

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.080

SUMMARY OF CHANGES: No changes.

Post-State Employment

QUESTION

May an employee who oversees motorcycle safety courses for the state work for vendors who provide motorcycle safety instruction on local military installations?

ANSWER

It depends on the factual situation.

ANALYSIS

The Department of Defense, through the military departments, negotiated a contract with two vendors to provide motorcycle safety education instruction to military members on military installations. The Army selected Cape Fox as their contractor; the Navy selected Navy Region Northwest. The military departments negotiated all of the terms and conditions regarding these contracts. When a military member wants to take the motorcycle safety course on Ft. Lewis or at a Washington Naval installation, they deal directly with these contractors for course costs, schedules and completion.

Under Title 46, RCW, the Washington State Department of Licensing (DOL) is tasked with the responsibility for all of the vehicle operator's licenses issued to Washington drivers. DOL sets standards a driver must meet in order to obtain a license. An automobile driver must go through a driver's course and take a written and driving test at a DOL location. DOL may, however, waive the Washington Motorcycle Rider Skills Examination if a motorcyclist successfully completes a course that meets DOL's safety requirements. Under the waiver system, the student is issued a motorcycle endorsement to their driver's license directly by the course instructor upon course completion.

Under RCW 46.81A.020, DOL may enter into agreements to review and certify that a private motorcycle skills education course meets educational standards equivalent to those required of courses conducted under the motorcycle skills education program. An agreement entered into under this subsection must provide that the department may conduct periodic audits to ensure that educational standards continue to meet those required for courses conducted under the motorcycle skills education program.

The vendors that the military departments selected to provide their motorcycle safety courses contacted DOL in 2005 to develop an interagency agreement to govern their relationship with DOL. These agreements were not considered contracts and there was no exchange of fees or payments of any kind between DOL and the selected vendors.

These agreements set forth terms under which DOL would audit their courses, provide course material (instructional workbooks) and train their instructors. If DOL found, through the audits, that the course met the state's course requirements, then DOL would waive the skills examination for the students successfully completing the course. If the course was not up to state standards, the student would then have to take both the written and driving tests at a DOL office.

The Cape Fox agreement expired on July 1, 2007 and the Navy agreement on April 20, 2008. *There were no current agreements*, and DOL had not begun to renew these agreements. The original agreements were processed by the previous Motorcycle Program Manager. Since then, the agreements were updated once, with no changes made. The current Motorcycle Program Manager is listed as the point of contact, but had no role in drafting the original agreements or with updating them. He was simply the point of contact because of his position.

Recently, one of the military vendors approached the current Motorcycle Program Manager for possible employment. This employment would entail managing the programs for the naval installations.

RCW 42.52.080, which states, in pertinent part:

- 1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:
 - (a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;
 - (b) Such a contract or contracts have a total value of more than ten thousand dollars; and
 - (c) The duties of the employment with the employer or the activities for which the

compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

...

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment. This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

For RCW 42.52.080(1) to apply, the former state employee must have negotiated or administered a contract in the two years immediately prior to leaving state employment. In the case at hand, there were no current agreements between the state and either military vendor. When there was an interagency agreement, the current Motorcycle Program Manager did not participate in the negotiation of that agreement at any time. While, the current Motorcycle Program Manager ensured that his technicians followed the terms of the agreement, he did not have the courses audited because the instructors who taught the military classes were also instructors for the private vendor's classes and these instructors had been previously trained by DOL.

Further, the interagency agreement was not a contract. The actual "contract" was between the vendors and the military departments. No money or fees changed hands between the military vendors and DOL.

For RCW 42.52.080(5) to apply, there must have been a "transaction involving the state." The Act defines a "transaction involving the states" as:

(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

- (i) Is, or will be, the subject of state action; or
- (ii) Is one to which the state is or will be a party; or
- (iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit. RCW 42.52.010(21).

Again, the interagency agreement is not a contract, and while DOL is a named party on the expired agreement, DOL was not in the process of updating the agreement, with no plans to do so in the future. There was no real benefit to the military vendor for having this agreement because the military may provide this course on military installations with or without the state's involvement. The only benefit of having this agreement was that the military student did not have to take the basic skills tests at a DOL office. This waiver benefited the student, not the vendor.

While one could argue that having this waiver is a selling point for the military vendor and is a good marketing tool, according to the current Motorcycle Program Manager, the classes offered off post or off base fill up very fast because they are subsidized and the military member has a better chance of getting into a class on their installation than one off post/base, so the waiver is a non issue. Also, many military members seeking an endorsement have no alternate source of transportation off of the installation, so they attend the classes on post/base because they have the ability to physically get to these locations.

Based upon the facts of this specific situation, the proposed post-state employment of the Motorcycle Program Manager does not meet the criteria under RCW 42.52.080 and employment with either military vendor identified in the Interagency Agreements sent would not violate the Ethics in Public Service Act.