

August 19, 1999

Melinda Grier
General Counsel
University of Oregon
Office of the President
1226 University of Oregon
Eugene, Oregon 97403-1226

Dear Ms. Grier:

The Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion at its meeting on August 19, 1999:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION ADVISORY
OPINION NO. 99A-1001**

STATED FACTS: The University of Oregon has developed a program to encourage its faculty and staff to walk or bike to work. The program will provide faculty and staff who walk or bike to work with credits. Faculty and staff will be able to use these credits to receive discounts on certain goods and services provided by local merchants. Some of these goods and services would include such items as Greyhound bus tickets, bicycle purchases and university concert tickets. The monetary value of these discounts could vary and would be determined by the merchant.

In researching the program, staff of the university was unable to identify other employers who offered a similar incentive to their employees. It is the belief of the university staff that the merchants would offer the discounts regardless of whether the employer were a public entity, such as the university, or if the employer were a large private employer. The merchants simply see this as simultaneously promoting their own business and a public good. These benefits do not benefit just one employee or one class of employee, but all employees who work at the university. Also, for most, if not all university faculty and staff, the merchants offering the discount are unlikely to have legislative or administrative interest in the university.

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Finally, the proposed program would respond to a governor's executive order which requires state agencies to promote commuting alternatives to the maximum extent practical.

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: Would the university faculty and staff violate Oregon Government Standards and Practices laws by taking advantage of such an incentive program?

OPINION: The stated facts indicate that research was done and the university was unable to identify private sector employers who offered a similar incentive program to their employees. The requestor holds a belief that these merchants would offer the discounts regardless of whether the employer were a public entity ... or ... a large private employer... As has been stated previously, the GSPC believes there may be limited circumstances when public officials may take advantage of group discounts or other marketing incentives. Those would include instances when the benefit is unsolicited by the public official and is available to others who are not public officials. The requestor's belief regarding the availability of merchant discounts however, cannot be considered a fact for the purposes of this opinion. Generally speaking, if public officials participate in financial incentive

programs such as described in the stated facts and those same benefits are not available to persons who are not public officials, the public officials would be receiving personal financial gain only because of the holding of official position. ORS 244.040(1)(a) prohibits public officials from obtaining financial gain because of official position.

ORS 244.040(1)(a) specifically excludes official salary as a use of office for personal financial gain. The GSPC has opined in other staff and advisory opinions that an employee's benefits package is a part of the employee's official salary. Accordingly, if the incentive program was formally adopted as a part of the employee's benefit package, there would be no violation of Oregon Government Standards and Practices laws for the university employees to participate in the incentives program.

The fact that the proposed program would comply with an executive order does not mitigate the prohibitions or requirements stated above.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 1999.

Rachel Gerber, Chairperson

Kelly Carlson
Assistant Attorney General

Date