Ethics in Public Service

Scenario Answers

1. Who is subject to the state Ethics in Public Service Act?

    A. All state and municipal employees in Washington State.
    B. All state employees except judges in the court system.
    C. All state employees except legislators.
    D. All state officers and employees including, justices, legislators, state elected officials, chief executive officers, and members of boards, commissions, or committees.

ANSWER: D. ***See RCW 42.52.010(1) , (27) and (28).***

2. Does the Ethics Act only apply to state officers and employees during normal working hours or when they are performing their state duties at times not considered normal working hours?

ANSWER: No, the Ethics Act applies to state officers and employees 24 hours a day/7 days a week, with one exception - when a state employee or officer is campaigning for the election of a person or a ballot initiative. In that case, they may campaign during their non-working hours.

See Advisory Opinion 96-08 that states in pertinent part:

Since the statutes address activity outside normal working hours, it is reasonable to assume that the Legislature intended to consider that the designation of state official or state employee is carried with the individual outside normal work hours and other times when the officer or employee is not actually working.

In addition, as a policy matter, it would defeat the purpose of the ethics law if its prohibition (for example, the limitation of the receipt of gifts) only applied during working hours. It makes no sense to say an officer or employee may not receive gifts between 8:00 a.m. and 5:00 p.m., but could receive them at other times.

While most of the limitations in chapter 42.52 RCW apply at all times, there is one exception related to working hours. RCW 42.52.180(1) prohibits use of the facilities of an agency for political campaigns. The facilities of an agency include "use of state employees during working hours." This prohibition is limited to "working hours." Thus, during the time that is not "working hours," a person is still a state officer or employee but the prohibition against political campaigning does not apply.

3. What organization within state government can investigate a violation of the Ethics in Public Service Act?

    A. The Executive Ethics Board
    B. The Legislative Ethics Board
    C. The State Auditor's Office
    D. All of the above

ANSWER: D. Any agency may investigate ethics violations, however, only the Legislative and Executive Ethics Boards have the authority to fine a person for an ethics violation.

4. Can the Executive Ethics Board take any personnel action against a state employee?

ANSWER: Their authority is to impose sanctions including reprimands and monetary penalties. They may *recommend* suspension and/or removal from a position to the appropriate authorities, but they do not have the authority to take any *actual* personnel action. See RCW 42.52.360.

Conflicts of Interest (RCW 42.52.020)

1. You are a university instructor. You also own a painting company that you run privately out of your house. During the summer, your paint business gets very busy and you need to hire more painters to get the work done. Several students from your current summer class want to work part-time for you.

Can you hire some of your summer class students to paint houses for you?

ANSWER: No. RCW 42.52.020 prohibits a state officer or employee from engaging in an outside business or any activity that is in conflict with the proper discharge of the officer's or employee's official duties. Conducting an outside business or engaging in outside employment with an entity that the officer or employee regulates raises such a conflict between the officer's or employee's official duties and his or her private interest in the business or outside employment. (Advisory Opinion 97-03).

2. Francis Fussbudget is a supervisor in a large state agency. She also loves to travel and owns several condominiums located in lovely faraway places. This summer, Francis had planned on staying in her condo in Bora Bora for two weeks. Just as she was gathering her clothes to pack into her travel suitcase, she slipped on a shoe and broke her ankle requiring her to stay at home instead of vacationing. Because she did not want the lovely condo to sit vacant, Francis wants to offer her condo to her subordinates for rent during that time.

Can Francis rent her condo to her subordinates?

ANSWER: No. RCW 42.52.020 prohibits a state officer or employee from engaging in an outside business or any activity that is in conflict with the proper discharge of the officer's or employee's official duties. Conducting a financial transaction with someone you supervise raises a conflict between the officer's or employee's official duties and his or her private financial interests. (Advisory Opinion 97-03).

3. You are a health inspector with a partnership interest in a local restaurant. This interest has not been disclosed to your agency. You are assigned to perform an inspection of your restaurant. Do you perform the inspection?

ANSWER: No. Inspecting the restaurant would conflict with the performance of your public duties because you have a financial interest in the restaurant. See RCW 42.52.020 and RCW 42.52.030(2).

Financial Interest in a Transaction (RCW 42.52.030)

1. You manage a state mental health facility. Your spouse is the executive director of a non-profit corporation that wants to bid on a contract to provide services to your facility. How do you handle the situation?

