

ADVISORY OPINION

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DE MINIMIS USE OF STATE RESOURCES - CHARITY

QUESTIONS:

1. May state officers or employees use state resources to coordinate state-wide volunteer construction projects?
2. May state officers or employees use state resources to coordinate an occasional fund-raising activity for charity?

SHORT ANSWERS:

1. No. It is likely that coordinating state-wide volunteer construction projects would use state resources beyond those permitted by WAC 292-110-010 and has potential to interfere with the performance of official duties. Therefore, this project would violate WAC 292-110-010.
2. Yes. An occasional charitable fund-raising event, such as a holiday bake sale, would likely not be a violation of WAC 292-110-010 because it involves de minimis use of state resources, would not interfere with official duties, and, if sanctioned by the agency head, would produce indirect public benefit.

BACKGROUND

This opinion concerns the use of state resources for two kinds of charitable activity. The first involves state employees who organize themselves to raise funds for charity. Typically, during the holiday season they may participate in an "Adopt-a-Family" program and raise money for gifts for a needy family through fund raising projects such as bake sales on agency premises, where baked goods are available for purchase during the work day.

The second involves a proposal to use state resources to coordinate community volunteer projects that would be carried out by volunteers including agency staff, local governments and business. These volunteer activities would be occasional weekend events to design and construct a transportation, recreation, or other community-use project. However, though the actual projects would be constructed on weekends, much of the preliminary and ongoing coordination work would, of necessity, take place during normal working hours.

Under this proposal the employees in the state agency would assume the primary responsibility for coordinating these activities. This would require the use of staff time and resources to accomplish the project selection, design, construction and volunteer support of the activities. The usage identified by the agency includes:

- Staff time, (12 employee hours/month for seven months, and 48 employee hours/month during the event month) that would be made up by working late;
- Computer use consistent with the above working hours;
- Paper, envelopes and three mailings of 1,000 letters total;
- Legal and audit advice; and,
- Telephone, fax, and office equipment consistent with the hours noted.

Both types of projects involve the use of state resources. The question is whether this use is permitted under RCW 42.52.160 and WAC 292-110-010.

ANALYSIS

Having recognized that state resources will be used to accomplish the charitable projects, the Board must consider whether or not the activity represents the occasional but limited use of state resources permitted in WAC 292-110-010. That regulation, in section (4), sets out a three-part test for determining the circumstances under which occasional use would be permitted:

- a) the cost to the state is de minimis;*
- b) the use of state resources does not interfere with the performance of the officer's or employee's official duties; and,*
- c) the agency finds that there is some benefit to the public in addition to the private benefit to the officer or employee; A public benefit under this rule may be direct or indirect, such as improving employee morale or activities that improve the work related job skills of an officer or employee.*

If any one of the above criteria is not met, no further consideration of the other two is needed. For our purposes, however, all three are considered.

a) de minimis cost

In determining whether or not the use of state resources is permitted under this de minimis

exception, the appropriate reference is WAC 292-110-010, which in effect defines de minimis by providing for use of state resources if there is no actual cost to the state or the cost to the state is so small as to be insignificant or negligible. An Adopt-a-Family project would require some use of state resources to coordinate with the sponsoring charity, post notices of a holiday bake sale, and arrange display of baked goods. If copying were done at a local commercial copy center, the project would involve insignificant or negligible cost to the state. Thus, the Board concludes that a properly conducted fund raising event would only involve a insignificant or negligible use of state resources.

In contrast, it is evident from the list of required resources necessary to coordinate state-wide volunteer construction projects, that the cost involved is neither insignificant nor negligible. Since the cost of this proposal is not de minimis, the use of state resources would not be permissible.

b) interfere with performance of official duties

Volunteer projects carried out by employees during working hours will impact the work performed. The point at which the impact becomes interference is a judgment best made by agency management, on a case-by-case basis. An Adopt-a-Family bake sale project involves volunteer effort; however, the work (i.e. baking) is performed at home, after work hours. Typically, the baked goods are displayed and available for purchase during the lunch hour or break times. Gift purchases with the proceeds are made after normal working hours. The Board concludes that a properly conducted charitable fund raising event would not interfere with employees official duties because most of the work is done outside working hours and on breaks.

On the other hand, the proposal to coordinate state-wide volunteer construction projects would involve significant amounts of staff time during working hours. In addition, the proposal also requires some use of phones, facsimiles, computers, etc., and might well rise to the level of interference with performance of the official duties of the agency, depending on the resources available to the agency. Although employees might be willing to work late to make up the work time devoted to the project, other staff who might be required to work late because essential equipment was tied up by volunteer activities during regular working hours could well view the project as interference with performance of official duties. The use of significant amounts of staff time and equipment during working hours is likely to interfere with the performance of official duties.

a) public benefit, direct or indirect

If it is determined that the occasional but limited use of state resources for the volunteer project involves de minimis cost and the use of resources would not interfere with performance of official duties, some benefit to the public, either direct or indirect, must be identified in order for the activity to comply with WAC 292-110-010.

The determination of what volunteer activity constitutes a public purpose or benefit must

be an official determination. That is, it must be made by legislative mandate,¹ or by the head of an agency or institution. Therefore, an employee fund raising event or the proposal to coordinate state-wide volunteer construction projects would require some official approval to be permissible under the law.

¹ An example of legislative mandate is found in Advisory Opinion 96-03, in which the Board determined that de minimis use of agency resources to organize employee sports teams and athletic activities was not a violation of the ethics law because this activity had been sanctioned by the legislature as an employee "Wellness" program, recognizing the indirect public benefit of healthy state employees.