

## ADVISORY OPINION

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REFERENCES: RCW 42.52.010

SUMMARY OF CHANGES: Updated statutory references.

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### Definition of Assisting in a Transaction

#### QUESTION

Does the rulemaking process fall within the definition of “transaction involving the state”?

#### ANSWER

No, the term “transaction involving the state” is broad and involves the interaction of an individual with the state, and generally refers to contracts or regulatory transactions. Rulemaking, however, is analogous to legislative activities within an area of authority delegated by the legislature and therefore does not meet the definition of a transaction involving the state.

#### ANALYSIS

RCW 42.52.010(21) defines “transaction involving the state” as:

(a) . . . a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

- (i) Is, or will be, the subject of state action; or
- (ii) Is one to which the state is or will be a party; or
- (iii) Is one in which the state has a direct and substantial proprietary interest.

(b) “Transaction involving the state” does not include the following:

Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties

by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit.

The definition of “transaction involving the state” uses the term “state action” which is defined in RCW 42.52.010(17) as follows:

“State action” means any action on the part of an agency, including, but not limited to:

- (a) A decision, determination, finding, ruling, or order; and
- (b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

The term “transaction involving the state” is broad and involves the interaction of an individual with the state. RCW 42.52.010(21)(a) refers to “application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter.” In prior opinions we have concluded that a “transaction involving the state” includes a contract with the state (Advisory Opinion 97-07); an application for a water rights permit (Advisory Opinion 97-06); and the filing of a fuel tax return (Advisory Opinion 97-08).

Rulemaking is different. A rule is more general establishing policies, procedures, or requirements. The Administrative Procedure Act defines “rule” to include:

“Rule” means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale.

RCW 34.05.010(16).

We also note that the definition of “transaction involving the state” excludes legislative duties. RCW 42.52.010(21)(b). Rulemaking is similar to legislating within the area of authority delegated by the legislature. Therefore we conclude that rulemaking is not a transaction involving the state.