



Legislative Ethics Board

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April 6, 1995

Advisory Opinion 1995 - No. 7

The Board has received an advisory opinion request from Senator Kevin Quigley, who has waived confidentiality.

QUESTION

Would the following hypothetical situation constitute a violation of the state ethics law:

Before the legislative session, a legislator sends a memorandum to a couple of dozen attorneys out of more than 300 in the legislator's employing firm advising of his or her impending leave of absence status and inviting attorneys of the firm to contact the legislator if they or their clients have interests in legislation where the legislator might be able to provide a status report or provide an introduction so that they might get in contact with the appropriate legislative chair or committee person.

The legislator is a salaried attorney in a large law firm but is not a partner, does not share in profits of the firm, and receives no compensation from the firm during legislative sessions. The legislator regularly invites constituents of his or her district to make their views known to the legislator. The legislator has not intended to or received any personal advantage, and has not made any attempt to influence any legislation on behalf of an attorney or client of the firm.

OPINION

Based on the facts as presented in the request, the Board concludes that the issuance of such a memorandum would constitute a violation of the ethics laws. One of the basic principles of the ethics law is "that public office, whether elected or appointed, may not be used for personal gain or private advantage" (excerpted from RCW 42.52.900). The issuance of a memorandum under the circumstances stated in the opinion request creates an implication that special

privileges are being offered in violation of RCW 42.52.070; and that an indirect financial interest is created in conflict with the proper discharge of legislative duties in violation of RCW 42.52.020.

ANALYSIS

Special Privileges

The memorandum offers the legislator's assistance to other attorneys in the firm "if they or their clients have interests in legislation" (emphasis added). The clear implication of this language is that the law firm is being offered an opportunity to attract clients using legislative access as a selling point. Although the legislator may be offering assistance similar to that which would be provided to any constituent who asks, the memorandum creates the impression that some special advantage is being offered to clients of the firm.

RCW 42.52.070 reads as follows:

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents or other persons (emphasis added).

The board finds that the offer to provide legislative assistance to the firm's attorneys and their clients would constitute a grant of special privileges. As a result of this offer, the firm is able to portray that a special advantage or privilege is available to its clients. It is this connection which creates the violation. It would not be a violation for the legislator to offer to assist people in finding out about the legislative process. Nor would it be a violation for the firm, or any firm, to claim that it has special expertise in dealing with the state legislature or the legislative process. The violation occurs because the legislator by making the offer enhanced the firm's ability to make the claim for special access. This ability amounts to securing special privileges in violation of RCW 42.52.070.

Incompatible Activities

RCW 42.52.020 states:

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 duties.

In the question as presented, the legislator is not a partner, does not share in the profits of the firm, and receives no compensation from the firm during legislative sessions. The board is also asked to assume that the legislator "has not received any personal advantage, nor intended to receive personal advantage."

The board finds that the concept of "direct or indirect" financial interest in a law firm setting is more complex than simply whether or not the legislator is receiving a direct payment for services rendered. An enhancement to the firm's ability to attract clients is a benefit to the firm which indirectly benefits the legislator. - Even though the legislator is not a partner sharing in the profits of the firm, the legislator's position in the firm is affected by how well the firm as a whole performs and the nature of the legislator's contribution to that performance. For example, the offer to provide a client service might be significant when questions of promotion or retention are decided by the partners.

Earlier board opinions have addressed this issue as well. In Advisory Opinion 1995 - No. 1 the board adopted as precedents several of the opinions of the prior ethics boards related to the citizen-legislator role. In one of those opinions, House of Representatives Board Opinion 86-2, the question concerned a legislator's participation in consideration of a bill which the legislator had been involved with during the interim as an attorney employed as an associate in a law firm. Recognizing that there was no direct payment involved, the board nevertheless found the potential for a monetary gain: "It is reasonable to expect that such conduct would create a probability of enhancing the member's economic relationship with his law firm." (cited in Legislative Ethics Board Advisory Opinion 1995 - No. 1, page 19.) This indirect benefit was held to be a violation of the conflict of interest rule barring members from obtaining "a direct monetary gain" by reason of their official activity.

In the facts of the opinion request before the board, it is doubtful that clients of the firm would be seeking educational advice on the legislative process in the abstract. Rather, the implication of the memorandum is that the legislator can assist the firm's clients in obtaining access to the legislative process and/or the appropriate legislative chair or committee member in order to have a better chance of achieving a favorable result. The memorandum specifically refers to clients who "have interests in legislation."

Declaration of Policy

RCW 42.52.900 sets forth the legislative declaration of policy to guide ethics decisions in government. That policy states in part:

State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

The facts of the opinion request would create a situation in which the legislator is offering to let the law firm use the legislator's position for private advantage. This is clearly contrary to the policy set forth by the legislature.

CONCLUSION

The facts stated in the opinion request would be a violation of: (1) the prohibition against securing special privileges; (2) the prohibition against having a financial interest or professional activity in conflict with the proper discharge of legislative duties; and (3) the government ethics policy set forth in the ethics law.