

ADVISORY OPINION

APPROVAL DATE: November 9, 2007

NUMBER: 96-03

STATUS: **Current.**

REVIEWED ON: February 22, 2021

NEXT REVIEW: February 2026

REFERENCES: RCW 42.52.160, WAC 292-110-010

SUMMARY OF CHANGES: No changes.

De Minimis Use of State Resources

QUESTION

RCW 42.52.160 prohibits use of state resources for the private benefit or gain of a state officer, state employee, or another. Is the de minimis use of staff time and resources to support recreational activities as part of an agency wellness program a violation?

ANSWER

No, WAC 292-110-010 provides for de minimis use of state resources.

ANALYSIS

The Board has considered an agency proposal to allow recreational activities including, but not limited to, bowling tournaments, golf tournaments, basketball tournaments, softball league and tournaments, as part of their agency wellness program. By allowing these activities, the de minimis use of staff time and resources would be required to support the activities. The de minimis usage includes copier supplies, limited e-mail communication time, and the use of departmental conference rooms during non-scheduled work hours for the activity planning process.

In the request for advice, the agency noted that the Legislature has recognized the value of work place employee wellness programs; and that the Department of Personnel has encouraged such wellness programs. The Legislature found that, "...The state, as an employer, desires to foster a working environment that promotes the health and well-being of its employees..." (Laws of 1987, Ch. 248, Sec. 1). RCW 41.04.362 permits the Department of Personnel to develop and administer a voluntary state employee wellness program, and to encourage such programs in state agencies. In 2007, the Legislature amended RCW 41.05.540 and created WA Wellness. This statute requires WA Wellness to establish and maintain a state employee health program focused on reducing health risks and improving the health status of state employees and others.

It is the Board's view that this question has been addressed in WAC 292-110-010 Use of State Resources. The regulation provides for de minimis use of state resources when all conditions are met.

Though it is important to encourage agencies to be scrupulous in assuring that these activities do, in fact, require no more than de minimis use of state resources and time, the activities as described fall within the scope of WAC 292-110-010, and serve an indirect public benefit, i.e. the health and morale of state employees. This benefit was acknowledged by the legislature when the Wellness program was authorized, and in subsequent statutory amendments.