

July 6, 2001

Bonnie Malepsy
Manager of Fiscal Services
Medford School District 549C
500 Monroe
Medford, Oregon 97501

Dear Ms. Malepsy:

This is in response to your correspondence dated, June 22, 2001 regarding the propriety of the school district providing meals to employees.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 01S-016

STATED FACTS: School district administrators have identified several circumstances wherein the district would like to consider providing meals to district employees and others who participate in district events. One occasion is a manager wanting to use public funds to purchase a meal for employees as a thank you for a job well done. Another is a district employee who organized an instructional staff development workshop wishing to use public funds to provide dinner meals to the speaker(s) and district workshop staff. A final occasion is a manager using agency funds to provide dinner to employees who work late on a particular project.

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: Would public employees violate Government Standards and Practices laws by accepting meals purchased by their employer?

OPINION: Public employees are public officials. ORS 244.040(1)(a) prohibits public officials from using their official position or office to obtain financial gain or for the avoidance of financial detriment that would **not otherwise be available but for** the public official's holding of the official position or office. There are four exceptions to this prohibition. They are official salary, honoraria, reimbursement of expenses or unsolicited awards for professional achievement.

Several situations were presented as examples in the stated facts. One was a manager wanting to use public funds to purchase a meal for employees as a way to thank them for a job well done. Another situation was a manager using public funds to purchase meals for employees who have been required to work extra hours on a particular project. Neither of these examples appears to fall under one of the four exceptions stated in ORS 244.040(1)(a).

A third situation offered as an example involves a district employee who organized an instructional staff development workshop who wants to provide a dinner meal for the speaker and the district workshop staff after the workshop. As in the first two situations discussed, meals purchased for public employees by their employer is not one of the exceptions to the prohibition in ORS 244.040(1)(a). However, the speaker may require a different application of the law. If the speaker came from the private sector ORS Chapter 244 would not apply because the person would not be a public official. However, if the speaker was employed by another public entity he/she would be able to accept the dinner meal under the reimbursement of expense provision of ORS 244.040(1)(a).

There are circumstances in which a public official might be able to accept meals purchased by the public employer. For example, the district might schedule a training session, workshop or other such event pursuant to district business. A meal is listed as an agenda item, but the cost and menu selection are not within the control of the employee. Under such circumstances the district employee could accept a meal provided by the district without violating ORS 244.040(1)(a).

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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

01S-016d