ANSWER: By virtue of your marital relationship, you have a beneficial interest in the contract. Participating in the award of the contract would be an ethical violation. RCW 42.52.030(1) and 42.52.030(2). You would need to disclose your relationship with your agency and recuse yourself from any discussion or negotiation of any contracts with your spouse. As long as another group makes the decision on who is awarded the contract and you do not administer the contract in any way, your spouse may be selected.

2. Polly Wogg is a preeminent marine biologist who also teaches marine biology classes at the University. Ms. Wogg requires her students to purchase her book, *Tide pools and Tadpoles of the Pacific Northwest*, when they take her class at the University. What are the ethical issues?

ANSWER: Polly has a financial interest in the transaction because she is making the decision that her students buy her book to take her class. She cannot benefit financially from that personal decision. If a book selection committee (that she is not on) selected her book, she could make a profit OR if another university or college wants to use her book, she can make a profit, but she cannot make a profit (receive money over and above the salary she receives from the state for teaching the class) on a decision she makes personally. In this instance, she would have to sell the book at cost and not collect any royalties for the sale. See RCW 42.52.030(1).

3. You are an Administrative Law Judge who handles cases for the Department of Revenue. A case that you are assigned to regards a business who has not paid all of their business and operating taxes to the state. As you read through the case documents you realize that you have an ownership interest in this business. What do you do?

ANSWER: You disclose your interest in the entity and recuse yourself from the case. In Advisory Opinion 97-12, the Board established that stock ownership in an entity is a private interest that could create a conflict of interest if a state employee participated in a state action involving that entity. 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.

Assisting in a Transaction (RCW 42.52.040)

1. Prior to accepting your current position, you investigated complaints for another state agency. One day a complainant contacts you to ask for help in appealing an unfavorable decision on a complaint filed with your former agency. Can you assist in the appeal?

ANSWER: No. Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or
(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

Your intervention may create the appearance that you are improperly using your state position for the benefit of the complainant.

2. Emma works in your agency's human resources office. Her official duties include assisting people who want to file harassment complaints against the agency. Emma helps Egbert file a sexual harassment complaint. Emma subsequently goes to work for a different agency. After Emma's departure, Egbert contacts her and asks for assistance in preparing an appeal to an adverse decision. What should she do?

ANSWER: Politely decline to provide any assistance if Emma had a greater role than just a "ministerial" role in helping Egbert file the complaint with her prior agency.

RCW 42.52.040 prohibits a state employee from assisting another person, directly or indirectly, whether or not for compensation, in a transaction involving the state in which the state officer or state employee has at any time participated. RCW 42.52.010(13) states that "participate" means 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.

Confidential Information (RCW 42.52.050)

1. Your agency receives a subpoena for a group of personnel records. One of the public documents has a handwritten sticky note containing some potentially damaging information. James provides copies of all typed documents and omits the sticky note on the theory that it might have been added later and its author is undetermined. Is this is a violation?

ANSWER: Yes. Under RCW 42.52.050(4), you may not intentionally conceal a record if the record is disclosable under RCW 42.56.

2. Sammy works in your agency's purchasing department and takes care of billing for office supplies. He thinks that his agency is paying an unreasonable amount for paper, so he makes copies of the billing for his wife who works for a paper company. Her paper company then offers to provide superior products at a lesser cost. Is this is a violation?

ANSWER: If the billing information is considered "confidential" under RCW 42.56 or agency policy, is may be a violation of RCW 42.52.050 (3), which states that no state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information. It would further violate RCW 42.52.070 because Sammy is using his position to give his wife a special privilege – a look at the agency's billing so that her company can offer a better price to Sammy's agency and thus get their business.

3. You are a public records officer and receive a request for the director's payroll records. You determine they are disclosable. You decide, though, not to release the records because the director is sensitive about her level of compensation. Have you made the right decision?

ANSWER: No. Under RCW 42.52.050(4), you may not intentionally conceal a record if the record is disclosable under RCW 42.56. While there are legitimate exemptions to disclosure, these should not be misused to protect an embarrassing public record. As a public records officer you have an obligation to release the records and may not act to conceal them, even if embarrassing to the director.

Special Privileges (RCW 42.52.070)

1. You know that your agency will be surplusing some computer equipment next month. You and a friend run a small business on the side and your friend has asked that you let him know when equipment is to be surplused and available for bid. The announcements informing the public of this surplused property will be sent out next week, giving the public only two days to ascertain if they want to bid on any of the listed equipment. You are having lunch with your friend and business partner today and give him a list of the equipment that is being surplused. What are the ethical issues?

