

ADVISORY OPINION

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REFERENCES: RCW 42.52.160, RCW 42.52.180,
WAC 292-110-010

SUMMARY OF CHANGES: Non-substantive scrivener's errors.

Use of Agency Websites to Provide Links to Private Web Sites that Advocate for or Against Ballot Initiatives or Political Candidates

QUESTIONS

1. May a state agency maintain a direct internet link to private non-governmental web sites?
2. May a state agency establish an internet link to a private web page which does not contain materials that advocate for, or against, a ballot initiative or political candidate even though the private web sites homepage may contain material that advocates for, or against, a ballot initiative or political candidate?

ANSWERS

1. Yes - so long as the private organization does not post messages or advertisements on its web site or home page that advocate for, or against, a ballot initiative or political candidate. Providing a direct link to a web page or linked document that includes materials that advocate political positions, however, would violate RCW 42.52.180.
2. Yes - so long as any materials or advertising that advocates for, or against, a ballot initiative or political candidate was located on another web page or linked document within the organization's web site. State agencies that provide links to private web sites should initially verify that the linked web page does not contain political advocacy and establish a reporting mechanism or agreement that will allow the agency to suspend the link if the contents are changed.

ANALYSIS

For the purpose of this opinion a web site is a site (location) on the World Wide Web. Each site is owned and managed by an individual, company or organization. A web page is a linked document stored on a web site. Every web page is identified by a unique URL or uniform resource locator, which allows other web sites to provide a direct link to that specific document. Each web site contains a home page, which normally is the first linked document users see when they enter the site. The site might also contain additional documents and files.

Many state agencies maintain web sites which provide important agency information to the public and agency employees. In some cases state agencies may provide direct links to web sites that are managed by other organizations, including private non-governmental organizations such as non-profits that support the agency mission or unions. On occasion providing a direct link to a private web site is a contractual obligation under a collective bargaining agreement.

Often private organizations will take positions that advocate for or against a state ballot initiative or political candidate. To inform the public and to support such positions, private organizations will post documents and other advertising materials on their web sites. The content of these web sites and documents are not regulated by state agencies. For the purposes of this opinion a private web site is a web site maintained by a private non-governmental entity, such as non-profit firm, for-profit firm, or union, whose employees are not subject to the Ethics in Public Service Act.

1. State agencies may establish links to a private web site, however, they may not knowingly establish links to a web page or linked document that advocates for, or against, a ballot initiative or political candidate.

The Ethics Act prohibits the use of state resources for private benefit or gain, unless the use is reasonably related to conduct 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 02-02A the Board advised that the guidelines on the use of state resources apply to all resources under an employee's control including, but not limited to, facilities of an agency, state employees, computers, equipment, vehicles, and consumable resources. The Board further advised that state resources also include state information, e.g., databases, employee lists. Maintaining or updating web sites requires agency equipment, including web servers, and the use of state employees during working hours to accomplish updates or to maintain the web site, including links. Therefore, state agency maintained web sites are a facility of the agency subject to RCW 42.52.160 and RCW 42.52.180.

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. In this and several other advisory opinions related to the use of state resources the Board has generally deferred to state agency heads' decisions regarding official duties and the appropriate uses of state resources. While the Board also defers decisions regarding the appropriateness of providing Internet links to private web sites to agency heads, the Board further advises that the State Constitution, state laws, and the Ethics in Public Service Act strictly prohibit certain uses of state resources.¹

The Ethics Act strictly limits the use of state resources to promote or oppose candidates for public office or to promote or oppose passage of ballot initiatives and referendums. RCW 42.52.180 provides, in relevant part:

(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. ...

(2) This section shall not apply to the following activities:

(a) ...

(b) ...

(c) Activities that are part of the normal and regular conduct of the office or agency;
and

(d) ...

(Emphasis added).

In EEB Advisory Opinion 02-04, the Board advised that distributing newspaper articles and editorial opinions that tend to support or oppose candidates for public office or ballot measures during an election or ballot measure certification period, would not be considered a regular or usual state agency activity. This finding would hold even if the use was related to an otherwise normal or lawful activity such as using state resources to administer a collective bargaining agreement or to provide public information about private groups who support a state agency's mission.

