

ADVISORY OPINION

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REVIEWED ON: December 2, 2010

NEXT REVIEW: June 2021

REFERENCES: RCW 42.52.020, RCW 42.52.030.

SUMMARY OF CHANGES: Updated format only.

State Employee's Outside Business Relationship with an Agency Vendor

QUESTIONS

1. Does the Ethics in Public Service Act prohibit a Washington State Lottery ("Lottery") District Sales Representative ("Sales Representative") from establishing an outside business relationship with a Lottery vendor ("Lottery Vendor") when the Sales Representative's duties include making discretionary decisions regarding distribution of the Lottery Vendor's products?

2. If the answer to question (1) is yes, would the Ethics in Public Service Act still prohibit the outside business relationship if the Sales Representative waived receipt of any profits or royalties generated by sales of the Lottery Vendor's products in the State of Washington, but retained intellectual property rights for sales outside the State?

ANSWERS

1. Yes, under the outside business relationship, the Sales Representative would receive compensation from a person, namely the Lottery Vender, who holds a beneficial interest in a State contract over which the Sales Representative exercises discretionary authority. Such an outside business relationship is clearly prohibited by RCW 42.52.030(1).

2. Yes, the Sales Representative would maintain a business or professional relationship with the Lottery Vender while exercising discretionary authority over the distribution of the Lottery Vender's products. Such an outside business or professional relationship would conflict with his official duties, in violation of RCW 42.52.020.

ANALYSIS

As part of his official duties, the Sales Representative solicits new accounts and negotiates sales and placement of Lottery products with retail outlets within an assigned geographic area. In addition, the Sales Representative distributes to; instructs on how to use; and monitors all retailers use of point-of-sales materials. The Lottery Vendor is the primary provider of ticket dispensers for the Lottery's "scratch ticket" products. The Lottery Vendor's products are owned by the Lottery and distributed to retail outlets, as required, by Sales Representatives throughout the state.

While the Sales Representative does not conduct official state business with the Lottery Vendor, his actions directly affect the distribution of Lottery Vendor products within his assigned geographic area. For example, the Sales Representative can "sell-in" certain ticket dispensers to existing and new retailers, thus increasing the volume of the Lottery Vendors sales for a particular ticket dispenser to the Lottery. In addition, the Sales Representative can influence other Sales Representatives to use and sell a particular ticket dispenser within other geographic areas.

In May 2000, the Sales Representative asked his supervisor to approve a test of a "Modular Scratch Ticket" system ("Modular Dispenser") which had been manufactured by the Lottery Vendor. The supervisor approved the installation of four Modular Dispensers, which the Sales Representative installed at retail outlets in his geographic area. The test period ran from June 1, 2000, until August 31, 2000.

On November 9, 2000, the Sales Representative submitted an outside business request which he stated the Lottery Vendor would manufacture the Modular Dispensers. The proposed outside business relationship would include payment of royalties to the Sales Representative for the sale of Modular Dispensers by the Lottery Vendor.

In a November meeting with Lottery management, the Sales Representative indicated that he was willing to waive any profits he may derive from sales of the Modular Dispenser in Washington State. In December 2000, the Lottery removed the experimental Modular Dispensers from the retail outlets because the test period had ended.

The Ethics in Public Service Act prohibits a state employee from having a financial interest in a transaction involving the state. RCW 42.52.030(1) provides:

No state officer or state employee, except as provided in subsections (2) and (3) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

As noted above, the Sales Representative exercises considerable responsibility and discretion regarding the sales and distribution of Lottery Vendor's products within his assigned geographical area. By receiving a royalty payment from the Lottery Vendor for the sale of Modular Dispensers to his official state clients, he is accepting compensation from a person, namely the Lottery Vendor, who is beneficially interested in the contract or sale. Such an outside business relationship is clearly prohibited by RCW 42.52.030(1).

The Sales Representative, however, is willing to waive any profits or royalty payments generated in the State of Washington by his business activity with the Lottery Vendor. If executed in this manner, a business relationship between the Sales Representative and the Lottery Vendor would not violate RCW 42.52.030(1).

The Ethics in Public Service Act generally prohibits outside business or professional relationships that conflict with the official duties. RCW 42.52.020, provides that:

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.

In EEB Advisory Opinion 97-03, the Board advised that RCW 42.52.020 prohibited an employee from conducting an outside business or accepting outside employment that the employee would regulate as part of the employee's official duties. The Board concluded that such a prohibition was based on the divided loyalties that occur between the outside business and official duties as an impartial regulator of that business.

Like the state employee who regulates businesses, the Sales Representative exercises considerable responsibility and discretion regarding the sales and distribution of Lottery Vendor's products within his assigned geographical area. Accordingly, an outside business or professional relationship with the Lottery Vendor is in conflict with the Sales Representatives' official duty to impartially recommend and provide Lottery Vendor products to retail outlets within his assigned geographic area.

The Board's advisory opinion is based on the general facts as stated above. The Board does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Board to reach a different conclusion. In addition, Board advisory opinions are narrowly drawn to interpret the Ethics in Public Service Act. They do not address whether the proposed action is prudent, good public policy or effective management practice.