

ADVISORY OPINION

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REFERENCES: RCW 42.52.010, RCW 42.52.110,
RCW 42.52.140, RCW 42.52.150

SUMMARY OF CHANGES: Updated references.

Cash Awards from Non-profit

QUESTIONS

1. Can a state employee accept a \$100 cash award from the Western Association of State Highway and Transportation Officials (WASHTO) for team excellence?
2. If a state employee cannot receive a \$100 cash award for Team Excellence from WASHTO, can a state employee accept a \$50 cash award from WASHTO for the same purpose?
3. Can the Washington State Department of Transportation (WSDOT) accept funds from WASHTO to use in a recognition program under RCW 41.60.150, where the agency determines eligibility and award criteria and provides the cash award?

ANSWERS

1. No, cash awards in excess of \$50 may not be accepted by state officers and state employees unless they fall within the exception under RCW 42.52.010(9)(j) for "Awards, prizes, scholarships, or other items provided in recognition of scientific or academic achievement."
2. Yes, a cash award is an item of economic value that falls within the definition of a "gift" under RCW 42.52.010(9). A state officer or state employee may accept a cash award under RCW 42.52.150(1) provided receipt does not violate RCW 42.52.140.
3. Yes, provided the agency determines eligibility and award criteria, selects the employee(s), and the cash award comes from the agency. Pursuant to RCW 42.52.110(1),

state employees¹ are prohibited from indirectly receiving any compensation, gift, reward or gratuity for the performance of official duties from a source other than the state of Washington.

ANALYSIS

This opinion concerns receipt of awards through the Quality Support Fund Program established by WASHTO. WASHTO is a non-profit organization comprised of eighteen states and four U.S. federal government agencies and associate members from Canada. In 1997 WASHTO established the Quality Support Fund Program which provides up to \$5,000² to states that either support or start a quality program.

To qualify for this program, WSDOT established a Team Excellence Award. Teams nominated for the award are evaluated based on the five criteria: (1) support of the agency's strategic plan; (2) consultation with customers and stakeholders; (3) success in using methods and tools to determine root causes of problems and analyzing data to find solutions; (4) ability to implement team recommendations; and, (5) development of adequate measurement tools to gauge performance. WSDOT has asked the Board whether the state's ethics law allows team members to receive cash awards for their accomplishments.

In question 1, the Board is asked whether state employees may receive cash awards valued at \$100 for team excellence. Under RCW 42.52.150(1) state officers and state employees may not accept gifts valued in excess of \$50, other than those items specified under subsections (2) and (5). None of the exceptions to the \$50 limit include cash awards.

Further, the Board has previously concluded that state officers and state employees may not receive cash awards that recognize excellence in government because the only statutory exception that would allow such awards applies only to "Awards, scholarships, prizes and other items provided in recognition of academic or scientific achievement" under RCW 42.52.010(9)(j).

Advisory Opinion 99-05. State employees may receive non-monetary "tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item," even if valued in excess of \$50, under exceptions found in RCW 42.52.150(2)(c) and RCW 42.52.150(4)(b).

The second question involves a policy interpretation of RCW 42.52.150, and whether the \$50 limit under RCW 42.52.150(1) includes cash awards. A "gift" is defined in RCW 42.52.010(9) as "anything of economic value for which no consideration is given."

Because a cash award is an item of economic value, the Board believes that a cash award that does not exceed the \$50 limit would not violate RCW 42.52.150(1). A state officer or state

¹ RCW 42.52.110(2) allows officers and employee of institutions of higher education to receive compensation, gifts, rewards or gratuities from governmental entities or a nonprofit organization organized for the benefit or support of the institution.

² As of 2016, the award is \$3,000 per fiscal year.

employee may not accept a cash award, however, if acceptance would violate RCW 42.52.140:

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

The final question essentially has two parts. The first is whether WSDOT may accept funds from WASHTO to use in a recognition program under RCW 41.60.150? The second is whether state employees may indirectly accept a cash award from a person, if the person gives the funds to the agency and the agency uses the funds to provide the cash awards?

In Advisory Opinion 96-01 the Board found that the restrictions under RCW 42.52.150 apply to the state officers and state employees who work for state agencies, but that the statute does not apply to gifts given to the state or its agencies. The Board expresses no opinion about the authority of an agency to accept the gift, or whether an agency may use funds for a particular purpose such as employee recognition. These questions fall outside of chapter 42.52 RCW and are beyond the authority of the Executive Ethics Board.

A potential ethics issue can arise, however, if the person who provides gifts or funds to a state agency designates or otherwise directs that a certain employee or group of employees be the recipient or beneficiary of the gift or funds. To the extent that the performance of quality work is within a state officer's or state employee's official duties, acceptance of a designated gift could violate RCW 42.52.110 which provides:

No state officer or state employee may, 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 authorized by law except: (1) The state of Washington;

If the agency determines award and eligibility criteria, selects the state employees who are qualified to receive such awards, and provides cash awards under its own statutory authority, a violation of RCW 42.52.110 would not occur.