

July 3, 2001

Debbie Kennedy
Human Resources Manager
City of Albany
333 Broadalbin SW
Albany, Oregon 97321-0144

Dear Ms. Kennedy:

This letter is in response to your correspondence dated June 6, 2001 concerning the use of city owned fire vehicles for two fire management personnel.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION 01S-015

STATED FACTS: An assistant fire chief and a safety and training supervisor take their city owned fire vehicles home each night because they are both required to respond to first alarm fires when they are off duty. These are the only fire personnel who take home city owned vehicles. The safety and training supervisor provides a vital safety role at first alarm fires. The assistant fire chief is needed because first alarm fires have used all available on duty shift personnel. The assistant fire chief can generally respond more quickly than a fire fighter who has been called back to work.

A first alarm fire is any fire that involves a structure; either a house or commercial building. They can also occur with large grass fires. First alarm fires involve more than one engine. In order to minimize time for the assistant fire chief and the safety and training supervisor to respond to these emergencies they need fully equipped city vehicles with them at all times. Both of these employees have special equipment in the city vehicles that they need for first alarm fires, including a fire radio and protective clothing. There is no way to estimate the number of times they get called back but it is safe to say it is fairly frequent during winter months and hot, dry periods of the summer.

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The city has been asking these two employees to leave their vehicles parked at a distance from family activities that occur while they are off duty. This poses a real hardship for their family life. For example, the assistant fire chief has several children who participate in sports and school activities. He is currently parking his city vehicle some distance from the city parks, where his son plays baseball and he assists in coaching the team. Recently he had a call back that necessitated his wife leaving their three-year-old daughter at play in a sandbox at the park while she drove him to his city vehicle. Having these two employees available for 24-hour callback, seven days a week is of great value to the City of Albany. Allowing them to park the city vehicles nearby when they have personal family business off duty seems akin to requiring them to take the vehicle home so they will be ready for emergency callback. The two employees do not have an employment contract with the city that allows them use of the city owned vehicle as part of their wages. To the contrary, the city benefits from having them always at the ready with the vehicle and equipment they will need for first alarm fires.

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.

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.

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QUESTION: Would it be a violation of Oregon Government Standards and Practices laws for the assistant fire chief and the safety and training supervisor to use the assigned city vehicles, which they are allowed to take home, to conduct personal family business, such as attending their children s baseball games, when off duty?

OPINION: ORS 244.040(1)(a) prohibits a public official from using official position or office to obtain financial gain or the 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, 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 relative of the public official is associated.

The stated facts indicate that the assistant fire chief and the safety and training supervisor take their city owned fire vehicles home each night because they are both required to respond to first alarm fires when they are off duty. Both of these employees have special equipment in the city vehicles that they need for first alarm fires. It is estimated that the number of times they are called back to work for first alarm fires may be quite frequent during winter months and during hot dry periods of the summer. These employees have family functions they wish to attend such as little league games and school events. They must have their city vehicles available to them on the chance they are called to respond to an emergency.

These circumstances may be somewhat unique to the emergency nature of the fire service and, in this case, unique to the assistant fire chief and safety and training officer specifically. It appears that the fire department and the citizens of the City of Albany benefit to an equal if not greater degree than the employees. Accordingly, the personal use of the city vehicles, as indicated in the stated facts, by these two employees does not appear to be prohibited by ORS Chapter 244.

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.

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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 GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Please call or write again if you have further questions or desire additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

01S-015-SO-JP