



Washington State Executive Ethics Board

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Executive Ethics Board News

Linnaea Jablonski, Chair
Mike Connelly, Vice Chair
Neil Gorrell, Member
Martin Biegelman, Member
Matthew Williams, Member

January 8, 2010

The Executive Ethics Board (Board) met on Friday, January 8, 2010. Mr. Biegelman appeared by phone; all other members attended in person. Others attending included: Melanie de Leon, Executive Director, Ruthann Bryant, Board Secretary, Nancy Lewin and Sue Jones, Board Investigators, Mickey Newberry, AAG Prosecutor and Jerry Anderson, Senior AAG, Board Counsel. Other members of the public also attended.

Enforcement

An administrative hearing regarding EEB Case 08-128 was continued until the September 10, 2010 meeting.

Board Action:

- A. The Board heard and approved the Attorney General's Office Use of Resources policy.
- B. The Board heard and approved the Department of Ecology's Prohibiting Private Use of State Resources policy.
- C. The Board discussed and provided formal opinions on the following issues:
 1. Whether Washington Horse Racing Commission (WHRC) employees and commissioners may bet on simulcast races without violating RCW 42.52.020. The Board reviewed and discussed RCW 42.52.020 and provisions of RCW 67.16 prior to making their decision. Based upon RCW 67.16 as it is currently written, the Board determined that: (1) simulcast races fell under the current definition of a race meet and (2) simulcast races are conducted "under the authority of the commission" because WHRC regulated the parimutuel wagering system and was the sole authority to approve or disapprove the transmission of a simulcast race to Washington state locations. Based upon this determination the Board opined that WHRC Commissioners and employees would violate RCW 42.52.020 if they bet on simulcast races.
 2. Whether a wellness program that would use 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 would violate RCW 42.52.160 or WAC 292-110-010. In Advisory Opinion 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 when (a) there is no cost to the state; and (b) such use does not interfere with the conduct of state business. The same rule permitted de minimis use of state resources when there is a public benefit, direct or indirect.

The current Board opined that WAC 292-110-010 still allows use of state resources for wellness activities under:

(2)(b). An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty; and

(2)(d). A state officer or employee may make an occasional but limited personal use of state resources 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; and
- v) The use does not compromise the security or integrity of state property, information, or software.

The activity presented to the Board consisted of the use of an agency parking lot as the delivery site for local farmers to use to drop off boxes of fresh produce to agency 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. The farmers then package fresh, locally grown produce into boxes that are delivered to agency subscribers at their place of employment once per week at a designated time.

The Board understood that the 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.

3. Whether off-duty Washington State Patrol ("WSP") personnel could be permitted to participate in Special Olympics functions while in uniform without violating RCW 42.52.160 or WAC 292-110-010. Under WAC 292-110-010(2), an agency head or designee may authorize the use of state resources for activities that promote organizational effectiveness. Under Advisory Opinion (AO) 2002-02A, "organizational effectiveness" relates to an agency's mission and encompasses activities that enhance or augment the agency's ability to perform its mission. The Board opined that state agencies may allow employees to participate in activities that are not official state duties but that promote organizational effectiveness by supporting a collegial work environment. So long as the employees who participate in the activity limits their use of state resources, then these activities would not undermine public confidence in state government.

The AO further stated that while the Ethics Act normally prohibits the use of state resources to support outside organizations or groups, including charities, unless the support is part of the agency's official duties, WAC 292-110-010 allows agency heads to nevertheless approve a de minimis use of state resources for activity that promotes organizational effectiveness even if that activity may incidentally support a private organization.

In this case, the agency head has specifically allowed uniformed personnel to wear the WSP uniform during specified off-duty functions under policy 16.00.030. This designation by the agency head falls under the exception delineated in WAC 292-110-010(5)(b), therefore, the Board opined that WSP personnel may wear their uniforms when participating in Special Olympics functions without violating the Ethics Act.

Meeting agendas can be found at www.ethics.wa.gov under "Meetings."

The next meeting of the Executive Ethics Board is scheduled for March 10, 2010.