

December 9, 1997

Heidi Stanphill  
Hood River County  
309 State Street  
Hood River, OR 97031

Dear Ms. Stanphill:

This letter is in response to your correspondence dated November 28, 1997, concerning whether or not Hood River County employees and their families can avail themselves of a discount on the purchase of a new automobile from Ford dealership in Portland without violating Government Standards and Practices laws.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 97S-035**

**STATED FACTS:** A Portland Ford dealership is offering employees of Hood River County and their families an opportunity to purchase a new automobile under its 1998/1999 Auto Buying Program S.A.F.E. (Security Assurance For Employees). Under the program, county employees would have the opportunity to purchase a new vehicle while enjoying the same benefits and discounts normally reserved for commercial buyers. Correspondence provided to the GSPC indicates that the offer is not restricted to public employees but is offered to all businesses that manage fleets.

**RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable 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 #1: Do Oregon Government Standards and Practices laws permit government employees to take advantage of this special discount?

OPINION: The Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712 p. 2d 87 (1985), identified the broad policy of Oregon's ethics laws as ensuring, "...that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. In that case, the Supreme Court held that a public official could not use official position or office to obtain financial gain for the public official where, through access to the public official's governmental body's buying power the public official purchased an automobile at a discount price. The court emphasized that the term use in ORS 244.040(1) includes availing oneself of a benefit not available to the general public. The court applied a but for test, i.e., but for the public official's position, the public official would have been unable to purchase the automobile at the discount price and, thus, obtain a personal gain. 712 p 2d at 92.

The GSPC believes there may be limited circumstances when public officials may take advantage of group discounts or other marketing incentives. Those would include instances when the benefit is unsolicited by the public official and is available to others who are not public officials. Accordingly, if the Ford dealership's auto buying program is also available to a substantial segment of the population who are not public officials, participation by a public official would not appear to violate Government Standards and Practices laws. If the program is available only to public officials it would appear that participation by public officials would place them in violation of ORS 244.040(1)(a).

An example of a marketing incentive which is available to others who are not public officials would be membership in discount sales warehouse outlets such as Costco Wholesale. In addition to government employees, businesses of this type normally offer membership to members of credit unions, employees of public utilities and individuals who are self employed. The offer is not strictly limited to public officials.

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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.**

Please do not hesitate to call or write again if you have additional questions or desire additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director

LPH/aip/stanphill