

Chapter 292-110 WAC

AGENCY SUBSTANTIVE RULES

WAC

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WAC 292-110-010 Use of state resources. (1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(2) Permitted uses.

(a) Use of state resources for official state purpose. "Official state purpose" includes use of state resources to conduct official duties, activities reasonably related to the conduct of official state duties, activities related to state employment, and activities otherwise allowed by statute. Examples of official state purposes include:

(i) Training and career development approved by the employing agency under RCW 41.06.410;

(ii) Membership or participation in professional associations that enhance job-related skills of the state officer or employee, so long as use of state resources for this purpose has been authorized in writing;

(iii) State or agency sponsored health, safety, or diversity fairs;

(iv) Management of or access to state-provided or state-sponsored benefits, including health, deferred compensation, insurance, retirement, and the employee assistance program;

(v) Searching and applying for state jobs, including taking an examination or participating in an interview; and

(vi) Placement of nongovernmental web page links on an agency web site for official state purposes as long as the use does not violate RCW 42.52.180.

(b) **Agency approved use.** An agency head or designee may authorize limited use of agency staff time and resources for the following uses as long as that use is specifically authorized in an agency policy and conforms to that policy:

(i) Supporting, promoting, or soliciting for charitable activities;

(ii) Employee recognition, including birthday, retirement, wedding/baby showers, or other similar celebrations;

(iii) Activities supporting agency organizational effectiveness provided the agency's policy allowing use of state resources for such purposes is approved by the executive ethics board;

(iv) State or intermittent agency sponsored health activities, for example, vaccinations, diabetes screenings, cholesterol screenings; or recording participation in an agency or PEBB sponsored wellness program.

(3) **Permitted personal use of state resources.** This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or 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 state 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 a private financial gain; and

(vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

(b) A state officer or employee may use state resources for wellness or combined fund drive activities as long as use conforms with (a) of this subsection or as authorized in state law and rule.

(4) **No expectation of privacy.** Technologies such as electronic mail, facsimile transmissions, the internet, and voice mail may create an electronic record. This is what separates these from other forms of communication such as a telephone conversation. The ethics rules do not distinguish between the various forms of communication. Electronic records are reproducible and therefore cannot be considered private. Such records may be subject to disclosure under the Public Records Act, or may be disclosed for audit or legitimate state operational or management purposes.

(5) **Reimbursement for personal use.** In some limited situations, such as officers or employees working at remote locations, an agency may allow reimbursement for limited personal use of state resources by the state employee or officer.

(6) **Agency policies.** Agency policies that are approved by the board qualify for "safe harbor" under WAC 292-120-035. Nothing in this section is intended to limit the ability of an agency to adopt policies that are more restrictive. However, violation of a more restrictive agency policy by itself will not constitute a violation of RCW 42.52.160, even if it would constitute a violation of agency policy.

(7) **Advisory opinions and frequently asked questions.** The executive ethics board publishes advisory opinions interpreting the Ethics in Public Service Act and/or its rules and provides answers to frequently asked questions regarding the use of state resources that can be found at www.ethics.wa.gov.

[Statutory Authority: RCW 42.52.16 [42.52.160], 42.52.360. WSR 16-03-052, § 292-110-010, filed 1/15/16, effective 4/1/16. Statutory Authority: RCW 42.52.360 (2)(b). WSR 09-16-046, § 292-110-010, filed 7/28/09, effective 8/28/09. Statutory Authority: RCW 42.52.360 (2)(b), 42.52.160(3). WSR 02-07-074, § 292-110-010, filed 3/18/02, effective 4/18/02; WSR 98-

08-054, § 292-110-010, filed 3/27/98, effective 4/27/98. Statutory Authority: RCW 42.52.160(3). WSR 96-01-036, § 292-110-010, filed 12/13/95, effective 1/13/96.]

WAC 292-110-020 Working hours. (1) Nothing in RCW 42.52.180(1) or this rule prohibits a state officer or state employee from assisting in a campaign during nonworking hours provided that the state officer or state employee who engages in activity that would fall under RCW 42.52.180(1) during nonworking hours does not use any facilities of an agency.

(2) Some state officers and state employees occupy positions that have fixed schedules with the same beginning and ending times. For state officers and state employees with fixed schedules, working hours are the hours between the starting and ending times of their scheduled working hours. State officers and state employees with fixed schedules may not engage in activity that would fall under RCW 42.52.180(1) during these fixed working hours, unless they are on a lunch break under subsection (5) of this rule or on leave under subsection (6) of this rule.

