

## Guidance regarding Use of State Resources

RCW 42.52.160 and WAC 292-110-010 restrict the use of state resources for personal use. The following three questions are offered to assist you in determining whether a particular use falls under the statutory restrictions.

**First Question: Will my use of state resources accomplish a business purpose or a personal purpose?**

- If your use of state resources will accomplish an official state purpose, the ethics law's restrictions on use of state resources do not apply. Other laws, agency policy, and your supervisor control business use of state resources.
- If your use of state resources will not accomplish a an official state purpose, that use is personal. Continue the analysis by asking yourself the next question.

**Second Question: Will my personal use of state resources satisfy all of the elements of the *de minimis* use standard?**

- If your personal use will satisfy all of the elements of the *de minimis* use standard, you may make that personal use of state resources.
- If your personal use will violate one or more elements of the *de minimis* use standard, don't do it.

### General information

**Question:** What types of state resources are covered under the ethics law?

**Answer:** The guidelines on 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. State resources also includes state information, e.g., databases, employee lists. (See RCW 42.52.160(1) and RCW 42.52.180(1))

**Question:** What exactly is a "private benefit or gain"?

**Answer:** A private benefit or gain can range from avoiding a cost or expense by the use of resources to support your outside business or paying a discounted government rate for a personal phone call. There are some uses that do not appear to have a cost but may result in private benefit or gain. For example, it may not cost a significant amount of money to use a state computer to access the Internet. Nevertheless, by making a personal use of a resource available to you only because you are a state employee, you are receiving a private benefit or gain.

**Question:** What is a *de minimis* use?

**Answer:** A *de minimis* use is an infrequent or occasional use that results in little or no actual cost to the state. See WAC 292-110-010(3)(a) In order for the use to be considered *de minimis* in must meet all the conditions in the rule. An occasional brief local phone call to make a medical or dental appointment is an allowable *de minimis* use of state resources. The cost of a brief phone call is negligible and is not likely to interfere with your job. The following examples address *de minimis* use:

**Example A:** An employee makes a telephone call or sends an e-mail message to his/her children to make sure that they have arrived home safely from school. This is not an ethical violation as long as the call or e-mail is brief in duration, there is little or no cost to the state, i.e., your SCAN code is not used, and sending a brief message does not interfere with the performance of official duties.

**Example B:** An employee uses his/her agency computer to send electronic mail to another employee wishing them a happy birthday. This is not an ethical violation. The personal message is brief and does not interfere with the performance of official duties.

**Example C:** Every spring a group of employees meets during lunch to organize an agency softball team. The meeting is held in a conference room that is not needed for agency business during the lunch hour. This is not an ethical violation. There is little or no cost to the state, the meeting does not interfere with the performance of official duties, and off-site recreational activities such as softball teams can improve organizational effectiveness.

**Question:** What does “promoting organizational effectiveness” really mean?

**Answer:** State agencies may allow employees to participate in activities that are not official state duties but promote organizational effectiveness by supporting a collegial work environment. Often these activities involve an accumulated use of state time or resources that is more than *de minimis*. So long as the employees who participate in the activity limit their use of state resources, then these activities would not undermine public confidence in state government. (WAC 292-110-010(2)(b)(iii))

**Example:** An agency determines that an agency wide retirement lunch will enhance organizational effectiveness. The retirement lunch will last a half hour longer than the normal one hour lunch break, which totals 15 hours of paid time for the agency. An employee uses his or her office computer to compose a flyer about the lunch, send a few reminder e-mails, and collect for a retirement present. This is not an ethical violation. While the accumulated time use may not meet the limited *de minimis* use standard, the use supports organizational effectiveness and was approved by the agency. Since most of the activity takes place outside of normal working hours, it will not interfere with the performance of each employee's official duties. In addition, the employee's use of the office computer and printer will result in little or no cost to the state.

**Question:** Can state time be used for baby showers and promotion parties for employees (to increase moral and show support), and if so, how much?

