

November 12, 2002

Mark Pilliod  
City Attorney  
City of Beaverton  
P.O. Box 4755  
Beaverton, Oregon 97076

Dear Mr. Pilliod:

This letter is in response to your correspondence dated September 10, 2002 concerning sworn police employees receiving free transportation from Tri-Met.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION NO. 02S-029**

STATED FACTS: An Oregon city has an annual "Tri-Met Passport" program where city employees receive from the city a Tri-Met pass in the form of a sticker. In determining the number of potentially eligible employees on which the city bases the number of stickers it pays for the city does not count sworn police employees, extra help employees or graveyard shift police records employees. Sworn police officers are not counted because they are not required to pay Tri-Met fares if they show their police badge.

The city's program exists to reduce the number of vehicle trips employees make to and from work and meetings. If the city is required to include the numbers of police officers with employees who otherwise receive Tri-Met passes from the city it will increase the cost to the city.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

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 be a violation of Oregon Government Standards and Practices laws for a police officer to accept free transportation from Tri-Met in lieu of a pass furnished by the city?

OPINION: 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 Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712p. 2d 87 (1985), identified the broad policy of Oregon's ethics laws as ensuring that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. In that case, the Supreme Court held that a public official could not use his official position to obtain financial gain for himself where, through access to his governmental body's buying power, he purchased an automobile at a discount price. The Court emphasized that the term "use" in ORS 244.040(1)(a) includes availing oneself of a benefit not available to the general public. The Court applied a **but for** test, i.e., but for his position, the public official would have been unable to purchase the car at the discount price and, thus, obtain a personal gain. 712 p 2d 92.

It appears that, simply by showing a badge to ride Tri-Met free, a police officer would be using his/her official position for personal financial gain in violation ORS 244.040(1)(a). **But for** the police officer's official position the police officer would not be able to receive the free transportation from Tri-Met.

The stated facts do not indicate why Tri Met offers free passage to police officers. If it could be shown that the basis for the Tri Met policy was an expectation that an officer riding on a bus or train would be armed and/or take police action if the need were to arise, such as in the case of an assault, robbery or unlawful disturbance, it appears the

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police officer would then be performing the official duties which the officer took an oath to perform and the officer would not then be in violation of ORS 244.040(1)(a).

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 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 ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

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

Sincerely,

L. Patrick Hearn  
Executive Director

02S-029-JP