

March 2, 2001

Sunun Setboonsarng
International Trade Manager
Oregon Economic and Community Development Department
121 S.W. Salmon, Suite 205
Portland, Oregon 97204

Dear Ms. Setboonsarng:

This is in response to your correspondence dated February 8, 2001 regarding an invitation from the Taiwan government for key members of the Oregon Legislature to visit Taiwan.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 01S-004

STATED FACTS: An official of the Taipei Economic and Cultural office plans to extend a personal invitation for members of the Oregon Legislature to travel to the country of Taiwan and visit for about one week. The invitation will include an offer by the Taiwan government to pay for certain travel expenses on behalf of the invited legislators. The Taiwan government is offering to pay for the round-trip airfare (\$800-\$1000), hotel room (\$100-\$140 per night) and meals for each traveler.

In offering this invitation the Taiwan government has identified several objectives. First is to inform and share, with the members of the legislature, information about their country's political situation and of trade and investment opportunities. Second is to show Taiwan as a modern country with business interest in Oregon. Third is to offer support to Oregon's business interests in Taiwan.

The benefit to Oregon from this trip is an opportunity for the legislators to lobby the Taiwan government on behalf of Oregon companies and offers the potential for opening doors for Oregon in areas of trade, investment, tourism and education.

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

244.020(8) " Gift means something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials. However, gift does not mean:

(c) The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, subject to the reporting requirement of ORS 244.060(6).

244.020(11) Legislative or administrative interest means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

244.020(15) Public official means any person who, when an alleged violation 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 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.

244.040(2) No public official or candidate for office or a relative of the public official or candidate shall solicit or receive, whether directly or

indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.

244.060(6)(a) Notwithstanding ORS 244.020(8)(c), if a public official has received food, lodging and payment of travel expense exceeding \$100 when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, the name, nature and business address of the organization paying the expenses and the date and amount of that expenditure.

244.100(3) In addition to any disclosures or reports required under subsections (1) and (2) of this section, any person or organization that provides a public official with food, lodging or travel expenses exceeding \$50, as described in ORS 244.060(6), shall notify the public official in writing of the amount of the expense. The notice shall be sent to the public official within 10 days from the date such expenses are incurred.

QUESTION: Would it be a violation of Government Standards and Practices laws for members of the Oregon Legislature to accept the offer of the Taiwan government to pay their airfare, lodging and meal expenses in connection with a trip to Taiwan?

OPINION: Based on the stated facts current GSPC laws would permit the legislators to accept the offer of the Taiwan government to pay their airfare, lodging, meals and expenses directly related to the proposed travel.

The legislators identified to be recipients of the invitation from the Government of Taiwan are public officials as defined in ORS 244.020(15). As public officials the provisions of Government Standards and Practices laws would apply to their anticipated travel and that travel must bear a relationship to the official's office.

The Oregon Economic and Community Development Department has within its organization the Oregon Tourism Commission and an International Trade Division. The State of Oregon has representatives located in Japan, Korea and Taiwan. Since the 1987 establishment of the office in Taiwan, Oregon has pursued reciprocal interests with Taiwan in the areas of commerce, tourism and education. The Oregon Legislature has oversight and funding responsibilities toward these established efforts and interests.

In previous GSPC staff opinions, an event would bear a relationship to the public official's office if the public official participates because of the office held and appearance at such an event is in an official capacity. The proposed travel is to inform the legislators of the Taiwan political situation, commercial and educational opportunities for Oregon. Accordingly, it appears the members of the legislature would be, as stated in ORS 244.020(8)(c), participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, subject to the reporting requirement of ORS 244.060(6).

ORS 244.040(2) prohibits public officials from receiving gifts exceeding \$100 from a single source, which could reasonably be known to have a legislative or administrative interest in the governing agency, in which the official holds a position. Legislative or administrative interest is defined in ORS 244.020(11) as an economic interest, distinct from that of the general public.

It could be argued that the government of Taiwan has an administrative or legislative interest in bills, resolutions, regulations or proposals, acted upon by legislators, that would be distinct from that of the general public. With the Taiwan government as the source of the funds for the proposed travel and the existence of a legislative or administrative interest, the proposed payment of travel expenses would be prohibited under ORS 244.040(2). However, ORS 244.020(8)(c) exempts the receiving of food, lodging and travel expenses, when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, from that prohibition. It appears that the purpose of the proposed trip, the promotion of trade between Taiwan and Oregon, would meet those requirements. The requirement to report such expenses is set out in ORS 244.060(6) and ORS 244.100(3).

In part, ORS 244.060(6) sets out the requirement for a public official to report, on the Annual Verified Statement of Economic Interest (SEI), the receipt of food, lodging and travel expense exceeding a specified amount in any event which bears a relationship to the public official's office. In the year 2000 that amount was \$129.

In addition to the recipients' reporting requirements, ORS 244.100(3) requires that any person or organization that provides a public official with food, lodging and travel expenses exceeding \$50, as described in ORS 244.060(6), shall notify the public official in writing of the amount of the expense.

In the request for this opinion, the miscellaneous expenses related to the proposed travel to Taiwan, such as service transportation, translation services and guides, were not mentioned. However, in past GSPC staff opinions, such

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expenses have been considered as travel related and included as items exempt from the gift limitations set forth in ORS 244.040(2).

Although there was no mention in the stated facts that spouses of the legislators would accompany them to Taiwan, it should be noted that the exemption found in ORS 244.020(8)(c) applies only to the public official, not to their spouses. Accordingly, if the Government of Taiwan were to pay the costs for spousal travel, the legislator would be in violation of ORS 244.040(1)(a) and/or ORS 244.040(2). Government Standards and Practices law does not prohibit the spouse of a legislator from accompanying that legislator on official travel; however, any costs incurred due to such participation may not be paid by any person or entity having a legislative or administrative interest in the legislator's actions or votes in their capacity as legislators (ORS 244.020(11)).

This opinion will be submitted to the Oregon Standards and Practices Commission for adoption as a formal advisory opinion, pursuant to ORS 244.280, at its meeting on April 13, 2001.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON STANDARDS AND PRACTICES COMMISSION

Do not hesitate to call or write if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:01S-004