

March 3, 1995

Advisory Opinion 1995 - No. 5

QUESTIONS: Would it be ethical for a legislator to accept a gift of a newspaper subscription if the subscription is valued at more than fifty dollars? What if the subscription is for the legislator's hometown newspaper? What if the donor is a lobbyist?

OPINION

The Board concludes that there is not a "yes" or "no" answer to any of these questions. The subscription would not be subject to the fifty dollar limit for gifts. However, the subscription would be subject to the rule prohibiting a legislator from accepting a "gift, gratuity, or favor if it could be reasonably expected that the gift, gratuity, or favor" would influence the legislator's official conduct or would be a reward for the legislator's official conduct. Whether the acceptance of a newspaper subscription would violate this rule will depend on the circumstances surrounding the acceptance.

Does the "fifty dollar" rule apply?

The State Ethics Act, in RCW 42.52.150, imposes the "fifty dollar" rule on gifts. With exceptions discussed later in this opinion, the rule provides that:

No state officer or state employee may accept gifts . . . with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. . . .

Because the rule applies only to "gifts," the act's definition of "gift" is a starting point for determining whether a legislator may accept a newspaper subscription valued at more than fifty dollars. The act, in RCW 42.52.020(9), contains a standard definition of "gift," but then goes on to exclude the following from the definition:

- (a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;
- (b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;
- (c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

. . .

(e) Items a state officer or state employee is authorized by law to accept;

. . .

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW. . . .

The facts in the questions do not reveal whether the newspaper subscription would fall within any these exclusions. If it would fall under any of them, then, the fifty dollar limit would not apply. This would be true regardless of whether the donor is a lobbyist or whether the subscription is a hometown newspaper.

Assuming the newspaper subscription does not fall under any of the above listed exclusions and therefore would be a "gift," there are other provisions in the act which could render the fifty dollar limit inapplicable to the subscription "gift." RCW 42.52.150, the section imposing the fifty dollar limit, also specifies a number of circumstances where the limit does not apply. The circumstances in subsection 2(d) and 2(e) of this RCW section seem particularly pertinent to a "gift" of a newspaper subscription. Under them, the "fifty dollar" limit does not apply to:

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties; . . .

It is not difficult to imagine how either of these exceptions, but particularly paragraph (e), would apply to a "gift" of a newspaper subscription. Legislators are expected to know about public policy issues and the communities they represent, and newspapers are a major source for their obtaining this knowledge. The Board believes that newspapers generally would fall under these exceptions and that, therefore, the fifty dollar limit would not apply to a "gift" of a newspaper subscription. Because the exceptions do not distinguish between kinds of donors, the Board believes the limit would be inapplicable regardless of whether the donor is a lobbyist.

The "reasonable expectation" rule

The act, in RCW 42.52.140, 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.

This rule would prohibit a legislator from accepting a newspaper subscription if the subscription is a "gift, gratuity, or favor" and if "it could be reasonably expected that the gift, gratuity, or favor would influence" the legislator's official actions or if it could be "considered" as a "reward" for the legislator's official actions. It is noted that this provision is not limited to "gifts." Even if the subscription would be excluded from the "gift" definition, the subscription may qualify as a "gratuity" or "favor" and, therefore, still be subject to the provision.

Whether the "reasonable expectation" rule would be violated by a legislator's acceptance of a newspaper subscription would be determined by the circumstances surrounding the acceptance. Some factors that the Board considers relevant here include whether there is a lobbying relationship between the donor and the legislator; the value of the subscription; and if the subscription cost would be paid by a lobbyist, whether the legislator has other reasonable means of obtaining the newspaper. See: House Advisory Opinion 1989 - No. 2, where the former House Board of Legislative Ethics considered factors of this nature in disallowing an expensive gift of travel expenses where the travel dealt with a public policy matter and was within legislative duties but where the expenses would have been paid by persons with a lobbying purpose. The rule interpreted in that case, Joint Rule 1(a)(4) of the former Code of Ethics, was very similar to the "reasonable expectation" rule.

It is noted that if the newspaper subscription falls within the previously quoted exceptions (RCW 42.52.150(2)(d) or (e)) to the "fifty dollar" rule, then the act requires the Board to "presume" that the subscription would not violate the "reasonable expectation" rule. However, this presumption is "rebuttable," which means, in effect, that the presumption will not apply if the circumstances show that the rule has been violated. See: RCW 42.52.140(2) and (3).

Rules for legislators who contract for goods or services

Special rules apply, under RCW 42.52.150(4), to circumstances where a legislator accepts items from a person with whom the legislator, in his or her official capacity, contracts for the provision of goods or services. Where there is such a contractual relationship, a legislator may only accept certain kinds of things from such person. Things that may be accepted include:

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's

performance of official duties; . . .

These provisions are identical to the previously quoted exceptions to the fifty dollar limit. For the reasons we stated in our discussion of those exceptions, we believe that these provisions also would generally cover newspaper subscriptions and would cover them regardless of whether the donor is a lobbyist.