

ADVISORY OPINION

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REFERENCES: RCW 42.52.020, RCW 42.52.050

SUMMARY OF CHANGES: Updated format only.

Elective Office/Confidential Information

QUESTIONS

1. Can state officers or state employees seek or hold elective office in local government when they administer state programs within the local government's jurisdiction?
2. Can state officers or state employees disclose confidential state information when they hold local public office?

ANSWERS

1. Yes, RCW 42.52.020 does not prohibit a state officer or state employee from seeking or holding elective office in a local jurisdiction. In situations where the state officer or state employee administers or manages programs on behalf of the state within the local jurisdiction, however, there may be a potential for divided loyalties between the obligations of elective office and the obligations of state service. In these situations, the state officer or state employee should recuse himself or herself from participating in decisions and actions on behalf of the local jurisdiction or the state in areas where such decisions and actions may conflict with public duties on behalf of the state.
2. No. RCW 42.52.050 prohibits disclosure unless authorized by statute or an appropriate agreement.

ANALYSIS

Two state employees administer state programs through the Washington State Department of Transportation (WSDOT) and the Department of Ecology (DOE) in a local jurisdiction. The WSDOT employee is a local manager and oversees the administration of two grants from WSDOT; while the DOE employee oversees compliance with the Shore Management Act. Both employees are seeking public office in the local jurisdiction. The Board has been asked to decide whether the

fact that the employees administer state programs in the locality prevents them from seeking public office; and, whether, if elected, these state employees may disclose confidential state information to their local government.

The first question involves an interpretation of RCW 42.52.020, which states:

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 situations where a state employee administers a program that involves a local jurisdiction, a conflict of interest could occur if the state officer or employee, while acting as a representative of the local jurisdiction, participated in actions affecting the administration or implementation of a state program that was under his or her responsibility as a state employee. If the local jurisdiction disagreed with a state action, for example, the state employee could be placed in a position where his or her loyalties were divided between obligations to the local jurisdiction as an elected official and obligations to the state as a state officer or employee.

Such conflicts can be prevented if the state officer or state employee recuses himself or herself from participation in the decisions and actions of the local jurisdiction or the state on any issue that could create a conflict with his or her public duties on behalf of the state.

Absent circumstances that create a real or apparent conflict based on divided loyalties, RCW 42.52.020 does not prevent a state officer or state employee from engaging in a business, transaction, or in a professional activity separate from their state duties. This includes holding elective office.

The second question regards the disclosure of confidential information. RCW 42.52.050 governs the disclosure of confidential information and provides:

(1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

RCW 42.52.050(1) prohibits state officers and state employees from engaging in activities that might reasonably be expected to require or induce the disclosure of confidential information. While a state officer and employee may have knowledge of confidential information, the fact that the state officer or state employee may also hold elective office does not lead to a reasonable expectation that confidential information will be disclosed.

RCW 42.52.050(2) and (3) clearly specify that a state officer or state employee has an obligation under the state's ethics law to not disclose confidential information. Disclosure may only be authorized by statute or by the terms of a contract agreed to between the state officer's or state employee's agency and those who have the authority to waive confidentiality.

The holding of an elective office by a state officer or state employee does not lead to a presumption that confidential state information has, or will be, disclosed.