

March 22, 1999

Lori Gaither
ODOT Safe Haven
2775 19th St. SE
Salem, OR 97302

Dear Ms. Gaither:

This is in response to your correspondence dated March 9, 1999 regarding a potential conflict of interest for an Oregon Department of Transportation (ODOT) employee who has been offered outside employment by one of ODOT's vendors.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 99S-005

STATED FACTS: An ODOT employee works in the Equipment Repair Shop repairing mowers. The employee has been asked to assist one of ODOT's vendors to develop/invent a new mower. This new mower is similar to the mowers the employee works on in ODOT's repair shop. The employee would assist the vendor as an employee of the vendor and not as a business partner.

ODOT utilizes the vendor on an as needed basis for repairs that cannot be done in ODOT's repair shop. ODOT has at least two vendors that are able to do these repairs. Part of the ODOT employee's duties include contacting these vendors to do these repairs. The employee has nothing to do with bids, contract development, monitoring, etc. The employee does not give input on vendor selection or equipment purchases.

The ODOT employee works four ten-hour days for ODOT. The employee would work for the vendor on the employee's days off. No state time would be used to do work for the vendor.

The vendor's new mower may someday be on the open market where ODOT could purchase it.

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RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to this opinion:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section.

ORS 244.020(2): Business means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated...

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.

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ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION #1: Would a public employee violate Oregon Government Standards and Practices laws by working for a vendor to the employee s public agency?

OPINION: A public employee would not violate Oregon Government Standards and Practices laws by working for a vendor to the employee s public agency. In previous advisory opinions of a similar nature, the Oregon Government Standards and Practices Commission (GSPC) has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.
5. That employees will notify their appointing authority in writing of a potential or actual conflict of interest if private endeavors could or would be affected by public employment.

If public employees follow the GSPC s guidelines for outside employment, there will

most likely not be any violations of ORS Chapter 244.

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The facts state that part of the employee's job is to call vendors to do needed repairs on equipment when repairs cannot be done by the agency's repair shop. If the employee were to engage in outside employment with one of these vendors, the employee would be prohibited from referring state business to the outside employer pursuant to ORS 244.040(1)(a). ORS 244.040(1)(a) prohibits a public official from using their position to obtain financial gain for themselves or a business with which they are associated. A public employee can avoid violating ORS 244.040(1)(a) by notifying their appointing authority of their conflict of interest. ORS 244.120(c) requires the public employee to make a written disclosure of a conflict of interest to the employee's appointing authority whenever the employee would be faced with calling the vendor. The disclosure must include the employee's request that the appointing authority dispose of the matter.

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

LPH:aip/99S-005