ADVISORY OPINION

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NEXT REVIEW: June 2026

REFERENCES: RCW 42.52.010, RCW 42.52.150

SUMMARY OF CHANGES: No changes.

Limitations on Gifts to Employees of Regulatory Agencies

QUESTIONS

1. Does a state agency that only performs ministerial acts fall within the definition of regulatory agency in RCW 42.52.010(24)?

2. Does a state agency that performs both ministerial and regulatory acts fall within the definition of regulatory agency in RCW 42.52.010(24)?

3. If a regulatory agency performs some functions that are regulatory and some that are not, who is subject to the more stringent limitations on the receipt of gifts in RCW 42.52.150(6)?

ANSWERS

1. No, a state agency that performs only ministerial acts does not fall within the definition of regulatory agency in RCW 42.52.010(24). A ministerial act is one that does not involve the exercise of judgment and discretion or control or affect the interests of identified persons.

2. Yes, an agency that is authorized to conduct adjudicative proceedings, issue permits or licenses, or to control or affect the interests of identified persons meets the definition of regulatory agency. The fact that the agency also performs ministerial acts does not remove it from this definition.

3. Strict limits on gifts in RCW 42.52.150(6) apply to officers and employees of a regulatory agency who participate in regulatory and/or contractual matters. An officer or employee who *only* participates in ministerial acts is not subject to the more strict limitations on gifts.

ANALYSIS

RCW 42.52.010(24) defines a regulatory agency as:

> [A]ny state board, commission, department, or office, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect the interests of identified persons.

Under this language, an agency is a regulatory agency if it is authorized by law to exercise authority over or influence identified persons. Clearly, an agency that conducts adjudicative proceedings and issues permits or licenses is in a position to exercise authority over or influence identified persons.

The definition of regulatory agency is significant because RCW 42.52.150(6) imposes more stringent limitations on gifts that can be received by officers and employees of a regulatory agency. However, does an agency that performs only ministerial acts fall under these more stringent limitations. A ministerial act is defined as:

> One which a person performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety of the act being done.

Black's Law Dictionary 1148 (4th rev. ed. 1968). The key is that a ministerial act does not involve the exercise of discretion or judgment on the part of the person performing the act. Accordingly, the Board concludes that an agency that performs solely ministerial acts is not a regulatory agency.

Some agencies perform both ministerial acts and regulatory acts. These agencies would be considered regulatory under RCW 42.52.010(24) and fall within the stricter gift limitations under RCW 42.52.150(6).

Applying the limitations on gifts in RCW 42.52.150(6) to officers and employees of a regulatory agency that also performs ministerial functions must be resolved on a case-by-case basis and depends on the duties and responsibilities of the individual employee with regard to the person giving the gift.

RCW 42.52.150(6) provides in part:

> [A] state officer or state employee of a regulatory agency . . . who participates in those regulatory . . . matters may receive . . . only the following items from a person regulated by the agency[.]

The application of the more stringent prohibition depends on whether the officers and employees "participate" in "regulatory matters". RCW 42.52.010(22) defines "participate" as follows:

> "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

This means that officers and employees who only participate in ministerial acts would not be subject to the strict gift limitations in RCW 42.52.150(6) because they do not participate in "regulatory matters". On the other hand, an officer or employee who participates in regulatory matters is subject to the strict limits in RCW 42.52.150(6).

To determine whether an officer or employee has participated in regulatory matters, they must answer the following questions:

1. Does the officer or employee work for a regulatory agency or an agency that seeks to acquire goods and services? If the answer is "yes," continue to question #2.

2. Did the officer or employee's agency participate in the regulatory or contractual matters with the person wanting to give the gift? If the answer is "yes," continue to question #3.

3. Did the officer or employee participate in the regulatory or contractual matters with the person wanting to give the gift? If the answer is "yes," the officer or employee is subject to the stricter gift limitations in RCW 42.52.150(6).

4. Could the officer or employee participate in future regulatory or contractual matters with the person wanting to give the gift? If the answer is "yes," the officer or employee is subject to the stricter gift limitations in RCW 42.52.150(6).

5. Does the officer or employee work in the same office/division in which regulatory or contractual decisions are made, who does not personally make the decisions, but could influence the decision regarding regulatory or contractual matters with the person giving the gift? If the answer is "yes," the officer or employee is subject to the stricter gift limitations in RCW 42.52.150(6).

The purpose of RCW 42.52.150(6) is to impose stricter limits on the gifts that can be received by officers and employees who participate in regulatory matters. This purpose would be defeated if officers and employees could receive gifts from those who were potentially subject to regulation.