ADVISORY OPINION

APPROVAL DATE: July 10, 2009 NUMBER: 01-07A

STATUS: **Current**

REVIEWED ON: June 29, 2021

NEXT REVIEW: June 2026

REFERENCES: RCW 42.52.010, RCW 42.52.140, RCW 42.52.150, RCW 42.52.160(1).

SUMMARY OF CHANGES: No changes.

Gift Restrictions on Donations Made by Non-State Entities

QUESTIONS

1. Does the Ethics in Public Service Act have jurisdiction over gifts to a state agency?

2. Does a state agency violate the Ethics in Public Service Act if it uses funds received, from a person it regulates or a person who contracts, or seeks to contract, with the state agency to off-set agency costs associated with travel expenses?

3. Would a state officer or employee violate the Ethics Act if they indirectly received admission to, and the cost of food and beverages consumed at an event paid by funds received by an agency from a person regulated by that state officer or employee or who contracted with that state officer or employee?

ANSWERS

1. No, in EEB Advisory Opinion 96-01, the Board advised that RCW 42.52.140-.150 gift limits do not apply to gifts to the state or its agencies.

2. No, even if the source of the gift to the state agency may include persons regulated by the agency or those who contract, or seek to contract, with the state agency. However, the Ethics Act has jurisdiction over state officers and employees who may be the recipients of a gift to any agency.

3. Perhaps. When a state officer or employee is the ultimate beneficiary of a gift initially given to a state agency, close scrutiny must be given to the circumstances surrounding the gift to determine if the recipient violated the Ethics Act. The Board will look at several factors to determine whether a state officer or employee violated the Act. These factors include:

a. Did the state officer or employee actively solicit the gift or funds from the regulated entity or the entity that seeks to acquire goods and services ("the non-state entity"), if so, how?

b. Does the state officer or employee have significant influence on decisions regarding the non-state entity?

c. Is there a pending state agency action against or regarding the non-state entity?

d. Was the gift related to, or have the appearance of intent to influence the impending agency action?

e. Does the gift broadly benefit the state agency or is the gift narrowly tailored to benefit specific agency employees, or group of employees?

ANALYSIS

This advisory opinion does not address all potential issues that could arise under RCW 42.52 with regard to financial donations made to agencies by non-state entities[1]. The Board provides this summary and clarification of the Board's previous advice on the subject.

1. Gifts to State agencies do not fall under the jurisdiction of the Ethics Act.

In Advisory Opinion 96-01, the Board advised that the gift limits under RCW 42.52.140 and .150 do not apply to gifts to the state or its agencies. The Board further advised that if a gift is given to the agency and the agency uses the gift to off-set costs, especially travel costs, there is no technical violation of RCW 42.52.150(4)(g)(ii).

2. State agencies may accept reimbursement of travel or other costs from non-state entities.

In Advisory Opinion 96-01, the Board further advised that the source of the gift to the state agency may include persons regulated by the agency. In reaching its conclusion, however, the Board expressed serious concerns about the appearance of a regulatory agency receiving a gift from a person regulated by the agency.

Based on that opinion, the Board advises that under RCW 42.52, agencies may develop policies that allow for cost reimbursements from non-state entities. Nevertheless, the Board recommends that

[1] A non-state entity is defined as a person regulated by a state agency or a person who seeks to acquire goods and services from the state agency.

state agencies adopt guidelines which ensure that any gift accepted by the state agency is not directly related to, or does not have the appearance of intent to influence an official state action.

3. **Indirect gifts to state officers and employees may violate the Ethics Act and require close scrutiny by agencies.**

A potential ethics issue can arise if the non-state entity that provides gifts or funds to a state agency designates or otherwise directs that a certain employee or group of employees be the recipient or beneficiary of the gift or funds. In this situation, the state officer or employee would be receiving an indirect gift, which is prohibited by RCW 42.52.150(4). In other words, the state officer or employee may face an ethical violation if the non-state entity giving the gift directed the agency to send that particular state officer or employee to the event paid for by the funds from the non-state entity. Conversely, if the agency determines how the donated money will be spent, i.e., selects the state officer or employee to send to the event, there would be no indirect gift.

While an agency may accept any gift from any source, as the Ethics Act has no direct jurisdiction over agencies or the gifts they receive, the Ethics Act does have jurisdiction over state officers and employees. To insure no adverse impact to its employees, an agency should not allow non-state entities to select specific recipients of gifts made to an agency, particularly gifts of funds to be used for travel expenses.

When a state officer or employee is the ultimate beneficiary of a gift initially given to a state agency, close scrutiny must be given to the circumstances surrounding the gift to determine if the recipient violated the Ethics Act. The Board will look at several factors to determine whether a state officer or employee violated the Act. These factors include:

a. Did the state officer or employee actively solicit the gift or funds from the regulated entity or the entity that seeks to acquire goods and services ("the non-state entity"), if so, how?

b. Does the state officer or employee have significant influence on decisions regarding the non-state entity?

c. Is there a pending state agency action against or regarding the non-state entity?

d. Was the gift related to, or have the appearance of intent to influence the impending agency action?

e. Does the gift broadly benefit the state agency or is the gift narrowly tailored to benefit specific agency employees, or group of employees?

4. Other guidance regarding the expenditure of funds provided by non-state entities to reimburse for official travel.

RCW 42.52.160(1) prohibits a state officer or employee from using money under the officer's or employee's official control for private gain. RCW 42.52.160 provides, in part:

> (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

In addition, OFM travel regulations chapter 10.20.60 prohibit the use of reimbursed funds for "more than the actual expenses of travel except for meals which can be reimbursed on an allowance basis." Accordingly, the Board advises that using funds, which were provided by non-state entities to reimburse for official travel, may not be used to pay for additional or unreasonable expenses, such as payment for hotel rooms that exceed OFM rules or travel by a spouse or family member. Such use of money under the state officer or employee's official control could violate RCW 42.52.160(1).