

August 2, 2002

Sherry Banaka
Human Resources Program Manager
City of Hillsboro
123 W. Main Street
Hillsboro, Oregon 97123

Dear Ms. Banaka:

This is in response to your correspondence dated, July 29, 2002 regarding city employee use of the city government landline telephones.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 02S-020

STATED FACTS: The Oregon Government Standards and Practices Commission issued Advisory Opinion No. 98A-1003. This opinion addressed issues related to public employee use of agency equipment. Telephones and computers were the primary focus of the opinion. The opinion stated that public officials could use agency telephones for “any of a variety of other matters which can only be accomplished during regular working hours.”

A city asks if that provision includes allowing an employee to make personal credit card purchases over the city telephones during the employee’s lunch break. Such purchases may range from filling prescriptions to making a catalog purchase.

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 it violate Oregon Government Standards and Practices law if a public official made personal credit card purchases during regular working hours on the installed public agency telephones?

OPINION: No. ORS 244.040(1)(a) prohibits a public official from using his or her office to obtain a personal financial benefit or to avoid a personal financial detriment, which is available only because of the public position they hold.

There is nothing in the stated facts that would indicate that a city employee would experience personal financial gain or avoid a financial detriment by making personal credit card purchases from the public agency's telephones. Accordingly, it appears that a violation of ORS 244.040(1)(a) would not occur.

The city could allow such calls under circumstances described in GSPC Advisory Opinion 98A-1003 as long as the employee does not avoid a financial detriment, such as long distance charges billed to the city. If an employee's use of city telephones did result in the avoidance of a financial detriment a violation of ORS 244.040(1)(a) would occur.

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

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**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