

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.020,
RCW 42.52.030

SUMMARY OF CHANGES: Updated Answer section to accurately reflect the opinion.

Transactions Involving the State

QUESTION

If an Administrative Law Judge or an Industrial Appeals Judge owns stock in an employer, would their official actions relating to unemployment insurance and worker's compensation be exempted from a "transaction involving the state" under RCW 42.52.010(21)(b), and could they decide a case without incurring a conflict of interest under RCW 42.52.020 and RCW 42.52.030?

ANSWER

Yes. Unemployment insurance and worker's compensation matters that come before an Administrative Law Judge (ALJ) or an Industrial Appeals Judge (IAJ) do not fall within the definition of a "transaction involving the state" under RCW 42.52.010(21)(a) because those transactions are exempt under RCW 42.52.010(21)(b). Stock ownership in an employer by an ALJ or an IAJ would not, in and of itself, violate RCW 42.52.020; although this subsection may be violated by other interests or activities. Stock ownership, in this particular case, would also not violate the provisions of RCW 42.52.030.

ANALYSIS

Under RCW 42.52.010(21)(a) "[t]ransaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

- (i) Is, or will be, the subject of state action; or
- (ii) Is one to which the state is or will be a party; or
- (iii) Is one in which the state has a direct and substantial proprietary interest.

RCW 42.52.010(21)(b) defines those transactions that are exempt from the definition of a

“transaction involving the state,” and provides that:

“Transaction involving the state” does not include the following: Preparation, consideration or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

In the case of unemployment insurance and worker’s compensation benefits, an ALJ or an IAJ may decide such cases, but only after and initial determination is made by either the Employment Security Department or the Department of Labor and Industries. In such cases, neither the ALJ nor the IAJ participated in the underlying transaction—the department’s determination—and these cases would be exempt from the definition of a “transaction involving the state.”

RCW 42.52.020, the Ethics in Public Service Act’s conflict of interest statute, provides that:

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.

As to whether the ownership of stock in a person who is a party to a matter before an ALJ or an IAJ in an unemployment insurance or worker’s compensation case might create a conflict of interest under RCW 42.52.020 or RCW 42.52.030, the Board considers that such a conflict would not occur under RCW 42.52.020 merely on the basis of stock ownership, unless the ALJ or IAJ was also an interested party in the case or had a conflict on some other basis.

RCW 42.52.030 applies to financial transactions generally, and prohibits state officers and state employees from having a beneficial interest in a transaction involving the state. RCW 42.52.030(1) specifically applies to situations where a state officer or state employee may be beneficially interested in a contract, sale, lease, purchase, or grant under his or her supervision; or to situations when a state officer or state employee accepts compensation, a gratuity, or a reward from others beneficially interested in these matters. However, because unemployment insurance or worker’s compensation are not matters that constitute a “contract, sale, lease, purchase, or grant,” stock ownership by an ALJ or IAJ would not create a beneficial interest that violates these subsections.

RCW 42.52.030(2) provides that:

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, except that an officer or employee of an institution of higher education or the *Spokane intercollegiate research¹ and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or

¹ The Spokane intercollegiate research and technology institute was abolished by 2011 1st sp.s. c 14 § 17.

review panel for any nonprofit institute, foundation, or fundraising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity.

Because unemployment insurance and worker's compensation claims that come before an ALJ or an IAJ do not fall within the definition of a "transaction involving the state" under RCW 42.52.010(21)(a), this subsection would not be violated by stock ownership.