

## ADVISORY OPINION

APPROVAL DATE: April 11, 1997

NUMBER: 97-12

STATUS: **Current**

REVIEWED ON: May 5, 2021

NEXT REVIEW: May 2026

REFERENCES: RCW 42.52.010, RCW 42.52.020,  
RCW 42.52.030

SUMMARY OF CHANGES: No changes.

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### Stock Ownership by State Employee

#### QUESTION

Does stock ownership in a person prohibit a state employee from participating in state actions which may affect that person:

- (1) as a member of a broadly defined group; or,
- (2) as a specific interest of state action?

#### ANSWER

No, unless such interests could create a conflict. A conflict of interest, financial or otherwise, occurs when the state officer or employee participates in an official state action involving a person in which the member holds an interest, unless such action is exempted under RCW 42.52.010(21)(b).

#### ANALYSIS

Stock ownership in a person is a private interest that could create a conflict of interest if a state employee participated in a state action involving that person. 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 under two circumstances: (1) when the effect of participation would be the same for all members of a broadly defined group; and, (2) when the effect of participation could result in special treatment for a specific person within a broadly defined group?

RCW 42.52.020 provides in relevant part that a state employee may not:

...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.

A determination as to whether an interest conflicts with the proper discharge of official duties necessarily depends on an evaluation of the specific duties of the state employee. A state employee who administers contracts has different official duties and therefore a different set of obligations than a state employee who advises on policy questions.

For example, a state employee who administers agency contracts would have a conflict if he or she owned stock in an agency contractor because the state employee participates, directly and substantially, in state actions that could affect the contractor. This conflict would exist even if the state employee *indirectly* supervised the contract because the employee's official duties include both participation in and responsibility for a state action in the form of oversight for the contract on behalf of a state agency.

RCW 42.52.010(13) defines "participate" as:

...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.

while "responsibility" is defined in relevant part in RCW 42.52.010(16) as:

...direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

The financial interest conflicts with the proper discharge of official duties because it brings into question the impartial and independent judgment of the employee and undermines accountability to the public.

In evaluating potential conflicts for state employees in a policy advising role, the Board distinguishes between a board member's representation of a broadly defined interest group, which does not create a conflict, and a board member's financial interest in a specific person within the broader group, which could create a conflict. The Board considers that providing policy advice is not unlike a board member's representation of a broad interest group, in that the state employee is assigned to analyze either existing or proposed state policies and their effects on a broad cross-section of interests.

To the extent that a state employee owns stock in a person who may be affected by a state policy in which he or she participated, and the effect is the same as other similarly situated interests, there would not be a conflict of interest. However, if the state employee owns stock in a person whose interests may be affected to a different degree than other similarly situated interests, and the state employee participated in the policy by advising the state on matters specific to that person, there would be a conflict. This conflict would occur whether the person is affected by

name or by effect, and would exist regardless of the state employee's personal position on a policy, e.g., a state employee could not "remove" the conflict by arguing that his or her position on a policy issue would not result in a benefit to the person in which he or she owns stock.

The conflict may be resolved if the state employee recuses himself or herself, and participation is delegated to a supervisory state officer or state employee who does not hold a financial interest in the person.

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 person, and the effect of participating in a state action would be to affect the specific interests of this person, 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.