

May 4, 2001

Officer Dennis J. Dirren  
Tigard Police Department  
13125 S.W. Hall Blvd.  
Tigard, Oregon 97223

Dear Officer Dirren:

This is in response to your correspondence dated April 26, 2001 regarding employees of your department using their place of public employment as a mailing address for the receipt of personal mail.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**STAFF OPINION NO. 01S-009**

**STATED FACTS:** The current policy of the Tigard Police Department allows employees to receive some personal mail at the department address. This policy is founded on what the department views as common practice in law enforcement and security considerations for department personnel.

The department policy defines personal mail as any piece of mail that is addressed directly to the employee and not related to official matters. The policy identifies types of personal mail permitted as items from the Oregon Driver and Motor Vehicle Division (DMV), banking institutions and materials relating to voter registration.

The unintended consequence of this policy is that personal mail, other than that permitted, arrives at the department for employees. This includes magazine subscriptions, personal letters, gifts, utility bills and mail for family members of employees.

**RELEVANT STATUTES:** The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

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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(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: Does current Oregon Government Standards and Practices law allow public employees to use their public employment address as the address for their personal mail?

OPINION: No. The Supreme Court identified, in Davidson v Oregon Ethics Commission, 300 OR 414, 712p. 2d 87 (1985), a broad policy in the ethics laws ensuring, that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. Although the circumstances in the Davidson opinion were not analogous to those raised in this question, the opinion is helpful in addressing this issue. The court emphasized that the term **use** in ORS 244.040(1)(a) includes **availing oneself of a benefit not available to the general public**. The court also applied a **but for** test in Davidson. In that case the court opined that, **but for the public official s position**, the public official would have been unable to purchase an automobile at a discount price and, thus, obtain a personal gain.

In general, it would be a violation of the Government Standards and Practices laws for public employees to receive delivery of personal mail at their place of public employment. ORS 244.040(1)(a) prohibits a public official from using or attempting to use their official position to obtain a financial gain or to avoid a financial detriment. The statute further states that the public official cannot avail themselves of a benefit or avoid a detriment that would not be available to them **but for** their position.

If a public employee used their employment address for personal mail, it would allow them to avoid the financial detriment of paying rent for a post office box or other such service. While such avoidance of financial detriment (gain) would be

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minimal, it fails the but for test and would violate ORS 244.040(1)(a) because it is not compensation, honoraria, reimbursement of expenses or an unsolicited award for professional achievement.

The Government Standards and Practices Commission (GSPC) has generally interpreted official salary, in ORS 244.040(1)(a), as including all forms of official compensation and benefits offered by the public employer to the public employee. Official salary is specifically excluded from the prohibition preventing a public official from using their position for personal financial gain. Accordingly, if receipt of personal mail were formally established as part of an employee's compensation, such a practice would be permitted under the exemption for official salary. Such a compensation provision would have to be crafted in the same manner used to establish any other form of compensation. For example, it might entail the passage of an ordinance or the ratification of a bargaining agreement. It must be emphasized, however, that such enhancements to compensation may be subject to regulation by entities other than the GSPC such as the Oregon Department of Revenue and the Internal Revenue Service.

**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