

October 1, 1997

Steven R. Rinkle
Assistant County Counsel
Office of County Counsel
Jackson County Courthouse, Room 205
10 S. Oakdale Ave.
Medford, OR 97501

Dear Mr. Rinkle:

This letter is in response to your correspondence, dated September 26, 1997, concerning the propriety of two Jackson County sheriff s deputies retaining \$3,000 in currency they found while searching illegally dumped garbage on public land during the course of their official duties.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 97S-028

STATED FACTS: On August 5, 1997, two Jackson County sheriff s deputies were searching through garbage that had been illegally dumped on public lands owned by either the Bureau of Land Management or the U.S. Forest Service. The deputies were on duty at the time, and as part of their duties were searching through the garbage attempting to find some type of identification so that a citation could be issued. While searching, the deputies found \$3,000 in currency.

The deputies reported that they had found the money, and deposited it with the Jackson County Treasurer. The deputies also gave written notice to the County Clerk and published notice in the local newspaper that the money was found. The deputies took these actions, in part, to comply with ORS 98.005, which concerns the rights and duties of persons finding money or goods. ORS 98.005(2) provides that if no person appears and establishes ownership of the money prior to the expiration of three months after the date of the notice to the County Clerk, the finder shall be the owner of the money.

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RELEVANT STATUTES: The following Oregon Revised Statutes are relevant to the issues addressed herein:

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

QUESTION: If the deputies have complied with all the legal requirements of a finder, and the person owning the money does not appear, may the deputies keep the money that they found?

OPINION: No. ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official office or position to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of official position or office. This means that if people are able to gain financially only because they hold a public office or position, and the same opportunity is not available to persons who are not public officials, they would violate the statute.

The stated facts indicate that the two sheriff's deputies discovered the \$3,000 while they were performing their official duties. It appears that **but for** the performance of their official duties, the two deputies would not have found the money. In addition, the \$3,000 is not official salary, honoraria or reimbursement of expenses. Therefore, the deputies would violate ORS 244.040(1)(a) if they were to retain the money.

This same legal issue was previously addressed by the Oregon Government Ethics Commission in informal Advisory Opinion #381 of July 16, 1991. A copy of that opinion is enclosed.

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THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/rinkle.so