

March 1, 2002

Carol Brown
Human Resources Division
Oregon Department of Fish and Wildlife
2501 S.W. First Avenue
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Dear Ms. Brown:

At its March 1, 2002 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 02A-1004

STATED FACTS: A Natural Resource Specialist is employed by the Oregon Department of Fish and Wildlife (ODFW) and assigned as an Assistant Project Leader. One objective of the project is to determine the number of bull trout using the project area and their migration timing into and out of the area.

The ODFW employee led a work group in the development of a relatively inexpensive tag detection system that uses a passive integrated transponder (PIT) tag. While descriptions and applications of this technology are available on the Internet and in literature relating to fisheries, this device and/or system was developed during the employee's scheduled working hours as part of the employee's assigned ODFW duties.

The employee has expressed interest in starting his own outside business. The business would involve marketing the PIT tag detection system that was developed by the ODFW work group.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues 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 #1: Would it be a violation of Oregon Government Standards and Practices laws for an ODFW Natural Resources Specialist to start his or her own business?

OPINION: No. Oregon Government Standards and Practices law, ORS Chapter 244, does not prohibit public employees from engaging in outside employment. In previous advisory opinions related to this issue the GSPC has provided guidelines for public officials who engage in outside employment. Those guidelines are based upon ORS Chapter 244 laws and are as follows:

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.

4. That no confidential information be used to obtain financial benefit for the employee.
5. That employees will notify their appointing authority in writing of a potential or actual conflict of interest if private endeavors could or would be affected by public employment.

QUESTION #2: Would it be a violation of Oregon Government Standards and Practices laws for the ODFW Natural Resources Specialist to market the PIT tag detection system that was developed with public employer resources and while performing duties assigned by ODFW?

OPINION: Yes. ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official position or office to obtain a financial gain or the avoidance of a 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, the reimbursement of expenses or an unsolicited award for professional achievement for the public official.

The Oregon Supreme Court has indicated in a ruling that this prohibition in the law is to ensure that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. The court has emphasized that the term use in ORS 244.040(1)(a) includes availing oneself of a benefit not available to the general public.

The stated facts indicate that the Natural Resource Specialist acted as an Assistant Project Leader on a department work group. The PIT tag detection system was developed using the public employer's resources and during working hours as part of the employee's official duties. Accordingly, the detection system in question is a product of ODFW and the employee is prohibited by law from using the system in order to obtain personal financial gain.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Carol Brown
March 1, 2002
Page 4

Issued by Order of the Oregon Government Standards and Practices
Commission at Salem, Oregon on the 1st day of March, 2002.

Katherine E. Tennyson, Chairperson

Lynn Rosik
Assistant Attorney General

02A-1004dc