

ADVISORY OPINION

APPROVAL DATE: October 10, 1997

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REVIEWED ON: May 5, 2021

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REFERENCES: RCW 42.52.030, RCW 42.52.900,
RCW 42.52.901, RCW 42.52.903

SUMMARY OF CHANGES: No changes.

Financial Interests/Board Membership

QUESTIONS

1. Does RCW 42.52 prohibit a board member from participating in a proceeding when the member owns stock in a person who appears before the board, and when the member was appointed to represent a particular interest on the board?
2. Does RCW 42.52 require disclosure of the board member's holdings prior to the commencement of proceedings?
3. Does RCW 42.52 require divestiture to allow a board member's participation in proceedings, or are alternative measures available to ensure compliance with RCW 42.52?

ANALYSIS

RCW 42.52 does not prohibit a board member from holding financial interests and does not require divestiture of such interests. 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 person 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.

Board members may resolve conflicts by disclosing any interest that may be in conflict upon appointment; publicly disclosing a specific interest prior to a board proceeding where the interest may be the subject of board discussion or action; and, by abstaining from participation in discussions or voting on any issue where the interest may be affected.

In considering the specific issue of a board member who is appointed to represent a particular interest, the Legislature recognized that such appointments could create the appearance of a conflict. For this reason, RCW 42.52.903 expressly provides that:

Nothing in this chapter shall be interpreted to prevent a member of a board, committee, advisory commission, or other body required or permitted by statute to be appointed from any identifiable group or interest, from serving on such body in accordance with the intent of the legislature in establishing such body.

In Advisory Opinion 96-09, the Board clearly acknowledged that while many of the provisions of RCW 42.52 might preclude the participation of certain individuals on state boards, commissions, or committees, RCW 42.52.903 allows this participation. The Board also advised that individuals serving in those capacities could avoid conflicts by adopting rules that required members to disclose their interests and to abstain from voting or attempting to influence votes as a means of addressing the ethical restrictions in RCW 42.52.

In this particular case, the Board considers that a useful distinction may be made between a board member who *represents* a broadly defined interest, such as “business,” “labor,” or “agriculture,” and a board member who *holds* a private interest in a specific person within the broader group. The underlying public purpose for appointing board members to represent broad interests is to encourage the contribution of diverse experiences, views, and perspectives to the business of government. This does not, in and of itself, create a conflict of interest. However if a board member has a *private* interest in a *specific person* within the broader group he or she is appointed to represent, this would create a conflict of interest.

In applying this analysis to the specific question of stock ownership, the Board also considers that the definition of “beneficial interest” in RCW 42.52.010(3) specifically excludes individually owned stocks when it exempts mutual funds or similar investment pooling funds as a beneficial interest. The defining characteristics of individual stock ownership, as opposed to mutual funds or investment pool funds, are control and the ability to exert influence.

While an owner of stocks can control and influence his or her investments, an owner of mutual funds or investment pool funds has no control over the entities in which the fund or pool invests. This difference also defines the circumstances under which an owner would have a private interest. An owner would have a private interest in any person in which he or she owned stock, but would not have a private interest in a mutual fund or investment pool. Stock ownership therefore creates a conflict of interest if a board member participates in a transaction with the state on an issue involving the interests of the person in which the member owned stock.

Although stock ownership may create a conflict of interest, the Board has previously established in Advisory Opinion 96-09 that divestiture of private holdings is not necessary to achieve the purposes of RCW 42.52. However, in circumstances where a quorum cannot be achieved because of a conflict of interest, and the participation of the board member is required for official action, members may be permitted to participate fully in proceedings, provided they publicly disclose the basis for disqualification prior to rendering a decision.

In reaching this conclusion, the Board references RCW 42.52.901 which provides in relevant part that the chapter “shall be liberally construed to effectuate its purposes.” One of these purposes can be found in RCW 42.52.900, namely that state officers and employees must consider “public accountability as a particular obligation of public service.” Public accountability depends on the ability of government officials and employees to exercise independent and impartial judgment in conducting official business. Private interests impair this judgment.