

## ADVISORY OPINION

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### Use of State Resources/Cell Phones

#### QUESTION:

May a state official or employee use a state-owned cellular telephone to make personal local calls when no landline is available without violating RCW 42.52.160?

#### SHORT ANSWER:

Yes, under limited circumstances; if the use of a state-owned cell phone does not cost the state or the cost is so small as to be insignificant or negligible, and the use is infrequent and short in duration. State-owned cell phones may never be used for private business enterprise or political purposes.

#### BACKGROUND

Parks and Recreation Commission employees often work in remote locations and may find themselves with a need to contact their families regarding a change to work schedule. They do not have access to a landline phone, but do carry state-owned cell phones.

#### ANALYSIS

The Ethics in Public Service Act was enacted to protect the interests of the state. It prohibits state officials or employees from using state resources for private gain. The Board, however, has recognized that limited use of state resources where no exception exists may be allowed when there is no actual cost to the state or the cost is so small as to be insignificant or negligible and the use is infrequent and short in duration.

The State Office of Financial Management's (OFM) Policy 10.20.10 states that certain travel expenses are considered as personal and not essential to the transaction of official state business. Such non-reimbursable expenses include personal telephone calls. However, OFM's policy also allows agencies some flexibility to define business telephone calls, and those agency policies

typically include the ability of the employee to call home. The calls must be limited (usually one call per day) and short in duration.

In Advisory Opinion 96-04, the Board determined that an employee may make and receive telephone calls during office hours, in light of WAC 292-110-010, without fear of violating RCW 42.52.160 if agency policy allows for such usage. The Board also allowed for brief and infrequent personal e-mails so long as agency policy also allowed for such usage. The Board encouraged the agencies to develop policies allowing for a de minimis use of public resources.

However, in Advisory Opinions 00-03 and 00-03A, the Board took a different position where state-owned cell phones were in question. In these opinions, the Board determined that an employee could not modify a state-owned cellular telephone to establish a personal line on that phone, even if the personal line is paid directly by the employee and there is no additional cost to the state. The Board recognized that it may be cumbersome to carry two cell phones, but it believed that to allow for such activity would undermine the intent of RCW 42.52.160 and the de minimis use exceptions provided in WAC 292-110-010. Simple convenience for the employee was not a sufficient reason to allow for the personal use of state resources. But, the Board also recognized that in some limited situations, an employee may be working in a remote location and a system of reimbursement for personal cell calls may be appropriate.

The Board understands that cell phone service plans have become more advanced and the costs of plans have decreased. Long distance calls are often treated as local calls in that a separate charge is not included in the billing if the call is within the plan's region.

In this case, a state employee, while not in official travel status but in the field, seeks to use a state-owned cell phone to call home and inform family members of a change in plan or work hours. Now, the employee radios into the main office and asks another staff member to place a call to the employee's family notifying them of the change in plan. If the employee were to be allowed to use the state-owned cell phone, he or she could place the call directly without disrupting another employee.

In light of the advances in cell phone technology and in keeping with the analysis provided in 96-04, the Board has concluded that a state official or employee may make personal use of a state-owned cell phone without violating RCW 42.52.160 so long as the usage fits into the de minimis category, is not used for private business enterprise or political purposes and is not prohibited by agency policy. Agencies are encouraged to adopt policies and implement a monitoring plan to ensure that there is no improper private use of state-owned cell phones.