

November 3, 1998

Damara Paris
RSPF Manager
Oregon Public Utility Commission
550 Capitol St. NE
Salem, OR 97310-1380

Dear Ms. Paris:

This letter is in response to your correspondence, dated October 21, 1998, concerning the propriety of a full-time public employee operating a part-time private business.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 98S-033

STATED FACTS: A new public employee is the Residential Service Protection Fund (RSPF) manager at the Oregon Public Utility Commission (OPUC). The employee oversees three telecommunication assistance programs: Oregon Telephone Assistance Program, which helps reduce the telephone bill of eligible low income Oregonians; Telecommunication Devices Access Program, which loans telephone equipment to deaf, hearing, speech and mobility impaired individuals who are not able to use standard phones; Oregon Telecommunications Relay Services, which provides phone translation between standard phone users and speech and hearing impaired individuals who use TTYs.

Prior to state employment, the employee developed a small part-time business selling sign language and deaf culture related giftware as well as books with deafness themes. The employee continues to operate the part-time business outside of state employment.

The employee is a deaf individual and is recognized in the deaf community, both locally and nationally. The part-time business has become known on a national level. Recently, at a conference for relay administrators in Denver, Colorado, the employee was approached by the vice president of USA Relay (USA), based in South Dakota. The vice president wanted to make a large order of sign language giftware through the employee's part-time business. The total amount of the order will be \$10,500 and

the
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profit would be \$4,000. The employee did not advertise the outside business during the conference. The vice president learned of the employee's part-time business by word of mouth in the deaf community.

USA Relay does not contract with the state of Oregon to provide relay services. USA is a vendor of Sprint Relay Services, who does contract with Oregon to provide relay services. USA does provide some services to other states through its contract with Sprint.

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

ORS 244.010(3): Nothing in this chapter is intended to affect:

(b) Any statute prohibiting or authorizing specific conduct on the part of any public official or public employee.

ORS 244.020(2): Business means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

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
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with which the public official or a relative of the public official is associated.

QUESTION #1: Can the employee go through with the sale of sign language giftware without violating Oregon Government Standards and Practices laws?

OPINION: Yes. ORS 244.040(1)(a) prohibits public officials from using their official position to obtain personal financial gain that would not otherwise be available to them but for their holding official position. A public employee s private endeavors must always be kept totally separate from their official duties and tasks in order to avoid violation of ORS Chapter 244.

Although the employee attended the conference in the capacity of a state employee, the stated facts the stated facts do not indicate the employee was using the conference to market sign language and deaf culture giftware. The vice president of USA Relay made the order on the strength of the employee s national reputation in the private sale of deaf language materials.

In previous advisory opinions of a similar nature, the Oregon Government Standards and Practices Commission (GSPC) has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

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.

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If public employees follow the GSPC s guidelines for outside employment, there will most likely not be any violations of ORS Chapter 244.

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.

Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/paris.so