

ADVISORY OPINION

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REFERENCES: RCW 42.52.010

SUMMARY OF CHANGES: Updated statutory references.

Employee's Identity

QUESTION

Do state officers and employees ever lose their identity or does their status as state officers and employees apply only during normal working hours or when they are performing their state duties at times not considered normal working hours?

ANSWER

State officers and employees never lose their identity as state officers or employees even when they are not working.

ANALYSIS

RCW 42.52 applies certain ethical standards to state officers and employees. This question asks whether individuals lose their status as state officers and employees when they are not actually working.

RCW 42.52.010(19) defines a “state officer” as:

[E]very person holding a position of public trust in or under an executive office of the state. “State officer” includes...chief executive officers of state agencies...and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work....”state officer” also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

RCW 42.52.010(18) defines a “state employee” as “an individual who is employed by an agency in any branch of state government.”

There is nothing in either of these definitions that limits a person’s status as an officer or employee

to certain working hours. Indeed, several sections of RCW 42.52 prohibit activities that would likely occur outside of normal work hours and when they are not working. For example, RCW 42.52.020 provides that no state officer or 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 duties”. Another example is RCW 42.52.070, which provides that “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”.

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.