ADVISORY OPINION

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STATUS: **Current**

REVIEWED: June 29, 2021

NEXT REVIEW: June 2026

REFERENCES: RCW 42.52.150

SUMMARY OF CHANGES: No changes.

Payments for Educational Programs

QUESTIONS

1. RCW 42.52.150 restrict the gifts that can be received by state officers and state employees. Does a regulatory agency violate these limitations if it receives a gift from a person it regulates, to be used to off-set the cost of training agency officers and employees?

2. Does a state officer or state employee who attends agency training violate RCW 42.52.150(6)(g)(ii) if the source of the funds used to pay for the training is a gift to the regulatory agency by a person who is regulated by the agency?

ANSWERS

1. No, RCW 42.52.150 limits the receipt of gifts by state officers and state employees. They do not apply to gifts to the state or its agencies.

2. No, RCW 42.52.150(6)(g)(ii) prohibits state officers or state employees, who participate in regulation, from receiving payments for seminars and educational programs from a person they regulate. However, in this case, the officers and employees are attending training put on by their agency and receiving their usual pay and expenses from the agency. The source of funds used by the agency to make these payments does not convert this normal situation into an ethics violation.

Although the Board finds that there is no technical violation when a regulatory agency receives a gift from a person it regulates to use for training purposes, the Board has a strong concern about the appearance of such a practice and the potential public perception that the agency will be influenced by the receipt of such a gift. Accordingly, the Board advises that any regulatory agency should consider the matter carefully before it accepts such a gift.

ANALYSIS

Questions 1 and 2 concern the receipt of gifts. RCW 42.52.150(1)(b) defines gift to mean "anything of economic value for which no consideration is given". Gift does not include:

> Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association, or charitable institution. . . .

RCW 42.52.150(1)(c)(vi).

RCW 42.52.150(2) provides:

> No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction.

(Emphasis added)

RCW 42.52.150 provides in part:

> (3) No state officer or state employee may accept gifts, other than those specified in subsections (4) and (7) of this section, with an aggregate value in excess of $100 from a single source in a calendar year or a single gift from multiple sources with a value in excess of $100 . . . .
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> . . .
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> (6) Notwithstanding subsections (4) and (7) of this section, a state officer or state employee of a regulatory agency . . . who participates in those regulatory . . . matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:
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> . . .
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> (g) Those items excluded from the definition of gift in subsection (1)(c) of this section except:
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> . . .
>
> (ii) Payment for seminars and educational programs sponsored by a bona fide nonprofit professional, educational, or trade association, or charitable institution[.]

(Emphasis added)

The limitation on acceptance of gifts in RCW 42.52.150(6)(g)(ii) applies to "state officers" and "state employees". These terms are defined in the law. RCW 42.52.010(28) defines state officer to include "every person holding a position of public trust in or under an executive, legislative, or judicial office of the state". RCW 42.52.010(27) defines state employee to mean "an individual who is employed by an agency in any branch of state government".

In other words, the restrictions in RCW 42.52.150(6)(g)(ii) apply to the people who work for state agencies. The restrictions do not apply to the agency itself.[1] This is confirmed by the fact that the law provides a separate definition for agency in RCW 42.52.010(1) to include:

> [A]ny state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the sate government, and those courts that are parts of state governments.

Thus, an agency, itself, cannot violate RCW 42.52.150(6)(g)(ii). Accordingly, the answer to Question 1 is "no".[2]

The second question asks if agency officers and employees who attend training violate RCW 42.52.150(6)(g)(ii) if the source of the funds the agency uses to pay for the training comes from a gift from a person regulated by the agency. Under this question, the officers and employees receive their regular pay from the agency. If they have travel or other expenses, they file the usual claim for expenses with the agency pursuant to state law and are paid by the agency. The training itself is paid for by the agency and the attendance of the officers and employees is part of their work.

In other words, from the point of view of the officer or employee, it is nothing more than regular agency training. We do not believe that this ordinary situation is converted into an ethical violation on the part of officers and employees attending training simply because of the source of the funds the agency uses to pay for the training. Indeed, from the point of view of the officer or employee, it seems unlikely that any payment from the agency meets the definition of the term gift. RCW

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[1] This question asks about receipt of gifts by an agency. RCW 42.52.150(6) also apply to state officers and employees who seek or solicit gifts. An officer or employee who solicits a gift to the agency may violate these provisions, even though receipt of the gift by the agency does not.

[2] Although we conclude that the receipt of a gift by a regulatory agency does not violate RCW 42.52.150(6)(g)(ii), we express no opinion about the authority of agencies to accept gifts in the first place. An administrative agency may only do the things it has the statutory authority to do. Thus, there may be a question of whether a specific agency has the statutory authority to accept a gift in the first place. There is also a question of whether the agency, having accepted the gift, may use the funds for any particular purpose such as training. These questions fall outside of chapter 42.52 RCW and are beyond the authority of the Executive Ethics Board.

42.52.150(1)(b) defines gift as "anything of economic value for which no consideration is given". When an officer or employee receives salary, expenses, or training from the agency, it would appear to be consideration for the work they do for the agency. Accordingly, we conclude the answer to Question 2 is "no".

Although we do not believe that the situation described in these two questions constitutes a violation of RCW 42.52.150(6)(g)(ii), we have serious concerns about the appearance of a regulatory agency receiving a gift from a person regulated by the agency which is subsequently used for training. RCW 42.52.150(6)(g)(ii) would prohibit a regulated person from paying reasonable expenses to an officer or employee who participated in the regulation to attend a seminar or other educational program. If the gift is given to the agency and the agency uses the gift to conduct agency training, there is no technical violation of RCW 42.52.150(6)(g)(ii). However, the Board is concerned that this practice could be perceived as a violation of the spirit of the law. Therefore, the Board would urge any regulatory agency to consider carefully not only the technical requirements of RCW 42.52.150, but also the perception of the public before accepting a gift from a person it regulates.