**Answer:** See previous answer for details regarding ethical violations. Consult your agency's policies for agency-specific restrictions.

**Question:** Can I use my state telephone (land line) or email to make appointments or take care of other personal matters?

**Answer:** Generally, yes. Although state telephones and computers are provided primarily for state business, they may be used for a small amount of personal communication to meet the demands of daily living. Employee use must be limited and occasional and must not cost the state money or interfere with work. For example, an employee may use a state telephone or computer to make a doctor's appointment or a lunch date, check in with family members, or arrange for transportation. Note, however, that individual supervisors and departments may have more strict policies on telephone and email use for reasons related to specific work situations.

**Question:** Can I use the copier at work to make one copy of my birth certificate or some other item?

**Answer:** Yes, this would fall under the de minimis use standard.

## **Outside activities**

**Question:** Can I leave menus for local restaurants in the break room?

**Answer:** Yes. If an agency merely has menus available for state employees or officers to use when ordering lunch it would not be considered a violation.

**Question:** May an individual state officer or employee use state facilities, including state paid time, to participate in the creation or review of articles and other advertising materials that will be used to promote private commercial products and services?

**Answer:** No – the Ethics Act contains a strong presumption against an individual state officer or employee using his or her official position and public resources to promote private commercial products. When state officers or employees are seen to favor one product over another, it significantly undermines vendor confidence in the agency's or the state's contractor selection process. While a state officer and employee should avoid participating in the preparation of private promotional materials, they may respond to reference inquiries and may review vendor statements about the business relationship to ensure that they meet agency policies and contracting rules.

**Question:** May a state officer or employee, acting within the course of official duties and under the authority of his or her agency, use state facilities, including state paid time, to promote private commercial products and services?

**Answer:** Yes under certain conditions – state officers and employees may use state resources for work that is reasonably related to the conduct of official duties. Where state agencies with appropriate authority have entered into contracts and other commercial relationships that provide for agency endorsement or promotion of a private product, such a use of state resources would not violate the Ethics in Public Service Act.

**Question:** If I use a state resource, can't I just reimburse my agency for the use?

**Answer:** No. Reimbursing for a personal use may result in a personal benefit and may impose significant administrative burdens on the state. For example, the price of a SCAN call is less than you would pay using your local telephone company. Reimbursing also creates the misperception that personal use is ok as long as we pay for it. Personal use should be the exception not the rule. (See WAC 292-110-010(5))

**Question:** The Red Cross holds a safety fair in our building and as part of their display sells first aid kits. Does this violate the Ethics Law?

**Answer:** No. The Department of Labor and Industries requires state agencies to establish a safety committee. *See* WAC 296-800-13020. These committees prepare and monitor safety and security plans for their agencies as part of their disaster preparedness program. Many of these plans require employees to provide emergency supplies for themselves in case of a natural disaster or major incident to augment the agency-provided supplies. To assist employees in gathering the supplies they need, agencies have allowed the American Red Cross to sell first aid kits, emergency items and other materials to state employees during safety fairs and other agency-sponsored gatherings.

## **E-mail and Internet Use**

**Question:** Can I send a personal e-mail message without violating the ethics law?

**Answer:** Yes. The general ethics standard is that any use of a state resource other than for official state business purposes needs to be brief in duration and frequency to ensure there is little or no cost to the state and the use does not interfere with the performance of official duties. Extensive personal use of state provided e-mail is not permitted. (See WAC 292-110-010(3)(a))

**Question:** Are my e-mail or voice messages private?

**Answer:** No, if you use state equipment do not expect a right to privacy for any of your e-mail or voicemail communications. E-mail and voicemail communications may be considered public records and could be subject to disclosure. Aside from disclosure, employees should consider that e-mail communications are subject to alteration and may be forwarded to

unintended recipients. Avoid these potential problems by treating e-mail communications as another form of business correspondence. (See WAC 292-110-010(4))