(3) Some state officers and state employees occupy positions that do not have fixed schedules with the same starting and ending times. For state officers and state employees who do not have fixed schedules, working hours are defined as:

(a) The hours set forth in any policy on working hours adopted by their agency; or

(b) If the agency has not adopted a working hours policy, 8:00 a.m. to 5:00 p.m. Monday through Friday; or

(c) The work schedule for the state officer or state employee approved by their agency.

(4) Working hours do not include state legal holidays unless the state officer's or state employee's work schedule requires the state officer or state employee to work on a state legal holiday.

(5) Working hours do not include the time designated for a state officer's or state employee's lunch break. A lunch break is between 12:00 p.m. and 1:00 p.m., unless the agency has designated a different time in a working hours policy or has approved a different lunch break as part of the state officer's or state employee's work schedule. If a state officer or state employee engages in activity that would fall under RCW 42.52.180(1) during the lunch break, the state officer or state employee may not make use of any of the facilities of the agency.

(6) Working hours do not include the time in official leave status. If a state officer or state employee engages in activity that would fall under RCW 42.52.180(1) while on leave, the state officer or state employee may not make use of any of the facilities of the agency.

(7) The definition of working hours also includes any time a state officer or state employee is actually working; for example overtime.

(8) The governor, lieutenant governor, secretary of state, treasurer, auditor, attorney general, superintendent of public instruction, commissioner of public lands, and the insurance commissioner are elected to office and hold office for a term of four years and until their successors are elected and qualified. Since these officers are elected to a term of office, they do not have working hours and may engage in activity that would fall under RCW 42.52.180(1) at any time. However, if

these officers engage in activity that would fall under RCW 42.52.180(1), they may not make use of any facilities of an agency except as provided in RCW 42.52.180(2).

[Statutory Authority: RCW 42.52.360. WSR 18-11-062, § 292-110-020, filed 5/14/18, effective 6/14/18. Statutory Authority: RCW 42.52.180(1) and 42.52.360(2)(b). WSR 96-22-030, § 292-110-020, filed 10/30/96, effective 11/30/96.]

WAC 292-110-030 Measurable expenditure. For purposes of RCW 42.52.180(2)(b) "measurable expenditure" means any separately identifiable cost or specific portion of a cost that is beyond the normal and regular costs incurred by the agency in responding directly to a specific inquiry from the media, a constituent, or any other person.

[Statutory Authority: RCW 42.52.360. WSR 18-11-062, § 292-110-030, filed 5/14/18, effective 6/14/18. Statutory Authority: RCW 42.52.180(2)(b) and 42.52.360(2)(b). WSR 96-22-029, § 292-110-030, filed 10/30/96, effective 11/30/96.]

WAC 292-110-050 Advisory opinions and informal staff analysis. State officers and state employees are encouraged to seek an advisory opinion whenever they have questions concerning situations that implicate the Ethics in Public Service Act and corresponding rules. Advisory opinions are intended to provide guidance to a state officer or state employee in advance of an action or decision and prevent ethics violations.

(1) Requests for advisory opinions, if not issued in response to a motion by the board, must be written and addressed to either the chair of the board or the executive director. Each request should provide sufficient information and circumstances to enable the board to evaluate the request.

(2) The executive director will acknowledge a request for an advisory opinion within fifteen calendar days of receipt. Persons requesting advisory opinions will be notified of the status of the request at thirty day intervals until final action is taken.

(3) The board will either:

(a) Deny the request and state the reason(s) for the denial; or

(b) Issue a written advisory opinion.

(4) An advisory opinion is final when it has been approved by the board.

(5) A person requesting an advisory opinion may, after receiving the board approved opinion, petition the board for reconsideration within thirty days of the approval date of the advisory opinion if the person believes that the advisory opinion is erroneous in factual detail. A petition for reconsideration must be written and must briefly state the errors of fact. The board may deny the petition if it lacks merit, or if the person who submitted the request provided erroneous information to the board.

(6) If a state officer or state employee receives an advisory opinion and fails to make a good faith effort to follow its guidance, the board will give this fact weight when considering a complaint alleging a violation based on the advice received.

(7) It is the responsibility of the executive director to provide ethics advice to any state officer, state employee, or other person; however, a state officer, state employee, or other person may only rely on written ethics advice. In pro-

viding such advice, the executive director may issue a written nonbinding staff analysis. A nonbinding staff analysis is intended to provide ethics guidance and advice in an expeditious manner, but does not substitute for a formal advisory opinion from the board. The executive director will provide a disclaimer to the person requesting the nonbinding staff analysis that the advice is solely the opinion of the executive director and not the opinion of the board or in any respect binding on the board. Only advisory opinions issued by the board and complaints decided by the board may be relied on for determining how the board will interpret a provision of the Ethics in Public Service Act.

