

March 3, 1995

Advisory Opinion 1995 - No. 4

QUESTION

Would it be permissible for a legislator to participate in the consideration of a bill - such as by advocacy for or against the bill, proposing amendments to it, and by voting for or against it in committee or on the floor - under the following circumstances:

(1) The member owns a lot in large residential subdivision containing thousands of lots and fifty-one miles of roads. The roads are owned by the subdivision's homeowners association and the association has responsibility for road construction and maintenance. Because of a local government moratorium on additional sewer hookups within the subdivision, two thirds of the subdivision lots cannot be developed. Many of the owners of the undevelopable lots have refused to pay dues to the homeowners association. For this reason, the association does not have funds to adequately provide for the roads.

(2) The bill would require county funding assistance for road construction and maintenance within the subdivision. The assistance would be provided to the homeowners association. Generally, this arrangement would last until the moratorium ended. It is likely that the bill would apply only in one county and only to this particular subdivision within that county.

(3) The member's lot is not developable under the moratorium. The lot is valued at approximately eleven thousand dollars. It is possible that the funding arrangement would increase the value of the lot.

OPINION

Subject to the validity of certain assumptions made by the Board, the answer to this question is that it would be permissible for the legislator to participate in the legislative activities specified in the question.

We are aware of only one standard of ethics that is germane to the legislator's question. That standard, which is in RCW 42.52.020, provides as follows:

No state officer . . . 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 . . . duties.

The Board finds that the legislator's ownership interest in a lot valued at eleven thousand dollars would constitute an "interest" within the meaning of the statute. Therefore, the question to be answered is whether this interest would "conflict with" the legislative activities specified in the question. If it would, then the "proper discharge" of the legislator's duties would require that he or she not engage in the legislative activities. If it would not conflict, then the legislator may engage in the activities.

The State Ethics Act provides, in RCW 42.52.330, that:

By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle.

In Advisory Opinion 1995 - No. 1, the Board's first advisory opinion, the Board carried out its interpretation duty under this provision. It did so by adopting the "citizen-legislator" exception in the former Code of Legislative Ethics. Under the "citizen-legislator" exception, a legislator:

does not have . . . [an] interest which is in conflict with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator as a member of a business, profession, occupation, or group, to a greater extent than to any other member of such business, profession, occupation or group.

The question to be answered, then, is whether the legislator's participating in the legislative activities would be permitted under the citizen-legislator provision? The answer to this question turns on whether the legislator is a member of a "group" whose members would benefit from the bill and if so whether the legislator would benefit "to a greater extent than . . . any other member of such ... group."

Is the legislator a member of a "group" comprising the lot owners? The answer seems to be "yes." Our conclusion on this point is hedged because we do have a concern. While the question indicates that there are many lots, it does not clearly state that there are many lot owners. In House Opinion 1987 - No. 1, the House Board questioned whether a member with a business of preparing and advocating certificate of need applications for hospitals and nursing homes belonged to a "group" for purposes of applying the citizen-legislator provision. After noting that there may be very few persons in the business of preparing and advocating such certificate of need applications, the Board stated:

We do not believe that the Code of Legislative Ethics should be construed in a manner which, in effect, authorizes a legislator to promote his or her private interests in the legislature where the justification for the authorization would be that there exists one or two other persons who would similarly benefit.

Assuming that there are many lot owners, which we suspect is probably the case here, the legislator is a member of a "group" under the "citizen-legislator" exception.

Would the bill benefit the legislator "to a greater extent than" other lot owners in the "group"? The legislator's question does not show whether the legislator would or would not be benefited more than the other lot owners. Assuming the legislator would not be benefited more than the other lot owners, which again we suspect is the probable situation here, the member may engage in the legislative activities specified in the question.