**Question:** What are the guidelines on Internet use?

**Answer:** Any personal use of state provided Internet access must be both brief and infrequent and meet all the conditions in the de minimis use rule. (WAC 292-110-010(3)(a)) Extensive personal use of state provided Internet access is not permitted. In addition, your agency may have more stringent policies regarding personal use of the Internet, so please review them before using the Internet. The following examples address uses of the Internet:

**Example A:** Several times a month an employee quickly uses the Internet to check his or her children's school website to confirm if the school will end early that day. The transaction takes about five minutes. This is not an ethical violation. The use is brief and infrequent, there is little or no cost to the state, and the use does not interfere with the performance of official duties.

**Example B:** An employee uses the Internet to manage her personal investment portfolio and communicate information to her broker. This is an ethical violation. Using state resources to monitor private stock investments or make stock trades, are private activities that can result in a private financial benefit or gain. Allowing even an occasional or limited use of state facilities to facilitate a private financial gain undermines public confidence in state government.

**Example C:** An employee spends thirty to forty minutes looking at various web sites related to a personal interest. This is an ethical violation. The use is not brief and can interfere with the performance of state duties.

**Example D:** An employee visits several humor and joke sites. While at a site, he/she downloads a joke file and e-mails it to several co-workers. This is an ethical violation. By e-mailing a file to co-workers the employee disrupts other state employees and obligates them to make a personal use of state resources. In addition, downloading files and distributing them to co-workers can introduce a computer virus, which can compromise state databases.

**Question:** Can a state employee or state officer access their Linked In, Facebook or Twitter accounts or pages from their state computer if the access is for the purpose of promoting their state agency or state web site and directly linked to their job?

**Answer:** If the use was for part of the employee or officer's official duties, there is no ethical issue. If it was not for an official duty, it would fall under the de minimis use rule.

**Question:** What do I do if I access the wrong Internet site?

**Answer:** Don't panic! The best thing to do is to back out of the site and remember what it was that got you there and don't go back. Everyone makes this kind of mistake. It is also advisable to contact your supervisor or information systems staff to notify them of your mistake.

**Question:** May a state agency maintain a direct internet link to private non-governmental web sites?

**Answer:** 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.

**Question:** 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?

**Answer:** 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.

## **Use of State or Resources to Support Charities**

**Question:** Can I use state resources to support charities?

**Answer:** The limited use of state resources to support charities may be allowed if an agency head or his/her designee, approves the activity as one that promotes organizational effectiveness. Approval may be in the form of a specific policy that establishes guidelines for limited use of state resources. (See WAC 292-110-010(2)(b))

### **Examples of limited use:**

- Sending an e-mail to notify employees of a blood drive.
- A bake sale to support an Adopt-A-Family Program. Here, the baking would be performed at home and after working hours. The baked goods are then displayed for purchase during break times and the lunch hour. When gifts are purchased for the family, the purchases are made after working hours.

**Question:** Is there anything employees shouldn't do while conducting charity work on state time?

**Answer:** Any use of state resources that results in an expenditure of funds should be avoided. Consider this scenario: a group of employees spend 6 working hours of staff time a week for over a four-week period to plan a charitable fund-raiser, and use the computer, fax, and copier to produce fund-raising materials. This is an expenditure of state funds that would not be considered a de minimis or limited use of state resources.

**Example:** An employee is active in a local PTA organization that holds fund-raising events to send children to the nation's capital. Although a parental payment of

expenses for the trip is expected, the more raised through individual contributions, the less the parent must pay. The employee uses agency e-mail to solicit contributions to the fund-raiser from a broad distribution list of co-workers. The e-mail asks each recipient to pass along the e-mail to other state employees. This is an ethical violation. The employee is using state resources to promote an outside organization and a private interest. By sending the e-mail to other state employees and asking state employees to pass the solicitation along, the employee is asking other state employees to improperly use state resources in a manner that interferes with the performance of official duties.

