

August 7, 2002

Terry Gowen
51503 Cedar Road
La Pine, Oregon 97739

Dear Mr. Gowen:

This is in response to your correspondence dated, July 29, 2002 regarding your interest in starting personal business while remaining a public official.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-022**

STATED FACTS: A county parole and probation officer has duties that require supervision of adults convicted of crimes. This requires counseling and monitoring of their behavior and activities to insure compliance with conditions of their parole or probation.

The officer has a bachelor's degree in biblical studies. Course work included psychology, counseling and family counseling. In twelve years as a parole and probation officer, the officer's public employers have offered and paid for additional training in counseling and interview techniques.

Through training, work experience and what is described as "much self-study," this officer has developed some level of expertise. This is described as an ability to understand the criminal mind or thinking and to develop methods to bring about a constructive change in that thinking.

The officer has received numerous requests to share this expertise and sees the potential of developing a personal business. The business would involve providing training and training material to other correction agencies, human service agencies and private treatment providers.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020(1) "Actual conflict of interest' means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7) of this section."

244.020(2) "Business' means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity."

244.020(7) "Potential conflict of interest' means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:"

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 the parole and probation officer violate Government Standards and Practices law by establishing a personal business that would provide training in corrections practices, counseling and interview techniques to employees of other correction agencies, human service agencies or private parties?

OPINION: No. Oregon Government Standards and Practices laws do not prohibit private employment by public officials. 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 the holding of their official position. The GSPC and GSPC staff have previously opined that obtaining financial benefit as a result of the use of knowledge gained by a public official, as a result of holding an official position, does not violate this prohibition. An opposite view would mean that experience and qualifications gained in a public position could not be used by public officials in their private endeavors, such as veteran law enforcement officers teaching recruits at a police academy. The GSPC staff does not believe that ORS 244.040(1) (a) compels this opposite view. However, a public official's private endeavors must always be kept totally separate from their official duties and tasks in order to avoid violating ORS Chapter 244.

In previous advisory and staff opinions of a similar nature, the Oregon Government Standards and Practices Commission has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines are based on ORS Chapter 244 and include the following:

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 NO. 2: Would it be a violation of Government Standards and Practices law for the parole and probation officer to sell training materials developed on the officer's own time and with personal resources to other public or private entities?

OPINION: No. This practice would be allowed by ORS Chapter 244. The officer must insure that no public employer resources are used to produce material he offers for sale. The officer must not solicit the public employer, or any entity, to purchase his training services or materials during working hours. If the public employer were to consider the purchase of the officer's services or material, the officer must not be a participant in the agency decision process.

QUESTION NO. 3: Would the parole and probation officer violate Government Standards and Practices law in establishing a business that provided training in corrections practices, counseling and interview techniques to the general public?

OPINION: No. The opinion to question number one also applies here.

QUESTION NO. 4: Would the parole and probation officer violate Government Standards and Practices law in establishing a business and contracting with public agencies to provide training on the condition that the agency provide the facilities, materials and refreshments, etc.?

OPINION: No. The opinion to question number one would also apply here.

QUESTION NO. 5: Would it be a violation of Government Standards and Practices law for the probation and parole officer to list experience as a parole and probation officer in literature advertising his training business or events?

OPINION: No. The officer should insure that such literature does not list the current public position held or identify the employing public agency. Public officials are prohibited from using official public position for personal financial benefit. If such references were made it could be 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 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

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**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