

March 31, 2000

Janet Beer, RD  
Oregon Child Nutrition Coalition  
P.O. Box 2141  
Lake Oswego, Oregon 97035

Dear Ms. Beer:

This letter is in response to your correspondence dated March 2, 2000 concerning whether or not possible violations of Government Standards and Practices law would arise as a result of Oregon Child Nutrition Coalition (OCNC) officers receiving salary from OCNC in addition to their school district compensation.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
00S-004**

**STATED FACTS:** The Oregon Child Nutrition Coalition (OCNC) is a group of 81 public and private school districts that have incorporated a buying group for the purpose of processing formal bids. Two bids have been processed; one to purchase food and supplies and one for processing commodity chicken. Each individual school board retains the authority and responsibility for the actual contract and agreements with the vendors or manufacturers.

The Food Service Director for the Tigard-Tualatin School District is the president of OCNC. The secretary/treasurer for OCNC is employed full time as the Food Service Director for the Newberg School District. Both individuals provide duties for OCNC that are in addition to the jobs they do for their districts. OCNC has a three member board of directors who are current or retired school business managers. Neither the president or secretary/treasurer are members of the board of directors.

The OCNC receives approximately \$18,000 in annual dues and \$5,500 in fees from a trade show. Expense include sending the officers to related national meetings, processing bids, purchasing directors and officers liability insurance, purchasing office supplies, paying phone expenses, purchasing outside secretarial services, purchasing accounting services and reimbursing each officer s school district \$1,000 to offset phone cost, printing, faxing and other expenses.

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The board is considering increasing the amount reimbursed to each school district to \$6,000 per year with the directive that \$5,000 go to the individual officer as additional annual salary. The additional salary would be for time worked on OCNC business that was in excess of the officers normal contract days with their respective districts. OCNC does not want to have any employees. The increase in salary would be handled in the same way that extended duty contracts are given to teachers who work after school as coaches. The district payroll departments would handle all taxes, FICA and necessary deductions.

OCNC needs to more fairly compensate officers for the time they spend, in excess of the time they work for the district, working on behalf of OCNC. The officers have kept track of their time and over 100 hours per year is spent on OCNC business. The board is concerned that, without some kind of compensation, no future members will come forward to assume this responsibility when the current officers retire.

The president and secretary/treasurer believe that all decisions that benefit the individual districts also benefit all member districts. Neither of them have any personal interest in any business that sells foods or supplies to schools. Neither of them have any other personal source of income.

The only duty that both would continue to perform if they were not officers of OCNC would be product selection. However, they would not do it on the scale or coordinate it in multiple districts as they do for OCNC. In the event that they were no longer employed by their districts, OCNC would not send the \$6,000 to the districts. The individuals hired by their districts to replace them would not necessarily be selected by the board of directors to become a new officer. The board could choose any member they wished or they could purchase the administrative functions from a consultant. The president and secretary/treasurer are salaried employees. Both work an average of 45 hours per week. In addition, they both average 2 to 3 hours of work for OCNC per week.

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.

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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 be a violation of Government Standards and Practices law for the OCNC officers to receive salaries from the school districts and additional salaries from OCNC?

OPINION: It appears from the stated facts that the OCNC officers would not hold those positions were it not for employment with their respective school districts. ORS 244.040(1)(a) states that no public official shall 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, ... reimbursement of expenses or an unsolicited award for professional achievement for the public official ...

It appears from the stated facts that the \$6,000 per year which would be given to each school district by OCNC, with a directive that \$5,000 go to the individual officer as additional salary, would be compensation in addition to that stated in the officers' individual contracts with their school districts. The stated facts also indicate that, in the event that the OCNC officers were no longer employed by their respective school districts, OCNC would not send the \$6,000 to the districts. Accordingly, the money from OCNC would not be considered official salary. The OCNC officers would be receiving the additional money only because of their official positions with the school districts. Accordingly, it appears that receipt of the additional compensation from OCNC would cause the officers to violate ORS 244.040(1)(a).

If the employment contracts with the officers' respective schools were formally amended or rewritten to include the money from OCNC as a part of their official salaries, violations of Government Standards and Practices laws would not occur as a result of the officers receiving the added compensation from OCNC.

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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.**

Sincerely,

L. Patrick Hearn  
Executive Director

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