

November 25, 2002

M. Brian Playfair
General Counsel
Tri-Met
4012 SE 17th Avenue
Portland, Oregon 97202

Dear Mr. Playfair:

This letter is in response to your correspondence dated November 19, 2002 concerning sworn police officers receiving free transportation from Tri-Met.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-030**

STATED FACTS: In 1980 the Tri-Met Board adopted Ordinance No. 75, making a specific legislative finding that the requirement for security for drivers and passengers on Tri-Met buses would be met by augmenting Tri-Met's own police surveillance and protection by encouraging local and state law enforcement officers to ride Tri-Met buses at no cost to the officers. In addition, the board made a finding that the fare exemption is of assistance to local enforcement agencies in apprehending offenders who use the transit system in the execution of crimes. In 1987, the board extended the fare exemption to include light rail vehicles.

The fare exemption is based on the expectation by the board and staff that sworn police officers present on Tri-Met vehicles would respond in their official capacity and take police action if the need were to arise. It was the belief of the board and staff that the presence of sworn officers on Tri-Met vehicles would increase Tri-Met security resources for arrests and protection of individuals and serve as a deterrent to criminal behavior.

Section 19.20 of Ordinance No. 75 is entitled "Exemption from Fares." Section 19.20(C) states "Regularly sworn officers of local law enforcement agencies within the Tri-Met boundaries, and the Oregon State Police, are exempt from payment of fares on District vehicles upon displaying police identification or police badges upon request when entering or remaining upon any District vehicle."

This ordinance establishes a policy that encourages local law enforcement officers and Oregon State Police Officers to provide added protection for drivers and passengers and to discourage incidents occurring on the busses.

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 under the provisions outlined in the stated facts?

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.

The stated facts indicate that, for sworn police officers to receive free transportation on a Tri-Met vehicle, the officers are expected to respond in their official capacity and take official police action when the need arises. An additional incentive to the fare exemption is that the presence of sworn police officers on Tri-Met vehicles would increase Tri-Met security resources and serve as protection to individuals and as a deterrent to criminal activity.

It is the belief of GSPC staff that, given the stated facts, the police officers would be performing official duties which, the officers took an oath to perform and the officers would not be in violation of ORS 244.040(1)(a) by accepting free passage on Tri-Met.

This staff opinion is a supplement to Oregon Government Standards and Practices Commission Staff Opinion No. 02S-029 issued on November 12, 2002.

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