

February 4, 1998

Greg Hickman  
Personnel Officer  
Employment Department  
875 Union Street NE  
Salem, Oregon 97311

Dear Mr. Hickman:

This letter is in response to your correspondence dated January 23, 1998, concerning possible conflicts of interest with an employee of the State of Oregon Employment Department performing private contract work on personal time.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
98S-002**

**STATED FACTS:** An employee of the State of Oregon Employment Department has an opportunity, as an independent contractor, to write a report on the need for child care in Oregon. This employee currently works in the Child Care Division of the Employment Department half-time in a job share position monitoring contracts between the Child Care Division and Child Care Resource and Referral Programs in Oregon. In this capacity, the employee serves as a liaison on a committee that oversees the preparation of the report about the need for child care each biennium.

The committee has obtained a federal grant to fund a number of research projects including preparation of this report. The person on the committee officially responsible for the grant has proposed that the Employment Department employee enter into a contract to write the report once the data has been analyzed. The child care division has contracted with the Employment Department to analyze the data for the report but they do not have staff available to write the report.

The Employment Department employee has had no part, influence nor knowledge of the

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securing of the federal grant from which the employee has the potential to receive money on a contract basis. The employee is aware that no state resources can be used in performing the provisions of the contract. The work under contract would be done on the employee's own time.

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

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (8)(a) to (c) of this section.

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.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

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(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION: Would it be a violation of Government Standards and Practices law for the employment department employee to enter into a private contract to perform the contract work described in the stated facts?

OPINION: No. Oregon Government Standards and Practices laws, Oregon Revised Statutes Chapter 244, do not prohibit outside employment by a public official. This includes work which may bear a relationship to official duties. In previous opinions of a similar nature, the GSPC has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines include the following:

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.
5. That employees will notify their appointing authority in writing of a potential or actual conflict of interest if private endeavors could or would be affected by public employment.

While it is permissible for a public official to engage in private employment on their own time, state law does not permit a public official to use anything that a person who is not also a public official is not entitled to use. The law also prohibits the promotion of outside business pursuits while engaged in the performance of official public duties. Private employment must always be kept separate from public employment in order to avoid a violation of ORS 244.040(1)(a).

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**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Please don't hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director

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