

July 20, 2001

Roger Hoffman


Dear Mr. Hoffman:

The Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion at its July 20, 2001 meeting:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION 01A-1010

STATED FACTS: An Oregon State Police officer is planning on retiring from state service on December 1, 2001. The officer anticipates going on paid vacation leave at the end of September and would remain on vacation until the officer's retirement date. The officer has no intent of returning to duty during that time.

The officer has applied for a law enforcement position with the United Nations Civilian Police In Kosovo, Yugoslavia. It is possible the officer could be hired for that position prior to December 1, 2001, while he was still employed by the state police.

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

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."

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, unless the pecuniary benefit or detriment arises out of the following:"

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:"

244.040(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 conflict of interest, in violation of Oregon Government Standards and Practices law, ORS Chapter 244, for the officer to accept and be hired by another employer during a period of paid vacation from the Department of Oregon State Police?

OPINION: No. Conflicts of interest arise under ORS Chapter 244 only when a public official takes official action that could or would be to the private pecuniary benefit or detriment of the person or the person's relative or a business with which the person or a relative of the person is associated. The stated facts do not indicate that the officer would be taking any such official action.

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.

There is no difference in a public official engaging in outside employment during a regular vacation period and the officer who takes extended vacation prior to retirement and, during that vacation, is hired by another entity.

This opinion addresses only the application of relevant provisions of ORS Chapter 244 to the stated facts. This opinion does not limit a public employer's right to establish and impose a more restrictive policy upon its employees.

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 _____, 2001.

Katherine E. Tennyson, Chairperson

Date

Lynn Rosik
Assistant Attorney General

Date