

ADVISORY OPINION

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REVIEWED: September 23, 2016

NEXT REVIEW: September 2021

REFERENCES: RCW 42.52.160, WAC 292-110-010

SUMMARY OF CHANGES: Updated rule references.

Authorizing Wellness Organizations to Sell Products

QUESTION

May a state employee authorize a wellness organization to sell products during meetings, even if the meetings are held in accordance with the agency's wellness policy?

ANSWER

No, to allow an organization to sell products simply as a convenience for employees would undermine the Ethics in Public Service Act.

ANALYSIS

King County entered into a contract with Weight Watchers North America, Inc. (WWNA). The contract allows WWNA to conduct weight loss meetings in King County Offices. The contract also allows WWNA to store products in King County offices and sell the products during the meetings. The Washington State Health Care Authority entered into a cooperative purchasing agreement with King County which allows WWNA to come into state offices and conduct meetings and sell products under the same contract.

WWNA has products available to assist its members in their weight loss program. The products include food items, cook books, food scales, etc. The products are available through WWNA offices, the Internet, and at retail stores. There is no requirement that members use the official products of WWNA in order to become a member or attend meetings.

The Ethics in Public Service Act was enacted to protect the interests of the state. It prohibits state officials or employees from using state resources for private or personal business gain. RCW 42.52.160. In establishing rules that correspond with the statute, the Board adopted WAC 292-110-010, which sets the ground rules for de minimis use of state resources. The rule allows a state employee to use state resources under limited circumstances; that is the use is of little or no cost to the state, is brief in duration, occurs infrequently, does not interfere with the performance of any state officer's or employee's official duties; does not compromise the security or integrity of state property, information or software; the use is not for the purpose of conducting an outside business; and the use is not for supporting or promoting the interests of or soliciting for an outside organization.

In 1996, the Board adopted Advisory Opinion 96-03 which allows use of staff time and other resources to support recreational activities which are part of the agency's wellness program. When adopting that opinion, the Board stated that: "the Legislature has recognized the value of work place employee wellness programs; and that the Department of Personnel has encouraged such wellness programs...In 2007, the Legislature amended RCW 41.05.540 and created WA Wellness. This statute requires WA Wellness to establish and maintain a state employee health program focused on reducing health risks and improving the health status of state employees and others."

The Board believes that the wellness meetings are considered "official state business" because they are intended to promote the well-being of employees. It may benefit the employee to use the official products of the organization, but to have them available at the meetings is merely a convenience to the member/employee. The Board also believes that mere convenience to the employee is not sufficient enough reason to allow state resources to be used for private business gain.