

## ADVISORY OPINION

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REFERENCES: RCW 42.52.180

SUMMARY OF CHANGES: Amended to update statutory references.

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### Definition of Legislative Body/Political Activities

#### QUESTIONS

1. Is the Washington State School Directors' Association board of directors an "elected legislative body" as used in RCW 42.52.180(2)(a) and therefore eligible to vote on a motion to support or oppose a ballot proposition in an open public meeting?
2. Is the intent of the state ethics law to limit application of RCW 42.52.180(2)(a) only to the state legislature as the only elected legislative body in state government?
3. Given the structure, authority, and past practice of the WSSDA Board, is it the normal and regular conduct of the board to take positions on ballot measures as authorized by RCW 42.52.180(2)(d)?

#### ANSWERS

1. No. The Washington State School Directors' Association is a state agency under the executive branch of government and is not a legislative body. Therefore, the exception for elected legislative bodies under RCW 42.52.180(2) does not apply.
2. Yes. The state legislature is the only legislative body in state government. The term "legislative bodies" appears under RCW 42.17A.555 and applies to local legislative bodies. RCW 42.52.180 applies only to state officers and state employees. The only state officers that constitute an elected legislative body in state government are members of the state legislature when sitting as the house or senate.
3. Yes, provided that a ballot proposition clearly relates to education policy or the management of the state's school districts and there is no expenditure of public funds to promote or oppose such a ballot proposition. The WSSDA Board may also provide general, factual information to its members on the possible impact of education-related ballot propositions.

## ANALYSIS

The first question we consider is whether the WSSDA Board constitutes an “elected legislative body” and is therefore eligible to support or oppose a ballot proposition under the exception in RCW 42.52.180(2)(a). RCW 42.52.180 prohibits state officers and employees from using facilities and public resources for the purpose of assisting a campaign for election of a person to office or for the promotion of or opposition to a ballot proposition. Under RCW 42.52.180(2)(a) this prohibition does not apply to:

Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view.

The Washington State School Directors Association Board of Directors (“WSSDA Board”) argues that it is an elected legislative body and therefore subject to this exception. Considerations offered in support of this argument are: (1) WSSDA members and its board of directors are elected<sup>1</sup>; (2) state law authorizes the WSSDA to prepare, adopt and repeal a constitution, rules, regulations, and bylaws for its own organization; and, (3) the board exercises general supervision over WSSDA members, effects policies and procedures, approves the annual budget, and controls expenditures.

A determination of whether the WSSDA Board is an elected legislative body does not depend on the election of its members, but rather on whether the fact of election and the duties and responsibilities of the WSSDA Board are sufficient to lay claim that it is an elected legislative body.

Chapter 28A.345 RCW establishes the WSSDA as an “agency of the state” created to coordinate programs and procedures relating to policymaking and to control and manage the school districts. RCW 28A.345.010. The WSSDA is also charged with “preparing and submitting to the superintendent of public instruction, reports and recommendations which pertain to an increase in the efficiency of the common school system.” RCW 28A.345.040. In exercising these functions, the WSSDA Board supervises its members, effects policies and procedures, approves budgets, and controls expenditures. The Board believes that these duties and responsibilities clearly constitute executive functions similar to those exercised by the heads of other executive branch agencies.

In addition, while the term “elected legislative body” is not defined in RCW 42.52, “legislative” is commonly defined as “of or pertaining to legislation,” “decided by or resulting from legislation,” “empowered to create laws,” and “of or pertaining to a legislature.” Webster’s II New Riverside University Dictionary, 685 (1994). Based on these definitions, the WSSDA Board would not be a legislative body because it neither enacts nor is empowered to create laws. Therefore, there are no reasonable grounds to believe that the WSSDA Board is an “elected legislative body” within the meaning of RCW 42.52.180(2)(a).

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<sup>1</sup> The membership of the WSSDA is every school board member from the public common school districts in the state. School board members are elected to four- or six-year terms by the registered voters in each school district. The officers of the WSSDA Board are elected by the entire membership of the organization.

The second issue concerns the question of legislative intent behind the adoption of RCW 42.52.180(2)(a). The WSSDA Board argues that in adopting Chapter 42.52, the legislature authorized legislative bodies to take positions on ballot measures, and that it is unlikely that the legislature meant itself to be the only body encompassed under this provision.

In ascertaining the legislative intent behind RCW 42.52.180, the Board considered the recommendations of the Commission on Ethics in Government and Campaign Practices to the Legislature in its final report issued on January 6, 1994. In discussing the use of public resources for political campaigns, the Commission specifically referenced RCW 42.17A.555, and recommended that the prohibitions contained therein be included in the state's ethics law. The Commission's report also proposed exceptions to the general prohibition for "statewide elected officers and legislators."<sup>2</sup>

Under RCW 42.17A.555(4), the provisions of RCW 42.17A.555<sup>3</sup> do not apply to any person who is a state officer or state employee under RCW 42.52.010, because state officers and state employees are subject to RCW 42.52.180. RCW 42.52.010(18) and (19) respectively define a "state officer" and a "state employee" as:

[E]very person holding a position of public trust in or under an executive, legislative, or judicial office of the state. 'State officer' includes . . . members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work.

[A]n individual who is employed by an agency in any branch of state government. . . .

The only state officers that constitute an "elected legislative body" by definition are members of the legislature when acting collectively as the house and senate. Therefore, the exception under RCW 42.52.180(2)(a) applies only to the state legislature.

The final question for consideration concerns the issue of whether the fact that the WSSDA Board has taken positions on ballot measures in the past is sufficient to establish that such action constitutes "normal and regular conduct" for the purposes of RCW 42.52.180(2)(c). The WSSDA Board relies on King County Council v. Public Disclosure Commission as precedent. In this case, the Washington State Supreme Court held that the King County Council's practice of taking positions on ballot measures was "regular" because the state constitution authorized King County, as a county with a home rule charter, to exercise broad power unless restricted by the state constitution or state law, and because the King County charter provided that the council could make declarations of policy without the force of law. King County Council v. Public Disclosure Commission, 93 Wn.2d 559, 611 P.2d 1227 (1980).

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<sup>2</sup> See the Commission's Final Report, (January 6, 1994), pp. 13-15.

<sup>3</sup> The Public Disclosure Commission enforces the prohibitions in RCW 42.17A.555 for local jurisdictions.

The WSSDA Board is not analogous to the King County Council which is an elected legislative body. As a state agency, the powers of the WSSDA are limited to those expressly or impliedly granted by the state legislature. Pursuant to RCW 28A.345.010, the WSSDA was created to coordinate programs and procedures pertaining to policymaking and to control and manage the school districts. Under RCW 28A.345.030(8), the association is also empowered to provide advice and assistance to local boards to promote their primary duty of representing the public interest. There is no express or implied authority in the statute, however, for the use of public funds to promote or oppose ballot propositions. This includes the use of school district general funds which are used to pay WSSDA dues.

The Board finds that the “normal and regular conduct” exception under RCW 42.52.180(2)(c) would allow the WSSDA Board to take a position on a ballot proposition when the subject of the ballot proposition clearly relates to education policy or the management of the state’s school districts, and when there is no expenditure of public funds to promote or oppose the ballot proposition. The WSSDA Board may also provide general, factual information to its members on the possible impact of education-related ballot propositions.