

ADVISORY OPINION

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Use of State Resources/Cell Phones

QUESTIONS:

1. If a state employee is issued a cellular phone for official business, can the state employee modify the phone to establish a personal line for calls that will be paid for by the employee?
2. Can a personal line be installed if a state-purchased cellular phone is issued to replace a personal cell phone?
3. Can a state employee remedy any conflict of interest created by installing a personal line on a state-owned cellular phone by reimbursing the state for the cost of the cell phone?

SHORT ANSWERS:

1. The Board declines to address this question under RCW 42.52 because the state's master contracts with its cellular service providers already prohibit the personal use of products and services acquired under these contracts.
2. The answer is no. Although the Board allowed personal use of state-owned computer equipment under Advisory Opinion 97-04, the purpose for allowing such use was to accommodate hardware and software compatibility problems that impeded the ability state employees to perform work from a remote office. A cellular phone does not present the same system compatibility problems.
3. The answer is no. Under WAC 292-110-010(6) a state officer or state employee may not make private use of state resources and then reimburse the agency so there is no actual cost to the state. If a state officer or state employee is provided a cellular phone for the purpose of conducting state business, use of the phone is limited to the facilitation of state business unless the agency has submitted, and the Board has approved, a policy of reimbursement.

ANALYSIS

The Board has been asked to clarify ethics guidelines as they relate to the use of state-owned cellular phones. The first question posed to the Board is not so much a question of whether personal use violates some provision of RCW 42.52.160(1) or WAC 292-110-010, but whether personal use is authorized under the state's master contracts with its cellular service providers, AirTouch Cellular and AT&T Wireless Services. These contracts are managed by the Telecommunication Services Division of the Department of Information Services (DIS), which advises that use of the state's master contracts is limited to:

. . . all state agencies and political subdivisions (e.g., counties, cities, school districts, public utility districts, as defined in the Interlocal Cooperation Act, chapter 39.34 RCW) of the state of Washington. Purchasers must have established a business relationship with DIS. . . . These contracts are for the use of Government agencies and organizations only. Master contract products and services may not be purchased for personal use. [Emphasis added]

Since DIS is responsible for administering these contracts, the Board defers to DIS' interpretation that the contract does not allow for the personal use of cellular products or services acquired under the contract. Therefore, the Board declines to address this issue under chapter 42.52 RCW.

The second question relates to a previous advisory opinion in which the Board decided that if an agency substituted state computer equipment for personal computer equipment, a state employee could make personal use of the state equipment. Advisory Opinion 97-04. In this case the Board granted a limited exception to the general prohibition against personal use of state resources because (1) the state employee already owned his or her computer equipment; and (2) the reason for substituting state-owned equipment was to redress hardware or software incompatibilities and to facilitate the conduct of state business. The exception was not extended to circumstances where a state employee did not own a computer system, but was provided one by a state agency for legitimate business reasons.

In this case, the facts are not analogous. While incompatible software and hardware make it impossible for a state employee to perform official duties at an alternative work site, a cellular phone does not have the same limitations. In general, state officers and state employees are not prevented from performing official duties because they either do not own a cellular phone or, if they do own a cellular phone, because it is a personal cellular phone. If employees do not require substitution of a state-owned cellular phone to perform their official duties, the question is not an ethics issue, but rather a question of convenience.

The Board recognizes that a requirement that a state officer or state employee carry two cellular phones may be cumbersome, but believes this inconvenience may be resolved by installing a state line on a personal cellular phone. Further, the Board is concerned

that a policy that would effectively allow state employees to modify state-owned equipment to facilitate personal use would undermine the intent of RCW 42.52.160(1) and the *de minimis* use exceptions under WAC 292-110-010. For example, while the Board understands that some employees may occasionally need to make long-distance calls and believes that use of a credit card in these circumstances would fall within acceptable *de minimis* use standards, the installation of a personal line presupposes normal and regular use that clearly falls outside the limited use exceptions as defined in WAC 292-110-010(3).

The final question concerns the issue of reimbursement for state resources. Under WAC 292-110-010(6) the Board has established a standard for reimbursement:

In general, a state officer or employee may not make private use of state resources and then reimburse the agency so there is no actual cost to the state. However, the board recognizes that in some limited situations, such as officers or employees working at remote locations, a system of reimbursement may be appropriate. Any system of reimbursement must be established by the agency in advance and must result in no cost to the state. To be valid under this rule a reimbursement system must be approved by the board.

The Board's position on reimbursement arises from a concern that reimbursement systems generally create a presumption that personal use of official resources is legitimate as long as the state officer or state employee pays for the use. This is not a view the Board wants to encourage. However, there may be unique circumstances where a system of reimbursement for personal use of state-owned cellular phones may be warranted, and any state agency may submit such a policy for approval. Any policy for reimbursement should not allow personal use that violates any provision of RCW 42.52 or WAC 292-110-010 and provide potential sanctions for misuse.