

ADVISORY OPINION

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De Minimis Use of State Resources

QUESTIONS:

1. RCW 42.52.160 prohibits use of state resources for private benefit or gain. Does a state officer or employee violate this limitation if he/she receives and makes telephone calls during office hours about the vanpool in which he/she participates?
2. Does a state officer or state employee violate RCW 42.52.160 by using electronic mail to send a brief message to all employees announcing the birth of an employee/co-worker's child?

SHORT ANSWERS:

1. The answer to Question 1 must be determined by the agency based on analysis of the cost and public benefit in light of WAC 292-110-010. The board has issued WAC 292-110-010 as guidance, recognizing that each agency must apply the principles outlined in the rule to their own circumstances. The situational questions posed by this agency may be answered in the regulation.
2. Probably "no", based on the analysis above; but that determination may also be made by the agency in light of restrictions on state computer use.

ANALYSIS

Question 1 involves private use of state resources. The ethics law provides for agency development of regulations that address agency-unique circumstances, and the Board has encouraged independent agency analyses, policies and procedures.

RCW 42.52.500(1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

WAC 292-110-010(6) State agencies are encouraged to adopt policies applying these principles to their unique circumstances. Nothing in this rule is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy will not constitute a violation of RCW 42.52.160, but would constitute a violation of agency policy.

In their analysis, the agency should first consider the cost to the state.

WAC 292-110-010(4), permits a state officer or employee to make occasional but limited use of state resources for his or her private benefit if: (a) the cost to the state is de minimis (i.e. so small as to be insignificant or negligible); and, (b) the use of state resources does not interfere with the performance of the officer's or employee's official duties.

State employees' brief local phone calls during office hours about the vanpool would be of no cost to the state and therefore in compliance with WAC 292-110-010(4). However, if the vanpool-related phone calls were long distance, a de minimis cost would be incurred and the determination should be based on WAC 292-110-010(4)(c).

WAC 292-100-010(4)(c) permits occasional use of state resources if "the agency finds that there is some benefit to the public in addition to the private benefit to the officer or employee. A public benefit under this rule may be direct or indirect. . . ."

The vanpool is a part of the Commuter Trip Reduction program, sponsored by the State of Washington. Thus, an agency could determine that the program to reduce traffic congestion is of direct benefit to the public. Based on this determination, occasional de minimis use of state resources to coordinate the vanpool would not be a violation of the ethics law, provided that the coordination efforts did not interfere with the performance of the officer's or employee's official duties.

Question 2 also concerns de minimis use of state resources. However, WAC 292-110-010(5)(d) specifically addresses use of state computers.

WAC 292-110-010(5)(d) A state officer or employee may not make private use of state computers or other equipment to access computer networks or other databases including, but not limited to, electronic mail and electronic bulletin boards for personal use unrelated to an official business purpose.

Therefore, even if a brief e-mail birth announcement represents de minimis use, it would be a violation of the above rule if unrelated to an official business purpose. The agency may, however, recognize that agency-wide notifications which are used for communicating good will among employees, such as holiday greetings, congratulatory messages, and birth announcements, serve a legitimate business purpose and would therefore not be a violation of the ethics law and would be permitted under WAC 292-110-010(5)(d).

Agencies are encouraged to apply these analyses when considering situational questions that arise, and when formulating their own internal policies.