

November 3, 2000

Linda Meng
Chief Deputy City Attorney
City Hall, Suite 430
1221 S.W. 4th Avenue
Portland, Oregon 97204

Dear Ms. Meng:

This letter is in response to your correspondence dated October 23, 2000, concerning your request that the Government Standards and Practices Commission (GSPC) review the City's Internet Technologies Policies to see if there are any areas in which the policy fails to meet the requirements of state law.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 00S-025**

STATED FACTS: Keeping up with the rapid growth of the Internet and e-mail as media of communications is presenting challenges to public employers and employees. Use of the Internet and e-mail is a developing area and there are differences of opinion in many sectors regarding the appropriate policies. Part of the challenge for public employers is to determine and make clear to employees what are appropriate uses of these media under Government Standards and Practices law. The City of Portland has a policy already in place covering the Internet, Intranet and E-mail (Internet Technologies). These policies appear to be consistent with that of some state agencies.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issue addressed herein:

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.

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 which the public official or a relative of the public official is associated.

QUESTION: Do any of the provisions of the City of Portland's Internet and e-mail policy appear to be non-conforming to the prohibitions / requirements of Oregon Government Standards and Practices law?

OPINION: ORS 244.040(1)(a) states that no public official shall use or attempt to use their 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. This provision applies equally to elected persons, compensated public employees and uncompensated persons who volunteer their time to a public entity.

The Oregon Government Standards and Practices Commission issued Advisory Opinion NO. 98-1103 on July 9, 1998 (copy attached). That opinion addressed the personal use of telephones, cellular telephones and computers by public officials. The opinion states, on page 4 that publicly owned equipment is intended to be used for the official business of the government entity. Thus, employees may not generally use computers owned by public agencies for personal purposes. Employees must also

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comply with any employer policies which may place additional restrictions on the use of computers.

The present City of Portland Internet Technologies policy appears to comply with the prohibitions / requirements of Oregon Government Standards and Practices law. Accordingly, it appears that employees complying with the policy would not violate any provisions of ORS Chapter 244.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TOP 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

S-025dz