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OPINION	:	No. 02-613
of	:	April 11, 2003
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THE SEISMIC SAFETY COMMISSION has requested an opinion on the following question:

Does the payment by a state agency of an employee's annual dues for a professional license, which license is required for the employee to perform his or her agency duties, prevent the employee from rendering professional services to others for compensation?

CONCLUSION

The payment by a state agency of an employee's annual dues for a professional license, which license is required for the employee to perform his or her agency duties, does not prevent the employee from rendering professional services to others for compensation.

ANALYSIS

We are informed that a state agency pays the annual dues for the professional licenses that are needed by its employees, such as engineers, physicians and lawyers, to perform their agency duties. Do such payments by the agency prevent the employees from performing "outside" professional services for compensation? We conclude that they do not.

Preliminarily, we note that it is not uncommon for a state agency to pay the annual dues for professional licenses needed by its employees to perform agency duties. (See 75 Ops.Cal.Atty.Gen. 137 (1992).) Such payments may serve several purposes, including (1) attracting the most capable professionals for employment, (2) ensuring that the employees are fully qualified to perform their duties, and (3) being considered as part of the compensation package offered to employees under the terms of a labor union negotiated agreement. (*Id.* at pp. 139-140; see Gov. Code, §§ 3504-3505.) Because of these various public purposes benefitting the agency, payments of annual dues would not constitute illegal "gift of public funds"[1] to the employees even if the employees were incidentally benefitted as well. (See *California Finance Agency v. Elliott* (1976) 17 Cal.3d 575, 583; *County of Alameda v. Carleson* (1971) 5 Cal.3d 730, 745-746; *California Emp. etc. Com. v. Payne* (1947) 31 Cal.2d 210, 216; 75 Ops.Cal.Atty.Gen. 20, 24 (1992).)

Nor are we concerned with the type of professional services or the circumstances under which the services would be provided by the employees for compensation. An employee in state service may be prohibited from engaging in outside employment or in a particular field of outside employment in a manner and for the reasons prescribed by law. (See 80 Ops.Cal.Atty.Gen. 208, 210-213 (1997).) Prohibited "outside" services would be those that are "clearly inconsistent, incompatible, in conflict with or inimical" to state agency duties. (See Gov. Code, § 19990; *Morrison v. State Board of Equalization* (1969) 1 Cal.3d 214, 234; *Perez v. City of San Bruno* (1980) 27 Cal.3d 875, 892; *Shepherd v. State Personnel Board* (1957) 48 Cal.2d 41, 49; 73 Ops.Cal.Atty.Gen. 239, 240-255 (1990); 66 Ops.Cal.Atty.Gen. 367, 368 (1983).) We are directed to assume for purposes of this opinion that the state agency has not prohibited its employees from rendering the professional services in question to others for compensation.

The only question we address here is whether the state agency's mere payment of the annual dues would bar the employee from rendering professional services to others for compensation. It has been suggested that such payment might be akin to the agency furnishing to the employee a computer for the performance of agency duties. Using the computer for

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[1] Section 6 of article XVI of the Constitution provides: "The Legislature shall have no . . . power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever . . . ."

personal business would subject the employee to discipline under the terms of Government Code section 19990, which states in part:

> "A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.
>
> "Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:
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> ". . . . . .
>
> "(b) Using state time, facilities, equipment, or supplies for private gain or advantage.
>
> ". . . . . ."

We do not view a state agency's payment of an employee's annual dues for a professional license to be similar to the furnishing of a computer or other equipment needed for performing agency duties. In the latter situation, the agency is the owner of the equipment. Use of its equipment by the employee for personal business might disadvantage the agency in terms of operational costs, maintenance and repair of the equipment, even assuming the personal use is not on "state time."

On the other hand, a professional license is earned by and issued to the employee, not the agency; the license is the property of the employee. (See *Laisne v. Cal. St. Bd. of Optometry* (1942) 19 Cal.2d 831, 838-840.) Assuming the employee is not performing services that are "clearly inconsistent, incompatible, in conflict with or inimical" to his or her employment, the agency is not disadvantaged by the employee's use of the license to perform such services. Indeed, we know of no basis upon which to conclude that a state agency's payment of an employee's annual dues for a professional license would, by itself, bar the employee from performing "outside" professional services for compensation. Regardless of the source of payment for the annual dues, the license belongs to the employee.

We conclude that the payment by a state agency of an employee's annual dues for a professional license, which license is required for the employee to perform his or her agency duties, does not prevent the employee from rendering professional services to others for compensation.

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