

ADVISORY OPINION

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REFERENCES: RCW 42.52.080

SUMMARY OF CHANGES: Updated format only.

Post-State Employment

QUESTION

Can a former state employee provide consulting services to his former state agency when the consulting services are similar to work previously performed under a grant that funded the former employee's state work?

ANSWER

Yes, the prohibition against assisting in a transaction involving the state under RCW 42.52.080(5) is not violated if post-state consulting services do not involve the same services that the former employee rendered under a grant-funded position, and when the former employee did not participate in the decision to contract for such services.

ANALYSIS

This request concerns a state employee who currently works for the Research and Data Analysis Section (RDA) of the Department of Social and Health Services (DSHS). In 1999 the Division of Alcohol and Substance Abuse (DASA) was awarded the Treatment Outcomes Prospective Pilot Studies Enhancement Grant (TOPPS 2) from the Federal Center for Substance Abuse Treatment.

This grant provides resources to create outcome monitoring systems for clients receiving publicly-funded substance abuse treatment. DASA has contracted with RDA to use funds from the grant to integrate substance abuse treatment records with other data that act as indicators of the effectiveness of treatment. This data include information from medical record databases, arrest databases, and the Wage and Hour File.

The state employee has served as the Integrated Database Manager on the TOPPS 2 project. His official duties include the creation of a data warehouse of information which analyzes publicly-funded substance abuse treatment clients and outcomes of that treatment, and producing reports on the outcomes of treatment to the grantor.

The state employee intends to leave state employment and contract with DASA and RDA to write papers on treatment outcomes, and to compare results with other research, to be submitted to peer-reviewed journals. These papers are not in the original grant proposal or protocol, but the contract work would be paid for by grant funds from the TOPPS 2 project. The state employee did not participate in DASA's decision to use grant funds for this purpose.

The two provisions that apply to this question are RCW 42.52.080(2) and RCW 42.52.080(5). Under RCW 42.52.080(2):

No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

RCW 42.52.080(2) is intended to prevent former state officers or state employees from improperly acquiring a beneficial interest in a state contract or grant as a direct result of having participated in the decision to authorize or fund the contract or grant. In this case, the state employee did not participate in decisions relating to application of the federal grant, nor in the decision to use these grant monies to fund a contract for writing papers on treatment outcomes to be submitted to peer-reviewed journals. Therefore, the Board concludes that the employee would not violate RCW 42.52.080(2) if he left state employment and contracted with DASA for this purpose.

RCW 42.52.080(5) prohibits a former state officer or state employee from assisting in a transaction involving the state if the employee participated in that transaction while employed by the state:

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. . .

The prohibition under RCW 42.52.080(5) prohibits former state officers and state employees from rendering services either for or without compensation in relation to any case, proceeding, application, or other transaction involving the state, including a grant or contract, if they personally participated in such matters during the period of their state service. The Board finds no evidence to suggest that the state employee participated in DASA's decision to use grant funds to pay for post-employment contractual services. Further, the scope of the contractual services to be rendered are outside the scope of the employee's official duties for RDA, and were not included in the original grant proposal or protocol. Therefore, the state employee would not violate RCW 42.52.080(5) by providing the proposed contractual services.

Although the Board does not believe that the situation described in this opinion constitutes an

actual violation of RCW 42.52.080, we nonetheless have serious concerns about the appearance of conflict that arises when a state employee leaves state service and immediately receives a contract to perform work for his or her former state agency, and the services provided are substantially similar to the work performed as a state employee.