

May 31, 2002

Dave Kanner
Deputy County Administrator
Jackson County
10 S. Oakdale, Rm. 214
Medford, Oregon 97501

Dear Mr. Kanner:

At its May 31, 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-1005**

STATED FACTS: The various departments within a county government have fax machines. Some departments have a practice that allows employees the personal use of the fax machines. The conditions required for this personal use are that it must be infrequent, the matter must be one that needs to be resolved during business hours and the calls are to be local.

The county airport has established a fee schedule for the use of the department fax machine. The fees were established to accommodate the requests of traveling public patrons of the airport. The department adopted a policy that granted the employees permission to use the department fax machine under the same conditions as offered to the public.

The county wishes to formulate a policy for all agencies addressing the personal use of fax machines by employees that would conform to the provisions of ORS Chapter 244.

RELEVANT STATUTES:

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: Would there be circumstances under which county employees could make personal use of their department fax machines without violating Oregon Government Standards and Practices laws?

OPINION: Yes. The circumstances under which this practice would be permitted would have to mirror the circumstances under which public use would be permitted.

ORS 244.040(1)(a) prohibits all public officials in the State of Oregon from using their official position to obtain a financial benefit or avoid a financial detriment if the opportunity to do so arises only because of the holding of the position. Generally, if a public official made personal use of the public employer’s fax machine it would be a violation of this statute. In a previous ruling by the Oregon Supreme Court, the justices indicated that a public official could not avail himself/herself to any of the assets and resources of the public employer that would not be available to a similarly situated private individual.

While personal use of an agency fax machine can be approached much like that of a telephone or computer there is one important difference. Commercial businesses charge appreciably more for this service than would be paid for a local telephone call. For example, a business which offers customers the service of sending and receiving faxes might charge \$3.00 for the first page and \$1.00 for succeeding pages, etc.

Any countywide policy on the personal use of fax machines must apply the same criteria to county employees as is applied to private individuals. Whether a use fee is charged or the service is offered free of charge makes no difference.

QUESTION NO. 2: Would the county employees be in violation of Oregon Government Standards and Practices laws if the county departments established a fee schedule for the personal use of fax machines that excluded public use?

OPINION: As was discussed in the previous question, public officials are prohibited, by ORS 244.040(1)(a), from realizing a financial gain by availing themselves to assets and resources of the public employer that would not be available to them but for the public position held.

The county could establish a fee schedule that would allow only public officials to pay for the personal use of the county fax machines. If the county established a fee schedule for the use of fax machines the fee schedule must be equal to or exceed the prevailing rates offered at commercial businesses. In establishing rates equal to those available commercially, the employees can avoid realizing the financial gain that is prohibited by ORS 244.040(1)(a).

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.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 31st day of May, 2002.

Katherine E. Tennyson, Chairperson

Lynn Rosik, Assistant Attorney General