

May 7, 2001

R. Charles Pearson, PLS  
Clackamas County Surveyor  
9101 SE Sunnybrook Blvd., Suite 428  
Clackamas, Oregon 97015

Dear Mr. Pearson:

This letter is in response to your correspondence dated April 16, 2001 concerning the use of cellular telephones in lieu of desk telephones.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**STAFF OPINION 01S-010**

**STATED FACTS:** A government agency is considering replacing desk telephones with cellular telephones in the agency's office as a cost savings measure.

The government agency currently has employees that spend approximately 50% of their time in each the field and the office. The agency currently provides the employees with cellular telephones for the field portion of their job duties. In the office the employees have a standard desk telephone that is equipped with voice mail. The employees are allowed to occasionally use the desk telephones for personal use, in compliance with Oregon Government Standards and Practices Commission (GSPC) Opinion 98A-1003, while in the office.

**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.

R. Charles Pearson, PLS  
May 7, 2001  
Page two

**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: With reference to GSPC Advisory Opinion 98A-1003 what will an employee's responsibility and liability be regarding personal telephone calls if a currently provided desk telephone is removed and a cellular telephone provided in its place?

OPINION: The conclusions cited in GSPC Advisory Opinion 98A-1003 will still apply. If the agency is providing the employees with cellular telephones only and not regular desk telephones we believe that the rules cited under Telephones in advisory opinion 98A-1003 also apply to the cellular telephones. The practice of allowing employees to use the cellular telephones to talk to family members, make medical appointments, schedule service technicians, confer with a child's school and take care of any of a variety of other matters which can only be accomplished during regular working hours would apply in this case without such usage being prohibited by law. In this situation it would be less disruptive to permit employees to make such personal calls from the cellular telephones than to require an employee to take a break or leave from work to take care of personal matters.

Personal telephone calls made during working hours from public employers' telephones should be brief and infrequent. Personal long distance calls, even if the employee reimburses the agency for the cost of such calls, should not be made on agency telephones.

R. Charles Pearson, PLS  
May 7, 2001  
Page three

If the agency chooses a cellular telephone plan that includes long distance telephone calls at no extra charge the employees would be prohibited from using this service. If the employee used this service the employee would be receiving a financial gain or avoiding a financial detriment and would be in violation of ORS 244.040(1)(a).

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION THAT 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.**

This staff opinion will be presented to the GSPC for adoption as a formal advisory opinion pursuant to ORS 244.280(1) at its June 1, 2001 meeting.

Sincerely,

L. Patrick Hearn  
Executive Director

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