


Theodore R. Kulongoski, Governor

April 23, 2004

M. Brian Playfair
General Counsel
Tri-County Metropolitan Transportation District of Oregon
4012 S.E. 17th Avenue
Portland, Oregon 97202

Dear Mr. Playfair:

At its April 23, 2004 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 04A-1003

STATED FACTS: Tri-Met is studying an offer from Nextel Communications, a wireless service provider. The offer is referred to as the "Corporate Alternate Line Plan" (CALP). The offer pertains to Nextel wireless telephones with a two-line feature.

If a private or public entity purchases Nextel service for the entity's business operations, the CALP feature is offered if the number of telephones used by the entity exceeds a certain threshold. According to a Nextel representative, a Nextel client employee can subscribe to personal wireless service for a number assigned to the second line of the Nextel client/employer's wireless telephone. If the Nextel client/employer subscribes to a service plan that includes about 200 wireless telephones, the entity employee is offered a 10% discount on a personal service plan for a number assigned the second line. A Nextel representative has indicated that the threshold for the number of telephones required for this offer varies with marketing conditions and is subject to negotiation.

The CALP discount is offered to employees of private businesses and government agencies at all levels. The basic terms and conditions are offered in common to both public and private entities in larger wireless service plans at no additional cost to the Nextel client/employer.

An employee of a Nextel client/employer would be personally responsible for all service charges connected to the second line. The employer would have no financial responsibility for the second line, but would remain the owner of the actual telephone

device. The Nextel client/employer has the right to terminate the Nextel service plan, under the terms and conditions of the Nextel agreement.

Marketing competition and rapidly changing technology constantly raise new issues for agencies to consider when weighing the propriety of an agency's officials and employees accepting various offers for wireless service. For example, a customer once had to purchase a wireless telephone with a service plan, but now it is common for the telephone to be included with a service plan at no extra cost.

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 Government Standards and Practices laws for an employee of a Tri-Met to enroll in the Corporate Alternate Line Plan (CALP) offered by Nextel and accept the offer of a 10% percent discount on their personal service plan?

OPINION: No. Tri-Met employees are defined as public officials in ORS 244.020(15). ORS 244.040(1)(a) prohibits public officials from using or attempting to use their official position or office to obtain a financial gain or to avoid a financial detriment through an opportunity that would not be available to them if they were not holding the public position. The only exceptions to the prohibition are official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement.

The GSPC often receives inquiries related to issues involving benefits and practices common among private sector employees versus those available or practiced among Oregon public officials. It is a mistake to determine the propriety of a public official's action based on a practice widely used in the private sector. Rather, the provisions of ORS Chapter 244 should be applied. Those provisions are applied to the stated facts of this opinion request.

Information provided in the opinion request and obtained directly from a Nextel representative indicated that the offer is the same to both private and public entities. It appears that if an entity, public or private, subscribes to Nextel wireless service the CALP feature is available to the entity's employees if the plan includes approximately 200 wireless telephones.

Accordingly, the GSPC believes that Tri-Met employees may accept the discount under CALP because it is a discount available to both private and public employees under the same conditions. It is not a financial benefit prohibited by ORS 244.040(1)(a), which is one that would not otherwise be available but for the public position

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 23 day of April 2004.

John Kopetski, Chairperson

Keith L. Kutler, Assistant Attorney General