

March 29, 2002

Steven Swenson  
Administrative Services Coordinator  
Linn Benton Lincoln ESD  
905 4<sup>th</sup> Avenue, S.E.  
Albany, Oregon 97321-3199

Dear Mr. Swenson:

This is in response to your correspondence dated, March 15, 2002 regarding a education service district employee who is also a musician. You also referred to a staff member who has had crisis response training. You posed questions on behalf of both employees related to activities or employment they may engage in during personal time.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**STAFF OPINION NO. 02S-011**

**STATED FACTS:** The Director of Student Services for an education service district is a musician. During personal time and without the use of the employer's resources, the director pursues musical interests. The director has developed a musical presentation that consists of songs that emphasize ethical values such as honesty, courage and kindness.

The director has been asked by local school districts to perform this collection of songs for students. The director has given these performances during personal time off and has received no compensation.

The director, on personal time and using personal resources, has made a compact disc recording of this collection of songs. The disc is available through a retail outlet.

Another staff member has a masters degree in social work. This staff member received initial training in crisis response nearly 10 years ago. The education service district paid for this initial training. Since that time the staff member has worked in the crisis response area and has had updated annual training provided

at the education service district's expense. It appears that the district paid the employee's salary during the time training was received.

Members of the district staff volunteer to be assigned to work in the crisis response field. They respond to a school or district facility when a tragic event occurs. These events may be linked to a serious illness, unexpected death or a serious accident. Crisis response involves coordinating services offered to school staff and students. The response team members may provide counseling.

A community college has recently made an inquiry to determine the staff member's availability and interest in providing a training course on crisis response. The college was also interested in gaining assistance in forming a crisis response team. Apparently an employee of the community college recommended the staff member for consideration. The recommendation was based on previous experience with the staff member several years ago and not at the community college.

If the staff member provided the training and assistance at the community college it would be on approved and salaried "personal days". The district allows employees to have 3 days per year that are called "personal days." These are the days the staff member would use if allowed to provide this training. The community college would also compensate the staff member for the training and assistance provided.

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 NO. 1: Would it be a violation of Oregon Government Standards and Practices laws for the director to respond to personal inquiries about how to obtain a copy of the compact disc containing a collection of the songs from the musical presentation?

OPINION: No. ORS 244.040(1)(a) prohibits public officials from using their official position to obtain personal financial gain that would not otherwise be available to them but for holding their official position. A public employee's private endeavors must be kept totally separate from their official duties and tasks in order to avoid violation of ORS Chapter 244.

According to the stated facts the musical content on the compact disc was produced on the director's own personal time and by using personal resources. If the public appearances and performances are also on personal time, responding to personal inquiries about the availability of the disc recording would not be prohibited.

In regard to responding to personal inquiries, the GSPC has previously stated that when public officials "connect" their official position to their private enterprise they can be considered to be using their official position for personal financial gain. While the actual impact may be minimal, the implication is that, by virtue of their official position, they may be able to take advantage of their position for the benefit of their private enterprise. If the director already has or later develops any marketing materials, they should not refer to the director's employment with an Oregon public agency.

In the stated facts the director has only used personal resources and provides musical presentations during personal time off, which appears to not violate Government Standards and Practices law.

QUESTION NO. 2: Would it be a violation of Oregon Government Standards and Practices laws for the education service district staff member to provide training in crisis response at a community college and assist in creating a crisis response team?

OPINION: No. The GSPC has held in the past that the use of non-confidential knowledge and information gained as a result of public employment does not constitute a violation of Government Standards and Practices laws. There are several factors that lead to this opinion.

It is noted that the staff member has received training at the district expense. However, staff member had earned a masters degree in social work and has augmented the education and training received with nearly 10 years of experience in the area of crisis response.

The opportunity to provide training originated from a recommendation based on past experience with the staff member, not at the community college, but at a different location and employment. The opportunity does not appear to have been offered as a direct result of the public position held, but rather the result of many years of experience in the area of crisis response.

The training that would be provided would be of brief duration, 1 to 3 days. The opportunity does not appear to be a long-term position that would offer employment and/or tenure benefits.

If the staff member provides this training, including research and class preparation, on their own time using their own supplies, facilities and equipment, there would be no apparent violation.

In previous opinions offered for similar circumstances, the Oregon Government Standards and Practice Commission (GSPC) has issued guidelines related to public officials who choose to engage in outside employment or professional activity. These guidelines could be helpful in understanding the provisions and prohibitions found in ORS Chapter 244.

#### **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.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH**

Steve Swenson

March 29, 2002

Page 5

**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.**

Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn  
Executive Director

LPH/dc