ANSWER: Under RCW 42.52.070, 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. By giving your friend and business partner a list of the surplused equipment before the public has access to this same information, you have given your friend a special privilege.

2. You are the Division Chief for a state agency and your division is trying to fill a position that requires a specific educational degree and experience. Your Assistant Division Chief is working with the Human Resources folks to gather a list of possible candidates to interview. During the past two summers, your daughter worked in your agency as an intern and was a quick learner. Your daughter just graduated from college and applied for the vacant position. Even though your daughter does not meet the educational requirements, your Assistant Division Chief puts her on the list to interview. Your daughter is interviewed for the position and you participate in the interview session. After all candidates have been interviewed, you offer your daughter the position. What are the ethical issues?

ANSWER: There are several issues with this scenario:

   1. **Conflict of interest under RCW 42.52.020. Because of your relationship with your daughter, it would be a conflict of interest for you to supervise her or be in her supervisory chain.**
   2. **Special privilege under RCW 42.52.070. Even though your daughter does not qualify for the position, you offer her the position so you have used your position to give a family member a special privilege.**

3. You work for the Department of Social and Health Services and grow orchids in your spare time. You even belong to an orchid club that meets on a monthly basis. Your agency has many large meeting rooms, some of which are available for groups to use for a nominal fee for their use. Your orchid club needs a place to meet this month, so you reserve a room through your agency, but because you are friends with the facilities person, you do not pay for the room. You invite your orchid club to attend the monthly meeting. Is this a violation?

ANSWER: Yes, under RCW 42.52.070 you cannot give yourself, anyone or any organization a special privilege. If the public has to pay a rental fee to use the room, you must pay a fee to rent the room (unless agency policy or labor agreements dictate otherwise).

Post-State Employment (RCW 42.52.080)

1. As an agency administrator you supervise a $40,000 contract with the Jones Company. The Jones Company offers you $20,000 more a year if you leave your agency, take a position with the Jones Company, and then oversee the contract with your former agency. Can you accept this offer?

ANSWER: Your acceptance would violate RCW 42.52.080(1), which states: No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

> **(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;**
>
> **(b) Such a contract or contracts have a total value of more than ten thousand dollars; and**
>
> **(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.**

Because you administered a contract worth more than $10,000 and would be leaving state service to go to work for that vendor on the contract you administered, it would violate the Act.

2. You are an associate athletic director for a state university. A contract you helped develop is awarded to a vendor. Two weeks later, you terminate from state employment and go to work for that vendor. Your new job duties include working on the contract you helped develop and awarded to your new employer. What are the ethical issues?

ANSWER: Same as above in that you negotiated a contract with the vendor and now want to go to work for that same vendor on the contract you negotiated.

3. You were the design engineer for a project to refurbish a bridge on I-5 and worked closely

with the contractor (Bridge Builders, Inc.) assigned to actually complete the work. During the project, you retired from state employment. After a brief vacation in the Bahamas, you go to work for Bridge Builders on the same project. Are there any ethical issues?

ANSWER: Yes, your employment with Bridge Builders, Inc., may violate RCW 42.52.080(5), depending upon what you did while working for the state and what you will be doing for Builders. Under RCW 42.52.080(5), no former state officer or state employee may, at any time subsequent to his or her state employment, assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment.

Compensation for Official Duties (RCW 42.52.110)

1. As a Department of Licensing vehicle registration clerk, you process credit card payments for vehicle registrations. A major bank sends you a $50 reward for returning a card that has been revoked. Can you keep the reward?

ANSWER: **No, under RCW 42.52.110, a state employee may not directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law. So, the "reward" would be considered "other compensation" received for doing your job, as opposed to a gift.**

2. You are a case manager for the Department of Social and Health Services and help the public sign up for benefits. You have been working with Susan for several weeks trying to get her benefits started and after many hours on the phone you finally succeed. When Susan comes in to thank you for your help, she gives you a $5 gift card for coffee in appreciation. Can you keep the card?

ANSWER: No – for two reasons.

First, under RCW 42.52.110, a state employee may not directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing …any official duty, unless otherwise authorized by law. So, the gift card would be considered "other compensation" received for doing your job, as opposed to a gift.

Second, under RCW 42.52.150(6), a state employee or officer cannot accept a gift from someone they regulate or contract with. Since the gift giver was/is a client of your agency and someone you helped directly, i.e., regulated, you could not accept a gift of this type from this person even though it is less than $100.

