

November 4, 1998

Michael E. Judd
County Counsel
906 Main Street
Oregon City, OR 07045-1881

Dear Mr. Judd:

This is in response to your correspondence dated October 21, 1998 concerning employees' personal use of county-owned computers in the workplace.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 98S-034

STATED FACTS: The Oregon Government Standards and Practices Commission (GSPC) issued Advisory Opinion No. 98A-1003 on July 9, 1998. That opinion addresses the personal use of publicly owned technology resources by public officials. In part, the opinion states: If the public employee uses Internet access through a publicly owned computer to avoid the financial expense of subscribing to an Internet service at personal expense, it would be a violation of ORS 244.040(1)(a).

In Clackamas County, the public library system, through its branches, provides free public access to the Internet. This service is not restricted to library members or other county residents. Therefore, any county employee is currently able to use the Internet at any library location at no cost.

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.

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(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 No.1: Given that free Internet access is available to the general public, including county employees, at the county library, would Government Standards and Practices law permit county employees to occasionally access the Internet on county-owned computers in the workplace provided such use is limited to the employee's own time and does not result in additional cost to the county?

OPINION: No. While not indicated in the stated facts, it is assumed that there are limitations related to Internet access at the library. Such limitations probably include having to sign-up and wait for a computer to become available and a limit, such as 30 minutes, on the duration of usage. Internet access at the library would also be limited to those hours the library is open. It is anticipated that there would not be such limitations on the usage of the Internet at county employees' work stations because public employees ordinarily have virtually unlimited access to their work sites, even during evenings and weekends. Another consideration is convenience to employees of the Internet access. It would obviously be much more convenient for county employees to make personal use of Internet access at their workstations than it would be for them to go to a library branch. In addition, there would most likely be a lesser degree of privacy afforded a user at a library since library computers are often placed in very public locations so that the appropriateness of their use may be monitored.

For at least those reasons stated above, Internet access by county employees in the workplace and Internet access at the county public library do not appear to be equal. It appears that personal use of Internet access by county employees in the workplace would result in the employees obtaining a financial benefit which would be available to them only by virtue of holding their official position. The employees would then be in violation of ORS 244.040(1)(a).

QUESTION No.2: Are there any means by which county employees could utilize access to the Internet on publicly-owned computers in the workplace without violating Government Standards and Practices law?

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OPINION: Yes, there are at least two ways to establish such access for county employees which would not conflict with state law.

ORS 244.040(1)(a) prohibits a public official from using office for financial gain ...other than official salary... . The GSPC has interpreted official salary to include a total compensation package, including fringe benefits. Accordingly, the county could formally adopt Internet access for county employees as part of an overall compensation package.

It should be pointed out, however, that the value of such Internet access might be subject to income tax liability with the Oregon Department of Revenue and the Internal Revenue Service. Those agencies would have to be contacted directly for such determinations.

Another statement of in ORS 244.040(1)(a) reads ...that would not otherwise be available but for the public officials holding of the official position or office... . Accordingly, a second way to permit county employees to utilize Internet access in the workplace would be to develop a program whereby the general public could also avail themselves of Internet access using publicly-owned computers in county workplaces. Under this option, county employees would not be obtaining a financial benefit available only to them as county employees since it would also be available to the general public. It is acknowledged, however, that this option gives rise to many management concerns related to county liability and to the security of county facilities and property.

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.

Sincerely,

L. Patrick Hearn
Executive Director

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