

ADVISORY OPINION

APPROVAL DATE: February 13, 2009

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NEXT REVIEW: May 2026

REFERENCES: RCW 42.52.010, RCW 42.52.020,
RCW 42.52.030(2)

SUMMARY OF CHANGES: No changes.

Stock Ownership

QUESTION

May a Department of Revenue Administrative Law Judge (ALJ) make a determination regarding the tax liability of Acme Co., where the ALJ holds shares in Beta Co., and Beta Co. has a financial and voting interest in Theta Co. which owns Acme Co.? Theta Co. purchased Acme Co. from Beta Co. several years ago. However, Beta Co. currently has an approximately 30% economic and voting interest in Theta Co.

ANSWER

Yes, while a state employee would face a conflict of interest if they regulated a company that they owned stock in directly, that same logic does not hold true for companies that are owned by companies that are, in turn, partially owned by companies in which the state employee owns stock. The situation described in the question above is too attenuated for the state employee to have a conflict of interest or financial interest in the transaction.

ANALYSIS

The ALJ owns stock in the "Beta" Corporation, not the "Acme" Corporation, who is coming before him in a state action. The current market value of the ALJ's "Beta" Corporation stock is approximately \$12,000. The net income of the "Beta" Corporation was \$9.786 billion in 2007. Beta is the parent company of a range of industries including cigarettes and related products, alcoholic and non alcoholic beverages and food products. Through its capital group, it is also an investment company that manages a portfolio primarily consisting of leveraged and direct finance leases. Per its current website, it remains the economic owner of 28.5% of Theta who in turn owns taxpayer (Acme).

RCW 42.52.020, Activities incompatible with public duties, which states:

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

Since the ALJ does not own stock in the “Acme” Corporation, this section does not apply.

RCW 42.52.030(2), Financial interest in a transaction, which states in pertinent part:

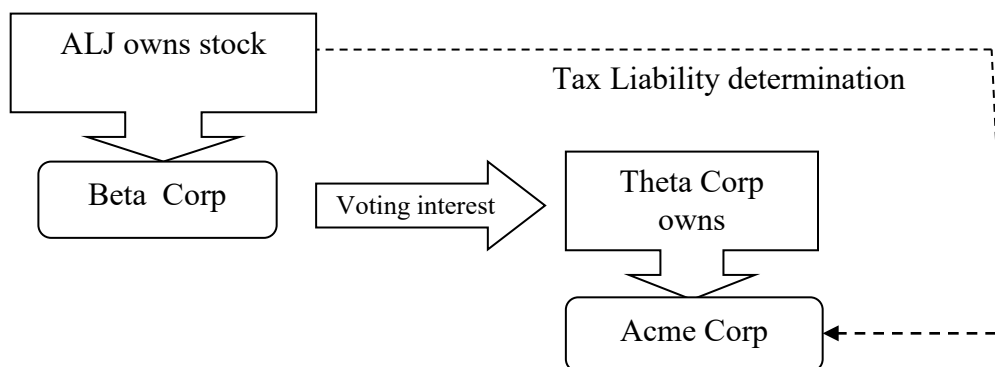
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(2) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest...

In Advisory Opinion (AO) 97-11, the Board held that RCW 42.52 does not prohibit a board member from holding financial interests and does not require divestiture of such interests. But, a conflict of interest, financial or otherwise, occurs when a board member participates in a transaction involving the state and the transaction or proceeding involves a company in which the member holds an interest. Stock ownership, unlike mutual funds and investment pools, creates a conflict of interest because individuals exercise control over their individual stock investments.

In AO 97-12, the Board further held that a conflict of interest, financial or otherwise, occurs when the state officer or employee participates in an official state action involving a company in which the member holds an interest, unless such action is exempted under RCW 42.52.010(21)(b). In circumstances where a state employee holds a financial interest and participates in state actions that would have a similar effect upon all members of a broadly defined interest group, the financial interest would not create a conflict. However, if the state employee holds a financial interest in a company, and the effect of participating in a state action would be to affect the specific interests of this company, a conflict of interest would occur. The conflict may be removed by recusal and delegation of responsibilities to a supervisory state employee who does not hold a conflicting financial interest.

However, the situation at hand is a *different* situation than those described in AOs 97-11 and 97-12. The current situation is as follows:



The substantive question in this case is the extent to which a financial interest should preclude a state employee from participating in a state action. In the question currently before the Board, the ALJ owns stock in a company that owns a portion of another company that owns a third company and it is the “third” company that comes before the ALJ for adjudication of a revenue issue (usually a state tax issue or B&O tax issue).

Many companies own stock in other companies, and these investments can, and do, change on a daily basis depending on market fluctuations. It would present a difficult, if not impossible, situation to require state employees who own stocks in major companies to try to discern who these companies invest in at any given moment. It would be an almost impossible task to find out and keep track of the day-to-day investing that companies participate in. It would also bar many state employees from doing their jobs if they could not regulate companies that were partially owned via issued stock by companies in which the state employee owned stock.

The ALJ does NOT own any stock in the “Acme” Corporation, nor in “Theta” as well. The ALJ’s ability to influence the “Beta” Corporation through his stock ownership is negligible. Even if the ALJ had a larger holding in “Beta” Corporation, there is no evidence to indicate that “Beta’s” voting interest in “Theta” Corporation would have any effect on “Acme” or its revenue issues with the state. The Board finds no conflict of interest at issue in this scenario.