(a) In considering a complaint alleging a violation, the board will give weight to the fact that the person charged in the complaint relied in good faith on written advice from the executive director.

(b) The board may review staff analyses provided under this subsection and may approve or disapprove of any advice provided. However, any such approval or disapproval is limited to whether staff had reasonable grounds for the advice.

[Statutory Authority: RCW 42.52.360, WSR 18-11-062, § 292-110-050, filed 5/14/18, effective 6/14/18. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425, WSR 01-13-080, § 292-110-050, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b) and (c), WSR 98-03-045, § 292-110-050, filed 1/15/98, effective 2/15/98.]

WAC 292-110-060 Current state officers and employees contracting with state agencies. (1) **Approval required** - Under RCW 42.52.120(2), a state officer or state employee must receive board approval before entering into, or obtaining a beneficial interest in, a contract or grant with a state agency only if the process for awarding the contract or grant was not open and competitive, or, whenever only one bid or application was received. The review of the contract or grant is to determine whether performance under the contract or grant by the state employee or state officer is in accordance with the Ethics in Public Service Act.

(2) **Application for approval** - State officers and state employees seeking the approval of the board for a contract or grant application, must provide the following information to the executive director no later than thirty days prior to the commencement of the contract or grant:

(a) A description of current official duties and responsibilities;

(b) A statement of the work to be performed and a copy of the contract or grant;

(c) The duration and dollar value of the contract or grant, if applicable;

(d) A statement that no state resources will be used to perform or to fulfill the contract or grant;

(e) A description of how the work will be performed without the use of state resources; and

(f) A statement that the employing agency has reviewed or approved the outside contract or grant under applicable rules or policies, except when requesting a conditional approval as provided in subsection (3)(b) of this section.

(3) **Approval process** - The executive director will review the contract or grant application and related documents and determine whether there could be a potential conflict with RCW 42.52.120(1) or other applicable provisions

of the Ethics in Public Service Act. If the executive director determines:

(a) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director will approve the contract or grant application;

(b) There would be no potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW but the contract or grant application has not been approved by the appointing authority, the executive director may conditionally approve the contract or grant application; or

(c) There could be a potential conflict under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, the executive director will refer the matter to the board for approval or disapproval.

(4) **Contract or grant amendments.** If a contract or grant has been amended or the scope of work altered, and the effect of the amendment or alteration may create a potential conflict of interest under RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW, a state officer or state employee must resubmit the contract or grant to the board at least fifteen days prior to commencement of work under the amended or altered contract or grant.

(5) **Series of similar contracts or grants.** If a state officer or state employee anticipates receiving a series of substantially identical contracts or grants with a state agency, the state officer or state employee may request that the board preapprove such contracts or grants. Preapproval will be effective for the period of one calendar year, after which the state officer or state employee must resubmit the request.

(6) **Exemptions, preapproved contracts or grants.** A state officer or state employee who has a contract or grant or a beneficial interest in a contract or grant which is preapproved by the board under this section is not required to file an application for approval of the contract or grant. However, a state officer or state employee is responsible for determining that the contract or grant would not conflict with RCW 42.52.120(1) or other applicable provisions of chapter 42.52 RCW. Provided that the applicable conditions in RCW 42.52.120(1) are met, the following contracts or grants are preapproved by the board:

(a) A contract or grant in which a state officer or state employee receives assistance through state programs or federal programs administered by the state when they are entitled to receive such assistance by law and on the same basis as similarly situated citizens, and when the state officer or state employee does not exercise discretionary judgment with regard to an assistance program for which he or she is otherwise eligible;

(b) A contract to perform teaching duties at a community college, vocational-technical school, or institution of higher learning, provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract of employment;

(c) A contract held by a spouse, in which the state officer or state employee has a beneficial interest, with a state agency, provided that the state officer or state employee did not participate in the contract;

(d) A contract that was received by a state officer or state employee of an institution of higher education to provide expert witness services in state litigation provided no state resources are used to perform the duties; there is no conflict with the performance of official duties; and the state officer or state employee did not use his or her official position to influence the contract.

(7) **Filing required** - Final contracts or grants reviewed under this rule must be filed with the board within thirty days of execution.

[Statutory Authority: RCW 42.52.360. WSR 18-11-062, § 292-110-060, filed 5/14/18, effective 6/14/18. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.120(2). WSR 04-18-019, § 292-110-060, filed 8/23/04, effective 9/23/04. Statutory Authority: RCW 42.52.360 (2)(b) and 42.52.425. WSR 01-13-080, § 292-110-060, filed 6/19/01, effective 7/20/01. Statutory Authority: RCW 42.52.360 (2)(b). WSR 98-04-001, § 292-110-060, filed 1/21/98, effective 2/21/98.]