**Question:** May state officers or employees use state resources to coordinate state-wide volunteer construction projects?

**Answer:** 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.

**Question:** May state officers or employees use state resources to coordinate an occasional fund-raising activity for charity?

**Answer:** 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.

**Question:** Can I sell items from my kid's charitable organization such as Girl Scout cookies and/or school fundraisers that sell candy or magazines in the workplace?

**Answer:** You may be able to, if it falls within "organizational effectiveness." That means that the agency head has approved the activity and acknowledges that it relates to an agency's mission and encompasses activities that enhance or augment the agency's ability to perform its mission.

**Question:** What about the Combined Fund Drive?

**Answer:** The Combined Fund Drive is somewhat different than other independent charitable organizations because it has been established by the state legislature. Therefore, it is part of the official duties of those employees who are assigned by the agency to conduct the Drive. Fund Drive coordinators should confine the time and effort spent conducting the drive to agency guidelines. (See WAC 292-110-010(3)(b) and EEB Advisory Opinion 00-09)

**Question:** What about the employees who are not officially assigned to conduct the Combined Fund Drive?

**Answer:** As noted above with charitable groups, the use of state resources to support the Combined Fund Drive charities should be reasonable, involve little or no cost to the agency, and

should not disrupt the conduct of official business in state offices. (See WAC 292-110-010(3)(b)) and EEB Advisory Opinion 96-11)

**Question:** Can an agency participate in a commercial activity that benefits the Combined Fund Drive?

**Answer:** State agencies should avoid direct involvement in commercial activity even if the proceeds may benefit the Combined Fund Drive. Examples of improper direct involvement include distributing commercial product sales brochures and order forms to agency employees, collecting product order forms in the workplace or on state paid time, and distributing products in the workplace or on state paid time.

**Question:** Can agency employees solicit donations for charitable events from outside businesses?

**Answer:** The state's ethics law contains a very strong presumption against solicitation by any state officer or state employee for any purpose, including charitable events. Solicitation by state employees can create the appearance that a donation might result in favorable treatment from the state, whereas a failure to donate might result in unfavorable treatment. A state officer or state employee whose official duties include regulation or the contracting for goods and services needs to be especially careful about solicitation. State officers and employees may not use their official state positions to solicit goods and services from private organizations and businesses. The following examples address solicitation on behalf of charitable organizations. (See RCW 42.52.070, RCW 42.52.140 and RCW 42.52.150(4))

**Example A:** The head of a state agency purchasing office sends a letter requesting gifts or donations for use at a CFD kick off luncheon to several vendors who provide goods and services to the agency. This is an ethical violation. While the purchasing supervisor will not personally benefit from the gifts, the CFD charities and the gift recipients would benefit from them. In addition, it would be reasonably expected that vendors who respond favorably to the solicitation did so with the intent to influence the vote, action, or judgment of the purchasing supervisor. (See RCW 42.52.070 and RCW 42.52.140)

**Example B:** The head of a state agency sends a letter to local businesses, including several vendors who provide goods and services to the agency, requesting gifts or donations for a use that will benefit agency employees and a private charity. This is an ethical violation. While the agency head will not personally benefit from the gifts, the private charity would benefit from them. In addition, it would be reasonably expected that vendors who respond favorably to the solicitation did so with the intent to influence the vote, action, or judgment of the agency head. This expectation in the vendors would be true even if the agency head did not routinely participate in such decisions. (See RCW 42.52.070 and RCW 42.52.140)

**Example C:** On their lunch break a group of agency employees who work for an agency that regulates or administers benefits for private business, but who are not

personally involved in regulating or administering benefits for their agency, solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family. When soliciting the gifts they voluntarily inform the businesses that they are employed by their state agency but are soliciting on behalf of the sponsored family or Adopt-a-Family. This is an ethical violation. By stating that they are employed by an agency that regulates or administers benefits for the private businesses they are using their state positions to influence the private businesses and support the private charity. (See RCW 42.52.070)

**Example D:** On their lunch break or after work a group of agency employees who are involved in regulating or contracting on behalf of their agency solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family. They do not solicit from agency vendors or other individuals with whom they conduct state business. When soliciting the gifts they tell the businesses that they are soliciting on behalf of the sponsored family or Adopt-a-Family. This is not an ethical violation. By soliciting on behalf of the private charity and not a state agency they are not using their state positions to influence the private businesses. In addition, the employees are not using state paid time or resources for the solicitation.

