



Washington State Executive Ethics Board

2425 Bristol Court SW • PO Box 40149 • OLYMPIA WA 98504-0149

(360) 664-0871 • Fax (360) 586-3955 • <http://www.ethics.wa.gov>

Executive Ethics Board News

Neil Gorrell, Chair
Linnaea Jablonski, Vice-Chair
Judy Golberg, Member
Mike Connelly, Member
Martin Biegelman, Member

September 11, 2009

The Executive Ethics Board (Board) met on Friday, September 11, 2009. Mr. Biegelman was absent; all other members attended. Others attending included: Melanie de Leon, Executive Director, Ruthann Bryant, Board Secretary, Nancy Lewin and Sue Jones, Board Investigators. Other members of the public also attended.

Enforcement

In lieu of an enforcement hearing, the Board accepted stipulations from:

1. Laura Cusack, a former employee of the Department of Ecology, who violated RCW 42.52.080, Employment after public service. The Board assessed a civil penalty of \$250.
2. Melissa Jackson, a Department of Corrections employee, who violated RCW 42.52.070, Special privilege and RCW 42.52.160, Use of state resources. The Board accepted a civil penalty of \$500, with \$250 suspended.

Board Action:

- A. The Board heard and approved the Department of Licensing's Ethics policy.
- B. The Board discussed the following issues:
 1. Under RCW 42.52.020, does a conflict of interest exist when a state employee/officer is the direct supervisor over the person who selects and administers a contract in which the state employee/officer has a financial interest?
 2. How does the Board interpret the phrase "under the supervision of the officer or employee" as used in RCW 42.52.030?

and adopted the following opinions:

1. It depends upon the actions taken by the state employee/officer supervisor to recuse themselves from selecting or administering the contract or making any discretionary decisions regarding the terms/conditions of the contract and what steps they have taken to screen themselves from day-to-day issues regarding vendor performance. RCW 42.52 does not restrict the ability of spouses of state officers and state employees from conducting their own businesses, or from contracting with persons who do business with state agencies that employ their state-employee spouses. However, there are provisions under RCW 42.52 that may limit a spouse's business activities when the business creates a conflict of interest for the state officer or state employee.

Advisory Opinion (AO) 97-13 discussed conflicts of interest regarding board and commission members. Under this AO, the Board opined that members who disclosed their interests and abstained from voting on certain matters would sufficiently address any ethical issues. The Board further opined that while recusal may not sufficiently resolves a conflict of interest where a state officer or state employee exercises supervisory responsibility in a state action, when participation is limited to non-supervisory participation, recusal is sufficient to preclude conflicts of interest under RCW 42.52.030.

The Board also opined in AO 97-12 that RCW 42.52 does not prohibit a state officer or employee from holding a financial interest, unless such interests create a conflict, which occurs when the state officer or employee participates in an official state action involving a person in which the member holds an interest. The conflict may be removed by recusal and delegation of responsibilities to a supervisory state employee who does not hold a conflicting financial interest.

In Advisory Opinion 04-03, the Board opined that the Ethics Act does not generally address conflicts between official duties and that agencies can resolve conflicts by ensuring that the employee does not exercise ongoing oversight of the project.

In the case in front of the Board, the state employee did not have managerial control over contractor as another, subordinate, employee managed the day-to-day operations. The state employee did not participate in the selection of vendors and did not negotiate or make any discretionary decisions regarding the terms or conditions of the contract. The state employee did not supervise vendor performance; however he did supervise the person who managed the contract. The question that remained was then: Is this the type of "supervision" prohibited under RCW 42.52.030(1)?

2. A generic answer is difficult as each situation must be analyzed, but in most cases, "under the supervision of the officer or employee" means direct supervision of the contract itself, not supervision of the person administering the contract or merely being in the chain of command of the employee managing the contractor.

There are two ways the Board could interpret the term "under the supervision of the officer or employee:"

- A. The supervision is over the **transaction** and not the person managing the transaction; or
- B. The supervision is over the **person** managing the transaction.

The Board selected option A and placed the scrutiny on the transaction and the steps taken by the agency and the state employee who has the beneficial interest in the contract to ensure that the employee has no part in selecting the contractor, supervising the contract performance, or making any discretionary decisions regarding the contract.

- C. The Board discussed what type of links a state agency can provide on its official website. They agreed that agencies may provide web links to contracted providers. The Board wanted more information regarding other entities that are not contracted providers, but that provide educational or information to the public that is in line with the mission of the agency. This discussion was tabled until the next meeting so that the Board staff could research the issue and get input from agencies.
- D. The Board also discussed the ethical issues that arose when when a state employee or official "donates" a lunch or other type of meal with them or time with them to an outside organization to

Meeting agendas can be found at www.ethics.wa.gov under "Meetings."

The next meeting of the Executive Ethics Board is scheduled for November 13, 2009.

be auctioned off to raise money for that outside organization. The Board opined that state employees and officials may donate a lunch with them as an item to auction off to raise money for a charitable organization, but they may not use state resources to purchase the meal or request reimbursement for the meal. Only de minimis use of state resources may be used to support any time spent with the state employee or official that is an auction item as well, i.e., shadowing the state officer for a day.

E. The Board repealed Advisory Opinion 97-09.

Other News

The Board said farewell to Judy Golberg who term ended in September. She will be spending her time travelling to far and exotic places.