

Advisory Opinion 2007 – No. 1

December 20, 2007

The Board has received an advisory opinion request from legislative employee Joanna E. Arlow who has waived confidentiality. Due to the nature of the request the Board has unanimously waived the notice requirement usually applicable to the receipt of advisory opinion requests (Rule 1K(1)).

Based upon the written request and the Board's public discussion of that request at a regularly scheduled board meeting on November 29, 2007 the facts and questions presented are as follows.

FACTS AND QUESTIONS

The requestor is a legislative attorney currently working for the Senate Democratic Caucus and in that capacity serves as a policy and legal adviser to caucus members on issues and legislation that comes before the Senate Human Services and Corrections Committee. At the conclusion of the 2008 legislative session she will leave legislative employment to become Policy Director for the Washington Association of Sheriffs and Police Chiefs (WASPC). WASPC lobbies the federal government and the legislature on issues relating to criminal justice and law enforcement. Some of those issues come before the Senate Human Services and Corrections Committee. Ms. Arlow represents there are other staff who could attend to legislative matters related to WASPC between the time of her opinion request and the date of her WASPC employment.

Ms. Arlow inquires as to whether she should recuse herself from working on issues that (1) WASPC has taken a position on, whether it is positive, negative or neutral; and (2) whether she should be proactive in establishing a "firewall" and separating herself from issues that she believes would be of concern to WASPC even if WASPC has not taken a position?

OPINION

The Board concludes that the answer to question number 1 is yes; Ms. Arlow should recuse herself from working on those issues. Further, the board concludes that her suggestion that she be proactive in separating herself from other legislative issues of concern to WASPC would most likely be required by the Ethics Act, depending upon facts which we do not now have before us.

In Advisory Opinion 1999 – No. 1, we were asked whether a legislative employee who had substantial and substantive legislative responsibilities as a caucus leadership adviser in K-12 education issues could run for election to his school board. We concluded that he could run but if elected his current legislative duties would present conflicts in

violation of the conflicts statute, RCW 42.52.020, and choices would have to be made. The present case is analogous except here, moreover, it may be concluded that future employment has been secured. She will accept that future employment while performing substantial and substantive legislative responsibilities during the 2008 session. She has correctly concluded that choices re her current legislative duties will have to be made.

Should Ms. Arlow have further questions about particular legislative issues and her proposed “firewall” to separate herself from WASPC interests she may seek further advice from the board.

OTHER ISSUES

For the requestor’s benefit and contemplation we refer to two other statutes which may, depending upon facts not before us, present questions about her new employment and her current legislative duties.

1. RCW 42.52.140 is the “reasonable expectation” statute and it provides that

“No state officer or state employee may...accept... any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action or judgment of the officer or employee, or be considered as part of a reward for action or inaction.”

A promise of employment could be a “favor” that is not allowed by this statute if the facts were such that it could be reasonably expected that the favor would influence an employee’s action or judgment or be considered a reward for action or inaction (see, for example, Advisory Opinion 1995 – No. 5).

2. Legislators and staff must be aware that RCW 42.52.080 – Employment after Public Service – restricts certain post-legislative employment for specified periods of time if the legislator or legislative employee had been administering contracts or making discretionary decisions relative to contracts with the prospective employer.

Moreover, this statute also prohibits an offer of employment from an employer if the potential employee knows or has reason to believe that the compensation “...was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or non performance of a duty by the officer or employee during the course of state employment.”

The restrictions found in these two statutes should, in addition to the conflicts statute, impress upon Ms. Arlow the desirability of establishing that proposed “firewall” between her legislative duties and the interests of her new employer.