Further, the Board advised that using state facilities to electronically distribute newspaper articles and editorial opinions which discuss public office candidates or ballot measures could result in an indirect use of facilities to support political activity. Therefore, while an election or initiative is pending before the voters a state agency may only electronically distribute newspaper articles that do not tend to support, or oppose, a candidate for public office, or a ballot initiative, or referendum.

Similarly, using state facilities to provide a direct electronic link to a private web page which contains materials and advertisements that support, or oppose, passage of a ballot initiative would also violate RCW 42.52.180.

¹ 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) and Advisory Opinions on this topic.

2. Providing a link to a private web page or linked document that contains nonpolitical information would not necessarily violate RCW 42.52.180.

Board rules note that “[a]ll state employees and officers are responsible for the proper use of state resources .” As noted above, the Ethics Act strictly limits the use of state resources to promote or oppose candidates for public office or to promote or oppose passage of ballot initiatives and referendums. By prohibiting indirect uses and the “knowing acquiescence” by a person with authority to direct, control, or influence the actions of other state officers or state employees; RCW 42.52.180 imposes a mandate that state officers actively ensure that agency resources are not used to indirectly support certain political activity.

Since state officers and employees who maintain state agency web sites cannot control or even predict the actions of private organizations, which may be allowed under law to promote certain political viewpoints; providing unmonitored or unsupervised electronic links to a private organization’s web site or home page creates significant or unacceptable ethical risks. Therefore, a state officer or employee may violate the Ethics Act if they do not initially verify the content of web pages that are linked to state agency web sites and do not establish a reporting mechanism or monitoring system to ensure that the agency is aware of content changes. By monitoring a link or obtaining an agreement regarding the content of linked documents on the private web site, state employees can avoid a violation of RCW 42.52.180 by suspending the link when needed.

The next issue is the ethical risk created by providing links to a web page or linked document that does not contain materials which advocate political positions, but which are located on private web sites that post political materials on another page or document, such as the home page. While current users of the Internet often follow various links or tabs on a web page that lead to other documents stored on the web site or to other web sites, such Internet search activity or “surfing” is clearly beyond the control or “knowing acquiescence” of state officers and employees who maintain state agency web sites. Accordingly, the prohibitions under RCW 42.52.180 would not apply to potential actions by others that are clearly beyond the state officer or employee’s control, such as Internet searches conducted by private visitors to state agency web sites.

While state officer and employees cannot control or predict the actions of private organizations, providing links to private web sites creates the impression to the public that the state agency has reviewed and approved the content of that web site. In order to alleviate any public confusion state agencies should also provide appropriate disclaimers whenever providing direct links to web sites whose content are not subject to state laws, such as the Ethics in Public Service Act.² The Board cautions state officers and employees that providing a disclaimer does not alleviate state employees from a duty under RCW 42.52.180 to ensure that state maintained links do not result in a direct or indirect use of state resources for prohibited political activity.

Agency decisions to establish a link to a private web site should include an evaluation of the likelihood that the private organization will post political materials on their web site. Based on

² The following suggested disclaimer language is based on federal government web site disclaimers. “The links provided may contain relevant information. These web sites are not maintained by [state agency] and the [state agency] is not responsible for the content available on this site. Since the [state agency] exercises no control over other sites; we take no responsibility for the views that may be represented, or the accuracy, propriety, or legality of any material contained on other web sites.”

that assessment those agency employees who maintain the links can determine the appropriate level of monitoring required to comply with the mandates of the Ethics Act.

In the case of non-political organizations that don't have a history of political advocacy, there is a low risk of a violation. In these cases an agency could meet the mandates of the Ethics Act by initially verifying the content of the linked document and then establishing a reporting mechanism that will encourage users of the agency web site to notify the agency when political materials are being posted on linked documents.³ By establishing a reporting mechanism when there is a low risk of violation agency employees who maintain those links could meet the mandates of the Ethics Act through routine maintenance of the links and would not need to closely monitor the content of linked web pages.

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.

³ A reporting mechanism could be established by adding the following language to an agency disclaimer. "When this link was established the linked web page did not contain materials that advocated for any political outcomes. If you find any materials on the directly linked web page that advocate for, or against, any political candidates, ballot measures, or referendums, please report it immediately to our Webmaster so that the link may be promptly removed."