

September 1, 1998

**Advisory Opinion 1998 - No. 6, Legislator Exec. Dir.**

The Board has received a request for an advisory opinion regarding whether a legislator could help establish, and then serve as Executive Director or President for, a nonprofit organization to "educate the public on salmon restoration."

**QUESTION**

A legislator establishes an organization and serves as Executive Director or President of the organization, which is organized as a nonprofit 501(c)(3) organization. The purpose of the organization is to educate the public on salmon restoration. The member would undertake the following activities on behalf of the organization: speech presentations with slides and materials, Internet web site, info for distribution, travel (expense reimbursement). Any information distributed by the organization would be factual and objective. The legislator would ensure that the organization avoids advocacy of any particular legislative proposal. The legislator would ensure that the organization avoids any grass roots lobbying, as that term is defined in the public disclosure statutes.

The member would conduct fundraising for the organization, targeting businesses, clubs, foundations, and individuals. Although the legislator himself would avoid raising any funds from lobbyists, others associated with the organization and on the board of directors of the organization would solicit donations from lobbyists. Some members of the board of directors of the organization are themselves lobbyists. The legislator would not in any way benefit personally from the organization. The only transaction of funds would be for the purpose of reimbursing the legislator for office supplies, travel, and other expenses necessary to fulfill the purpose of the organization.

There would be no use of public resources in either the creation or operation of, or fundraising for, the organization.

**OPINION**

If the legislator organizes and serves as President or Executive Director of the organization described in this request, the position as described would be a conflict of interest in violation of RCW 42.52.020.

**ANALYSIS**

At the outset, it should be noted that normally the Board takes the facts as stated in a hypothetical as they are given. However, in rare cases the Board may find the hypothetical to be so unlikely that the Board's advice will be more useful if it addresses the more likely set of facts. In this particular case the Board has chosen to "pierce the corporate veil" presented by the technical form of the organization proposed, allowing an examination of the full extent of the potential created for violation of the ethics law.

There are two provisions of the ethics law which directly relate to this question:

*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.

The situation described in the opinion request raises questions about the potential for conflict of interest between the private responsibilities and legislative duties. In its first advisory opinion, the Board addressed the issue of conflict of interest between a legislator's outside employment and legislative position. The State Ethics Act, in section .330 quoted above, establishes a presumption in favor of outside employment. In most instances the question is not whether a legislator is violating the statute by merely holding a particular outside position, but whether the law requires the legislator to refrain from certain functions of either the outside job or the legislative position.

However, in some of the earlier opinions cited with approval in **Advisory Opinion 1995 - No. 1**, the Board found that the conflict was so severe that the employment itself was a violation of the statute. The first of these, **Senate Board of Legislative Ethics Opinion 69-1**, addressed the proposed employment of a legislator as an assistant to the board of community colleges. The opinion states that "he would agree to work with members of the legislature [on behalf of the college board] in a capacity which is actually the same capacity in which he would work with them on legislation in which he was interested during the legislative session." The opinion states that this would be a violation of the prohibition on receiving outside compensation for legislative advice or assistance (now codified in RCW 42.52.110).

Similarly, in **Senate Board of Legislative Ethics Opinion 69 - 3**, in considering the question of a legislator serving as executive secretary of a trade association, the opinion states that "this Board does not believe that it is its prerogative to determine that the member is thus ineligible to serve as a member of the legislature by reason of such employment alone." The opinion further states, however, that acceptance of such employment with the understanding that it

includes performing "legislative services on behalf of the association" may be a violation in itself. The opinion goes on to cast doubt on the holding of such positions when lobbying is one of the paramount purposes of the organization, even when the position itself does not explicitly include lobbying responsibilities. The opinion suggests that such a situation could be a violation of the conflict provision now codified in RCW 42.52.020.

In this request, the legislator is the principal organizer of the group, and will serve as its primary administrative officer. Lobbyists will be included in the Board of Directors, and lobbyists will be solicited for donations to the organization.

The Board cannot accept the assumption that lobbying specific legislative proposals is not one of the paramount purposes or functions of the organization as proposed. The stated purpose of the organization in this request is public "education." In the context of a major legislative issue, public education is the equivalent of grass roots lobbying, regardless of whether it meets the threshold requirements for registration under the public disclosure laws. Given that context, it does not appear possible for a legislator to be the principal spokesperson for an organization having the membership and structure stated in this request without being involved in lobbying for specific proposals. Assuming that the organization is seeking to influence the legislature as one of its paramount purposes, the position itself is a violation of the conflict statutes as interpreted by 69-1 and 69-3.

The Board finds that the hypothetical facts presented here create an appearance that by donating to the organization, lobbyists will gain favor from, or special access to, the legislator. The appearance is significantly different from the customary occurrence where a legislator assists the fundraising efforts of a charity such as United Way. In this case, the member proposes to establish a new organization the purpose of which is to educate the public on an issue that is currently the subject of inquiry by the legislature and other governmental bodies. The board of the newly created organization would include persons who are registered lobbyists. Fundraising on behalf of the newly created organization would include solicitations to lobbyists and lobbyist-employers. As described, the organization appears to be a small one which would find it difficult to separate itself from the legislator who is one of the principal organizers and continues in the principal administrative position.

The Board interprets the passage of 42.52.330 to mean that *per se* employment bans should be limited to situations where there is a clear conflict of duties in the nature of the position itself, and the situation which the Board finds would inevitably flow from the particular facts of this opinion request represents just such a conflict.