

## ADVISORY OPINION

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NEXT REVIEW: February 2021

REFERENCES: RCW 42.52.160, WAC 292-110-010

SUMMARY OF CHANGES: Amended to reflect changes to WAC 292-110-010.

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### **Use of State Facilities, Including the Internet, to Access State 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, an occasional and limited 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.

#### **ANALYSIS**

In October 2001, the Board received an informal request for an advisory opinion regarding employee use of state facilities to monitor or update account allocations in a state provided retirement benefit plan. In addition to traditional defined benefit retirement plans, e.g., PERS 1 and PERS 2, the state provides a Deferred Compensation Plan (DCP) under which a state employee may contribute pre-tax compensation into a Department of Retirement Systems (DRS) administered account. Starting in 2002, the state started providing a defined contribution retirement plan, Public Employee's Retirement Plan-3 (PERS 3), which allows state employees to place part of their retirement savings in various investment vehicles.

While discussing this matter in its November 2001 meeting, the Board noted that any advisory opinion related to this matter should be broad and comprehensive. At its February 8, 2002 meeting, the Board decided to defer consideration of this request until the Board had adopted new "de minimis" use rules and the state's open period for enrolment in PERS 3 was completed

and any rules related to that program were adopted. On April 19, 2002 the Board adopted new "de minimis" use rules. In addition, PERS 3 open enrollment for current state employees was completed prior to September 2002.

### **The Deferred Compensation Plan, PERS 3, and the Health Care Authority Web-sites**

The legislature authorized DRS, through its administration of the DCP, to enter into contracts with public employees so that those employees may defer, deposit and invest a portion of their income into supplementary retirement accounts. This is a self-directed retirement investment program for public employees, with investment options limited to those that DRS deems to be in the interest of state employees. (See RCW 41.50.770)

In general, DCP account management is not a private open market investment. This program is limited to public employees. Its administration is authorized by statute and subject to public oversight through the statutorily defined responsibilities of DRS, the State Investment Board, and the Employee Retirement Benefits Board. The members of the State Investment Board invest the deferred compensation on the employees' behalf.

In addition, a DCP account is part of a public worker's employment benefits package. For example, the DCP web site allows employees to electronically access the DCP's information and services, just as the Department of Personnel's web site allows employees to review job postings, submit job applications, study and register for training opportunities, and learn about or request assistance from a variety of programs and services available to state employees (such as disability accommodation assistance, recruitment and diversity program specialists, and the Employee Advisory Service). All of these activities are part of the diverse benefits available to state employees, and are directly related to state employment.

The legislature recently created a new retirement plan, the PERS 3 Defined Contribution Program. Unlike DCP, once a member chooses participation in PERS 3, that choice is irrevocable. Under this direction, DRS enters into contracts with public employees who select a contribution rate, and that amount is deducted from their income and invested in one of several investments. Also, unlike DCP, once the contribution rate is chosen, it is irrevocable unless the member changes employers.

Much like DCP, under PERS 3, members have a limited number of investment options and PERS 3 is part of a public worker's employment benefits package. The PERS 3 web-site is an efficient alternative to making phone calls, mailing documents, or taking time to visit the DRS office, as it allows employees to electronically access the PERS 3 information and services without speaking to a DRS employee.

In addition to the DRS operated web-sites discussed above, the Health Care Authority (HCA) allows state employees to update and manage their state provided health care benefits via a web-site that is accessible on the Internet. Like the DRS web-sites, the program provides an efficient

alternative to making phone calls, mailing documents, or taking time to visit the HCA office when making corrections or updating state provided health care benefits.

### **1. The Ethics in Public Service Act Allows for the Occasional and Limited Use of State Resources to Access and Update State Provided Benefits**

The Ethics in Public Service Act prohibits the use of state resources for private benefit or gain, except in the course of official duties, and allows the Board to adopt de minimis use rules. RCW 42.52.160 provides in relevant 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.
- (3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

The corresponding rule generally allows agencies to authorize uses of state resources supporting agency organizational effectiveness.

The Board's rule, however, also prohibits the use of state resources for the private benefit of a state officer or employee. In EEB Advisory Opinion 02-02, the Board advised that using state resources to monitor private stock investments or make stock trades is an ethical violation because the conduct is a private activity that can result in a private financial benefit or gain. The Board further advised that "allowing even an occasional or limited use of state facilities to facilitate a private financial gain undermines public confidence in state government."

The question before the Board is whether state employees may use state resources to access state provided benefits. In addition to their salaries, state employees by statutory authorization receive pension, deferred compensation, health care, and life and disability insurance benefits as part of their compensation packages. Since these benefits are part of the compensation package, becoming and remaining informed regarding the various benefit options is related to the employees' personal finance. Because accessing information and choosing from among the available options is related to private finances and therefore private financial gain, the question is whether use of state resources to manage these benefits is prohibited under RCW 42.52.160.

In EEB Advisory Opinion 02-02A, the Board advised that "organizational effectiveness" relates to an agency's mission and encompasses activities that enhance or augment the agency's ability

to perform its mission. As discussed above, several state agencies that administer public employee retirement plans or administer health care benefits provide for Internet access to investment vehicles or health care benefits for the purpose of efficiently administering those benefits among a statewide workforce. By providing state employees with Internet access to state provided benefits the agencies that administer the benefits are saving resources that would be otherwise used to fully staff traditional methods of administering state provided benefits, such as telephone lines and customer service counters.

Unlike the private financial gains discussed under prior Board opinions, state provided benefits are part of the compensation package and therefore are authorized expenses incurred by the agency in the performance of its mission. Facilitating efficient and cost effective access to state provided benefits promotes organizational effectiveness of both the employer agency and the agency that administers the benefit. Therefore, an occasional and limited use of use of state facilities to review information about state retirement benefits, to make occasional changes to account allocations, or to select among health care benefit options is permitted under WAC 292-110-010 and would not violate RCW 42.52.160.

**2. Employees May Use the Internet to Access, Review, and Update Their State Provided Employment Benefits Even If the Employing Agency Has Not Adopted a Policy Authorizing De Minimis Use of the Internet.**

Internet access to review and update the DRS and HCA web-sites facilitates the efficient administration of employee benefits statewide. Prohibiting some state employees from using agency provided Internet access for this purpose would undermine the efficiencies and savings achieved by widespread access to the web-sites. The Board's advisory opinion is based on the general facts as stated above. The Board does not investigate the facts. Please be aware that modification of the facts, or knowledge of more specific facts or circumstances, might cause the Board to reach a different conclusion. In addition, Board advisory opinions are narrowly drawn to interpret the Ethics in Public Service Act. They do not address whether the proposed action is prudent, good public policy or effective management practice.