

Legislative Ethics Board

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ADVISORY OPINION 2023 – No. 2 Outside Employment of a Legislator June 2023

The Board received a request for an Advisory Opinion on April 13, 2023, from Rep. Chris Corry who has waived confidentiality.

I. BACKGROUND

A. Contents of Opinion Request

In his Advisory Opinion request, Rep. Corry requested that the Board review the terms of his recent job offer “to ensure that appropriate safeguards are in place to demonstrate compliance with applicable state law.” The Board’s conclusions in this opinion are based upon the facts provided by Rep. Corry and the information that appears on the Washington Policy Center (WPC) website. Should those facts change in the future, the Board’s advice might also change.

The request does not name the organization from which Rep. Corry received a job offer but describes it as a 501(c)(3) non-partisan research and educational organization that receives no state or federal funding. Rep. Corry indicates that his title would be the Director of the Center for Government Reform and his primary job responsibilities will be “to research and analyze best practices for sound tax and spending policies, identify opportunities for well-designed tax relief, promote adherence to constitutional principles of governance, and work to advance government transparency.” The Director oversees the Center’s workplan, performs a variety of research, engages in public speaking and radio opportunities, and prepares studies and other publications related to government issues of statewide significance.

Rep. Corry states that the Center’s major areas of focus over the years has been the following: protecting Washington’s competitive advantage of no income taxes; promoting broad-based tax relief; encouraging adherence to sound budgeting practices; enacting emergency powers reform; and improving legislative transparency and citizen participation.

According to the opinion request, the following legislative safeguards have been enacted within the job duties to ensure compliance with the Ethics in Public Service Act:

- Will maintain an independent and clearly identified status of Company employee when researching policy issues, publishing policy positions, appearing in the media, and engaging with the public on social media and the internet;
- Will maintain full separation of official legislative functions and role when conducting official business, delivering legislative testimony, delivering legislative correspondence, voting, and similar activities;

- Will maintain full separation of all campaign activities, resources, and communications capabilities from the Company;
- Will not represent the Company in testimony during session;
- Will not Lobby on behalf of the Company per RCW 42.17A.005(34);
- Will not engage in fundraising activity on behalf of the Company during session or with lobbyists or lobbyist employers; and
- Will not seek Washington State or Federal funds on behalf of the Company.

On April 25, 2023, the WPC issued a press release stating that it had hired Rep. Chris Corry to replace Jason Mercier as the Director of the Center for Government Reform. Since Rep. Corry decided to accept the position with the WPC and the WPC made that decision public through its press release, the Board will analyze Rep. Corry’s employment with the WPC rather than the hypothetical “Company” he describes in his letter.

On May 22, 2023, Rep. Corry was named the ranking Republican on the House Appropriations Committee.

B. Washington Policy Center

According to its website, the WPC is an independent, non-profit think tank that promotes sound public policy based on free-market solutions. It is a non-profit 510(c)(3) research and educational organization. Its mission is to improve the lives of Washingtonians by promoting high-quality, non-partisan, evidence-based research to advance policy solutions for a better Washington state. The WPC publishes studies, sponsors events and conferences, and educates citizens on vital public policy issues facing the region. Its research program is based upon six areas of public policy: budget and taxes; environment; health care; education; small business; and transportation.

Typical users of WPC research are state lawmakers, executive branch officials, city and county officials, reporters for print, broadcast, and online media, WPC supporters and the general public. News organizations commonly use WPC research as a resource when covering public issues. WPC experts and research findings are cited in news reports hundreds of times every year. WPC research studies and publications are posted online, distributed through its quarterly magazine and mailed to officials, media and WPC members across the state. WPC experts serve as a resource to lawmakers of both parties to promote sound public policy that benefits the people of the state of Washington. Legislators routinely invite WPC to testify before legislative committees. The WPC does not employ a lobbyist and its staff are not registered as lobbyists with the PDC.

C. Job Description for Director of Government Reform

According to the information provided by Rep. Corry, the following constitutes the job description for the Director position for which he was hired:

- Research and analyze best practices for sound tax and spending policies, identify opportunities for tax relief, promote adherence to constitutional principles of governance, and work to advance government transparency.
- Partner with stakeholders and citizens to work toward a government focused on its core functions while improving its transparency, accountability, performance, and effectiveness for taxpayers
- Protecting Washington’s competitive advantage of no income taxes.
- Promoting broad-based tax relief.

