

August 12, 1999

Advisory Opinion 1999 - No. 1, Incompatible Duties

The Board has received a request for an advisory opinion regarding whether a legislative employee could serve as a member of a public school board while performing a variety of tasks, as part of his legislative duties, in the area of K-12 education.

FACTS

A legislative employee describes his legislative duties as directly related to educational issues in Kindergarten through twelfth grade (K-12). He states that these duties include: (1) research of issues related to K-12; (2) advising legislators on education policy; (3) representation of legislators in discussion with stakeholder groups; (4) research of "special education" topics at the request of legislators; (5) preparation of education legislation and amendments; (6) coordination of media relations on education issues including press releases, guest columns, newsletters and press conferences. He states that the school board does designate a sub-committee to serve in a legislative liaison capacity and he would not offer to serve or accept an assignment to perform on such a committee.

The employee notified the Board on July 7, 1999, that the filing period for the open school board position was less than three weeks from that date, and he would file, or not, depending on whether the Board would be able to discuss the issue prior to the filing period. The retiring school board member had just announced that a vacancy would exist. We do not ordinarily respond orally to a formal request for an advisory opinion but, in this case, the employee had just learned of the opening and the filing period was imminent. We chose to offer oral advice and now adopt a written response.

OPINION

The State Ethics Act does not prohibit this employee from seeking election to a school board but, if elected, the duties of that position and his present legislative duties would, for the most part, present conflicts which would violate RCW 42.52.020. Representative John Pennington dissents from this opinion.

ANALYSIS

We note that this question presents a matter of first impression for the Board, insofar as we are asked to advise a staff member on the issue of conflict between legislative duties and outside-employment or professional activities. In the past, such questions have dealt with legislators behavior. The distinction is relevant because of the need to balance, for legislators, the

prohibitions of RCW 42.52.020 with the provisions of RCW 42.52.330.

Those statutes provide:

RCW 42.52.020 Activities incompatible with public 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.

RCW 42.52.330 Interpretation. 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.

We have held that section .330 establishes a presumption in favor of outside employment for legislators and that the question for them, in most cases, is whether the law requires the legislator to refrain from certain functions of either the outside job or the legislative position (Advisory Opinion 1998 - No. 6, and cases cited therein).

There is no presumption in the law which favors outside employment for staff when considering the applicability of .020, the so-called "conflict" statute, and the particular facts surrounding each question will determine the course of our analysis.

The possibility that this employee could routinely and properly discharge his substantive and policy-related legislative responsibilities, while at the same performing the substantive and policy-related responsibilities of a school board member, seems remote to us. While there could be an educational issue which would not present a conflict because the school board's position was compatible with that taken by those legislators whom the employee advises and responds to, the Act generally forbids activity where a person might reasonably expect conflict. (See, for example, RCW 42.52.020, forbidding **indirect** as well as direct actions; RCW 42.52.050, forbidding certain activity in which one might **reasonably expect** there could be a disclosure of confidential information; and Advisory Opinion 1998 - No. 6, in which we expressed our concern that even if certain employment was described in such a way as to preclude a finding of a **per se** conflict with RCW 42.52.020, the Act demanded our analysis of possibilities the ordinary person knows to exist). In this case, the employee has identified his legislative duties as substantial and policy-related but states that he would refrain from legislative liaison activities undertaken by the school board (emphasis added).

RCW 42.52.020 is directed at conflict with the ". . . proper discharge of the . . .state employee's official duties.", so abstention from certain direct functions of the school board would not always satisfactorily answer the question whether substantive and policy-related legislative duties could be properly discharged.

We do not, by this opinion, purport to deny this employee the opportunity to seek election to a school board. RCW 42.52.020 does not prohibit a legislative employee from seeking or holding a position as a school board member. Rather, our decision is confined to this employee and his need to substantially change his legislative duties if he were elected to a position where he would consider issues for which he has substantial legislative-related responsibility.