52.080

SUMMARY OF CHANGES: Updated format only.

Conflicts of Interest Related to Membership in Groups that are Sponsored by the Department of Natural Resources

QUESTION

May the State Survey Manager, a Department of Natural Resources (DNR) manager, also be an officer on a private non-profit organization that will receive funds under a Federal grant that was initiated and managed by the Survey Manager's division?

ANSWER

Yes, under certain conditions. The Ethics in Public Service Act protects the objectivity of state decision makers by prohibiting conflicts of interest. In this situation, however, the state officer is serving as an officer for the private organization as part of his official DNR duties. While the Ethics Act does not generally address conflicts between official duties, DNR should resolve and manage any conflict of interest by ensuring that the Survey Manager does not exercise ongoing fiscal oversight of the Federal grant.

ANALYSIS

In 2002, an ad-hoc group of land surveyors from State and local government met with land surveyors from the Land Surveyor's Association of Washington to discuss improvements in level net, which is a Federal government sponsored initiative to accurately survey the height of terrain. The proposed improvements would be accomplished by private consultants performing land surveying contracts and through installation of a global positioning system network. DNR is specifically authorized under RCW 58.24.030 to cooperate and advise state, local and private groups regarding implementation of such networks¹. A DNR Survey Manager has critical and

¹ RCW 58.24.030 provides in relevant part: "The commissioner of public lands, the department of natural

unique expertise in this technology. After meeting, the ad-hoc group of land surveyors decided to request support from the Federal government through appropriations from the National Geodetic Survey.

The ad-hoc group, including DNR employees and the Survey Manager, secured Federal grant funding for the project in State Fiscal Year 2005. The project would be managed by DNR as a pass-through to a newly formed non-profit organization called the Spatial Reference Center of Washington (SRCW). The grant program deliverables require planning and prioritization and the actual work must be contracted to private land surveyors. Direction to SRCW regarding grant program deliverables and land surveyor qualifications is provided by a Board of Directors called the Spatial Reference Council. DNR has a permanently appointed chair on the Executive Committee of the Council and the Survey manager was appointed as DNR's representative. SRCW bylaws designate that council positions are not compensated.

DNR intends to award any federal grant funds to SRCW under a Cooperative Agreement with SRCW that will be in place before the grant funds are received. The Survey manager participated in development of that one-year agreement. A Grant Fund Manager who works under the direction of the Engineering Division Manager who is the Survey Manager's supervisor, will provide ongoing fiscal management of the grant funds. Normally the grant manager is supervised by the Survey Manager, however, this employee will report directly to the Division Manager.

The Ethics in Public Service Act (Ethics Act) requires that state decision makers be objective in their official decisions. The Ethics Act protects that principle by prohibiting conflicts of interest. In addition, the Ethics Act encourages agencies to resolve or manage conflicts of interest. For example, the Ethics Act prohibits state employees from having interests, or engaging in professional activities, that are in conflict with the proper discharge of their official duties. RCW 42.52.020 provides that:

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

The Ethics Act also prohibits state officers and employees from participating in transactions between the state and an outside organization of which the state officer or employee is an officer or employee. RCW 42.52.030(2) provides in relevant part:

No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee

resources, and the advisory board are authorized to cooperate and advise with various departments and subdivisions of the state, counties, municipalities, and resisted engineers or land surveyors of the state for the following purposes: ...

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey.”

is an officer, agent, employee, or member, ...

These provisions address conflicts of interest and would prevent a state officer or employee from having any professional or financial relationship with persons that are the beneficiaries of that officer or employee's official actions. In EEB Advisory Opinion 00-14, the Board advised that membership on the board of a private organization is an interest in the organization that conflicts with the discharge of a state officer's or state employee's official duties as a state agency decision maker regarding the organization or its direct competitors, in violation of RCW 42.52.020. It appears from the facts, however, that DNR considers the Survey Manager's involvement with the Spatial Reference Council and SRCW a part of his official DNR duties.

In EEB Advisory Opinion 02-03, the Board advised that the Ethics Act did not address conflicts between official duties. Specifically, the Board advised that a DNR regional manager's interests in managing state forest land would not prohibit that DNR regional manager from participating in DNR forest practice decisions directly related to the forest land he or she manages.

The facts in that opinion, however, differ in that the conflict was based on an explicit conflict between DNR's statutory duties, rather than a conflict resulting from the agency acting within its discretionary authority. In addition, the analysis in EEB Advisory Opinion 02-03 did not include RCW 42.52.030 because the conflicts did not involve the direct interests of a private organization.

While there are factual differences from the prior opinion, it appears that the Survey Manger's work in obtaining the Federal grants and negotiating an agreement with SRCW and his position on the Spatial Reference Council are both clearly related to his DNR official duties. In addition, it appears that the Survey Manager does not have a beneficial or financial interest in the SRCW. Therefore, holding both positions in an official capacity does not create a conflict of interest between private interests and official duties.

As noted above, the Ethics Act encourages agencies to resolve or manage conflicts of interest. Accordingly, DNR should resolve and manage any conflict of interest by ensuring that the Survey Manager does not exercise ongoing fiscal oversight of the Federal grant. Ongoing fiscal management of the DNR grant and agreements with SRCW will be the responsibility of a Grant Fund Manager who works under the direction of the Engineering Division Manager and is not supervised by the Survey Manager.

Under RCW 42.52.030 and RCW 42.52.040, the Survey Manager should also recuse himself from future DNR decisions related to the SRCW. In addition, the Survey Manager's official DNR relationship with the Spatial Reference Council may cause Ethics Act concerns if he should leave state employment and work with the SRCW. *See* RCW 42.52.080.