

December 15, 1998

Vicki McLean
Central Services Administrator
Public Utility Commission
550 Capitol Street NE
Salem, OR 97310-1380

Dear Ms. McLean:

This is in response to your correspondence dated December 2, 1998 concerning an employee of the Public Utility Commission (PUC) who has been offered outside employment providing private counseling services to clients who may be customers of the PUC s Telephone Assistance Programs.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 98S-038

STATED FACTS: A PUC employee manages three programs for low-income, deaf, or speech-, hearing-, or mobility-impaired individuals. In the employee s role as manager of the programs, the employee provides information to both the Oregon Telephone Relay Service Program (OTRS) and the Telephone Devices Access Program (TDAP) advisory committees. The employee receives advice from these committees. In most decision areas, the employee serves as staff support and does not participate as a voting member on decisions.

Prior to her employment with the PUC, the employee provided counseling services for hearing impaired persons. The employee has been asked to provide counseling services for Cascade Centers, Inc. (Cascade). Cascade is the State of Oregon s Employee Assistance Program provider. If the employee provides counseling services for Cascade, it would be on her own time. The employee would be paid by Cascade for her counseling services.

Some clients of Cascade may also be customers of PUC s Telephone Assistance Programs. The employee is concerned that if she were to deny benefits to one of Cascade s customers, the customer may feel the denial was based upon personal knowledge the employee may have learned during a counseling session.

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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.

ORS 244.040(4): No public official shall attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.

QUESTION: Would it be a violation of Oregon Government Standards and Practices for the employee to provide counseling services on her own time for Cascade Centers, Inc.?

OPINION: No. ORS 244.040(1)(a) prohibits a public official, such as a program manager for the PUC, from using or attempting to use official position to obtain financial gain or the avoidance of a financial detriment for the employee, a relative of the employee or a business with which the employee or relative of the employee is associated. In addition to the prohibition of ORS 244.040(1)(a), ORS 244.040(4) prohibits the public employees from using any confidential information gained in the course of or by reason of official position or activities of the official in any way for financial gain.

The stated facts indicate that the employee is concerned about the appearance that information gained during private counseling sessions may be used in some way to negatively impact Cascade's clients in relation to assistance they might seek from the PUC. Oregon Government Standards and Practices laws regulate public employees only in the scope of their official duties. Accordingly, whatever information that the Vicki McLean

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employee gains from Cascade s client would be a policy issue for Cascade Centers, Inc., and the PUC to address.

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/mclean.so