

November 19, 1998

Dale Staib, Chief
Philomath Fire Department
P.O. Box 247
Philomath, Oregon 97370

Dear Chief Staib:

The Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion at its meeting on November 19, 1998.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION NO. 98A-1004

STATED FACTS: The Philomath Fire Protection District #4 is in the process of writing an employee policy manual. The proposed policy states that, as a part of the compensation, benefits and privileges provided to employees, the district would permit employees and their family members to use the fire district facilities, provided that such use would not interfere with the normal operations of the fire district. This use would include exercise equipment and facilities to perform maintenance work on private vehicles. Such use would enhance the ability of the district to respond by increasing the likelihood that employees will be at the fire station when an emergency call is received.

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: Would it be a violation of Government Standards and Practices laws for fire district employees to use district facilities for personal purposes as a part of their official compensation and benefits?

OPINION: No. Generally speaking, if public officials are permitted the use of district facilities and programs at no cost or reduced cost and those same benefits are not available to persons who are not public officials the public officials would be receiving personal financial gain because of official position in violation of ORS 244.040(1)(a). In the case at hand, the use of facilities by Philomath Fire District employees and their families would be a provision of their compensation package. ORS 244.040(1)(a) specifically excludes official salary as a use of office for personal financial gain. Accordingly, there would be no violation of Government Standards and Practices laws by Philomath Fire District employees and their families for the use of the district facilities.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 1998.

Don Reiling, Chairperson, Chairperson

Lynn Rosik
Assistant Attorney General

Date