

Executive Ethics Board News

Judy Golberg, Chair
Neil Gorrell, Vice-Chair
Evelyn Yenson, Member
Linnaea Jablonski, Member
Mike Connelly, Member

September 15, 2008

The Executive Ethics Board (Board) met on Friday, September 12, 2008. All members were present. Others attending included: Melanie de Leon, Executive Director, Ruthann Bryant, Board Secretary, Mickey Newberry, AAG Prosecutor and Linda Moran, Senior AAG, Board Counsel. Other members of the public also attended.

Enforcement

In lieu of an enforcement hearing, the Board accepted a stipulation from the following:

1. Linda Evans, Region 5 Administrator for DSHS. Ms. Evans agreed to pay a civil penalty of \$5000 plus \$3200 in investigative costs for violating RCW 42.52.020, 070, 140 and 160(1).
2. Karla Short, WSU Enrollment Coordinator. Ms. Short agreed to pay a civil penalty of \$750 for violating RCW 42.52.160(1).

Other

A. The Board issues a formal Advisory Opinion regarding two questions posed by Department of Transportation:

1. May a manager, as part of the state's bargaining team, propose language during collective bargaining that may benefit himself or herself, his or her spouse, or child?
2. May a manager, who on an approved withdrawal from a union after accepting a management position, be a part of the state's bargaining team with that union when the manager may receive a benefit for himself or herself, his or her spouse, or child because the member has the right to voluntarily revert back to a represented position and receive benefits previously negotiated?

The opinion answers the above questions with regards to ferry passes only.

1. A manager negotiating on the agency's CBA team, who had reversion rights to a union position, would not be using their position to give themselves, their spouses, or family members a special privilege if they proposed language during collective bargaining that would allow them to receive a ferry pass without actually reverting back to their prior union position. There is no special privilege they did not already have and that was not already part of the CBA. Retiring managers, on approved withdrawal from the union, have always had the right to a ferry pass by reverting back to the union, so they did not add a new benefit, but merely eliminated the "bumping back" process required to get the ferry pass. In essence, the managers were and are not receiving any new benefit; they were just making the process of conferring a current benefit more efficient.
2. A collective bargaining agreement is not considered "a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee." A CBA is a tentative agreement reached through a negotiation process made up of several individuals who

have no authority to ultimately accept or reject it. In fact the CBA is not binding until the Legislature funds it and the Governor signs it. The collective bargaining process has checks and balances in place to insure that one individual cannot influence the outcome.

B. The Combined Fund Drive (CFD) requested that the Board reconcile and clarify the issue regarding the use of state resources to promote or support agency participation in a commercial activity that benefits the CFD. After additional legal research was completed by Board staff, the Board interpreted “direct solicitation” as anything that is sent to state employees or is in state facilities that contains specific logos for the commercial organization that is providing the service/product/discount. For example, having containers located in state facilities to collect toner cartridges for resale with the reseller’s logo on the container would be considered direct solicitation and would violate the Ethics Act. However, if the container had no logo on it, or if it was the container of a recycler, not a reseller, it would not violate the Act.

C. The Board deliberated on whether state agencies have the authority to contract with a paid speaker allowing the speaker to bring and sell items (books, CD, etc.) to the audience. The Board held that a contract with a speaker may contain the ability for the state to purchase books or CDs to be given to state employees, but that agencies could not contract with speakers to allow them to bring and sell books/CDs or other products directly to state employees at any time during their presentation.

E. Another topic discussed by the Board was whether a state agency may provide a list of all known discounts offered to state employees on their intranet sites as long as they did not comment about the vendors, i.e., promote or support the vendor or the discount. After much discussion, the Board ultimately voted against posting a list.

F. The Board discussed whether a faculty member can require students to use the faculty’s own textbook for the faculty’s class and if the faculty author can accept royalties from the sale of their book to these students. The Board held that a faculty author cannot make a profit on the sale of his textbooks to his students at his own educational institution. This also holds for faculty members who also own the publishing company who manufactures and ships the books. In that case, neither the publisher nor the faculty author can earn a profit on book sales to the faculty’s own students at his own educational institution.

G. A current state employee requested that the Board determine if their proposed post-state employment would be prohibited by the Ethics Act. This employee is the Motorcycle Safety Program Manager for the state and wanted to work for a vendor who provides motorcycle safety classes on military installations to military members. The Board held that this specific scenario did not meet all of the criteria set forth in RCW 42.52.080(1), so this post-state employment would not violate the Act.

H. The Parks Department requested that the Board determine whether state employees living in state provided residences in state parks could put political campaign signs in the window of their residences. The matter was discussed and the Board requested more information regarding whether the residence is considered a state facility or a private residence. The Board will consider this question once the research is completed.

I. In July, the Board began discussions regarding the use of state resources under WAC 292-110-010. The Board staff provided a proposed revision to this rule after the Board reviewed all of the written comments provided to the Board staff by state agencies and listened to many comments by agency employees at the July meeting. The Board approved a draft revision and this revision will now go through the rulemaking process, with an open public meeting regarding this rule most likely being held during the November Board meeting.

J. The Board reviewed and continued working on updating its Mission Statement and Strategic Plan. The Board requested a clean version of the changes made today at their October meeting. These items will be placed on the Ethics website once they are completed.

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

The next meeting of the Executive Ethics Board is scheduled for October 10, 2008.

Training

Recurring 4-hour ethics training is now available! This course will provide an overview of RCW 42.52 and WAC 292-110-010 and is designed for new hires or folks who have not had ethics training in several years. Currently, the training will be held from 8 am to noon at the AGO Tumwater building, 7141 Cleanwater Drive, Tumwater on the following dates: 11/6/08, 1/14/09, 4/16/09, 6/18/09, 8/20/09, 10/15/09. We are working to offer the training in Spokane as well. Any state employee can attend. This training is at no cost to the agency. Board staff will be setting up the registration process by the end of September and will provide this information to agency training managers and all Ethics Advisory Group (EAG) members. CLE credits are being requested.

Staff News

The Ethics Advisory Group will meet on September 23, 2008, a week later than the usual scheduled day.

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

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