**Example E:** After work or on the weekend a group of state employees solicit holiday gifts on behalf of a family sponsored by Adopt-a-Family or their local private school. They solicit door to door in their neighborhood and do not solicit from agency vendors or other individuals with whom they conduct state business. When soliciting the gifts they indicate that they are soliciting on behalf of the private school, the sponsored family, or Adopt-a-Family. This is not an ethical violation. The employees are not using their state positions to influence the private businesses and are not using state resources to support the private charities.

**Question:** What other considerations should you take into account when conducting charitable solicitations?

**Answer:** Avoid direct personal solicitations of your co-workers and colleagues and opt for voluntary participation. Managers and supervisors should always avoid direct personal solicitations of employees who work under their supervision.

**Question:** If you can't solicit, then what can you do?

**Answer:** A state employee may purchase a gift certificate or other item for its fair market value and donate the item to an agency-sponsored charitable event.

## **Telecommuting**

**Question:** Can I have our IT department work on my personal computer to fix a problem that occurs while I am working from home on my own personal computer to access our agency's network?

**Answer:** It would depend upon the type of problem that is occurring. If your computer malfunctions while you are conducting official business on your personal computer, your agency's IT department would be able to assist you in troubleshooting the problem. If the problem is with any agency-provided software or hardware, they would be able to replace or repair that portion, but if the problem is strictly with your own computer, you would have to repair that at your own expense.

**Question:** Can I bring my personal laptop it into work and have our IT department work on it if I use it for agency work and I experience a virus or other problem?

**Answer:** No, you would need to repair your personal laptop on your own regardless of how much you used it for agency work.

**Question:** If an agency substitutes a state officer's or employee's personal computer equipment with state equipment so that the officer or employee can work at home, may the officer or employee make the same private use of the replacement state equipment that he or she could make of his or her personal equipment?

**Answer:** Yes. RCW 42.52.160 and WAC 292-110-010 limit the private use of state computer equipment. However, if an agency, for a legitimate agency purpose, substitutes state equipment for an officer's or employee's personal equipment, the officer or employee may use the state equipment on the same basis that he or she could use his or her personal equipment.

**Question:** Can I use my own iPhone/cell phone for both personal and work related purposes?

**Answer:** Yes, you may use your personal iPhone/cell phone for state business, but you cannot use a state iPhone /cell phone for anything other than use that would qualify under the de minimis use standard. There may be adverse tax implications for using a state iPhone/cell phone for personal use. Also refer to your agency's policy regarding personal use.

## **Job hunting**

**Question:** Can employees use state resources (time and computer) to fill out state applications, prepare resumes for state employment, and then apply for state jobs?

**Answer:** Yes, under WAC 292-110-010(2)(a)(v), this would be considered a permitted use. In addition, under WAC 357-31-325, a supervisor must allow a state employee to take paid leave to take state exams and participate in state interviews, but depending on agency policies, can allow the state employee the ability to complete these tasks without taking leave. However, an agency does not have to grant paid leave if the time requested by the state employee becomes excessive.

**Question:** Can employees use state resources (time and computer) to apply for, prepare resumes and other correspondence for jobs outside of the state system?

**Answer:** No, state employees and officers must use their own personal resources and time when seeking employment outside of the state system.

## **Miscellaneous**

**Question:** Can I take home an empty box, such as the kind copier paper come in, for personal use?

**Answer:** Yes, if the box merely housed the item that the agency actually needed to use. If the box was purchased by the agency to archive records or for other storage, then the box is considered a state resources and you would not be able to take them home for personal use.