Gifts (RCW 42.52.150)

1. Martha is an instructor at a state community college. One of her students gives her a beautifully wrapped Christmas gift at the beginning of finals week. He may or may not enroll in her class next quarter. Is accepting the gift a violation?

ANSWER: Yes – under RCW 42.52.150(6), Martha would be in a "Section 6" relationship with a current student because until the grades are in for that quarter/semester, Martha "regulates" the student. In addition to the items that are excluded in the statute under the definition of a "gift," Martha could accept the following items from a student:

- **Unsolicited advertising or promotional items of nominal value, such as pens and note pads;**
- **Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;**
- **Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;**
- **Informational material, publications, or subscriptions related to the recipient's performance of official duties;**
- **Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;**
- **Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization**

2. Your agency sent you to attend a conference in Orlando, Florida. Your agency paid your travel costs and you are receiving travel per diem while you are away. When you checked into your hotel, you received a packet with information regarding the conference. Included in the packet was a ticket stub that entered you into a door prize drawing to be made on the last day of the conference. On the last day of the conference, they draw for the door prize and lo and behold, you win! Can you keep the prize?

ANSWER: No, a state employee/officer may not keep a door prize if the state agency paid for the conference and the employee/officer is attending the conference, seminar, trade show, or similar event on state time. Should a state employee/officer win a door prize at the event, the door prize belongs to the agency. The agency may either keep the prize or dispose of it in accordance with state rules and regulations. The agency may not allow the state employee/officer to keep the prize. If the state employee/officer pays for the conference or seminar and attends it on their own time (including using vacation time to attend), then they may retain any door prize won at the conference or seminar.

3. You work for the health department and are often in the field conducting inspections. From time to time, business owners offer you refreshments and sometimes lunch. What should you do?

<u>ANSWER</u>: Decline any offers of food as they would be prohibited under RCW 42.52.150(6).

Use of Resources (RCW 42.52.160)

1. One of your employees sells Pampered Pup products on the side to coworkers. The employee hands out catalogues in the workplace, and takes and distributes orders during the lunch hour and at break times. Is this an ethical violation?

ANSWER: Yes, not only is this personal benefit or gain but it would violate the di minimis use exception in WAC 292-100-010(2)(d).

2. State employee Suzie Queue accessed the Internet site for the Department of Retirement Systems (DRS) to change her Deferred Compensation Plan (DCP) distribution after she reads an article in the DRS newsletter that warns employees about high risk investments in today's volatile market. Was Suzie's access to DRS's Internet site a violation of the Ethics code?

ANSWER: No, under Advisory Opinion 03-01 the Board opined that an employee may make occasional and limited use of state resources, including state provided Internet access, to review and update state provided benefits.

3. Sally was told that she would be working overtime today and needs to contact her day care provider to make arrangements for her daughter. Can she use the state phone to call her day care provider?

ANSWER: Yes, this is considered to be de minimis use under WAC 292-110-010(2)(d).

4. One of your employees brings a petition to work opposing a controversial ballot proposition. After spending the morning gathering signatures around the office, she reaches your desk. She asks you to sign the petition, arguing that state workers will lose their jobs if the measure passes. What do you do?

ANSWER: Stop the activity. Under RCW 42.52.160 and .180 the use of state resources is prohibited to campaign for the election of a person or a ballot initiative. Under RCW 42.52.180(1), knowing acquiescence by a person with authority to direct, control or influence the actions of the state officer or employee using the resource in violation of the Act, constitute a violation – so you could be the one getting in trouble if you take no action to stop the activity.

How much did you learn about the Ethics Act?

Multiple Choice Questions — Circle the letter of the statement for each item that most correctly responds to the question or completes the statement truthfully.

1. Who does the 1995 State Ethics Law Apply to?

   A. All state employees.

   B. Elected state public officials.

   C. Appointed state public officials.

   D. All of the above.

ANSWER: D

2. The Executive Ethics Board may take the following actions against a state employee who violates the Ethics Act? (May be more than one answer)

   A. A civil penalty not to exceed $5,000 per violation or three times the economic value of anything sought or received in violation of the ethics law
   B. Require restitution to the agency
   C. Require payment of investigative costs
   D. Terminate the employee's employment with the state

ANSWER: A, B & C

3. WAC 292-110-010, Use of State Resources, allows limited use of state resources for _____ reasons when there is little or no cost to the state, there is no interference with the performance of official duties, the use is brief in duration and infrequent, and the use does not compromise the security or integrity of state information or software.

