

October 5, 2001

Kevin B. Alano
Manager
Oregon Department of Transportation
2775 19th Street S.E.
Salem, Oregon 97302

Dear Mr. Alano:

This is in response to your correspondence dated September 10, 2001 regarding a brief temporary outside employment opportunity.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 01S-021

STATED FACTS: A human resource manager, who oversees training programs for a state agency, met a representative of a private firm that provides consulting and training in the areas of management and interpersonal skills. The representative contacted the manager to learn and discuss the agency's training needs and inform the manager of the services provided by the private firm.

The agency has a request for proposal (RFP) under review that will be sent to various vendors to bid on various management and interpersonal training related classes. The firm and the representative in this circumstance are not currently providing services to the agency and do not have any such arrangement under consideration.

The representative has subsequently offered the manager temporary employment. The employment would be during the manager's personal time off and would have no bearing on official duties. The manager would be asked to provide facilitation services to another state agency. These would include the provision of chart paper, easels and computer support to record notes and summarize meeting highlights.

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 the manager violate Government Standards and Practices laws by accepting this temporary employment with a private firm?

OPINION: Yes. ORS 244.040(1)(a) prohibits public officials from using or attempting to use their official position or office to obtain a financial gain or to avoid a financial detriment that would not otherwise be available **but for** the public official's office or position. The only gain permitted a public official by the statute is official salary, honoraria, reimbursement of expenses or unsolicited awards for professional achievement.

The stated facts indicate that the manager met a representative of a private firm in an official capacity and while performing official duties. This same representative subsequently offered the manager temporary employment. It appears that **but for** the manager holding the official position and performing the duties of that position the employment opportunity would not have been presented. Accordingly, if the manager accepted the position offered it would constitute a violation of ORS 244.040(1)(a).

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

Kevin B. Alano

October 5, 2001

Page 3

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-021dc