- Encouraging adherence to sound budgeting (constitutional reserves, four-year budget outlook, and tax limitations).
- Emergency powers reform.
- Legislative transparency and improving citizen access.
- Managing the Center for Government Reform budget in collaboration with other departments and supervisor.
- Working with state and national fiscal policy experts to expand the impact of our policy recommendations.
- Responding to government reform policy inquiries from media and members of the public.
- Build Advisory Council of experts to inform and augment the research of the Center, including Board members and members of Young Professionals program.
- Work with Development team to strategize and effectively execute fundraising relevant to the impact of the Center.
- Work with fellow Center Directors to strategize on maximizing impact of Research.
- Work with Director of Communications to maximize the reach of the Center's research products.
- Collaborate with the Director of Young Professionals program to build connections with this vital constituency for the future of Washington State.
- Collaborate with Eastern Washington Director to ensure that the impact of the Center's research includes all citizens and economic contributors to the state economy.
- Participate in Board meetings as directed by the VP of Research and the CEO.
- Presenting WPC research to civic and community groups.
- Presenting WPC research to traditional and online media and responding to media inquiries.

II. QUESTION

Does Rep. Corry's employment with the WPC as the Director of the Center for Government Reform present a conflict of interest under RCW 42.52.020 with his legislative duties?

III. OPINION

It is a violation of RCW 42.52.020 for Rep. Corry to serve as a legislator while also being employed by the WPC as the Director for the Center for Government Reform.

IV. ANALYSIS

RCW 42.52.020 provides as follows:

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.

In considering the application of RCW 42.52.020, the Board is also required to address RCW 42.52.330, which provides as follows:

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.

See, e.g., *Advisory Opinion* 1998 – No. 6; *Advisory Opinion* 2001 – No. 1; *In re Ericksen*, 2017 – Nos. 12, 13 & 14. RCW 42.52.330 also establishes a presumption in favor of outside employment. *Advisory Opinion* 1998 – No. 6 pg. 2.

For many years and through numerous opinions, the Board has analyzed the conflict-of-interest question using one of two lines of analysis: “*per se*” or “functional.” In the *per se* analysis, the question is whether the conflict is so severe that the employment itself is a violation of the statute or that the outside employment presents a direct conflict with the legislator’s official duties. In the *per se* category, lobbying or offering legislative advice or assistance would constitute conflicts of interest.

In the following cases, the Board analyzed the outside activities to determine whether they presented a *per se* violation of .020:

Advisory Opinion 1998 – No. 6: a legislator should not accept a position as the executive director of an organization focused on the development of grass-roots lobbying because the legislator will be compensated by an outside entity for engaging in legislative activity.

Advisory Opinion 1999 – No. 1: a legislative employee may not provide staff support to a committee regarding K-12 education while also serving as a member of the local school board.

In re Murray, 1999 – No. 5: a legislator may not be paid for lobbying the legislature on behalf of his outside employer, may not assist the outside employer in developing a legislative agenda, may not disclose confidential information as a part of the outside employment, and may not create a specific job through legislation and then accept employment to perform that job.

In re Sheldon, 2005 – No. 6: service as a county commissioner does not conflict with the official duties of a legislator; that a single person could not hold two government jobs is not a distinction recognized in the Ethics Act.

In re Armstrong, 2011 – No. 1: a legislator who has one set of constituents in his legislative job and another in his second government job has not automatically violated the Act.

In re Ericksen, 2017 – Nos. 12, 13 & 14: legislator whose outside employment takes him away from his legislative duties during session does not present a conflict of interest.

In re House and Senate staff, 2022 – No. 11: staff taking sick leave to protest the failure of a bill to move constituted lobbying and violated .020.¹

If a legislator’s outside employment is not a *per se* violation of .020, the Board then applies the functional analysis to the situation. Under the functional analysis, the Board reviews the situation to determine whether there are any “activities” or duties of the outside job which can come into conflict with the legislator’s official duties, thereby requiring the legislator to refrain from those particular duties.

Under this test, the Board focuses on circumstances in which a member’s vote will result in a benefit to that member more so than a benefit available to others who may be affected by the legislation. Several decisions have noted that “under this exception, a legislator does not have an interest which is in conflict

¹ In this opinion, the Board adopted the definition of “lobbying” found in RCW 42.17A.005: lobbying means attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency under the state administrative procedure act, chapter 34.05 RCW.

with the proper discharge of legislative duties if no benefit or detriment accrues to the legislator as a member of a group to a greater extent than to any other member of such ... group." *In re Murray*, 1995 – No. 6.

