

ADVISORY OPINION

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REFERENCES: RCW 42.52.020, RCW 42.52.050,
RCW 42.52.80

SUMMARY OF CHANGES: Updated format only.

Potential Conflicts of Interest Regarding Prospective Employment

QUESTION

Can a state employee pursue prospective employment with an employer without violating the state's ethics law?

ANSWER

Yes, however the state ethics law restricts prospective employment in circumstances where there is a conflict of interest. Prospective employment must not interfere with the independent and impartial exercise of judgment while performing official duties and cannot appear to induce or result in the disclosure of confidential information. An offer of employment also may not be accepted, if the state officer or state employee believes the offer is intended to influence judgment or action in the performance of official duties, or is a reward for the performance or nonperformance of an official duty.

ANALYSIS

For the purposes of this advisory opinion, "prospective employment" begins when a state officer or state employee has accepted an interview for a position outside state government. "Prospective employment" ends when a state officer or state employee has accepted or declined an offer of employment, or when a prospective employer has informed the state officer or employee that he or she is no longer under consideration for employment.

Prospective employment may create conflicts of interest when the prospective employer is a client or contractor to the state agency, is regulated by the state agency, or provides goods and services to the state agency, and when the state officer or employee pursuing employment participates in actions that may affect the interests of the prospective employer. The types of conflicts that may arise include, but are not limited to, situations where independent judgment

may be influenced and consequently impaired as a result of future employment considerations, or when the prospective employer might benefit from a state officer's or state employee's access to confidential information. The ethics law limits prospective employment and offers of employment in situations where a conflict of interest is likely to exist.

RCW 42.52.020 restricts state officers and state employees from having an interest or engaging in an activity or transaction when there is a conflict with the performance of official duties:

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.

Prospective employment is an interest that may conflict with the proper discharge of a state officer's or state employee's official duties when the state officer or state employee participates in matters that affect the interests of the prospective employer.

To avoid a conflict of interest, the state officer or state employee may disclose the fact that he or she is considering prospective employment to a supervisor, and ask that he or she be removed from participating in any matter that involves the prospective employer. In choosing to disclose and recuse from participation, the state officer or state employee may effectively remove concerns that his or her judgment has been affected, or that prospective employment has influenced the performance of official duties.

Prospective employment may also be limited in circumstances where a state officer or state employee has access to confidential information that could benefit the new employer. Pursuant to RCW 42.52.050(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 officer or employee by reason of the official's or employee's official position. [Emphasis added]

If the prospective employer offers a position that could reasonably be expected to involve the disclosure of confidential information acquired through official position with the state, the offer may not be accepted.

Under RCW 42.52.080, Employment after public service, there are two ethics standards that restrict former state officers and employees from accepting certain offers of employment. RCW 42.52.080(3) prohibits acceptance of an offer of employment or the receipt of compensation if a state officer or state employee has reason to believe that the offer or compensation was intended to influence the officer or employee or to reward for the performance or nonperformance of an official duty while employed by the state. RCW 42.52.080(4) prohibits an offer of employment or the receipt of compensation if a reasonable person would believe that the offer or compensation was for the purpose of influencing the performance or nonperformance of official

duties while employed by the state. [Emphasis added]

The difference between these two standards is subtle. Under 42.52.080(3), a state officer or state employee should decline an offer of employment or compensation if he or she believes the offer or compensation is (a) an attempt to influence the judgment or action of the officer or employee; or (b) is a reward for performing or deferring an official duty, presumably for the benefit of the prospective employer.

Under 42.52.080(4) the standard is not whether the individual state officer or state employee has reason to believe that influence is a factor, but whether a reasonable person—with knowledge of the facts—would believe the offer or compensation was for the purpose of influencing official duties. Both subsections, however, preclude acceptance of any offer of employment if offered to influence the state officer or state employee or to reward for the performance of official duties.