

May 9, 2001

Jim Bruce  
Human Resources Director  
Douglas County Human Resources Department  
Courthouse, Room 322  
Roseburg, Oregon 97470

Dear Mr. Bruce:

This letter is in response to your correspondence dated March 30, 2001 concerning an employee providing software and consulting services during the employee's non-work hours.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**STAFF OPINION 01S-008**

**STATED FACTS:** An employee of an Oregon county recently developed a software program that interfaces with the State Law Enforcement Data System (LEDS). The software program was developed on the employee's own time on the employee's personal home computer. The employee desires to make this software available to law enforcement agencies interested in its application.

The employee desires to contract individually with agencies interested in obtaining the software, configure their particular system, install the software and train them on the use and support of the application. This would be done for a fee, on the employee's own time, at the contracting agency's site and using the contracting agency's computer.

**RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the issues 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.

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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 the employee violate Oregon Government Standards and Practices law by providing the services described in the stated facts on the employee's own time?

OPINION: No violation of Oregon Government Standards and Practices law would occur. 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.

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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 the employee follows the GSPC s guidelines for outside employment, there will most likely not be any violations of ORS Chapter 244.

If the development of the software was related, in any way, to the employee s official duties this opinion would be totally different.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 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 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 GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Do not hesitate to call or write again if you have questions or desire additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director

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