   A. Official

   B. Personal

   C. Private business

   D. Political campaign

ANSWER: B

4. You may not receive, accept, take, seek, or solicit, directly or indirectly, anything of _____ if it could reasonably be expected that it would influence the vote, judgment or action, or be considered as part of a reward for an action or inaction.

   A. Significant value

B. Sentimental value

C. Economic value

D. All of the above

ANSWER: C

5. _____ laws define the line between public duties and personal interest, including financial and nonfinancial interest and obligations.

A. Outside employment.

B. Conflict of interest.

C. Assisting in transaction.

D. Employment of former state employee.

ANSWER: B

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

ANSWER: Special Privilege

7. When you leave state employment, there is a one-year waiting period in situations where which of the following conditions apply?

A. ___ Duties with the new employer include fulfilling or implementing a contract you negotiated or administered with your new employer while working for the state during the past two years.

B. ___Your duties with the state did not include any kind of contracting with or regulation of your new non-state employer.

C. ___ The contract(s) had a total value in excess of $10,000.

ANSWER: A

8. Under the Ethics in Public Service Act, you may release confidential information to the public when requested.

True False

ANSWER: False

9. If records should be disclosed to someone, and you have a personal obligation to release the records, yet you intentionally conceal the records from disclosure when requested you may have violated the Ethics in Public Service Act.

True False

ANSWER: True

10. The ***Statement*** column contains actions which are either **appropriate** (A) or **inappropriate** (I) *use of state resources*. Indicate whether the action is appropriate or inappropriate by writing "**A**" (Appropriate) or "**I**" (Inappropriate) in the ***Answer*** column for each statement below.

ANSWERS:

10a.____A_____Occasionally make local telephone calls for medical or dental appointments.

10b.____I_____Advertising or selling personal items at work during work hours.

10c.____A_____Send occasional and brief personal e-mail messages.

10d.____I_____Assist in the campaign of any candidate for election to any office, or to oppose or promote a ballot proposition.

10e.____A_____Use the Internet to search for information for your official state duties.

ANSWER:

11. Which employee has made an inappropriate use of a state resource?

A) Sally used her state owned Blackberry to e-mail her son in order to tell him that she had arrived safely at her destination while traveling for state business.

B) Marty regularly uses the state owned copier/scanner to upload family photos for his wall paper from his personal camera and stores them on his hard drive

C) Stewart made a purchase on a website for a professional reference book used in his job.

D) Barb accessed a computer dating site for singles.

E) B and D

ANSWER: E

12. ***Identify items in the Situation column that:***

(**A**) You may accept because the $100 limit does not apply or it is not defined as a gift.

(**B**) You may accept because the $100 limit does not apply and it is presumed not to influence.

(**C**) You may accept in a "Section 6 Relationship."

(**D**) You may not accept in a "Section 6 Relationship."

Two answers apply to each situation. Key words are underlined.

ANSWERS:

12a.___BC_____Admission to a charitable event.

12b.___BD_____Unsolicited flowers, plants, and floral arrangements.

12c.___BD _____Gifts from foreign dignitaries.

12d.___AC_____Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt.

12e.___BC_____Plaques and awards of appreciation.

12f.___AD_____Reasonable expenses (travel, room, and meals) for participating in a seminar or giving a speech.

12g.___BC_____ Food and beverages at hosted receptions where attendance is related to official duties.

12h.___AC_____Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties.

12i.___AC_____Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group.

12j.___BC_____Unsolicited advertising or promotional items of nominal value.

12k.__AC_____Items from family members where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee.

13. Select the three criteria that place a state employee in a "Section 6 Relationship"

A. You must work for a regulatory agency for over one year.

B. You must participate in regulatory or contractual matters with the person who offers a gift.

C. You must work for a regulatory agency or agency that seeks to acquire goods or services.

D. You must be a permanent full-time state employee.

E. The person giving the gift must be regulated by our agency or seek to provide goods or services to our agency.

ANSWER: B, C, E

14. Why do we have an Ethics Law? (Select all that apply.)

A. To establish laws on morals for state employees.

B. To establish minimum standards of conduct while performing public duties.

C. To seek to remove doubts concerning violations of public trust and confidence and the impairment of independent judgment.

D. To ensure state employees hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling responsibilities to which they are elected or appointed.

ANSWER: B, C, D