

June 8, 1995

Advisory Opinion 1995 - No. 12

QUESTIONS

Question (1): Under the circumstances specified in this question, does the State Ethics Act require that a legislative employee obtain the Board's approval of a contract with a state agency or that the employee file that contract with the Board? The circumstances are:

(1) The legislative employee's spouse is a partner in a law firm composed of approximately seventy-five attorneys and the spouse's partnership interest is valued at approximately two percent; and

(2) The contract, which is for the provision of legal services, is awarded to another partner in the firm. While the employee's spouse is not a party to that contract and does not provide legal services under it, it is probable that the spouse, because of the spouse's ownership interest in the partnership, would benefit financially as a result of the contract.

Question (2): Would the Board's answer to the above question be any different if the spouse is awarded the contract by the state agency or if the spouse performs legal services under the contract?

OPINION

The State Ethics Act contains separate provisions specifying when a legislative employee must obtain this Board's prior approval of a contract and specifying when a legislative employee must file a final contract with this Board. In response to Question (1), we conclude that neither prior approval nor filing would be required. In response to Question (2), we conclude that prior approval would be required if the spouse is awarded the contract and that, depending on the circumstances, prior approval may be required if the spouse performs legal services under the contract. Also in response to Question (2), we conclude that filing would not be required.

The Prior Approval Requirement

The State Ethics Act, in RCW 42.52.120(2), generally provides that, prior to execution of a contract with a state agency, a legislative employee must obtain this Board's approval of the contract if the employee would have a "beneficial interest" in the contract and if the contract is not awarded in an "open and competitive" bidding or selection process in which more than one bid or proposal is received.

In the questions presented, we conclude that the legislative employee would have a

"beneficial interest" in the state agency contract. The term "beneficial interest" is defined in RCW 42.52.010(4) as having the "meaning ascribed to it under the Washington case law." In **State v. Hurd** the Washington Supreme Court held that a public official had a "beneficial interest" in his wife's contract with the agency in which the official was the chief administrative officer. The basis for this holding was that the wife's earnings constituted community property. In **Advisory Opinion 1995 - No. 9**, this Board concluded that the Act's definition of "beneficial interest" was very broad and included even "insignificant" financial interests.

The questions presented here do not indicate whether the contract was awarded through the use of an "open and competitive" bidding or selection process. We will assume for purposes of this opinion that the contract was not. This assumption seems reasonable since state procurement laws providing for competitive bidding or selection contain broad exemptions applicable to legal service² contracts.

Under a literal interpretation of the approval requirement, the employee would have to obtain the Board's approval of the contract. However, in **Advisory Opinion 1995 - No. 9**, this Board decided that construing the approval requirement literally would result in an interpretation that would not serve the purposes of the approval requirement. For that reason, we held there that our approval would not be required under circumstances where a legislator's "beneficial interest" in a contract was based on the legislator's ownership of stock in a corporation that contracts with a state agency and where the legislator has neither a "controlling financial interest" in the corporation nor "substantial management responsibilities" over corporate business. While that opinion deals with legislators and is based to some extent on the citizen-legislator³ provision we believe nonetheless that it is on point with the questions presented here.

The facts in Question (1) do not show that the spouse has a "controlling financial interest" in the corporation or "substantial management responsibilities" over corporate business. Therefore, applying **Advisory Opinion 1995 - No. 9** to these facts, we conclude that the employee need not obtain Board approval.

With respect to Question (2), the employee would be required to obtain Board approval of the contract if it were awarded to the spouse, because under such circumstances the spouse would inevitably have "substantial management responsibilities" over the contract. The employee might also be required to obtain Board approval if the spouse were to provide legal services under the contract. This would depend on the nature of the contract and the spouse's legal services under the contract and any other activities of the spouse regarding the contract.

¹ 5 Wash. 2d 662 (1940)

² See: RCW 39.29.040 and RCW 43.19.190.

³ The "citizen-legislator" provision (RCW 42.52.330) provides: "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. "

For example, if the spouse's legal services were expansive and were to involve numerous contacts with state agency officials or if the spouse were to negotiate the contract with state officials, then the Board would consider the spouse as having "substantial management responsibilities" with respect to the contract. Similarly, if the spouse were to serve on the firm's management committee and as a result of such position have broad authority to affect the negotiation or implementation of the contract, the Board would be inclined to view the spouse as having "substantial management responsibilities" with respect to the contract.

The Filing Requirement

The State Ethics Act, in RCW 42.52.120(3) requires that a legislative employee "awarded a contract" by a state agency file the contract with the Board "within thirty days after the date of execution."

We also concluded in **Advisory Opinion 1995 - No. 9**, that a legislator's duty to file a contract with the Board only applies if the legislator is "awarded" the contract. We believe this conclusion also is on point with the questions presented here. Under the facts in Questions (1) and (2), the contract is not "awarded" to the employee. Therefore, we conclude that the employee need not file the contract with this Board.