

ADVISORY OPINION

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REFERENCES: RCW 42.52.160

SUMMARY OF CHANGES: Amended to update rule reference.

Use of State Resources/Hunters Education Program

QUESTION

Is there a violation of RCW 42.52.160(1) when an employee of one agency uses the computer of that agency to send e-mail as part of his volunteer activities for the Hunter Education Program, which is conducted by another agency?

ANSWER

The answer depends on whether the employing agency approves. There is no violation of RCW 42.52.160(1), so long as the employing agency has no objection to the use of the computer and the e-mail for the volunteer program.

ANALYSIS

This opinion concerns volunteer activities of a state employee related to the Hunter Education Program. RCW 77.32.155 provides that persons buying a hunting license must complete a course in firearm safety. RCW 77.32.155 has been implemented by the Director of the Department of Fish and Wildlife in WAC 232-12-227. The rule provides that the director may designate a state coordinator for the purpose of administering the hunter education program to supply the training required by RCW 77.32.155. Volunteer instructors are certified by the Department. Prior to certification, the Department requires a background check, pre-service training, completion of a written exam, and student teaching.

The issue is whether it is a violation of RCW 42.52.160(1) for a state employee volunteer, who is not an employee of the Department of Fish and Wildlife, to use the employing agency's computer and e-mail to conduct business for the hunter education program. RCW 42.52.160 provides, in 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.

We begin our analysis with two principles. First, RCW 42.52.160(1) prohibits using state resources for private gain. Thus, it would be improper for a state officer or employee to use his or her computer and the e-mail system as part of their volunteer work for some private club or organization. Moreover, a state agency could not permit such private use. Second, under RCW 42.52.160(2) the limitation in RCW 42.52.160(1) does not apply if the use is part of an officer's or employee's official duties. Thus, we concluded in Advisory Opinion 00-09 that RCW 42.52.160(1) did not apply to activities related to the combined fund drive because these activities were part of an employee's official duties.

This case falls in between. The volunteer activity is not performed for a private club or organization. The hunter education program is a function authorized by the Legislature. However, unlike the Combined Fund Drive, activities for the hunter education program are not part of the official duties of an employee working for an agency other than the Department of Fish and Wildlife.

A state employee has no right to use his or her state computer and the e-mail system to do volunteer work that is not part of his or her official duties. However, since the volunteer worker performs a state function, we conclude that the employing agency may permit this use. We emphasize that the employing agency is under no obligation to allow the use of the computer and e-mail system for the hunter education program. Even though the hunter education program is a state function, it is not the function of the employing agency. It is legitimate for the agency to conclude that use of its computer and e-mail system should be limited to carrying out the functions of the agency, not some other state function.