

## ADVISORY OPINION

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REFERENCES: RCW 42.52.160

SUMMARY OF CHANGES: Amended to reflect changes from 02-01A.

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### Use of State Facilities to Conduct Union Business

#### QUESTIONS

1. May a state employee use state vehicles or other state resources to attend meetings or conduct union business related to contract negotiation and administration?
2. Does the Ethics in Public Service Act prohibit certain uses of State facilities by a union?

#### ANSWERS

1. The Board and state labor laws recognize a unique relationship between a union as the exclusive representative of state employees and state agencies. Therefore, an agreement between an exclusive representative and a state agency for the use of state paid time and resources for the exclusive purposes of contract negotiation and administration would not violate the Ethics in Public Service Act.
2. Notwithstanding 1 above, state agencies may not authorize in a written collective bargaining agreement union use of State facilities that would directly conflict with the Ethics in Public Service Act.

#### ANALYSIS

In February 2001, the Board received a request for an advisory opinion regarding employee use of a state vehicle to attend a union related meeting. After reviewing a memorandum from Board staff, the Board decided to consider adopting a rule which would address how the Ethics in Public Service Act applies to union related use of state resources.

On July 13, 2001, the Board held a public discussion with agency, union, and oversight body representatives who provided information on public employee collective bargaining. While there was little or no support among stakeholder groups for a rule, some agencies indicated that they

would like more guidance in this matter. Between September 2001 and February 2002, the Board reviewed and circulated among interested parties several drafts of this advisory opinion.

The Board wishes to provide guidance to agencies and employees in this matter, however, a broadly drafted opinion would not properly address the concerns of all interested parties. Therefore, the Board is issuing a narrowly crafted opinion that is limited to the two issues discussed above. The Board understands that there may be other state laws that prohibit or allow appropriate union uses of state resources that are not addressed in this opinion. In the event of a dispute, the Board would address such matters on a case by case basis or issue another advisory opinion, as appropriate. In addition, nothing contained herein should be interpreted as advocating a position one way or another with respect to negotiations between state agencies and exclusive representatives.

The Ethics in Public Service Act prohibits the use of state resources for private benefit or gain, except in the course of official duties. RCW 42.52.160 provides, in relevant part:

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another. ...

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

In EEB Advisory Opinion 00-09, the Board found that RCW 42.52.160(2) provides that the limits on using state resources in RCW 42.52.160(1) do not apply when the use of resources is part of a state officer's or employee's official duties. The Board also found that the state's Combined Fund Drive is conducted pursuant to state law, RCW 41.04.036, and rules, WAC 240-10. The Board advised, therefore, that an agency could authorize the use of state resources including paid time to conduct a Combined Fund Drive. The Board further advised that conducting the Combined Fund Drive is part of the official duties of any officer or employee assigned to coordinate the drive in his or her agency.

**1. State labor law allows a use of State resources under certain limited circumstances for the purposes of collective bargaining agreement negotiation and administration.**

The relationship between an exclusive representative ("Union") and the employing state agencies is an issue of first impression for the Board. Black's Law Dictionary defines a Union as "an organization formed to negotiate with employers, on behalf of workers collectively, about job-related issues such as salary, benefits, hours, and working conditions."

While the Executive Ethics Board is not authorized to enforce state labor law, the Board notes that Unions are considered private associations. (e.g., *Technical Employees Association v. King County*, PERC Decision 6734-A (2000)). Accordingly, the Board advises that a Union is a "person" under RCW 42.52.010(14). The Board further advises that Union business is a private interest.

While a Union is a private association, state labor law fully recognizes that public agencies are authorized and in many instances are required, to collectively bargain with a Union on behalf of state employees. Collective bargaining frequently involves more than a “de minimis” use of state resources, particularly state paid time, during working hours, of agency personnel. The Board notes, however, that the stated purpose of the State’s collective bargaining laws is to promote the continued improvement of the relationship between public employers and their employees. The legislature has therefore determined that using state paid time and resources for collective bargaining is in the public interest.

As noted above in EEB Advisory Opinion 00-09, the Board advised that the limits on using state resources in RCW 42.52.160(1) do not apply when the use of resources is authorized under law or is a part of a state officer’s or employee’s official duties. Accordingly, the Board generally advises that use of state paid time and resources for the exclusive purposes of negotiation and administration of collective bargaining agreements would not violate the Ethics in Public Service Act. The Board cautions that this advice may not apply to all agreements between a Union and a state agency, as generally discussed in section 2 below. In the event of a dispute, the Board would determine whether or not a violation of RCW 42.52.160 has occurred on a case by case basis.<sup>1</sup>

## **2. The Ethics in Public Service Act prohibits certain uses of state facilities.**

In EEB Advisory Opinion 00-09, the Board generally deferred to state agency heads’ decisions regarding official duties and the appropriate uses of state resources. While the Board also defers decisions regarding collective bargaining to agency heads in this opinion, the Board further advises that the State Constitution, state laws, and the Ethics in Public Service Act strictly prohibit certain uses of state resources.<sup>2</sup>

Accordingly, the Board advises that state agencies do not have the authority to execute provisions in a written collective bargaining agreement that directly conflict with the Ethics in Public Service Act. Conduct that may directly conflict with the Ethics in Public Service Act includes, but is not limited to, a use of state resources to support or oppose a ballot initiative or a candidate to public office; a use of state resources for Union activities that are not reasonably related to the negotiation and administration of collective bargaining agreements, such as Union organizing, internal Union business, or advocating for a Union in a certification, union shop, or other election , except as authorized under statute or rules<sup>3</sup>. Assuming that the use has not been authorized by law, a use of state resources to advocate for or against a certain outcome in a union election, that exceeds the de minimis standards under WAC 292-110-010(3), would most likely result in a violation. In the event of a dispute, the Board would determine whether or not a

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<sup>1</sup> The Board notes that a Union’s use of state agency resources may have further ramifications. For example, use of agency computers, electronic mail, facsimile transmissions, and voice mail, may create a public record that is reproducible. Although the Board is not giving advice on these topics, readers of this opinion are cautioned that such records may be subject to disclosure under the public disclosure law, or used for audit or legitimate state operational or management purposes.

<sup>2</sup> See Washington State Constitution, Article 8, section 5 (Prohibits a gift of public funds), RCW 42.17A.635 (Prohibits many uses of public funds for lobbying), WAC 292-110-010, EEB Advisory Opinions, and FAQs.

<sup>3</sup> Chapter 41.06 RCW, the State Civil Service Act, chapter 41.56 RCW, Public Employees’ Collective Bargaining, and chapter 47.64 RCW, Marine Employees Employment Relations, provide the basis of state labor law for state employees. Union certification elections are addressed under chapter 391 , WAC.

violation of RCW 42.52.160 has occurred on a case by case basis or issue another advisory opinion, as appropriate.

The Board notes that RCW 42.52.160(1) does not prohibit a use of state resources, such as a state vehicle, to conduct official state business. Therefore, using a state vehicle to travel to a state facility to conduct official business would not be inappropriate even when the state employee also attends a Union meeting occurring at an adjacent location before or after the official state business. The Board further advises that the official state business must be bona-fide and cannot provide a pretense for using state vehicles to attend an otherwise private activity.

The Board's advisory opinion is based on the general facts as stated above. The Board does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Board to reach a different conclusion. In addition, Board advisory opinions are narrowly drawn to interpret the Ethics in Public Service Act. They do not address whether the proposed action is prudent, good public policy or effective management practice. Accordingly, nothing contained in this opinion should be interpreted as advocating a position one way or another with respect to negotiations between state agencies and exclusive representatives.