

February 18, 1998

Judge Laura M. Pryor
Gilliam County Court
PO Box 427
Condon, Oregon 97823

Dear Judge Pryor:

This is in response to information which you provided to the Oregon Government Standards and Practices Commission (GSPC) concerning Gilliam County Policy Number 91-1 which permits county employees to use county equipment on their own property for personal projects.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 98S-004**

STATED FACTS: Prior to 1991, Gilliam County had an unwritten policy which governed the use of equipment by county employees in their off time. On July 9, 1991, the county adopted written policy number 91-1 to formalize the process and clear misunderstandings related to the use of equipment by employees. That written policy reads as follows:

County employees may use County equipment on their own property under the following conditions:

- A. Project is approved in advance by the Roadmaster.
- B. Use must be by the requesting employee and on approved projects.
- C. Such use shall be infrequent in nature and for short periods of time.

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: Do Oregon Government Standards and Practices laws permit Gilliam County employees to take advantage of the policy which permits them to use county equipment for personal projects?

OPINION: No. ORS Chapter 244.040(1)(a) states in part that public officials may not use their official position to avoid financial detriment or obtain financial gain other than official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement. Gilliam County Policy Number 91-1 does not make reference to, nor does it appear to be, part of the official salary and benefit plan for county employees. Likewise, the language of the policy does not suggest that it is honoraria, reimbursement of expenses or an unsolicited award for professional achievement. ORS Chapter 244.040(1)(a) also states in part that public officials may not use their position to obtain financial benefit ...that would not otherwise be available but for the public official's holding of the official position or office... Gilliam County Policy Number 91-1 makes specific reference to county employees only. The policy makes no reference to the public at large or any group other than county employees. Accordingly, the opportunity for county employees to use county equipment for personal projects is available to them solely because they are county employees.

State law may be modified only by the Legislature. A political subdivision of the state may not adopt ordinances or policies which contradict or supersede state law. The use of county equipment by county employees under the provisions of Gilliam County Policy Number 91-1 would cause the employees to be in violation of ORS Chapter 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 if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

c: Phil Applegate