The *per se* analysis is most applicable to Rep. Corry's request. The Board must review his position with WPC to determine if that job provides compensation to him for the performance of legislative functions, including lobbying.

Rep. Corry has been hired by WPC as the Director of the Center for Government Reform; he does not supervise any staff. According to the WPC website, the issues addressed by the Center are as follows: ballot measures; budget and taxes; eastern Washington; income tax; open government; and sales tax. Several of these topics are squarely within the domain of the legislature: budget and taxes; income tax; open government and sales tax.

An example of articles published by WPC or other media within the last several years and written by Rep. Corry's predecessor under the "budget and taxes" tab on the website include the following: "Just in time to avoid 2/3 vote requirement, new property tax increase bill introduced" published on the WPC website; "What is the latest tax set to hit Washingtonians?" – Lars Larsen show; "Washington Legislators Proposing a New Health Care Compensation Tax – KONA-AM; "Just in Time to Avoid 2/3 Vote Requirement; new property tax increase bill introduced" – CLARK COUNTY TODAY. On April 26, 2023, Rep. Corry published an article entitled, "The highs and lows of the 2023 legislative session.

Examples of articles published by WPC or other media and written by Rep. Corry's predecessor under the "income tax" tab on the website include the following: "WPC: Washington v. the world on capital gains income taxes" – opinion piece published by THE WENATCHEE WORLD.; "No sugar coating it: Washington no longer income tax free" published by THE SPOKESMAN REVIEW.

Examples of articles published by WPC or other media and written by Rep. Corry's predecessor under the "open government" tab on the website include the following: "Are the public records of the government actually public at all?" Lars Larsen Show; "Opinion: New Bill Proposes Open Government Ombuds Study" published in CLARK COUNTY TODAY.

Several of the topics on which the WPC and Rep. Corry's predecessor opined are thoughts and opinions about actions the legislature should take or the WPC's opposition or support of actions the legislature has taken. According to Rep. Corry, as Director of the Center for Government Reform, he would continue in the same vein as his predecessor.

Furthermore, the WPC staff have also testified in support of or opposition to legislation in the past two biennia. According to their website, the WPC testifies only when it is asked; however, a review of the legislative website indicates that, during the 2023 session, WPC staff, including Rep. Corry's predecessor, testified on 18 bills, sometimes multiple times as the bills moved through the process. During the 21-22 biennium, WPC staff testified on 24 bills, sometimes multiple times as the bills moved through the process. The testimony provided by WPC was of the same nature as testimony provided by lobbyists, constituents, agency staff and advocates. In their testimony, WPC staff either supported or opposed the bill on which they were testifying or offered suggestions for amendments to improve the bill.

Applying the definition of "lobbying" to this fact pattern, it appears that the WPC, while referring to itself as a think tank is, through testimony, articles published in the media or on its website, "attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington."

In *Advisory Opinion* 1998 – No. 6, the Board was concerned about that organization’s stated purpose of “public education.” It held that “public education” is the equivalent of grass roots lobbying, regardless of whether the organization meets the threshold requirements for registration under the public disclosure laws. On its website, the WPC states that it “educates citizens on vital public policy issues.” This Board is concerned that that phrase is a euphemism for grass roots lobbying, although the WPC is more sophisticated than the organization analyzed in *Advisory Opinion* 1998 – No. 6. Nevertheless, Rep. Corry cannot be employed by an organization that lobbies issues faced by the state legislature and remain an elected member of the House of Representatives.

While the WPC agreed to put in place some restrictions to keep Rep. Corry’s legislative and WPC duties separate (“will maintain full separation of official legislative functions and role when conducting official business, delivering legislative testimony, delivering legislative correspondence, voting, and similar activities”), Rep. Corry is a legislator 24 hours a day, 7 days a week and while in some outside employment positions performed by legislators, this line of demarcation is clear, in this situation with WPC, it is not. Adding to this lack of clarity is that the WPC in its announcement and on its website clearly states that its Director of the Center of Government Reform is a current legislator.

A significant portion of the WPC’s mission is to take public positions on certain issues and advocate for those positions with the public and the legislature. Under the Board’s decision in *In re House and Senate Staff*, 2022 – No. 11, these actions are considered lobbying. Even with the protections agreed to by the WPC, they are insufficient to alleviate the per se conflict of interest that exists with Rep. Corry’s employment with the WPC.

ON BEHALF OF THE LEGISLATIVE ETHICS BOARD, this opinion is signed this 22nd day of June, 2023.



Tom Hoemann, Chair