

May 21, 2001

Pam Ryan
Manager
Financial Services Division
Oregon Parks and Recreation Department
1115 Commercial St. NE
Salem, Oregon 97301-1002

Dear Ms. Ryan:

This is in response to your correspondence, dated 3/23/01, regarding the propriety of state employees accepting tips at the Wolf Creek Inn, which is managed by your department.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 01S-013

STATED FACTS: The Oregon Parks and Recreation Department operates a bed and breakfast called Wolf Creek Inn. The wait-staff personnel are temporary employees hired through an employment agency. The turnover for these employees is high and the absence of employee benefits may be a factor.

To reduce this turnover the department is requesting approval to designate these positions as limited duration positions for the remainder of the 1999-01 biennium and to make them permanent positions in the 2001-2003 biennium.

In creating a compensation package for these state employee positions, the department is considering the inclusion of tips.

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

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 NO. 1: Can state employees working as wait-staff at the Wolf Creek Inn receive tips as compensation for services performed?

OPINION: No. The Government Standards and Practices law, stated in ORS 244.040(1)(a), prohibits public officials from receiving financial gain through the use of their position except for official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement.

In these stated facts, public employees that provide the services of wait-staff would be receiving a financial benefit in the form of tips which do not appear to fall within the definition of official salary.

QUESTION NO. 2: Is there any solution for the Parks and Recreation Department when faced with high turnover and the common practice of wait-staff in private businesses receiving tips?

OPINION: Yes. 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. As cited in the preceding response, official salary is specifically excluded from the prohibition for public officials using their position for personal financial gain. Accordingly, if receipt of tips were formally established

Pam Ryan

5/21/01

Page 3

as part of an employee's compensation, such a practice would be permitted under the exception for official salary. Any public employer considering the formulation of a compensation package with such a provision should insure that it complies with all other current laws, regulations and labor contracts. The governing body of a public body must formally adopt such benefits in the same manner as salary adjustments, health insurance benefits and all other elements of a public official's compensation. 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

dc:01S-013