

ADVISORY OPINION

APPROVAL DATE: January 8, 2010

NUMBER: 10-01

STATUS: **Current**

REVIEWED: June 21, 2017

NEXT REVIEW: June 2022

REFERENCES: RCW 42.52.160, WAC 292-110-010

SUMMARY OF CHANGES: Updated analysis to reflect current use of state resources rule.

Use of Resources for Wellness Program

QUESTION

Does the use of a state agency's parking lot as a delivery site for weekly pre-paid, pre-packaged local farm produce to be picked up by agency employees violate the Ethics in Public Service Act, RCW 42.52 (the Act) or its rules?

ANSWER

No, if the employee merely goes out to the delivery site, takes their box and stores it until they leave work for the day.

ANALYSIS

Washington Wellness, a statewide wellness initiative to improve the health of Washington State employees resides within the Health Care Authority (HCA). The goal of Washington Wellness is to make healthy choices easier for state employees, retirees, and their families. Most of their work is behind the scenes, helping to change state worksite policies and working with state agency senior leaders and wellness coordinators to affect change at the agency level.

According to the HCA, eating recommended amounts of fruits and vegetables reduces chronic disease and since prevention costs less than treating illnesses caused by an unhealthy diet, offering convenient access to fruits and vegetables helps employees adopt healthy eating habits. Healthier employees are more productive and miss work less often.

Washington Wellness learned that local farms offer a subscription service that delivers a weekly produce box to subscribers. State employee may take advantage of this subscription service, called "Community Supported Agriculture" or CSA. Employees sign up and pay for the subscription. Then the farmer delivers the boxes of produce on a specified day and time to the

state governmental organization. The participating employees pick up their box of produce and take it with them when they leave work. The boxes are wax coated and designed to hold the produce without additional refrigeration.

The distributor would use a state agency parking lot as the delivery site to drop off the boxes of fresh produce to a group of state employees on a weekly basis. This service would be offered as a subscription only service that is managed via a competitively bid contract made by the agency with local farmers. Based upon a pre-paid agreement, the local farmer would package fresh, locally grown produce into boxes that would be delivered to agency subscribers at their place of employment once per week at a designated time.

Wellness programs are statutorily authorized under RCW 41.04.362, which allows the Department of Personnel to develop and administer a voluntary employee wellness program. This law, passed in 1987, was based upon the findings of the legislature that:

(1) Improved health among employees will result in a more productive workforce, better morale, reduced stress, lower injury rates and absenteeism, and improved recruitment and retention rates;

(2) A substantial amount of illness and injury in the workforce is preventable because it results from lifestyle decisions;

(3) Illness and injury among state employees can be reduced if employees engage in healthier lifestyles.

The state, as an employer, desires to foster a working environment that promotes the health and well-being of its employees. Therefore, it is the purpose of this act to establish a state employee wellness program. "Wellness program" means those policies, procedures, and activities that promote the health and well-being of state employees and that contribute to a healthful work environment.

In AO 96-03, the Board opined that de minimis use of state resources to support recreational activities as part of a wellness program had already been addressed in WAC 292-110-010 because it allowed for de minimis use of state resources.

WAC 292-110-010 allows the use of state resources for wellness activities under (3)(b), which states that "a state officer or state employee may use state resources for wellness...activities as long as use conforms with" the de minimis use section of the rule. ," The de minimis use section, WAC 292-110-010(3)(a) states that "a state officer or state employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;

- (iv) The use does not interfere with the performance of any officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

In this case, the Board understood that the state employee merely had to go out to the delivery site, take their box and store it until they left work for the day. It would be up to the agency to determine how, or if, to store boxes for the employees and how to make this service available to all agency personnel so as not to violate RCW 42.52.070.

This 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.