

ADVISORY OPINION

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REFERENCES: RCW 42.52.020, RCW 42.52.050,
RCW 42.52.140, RCW 42.52.150, RCW 42.52.160

SUMMARY OF CHANGES: No changes.

Conflict of Interest/Spouse's Business Interest

QUESTION

Does the Ethics Act limit the ability of the spouse of a state employee from operating a private business within a state facility managed and supervised by the state employee?

ANSWER

Yes. RCW 42.52.020 prevents state employees from having a direct or indirect interest, or engaging in a business activity that is in conflict with the performance of public duties. A state employee who manages and supervises a state facility incurs a conflict of interest if his or her spouse operates a private business from that facility if the employee, acting as a state employee, has actual managerial or supervisory authority over the spouse's business. The only way to remove this conflict is to relocate the spouse's business outside of the facility. Under RCW 42.52.160, the state employee is also prohibited from using facility resources, including employees under his or her supervision, to benefit the spouse's business, including recommending or promoting this business to agency vendors.

The state employee and his spouse are also subject to the limitations imposed on the receipt of gifts under RCW 42.52.150(1). Because the spouse's clients seek to do business, do business, and are also regulated by the state employee's agency, the state employee is cautioned that receipt of a gift by the spouse under RCW 42.52.150(1), may appear to influence the judgment or action of the state employee, in violation of RCW 42.52.140. Further, if the state employee has access to confidential information, the state employee must ensure that his spouse is not provided access to such information.

ANALYSIS

The Liquor Control Board (LCB) operates a distribution center located in Kent, Washington. The distribution center receives and stores incoming product, then ships the product to retail

outlets throughout the state. It is managed by a Deputy Director (“director”) who oversees all warehouse operations, including scheduling deliveries from vendors and supervising activities that occur within the facility. The Deputy Director position is assigned to LCB’s Product and Retail Services Division, the division responsible for purchasing.

The director’s spouse recently started her own business. Through this business she contracts with individual vendors that supply products to the LCB distribution center, and labels or re-labels products that do not meet receiving specifications established by the LCB. This service is also performed by other labeling companies; however, the director’s spouse is the only person who operates her business from within the distribution center. Revenue generated from the business is not held as separate property.

RCW 42.52 does not restrict the ability of spouses of state officers and state employees from conducting their own businesses, or from contracting with persons who do business with state agencies that employ their state-employee spouses. However, there are provisions under RCW 42.52 that may limit a spouse’s business activities when the business creates a conflict of interest for the state officer or state employee. Pursuant to RCW 42.52.020:

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.

The director’s official duties include oversight for all distribution center operations, including activities occurring within the facility—whether performed by state employees, vendors, or contractors within the facility, and including his wife’s business. The fact that the director supervises the conduct of his wife’s business within the distribution center as part of his official state duties creates a conflict of interest that can only be removed by the relocation of his wife’s business outside the facility.

Another potential conflict is created under RCW 42.52.070 which prohibits state officers or state employees from using their official state positions to confer special privileges or exemptions:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents or other persons.

Although other labeling businesses are not prohibited from operating within the distribution center, the fact that the director’s spouse is the only labeling business that does so may lead vendors to conclude that there is some advantage or benefit to be gained by contracting with the wife’s business. Moreover, competing labeling businesses may perceive that the wife’s business gains a competitive advantage by operating from the facility supervised by her husband, particularly when access to LCB vendors—and clients—is direct and immediate.

A similar ethics concern is created under RCW 42.52.050 which prohibits the use of confidential information for benefit or gain, or the disclosure of confidential information:

- 1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.
- 2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless disclosure has been authorized by statute or by the terms of a contract involving (1) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.
- 3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive such information.

If the director has access to confidential information by reason of his official position with the LCB, this information may not be disclosed to or used for the benefit of the spouse or her business interests.

The potential for a violation of the provisions relating to gifts and gift limitations also exists in this situation, because the spouse is contracting with vendors who supply and are regulated by her husband's state agency. Under RCW 42.52.140, a state officer or state employee may not accept something of value if his or her vote, judgment, or action could be influenced:

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, judgment or action of the officer or employee, or be considered as a reward for action or inaction.

Because the director manages and supervises the activities of vendors operating within the distribution facility, and vendors who may also contract with his wife's business, acceptance of a gift, gratuity, or favor from a vendor by the wife may create the appearance that the giving of such items could influence the judgment or action of the director.

In addition, RCW 42.52.150(1) places limitations on the value of gifts that may be received by state officers and state employees. Such limitations apply to gifts given to family members or guests:

No state officer or state employee may accept gifts...with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars....The value of gifts given to an officer's or employee's family member or guest shall be attributed to the official or employee for the

purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest. [Emphasis added.]

While RCW 42.52.150(1) provides an exception to the \$50.00 gift limitation for family members when there is an independent business relationship, the circumstances in this case argue otherwise. The close connection between the wife's business relationship and LCB vendors, and the official duties of the state employee create a legitimate need to apply the \$50 gift limitation under RCW 42.52.150(1) despite the existence of an independent business relationship.

The final provision that applies to this question is RCW 42.52.160(1):

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official control or direction, for the private benefit or gain of the officer, employee, or another.

The director must ensure that distribution center facilities and resources are not used in any way to benefit or advantage his wife's labeling business, and neither the director nor state employees under his supervision may recommend or promote his wife's business to vendors seeking or doing business with the LCB. To do otherwise would violate RCW 42.52.160(1).