**Question:** Can state employees take home recycled paper that is going to be hauled away by a for fee vendor?

**Answer:** It would depend on the information contained on the paper being recycled. If the information on the paper was confidential, then state employees/officers would not be able to take the paper home – it would have to be hauled away by the vendor where it is shredded. If the recycled paper contained no confidential information, it would at the agency's discretion as to whether it would allow agency employees to take the paper home.

## **Wellness**

**Question:** 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; 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.

**Question:** Can state time be used for exercising as part of an agency wellness effort?

**Answer:** It depends on the program. If the agency is having everyone participate in an exercise at the same time, i.e., an afternoon walk for a wellness initiative, then the exercise would be an activity for organizational effectiveness and use of state time would be permitted. If each agency employee just wanted to exercise individually to get or stay in shape, they would have to accomplish that their own time.

## **Union activities**

**Question:** Can I use state facilities (email, phone, state time) to assist my union?

**Answer:** Although unions are private entities, the official purpose of collective bargaining laws is to enhance the relationship between public employers and their employees. Therefore, an agency may agree to allow individual employees to make certain limited use of

state resources and state paid time for the purposes of the negotiation and administration of collective bargaining agreements.

**Question:** May a state employee use state vehicles or other state resources to attend meetings or conduct union business related to contract negotiation and administration?

**Answer:** 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.

**Question:** Does the Ethics in Public Service Act prohibit certain uses of State facilities by a union?

**Answer:** 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.

### **Banking/Employee Benefits**

**Question:** May a state employee use state provided Internet access to monitor or update account allocations in a state provided retirement benefit plan, or to update personal information regarding other state provided benefits?

**Answer:** Yes, use of state resources, including state provided Internet access, to review and update state provided benefits would not violate the Ethics in Public Service Act. WAC 292-110-010(2)(a)(iv).

**Question:** Can I use the Internet to access my personal bank account to find out my checking account balance?

**Answer:** Yes. This would fall under the de minimis use rule, but please check your agency's Internet use policies. All transactions done on a state computer may be open to public inspection, so there should be no expectation of privacy even when completing personal banking transactions on your state computer.

### **Travel**

**Question:** Can I use the state vehicle to drive to a restaurant at lunch time?

**Answer:** When you are working in the field, you may use a state vehicle to eat at a nearby eating establishment, as long as this use is consistent with management and department policy, and the distance driven is minimal. Use of state vehicles for personal errands is prohibited.

**Question:** Can a state officer or employee use frequent flyer miles earned from official state travel for personal travel?

**Answer:** Yes, with limitations – State agencies may allow state officers and employees to use frequent traveler benefits earned on official travel. While the Ethics Act does not prohibit the personal use of frequent flyer miles earned while conducting official state travel, receiving such rewards is a beneficial interest in a state transaction. Therefore, state officers or employees may not participate in the selection of a carrier when they receive frequent flyer miles for travel on that carrier.

**Question:** Can a state officer or employee use other types of points earned through travel incentive programs for personal use?

**Answer:** Yes, state employees/officer may use points earned, such as motel/hotel point rewards, rental car rewards, and any other travel benefit of a similar nature for personal use.

**Question:** Can a state officer or employee donate airline tickets to a state agency for official state travel by using personal frequent flyer miles?

**Answer:** Yes – The Ethics in Public Service Act does not prohibit a state officer or employee from donating personal property or benefits, such as frequent flyer miles, to a state agency.

**Question:** Can a state officer or employee purchase airline tickets for official state travel using personal frequent flyer miles and then seek reimbursement of that travel payment from the state?

**Answer:** This question is governed by state travel regulations, which provide that personal funds can only be used to purchase airline travel in emergencies.

**Question:** May I use the government rate offered by hotels in I am not traveling on business?

**Answer:** Yes, unless the hotel requires you to be on official business.