

February 8, 1999

Dugan Petty  
Department of Administrative Services  
State Purchasing Manager  
TPPS Purchasing Section  
1225 Ferry Street SE  
Salem, Oregon 97310-1531

Dear Mr. Petty:

This letter is in response to your correspondence dated January 25, 1999 concerning a possible conflict of interest for the Transportation, Purchasing and Print Services Division (TPPS) Training Coordinator to act as a paid instructor to teach state developed classes at a college.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
99S-002**

**STATED FACTS:** The TPPS Division and Chemeketa Community College have entered into a contract to provide administrative management and continuing education credits for procurement education classes. TPPS anticipates the contractual arrangement will lead to a partnership with Chemeketa Community College for the state's procurement training program. TPPS plans to complete a second contract under which Chemeketa will provide college accreditation courses offered by the state through Chemeketa. As a condition of accreditation, an instructor, employed by Chemeketa, must be in the classroom to ensure the course delivery is consistent with college approved curriculum and adheres to the college level standards.

The TPPS Division Training Coordinator developed the curriculum and initiated the Chemeketa partnership in the performance of state job duties.

**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  
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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 it violate Government Standards and Practices laws if the TPPS Division Training Coordinator received compensation from Chemeketa Community College to instruct these state developed classes at the college?

OPINION: Yes. The provisions of ORS 244.040(1)(a) would apply here. The Oregon Supreme Court has held that public officials cannot obtain financial gain for themselves through the use of their public office or position. The court has stated the term use in ORS 244.040(1)(a) includes availing oneself of a benefit not available to the general public.

The TPPS Training Coordinator's position in developing the curriculum and initiating the Chemeketa partnership in the performance of the coordinator's state job duties put the coordinator in a unique position that may not have become available but for the holding of the official position. If this is a program that the TPPS Training Coordinator is the only person qualified to instruct these state developed classes at the college, the coordinator would not be able to be paid by Chemeketa Community College for instructing the classes. It appears that, if the coordinator were to do so, it would constitute the use of official position for personal financial gain in violation of ORS 244.040(1)(a). That is, the training coordinator would have used the TPPS position to create the income producing position at Chemeketa.

If these facts had been presented to the GSPC prior to the participation by the coordinator in developing the curriculum and initiating the Chemeketa partnership the GSPC would have advised the coordinator not to participate in the process. If the coordinator had not participated in the process and the instructing position became available and was

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to the coordinator, separate and apart from the coordinator's activities as the TPPS Division Training Coordinator, there would be no potential violation of Government Standards and Practices laws.

**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

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