

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.150

SUMMARY OF CHANGES: Non-substantive scrivener's errors.

Cash Awards

QUESTION

Can a state officer or employee accept a cash prize in excess of \$50, which is presented in connection with an award to the officer or employee for excellence in government?

ANSWER

No, a cash prize falls within the definition of gift in RCW 42.52.010(9), unless awarded in recognition for academic or scientific achievement under the exception in RCW 42.52.010(9)(j). RCW 42.52.150(1) prohibits the acceptance of gifts in excess of \$50 unless the item falls within an exception to the \$50 limit as set out in RCW 42.52.150(2). A cash award in excess of \$50 does not fall within any of the exceptions.

ANALYSIS

This opinion concerns the *Good Housekeeping* Award for Women in Government. Each year, Good Housekeeping Magazine, in collaboration with the Center for the American Woman and Politics and the Ford Foundation, gives annual awards recognizing women in government. Ten women are selected and the awards include a grand prize award of \$25,000, and nine awards of \$2,500. Anyone may nominate a woman in government as a candidate for the award. *Good Housekeeping* may also solicit nominations from prominent individuals. Winners are chosen by a selection panel that includes women distinguished by their service in government. Award winners must complete an Affidavit of Eligibility and Release which includes consent to be photographed and to have their name, likeness, and essay used for advertising or promotional purposes without further compensation.

The question is whether a state officer or employee may accept a cash award when the award exceeds the \$50 limitation under RCW 42.52.150(1). The first issue is whether a cash award

is a gift. RCW 42.52.010(9) provides that: “‘Gift’ means anything of economic value for which no consideration is given.” In this case, the \$25,000 cash award that accompanied the selection as a grand prize winner is clearly an item of economic value.

The cash award was not provided in exchange for consideration, but rather in recognition for excellence in government. Further, The Affidavit of Eligibility and Release would not constitute consideration. Instead, the affidavit and release acknowledge that no consideration will be paid to the winner for use of the photos and essays. Because no consideration is provided in exchange for the cash award, the cash award meets the definition of the term “gift.”

RCW 42.52.010(9) excludes certain items from the definition of “gift.” The exception most relevant to this opinion is contained in RCW 42.52.010(9)(j), which excludes from the term gift: “Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.” (Emphasis added) The second issue is whether this exception applies to any award or prize or is limited to only to those awards and prizes given in recognition of academic or scientific achievement.

We concluded that the exception to the definition of gift in RCW 42.52.010(9)(j) is limited to “items provided in recognition of academic or scientific achievement.” This is the plain meaning of the language of the exception. Moreover, the legislative history of the exception confirms this narrow reading.

The exception for awards and prizes based on academic or scientific achievement was not part of the original ethics law passed in 1994. Laws 1994 ch. 154, § 101. It was enacted in 1996 as Substitute House Bill (SHB) 2535. Laws 1996, ch. 213, § 1. RCW 42.52.010(9)(j). SHB 2535 was primarily concerned with the impact the ethics law would have on the issue of developing new technology at the state’s universities and conflicts with federal regulations regarding conflict of interest. 1996 Final Legislative Report, Fifty-Fourth Legislature, 1996 Regular Session at. 79.

The Legislature also noted that prior to the amendment: “The law would also require a faculty member awarded the Nobel Prize to decline the monetary part of the prize.” *Id.* RCW 42.52.010(9)(j) was added to correct this problem, but the context confirms our conclusion that the exception is limited to academic and scientific achievement.

Because the exception for awards and prizes in RCW 42.52.010(9)(j) is limited to “items provided in recognition of academic or scientific achievement” this exception does not apply to receipt of a cash award for excellence in government. In the opinion of the Board this is an unfortunate result. As a policy matter the Board believes that excellence in government is entitled to the same recognition as academic and scientific achievement. However, receipt of a cash award for achievements related to one’s official role, e.g., an outstanding woman in government, is nonetheless limited under the ethics law to awards given in recognition of academic or scientific achievement.

The Board finds that a cash award is a gift subject to the limitations under RCW 42.52.150. RCW 42.52.150(1) provides that: “No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year”

Thus, a state officer or employee may not accept a cash gift in excess of \$50 unless it falls within the exceptions in RCW 42.52.150(2), (5). These exceptions include various items such as flowers, promotional items and tokens of appreciation in the forms of a plaque or desk item. RCW 42.52.150(2)(a)-(c). It also includes meals related to official duties. RCW 42.52.150(5). None of the exceptions in RCW 42.52.150(2), (5) include cash. Thus, a cash award for excellence in government is prohibited by RCW 42.52.150(1).