


Theodore R. Kulongoski, Governor

May 6, 2004

Chief Dave Crawford
Mist-Birkenfeld Rural Fire Protection District
69500 Banzer Road
Mist, Oregon 97016

Dear Chief Crawford:

This is in response to your correspondence dated April 7 and April 20, 2004 regarding a proposed fire district policy relating to the personal use of wireless telephones by district personnel and volunteers.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 04S-005**

STATED FACTS: A rural fire protection district is surrounded by mountainous terrain. During heavy flooding in 1996, district roads were blocked and emergency radio communication was lost. Three district wireless telephones provided the only effective communication for two weeks. The district board of directors is considering a policy that would increase the availability of wireless telephone communication for personnel responding to emergencies and/or disasters.

The district has a wireless telephone service that does not incur a minimum monthly charge. All calls are billed at .21 per minute. There are also additional charges for roaming and long distance.

The proposed district policy would permit district personnel and volunteers to purchase their own individual wireless telephones. These telephones would be added as users under the district plan. Each user would be responsible for usage charges on his/her telephone. If any charges for calls were related to district business, the user would be able to request reimbursement for such charges.

Participating district personnel and volunteers must be members in good standing and participate in training. The participants must agree to make the wireless telephone

available for district business. The district reserves the right to deny an individual access to the district service.

The board of directors may also extend the opportunity to members of an area volunteer non-profit organization as well as interested persons from the general public.

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 a district employee or volunteer violate Government Standards and Practices laws by accepting the opportunity to participate under the proposed district wireless telephone policy?

OPINION: No. The participation does not appear to result in a financial benefit to public officials, who might choose to purchase a wireless telephone and activate it under the district service plan.

ORS 244.040(1)(a) prohibits public officials from accepting a financial benefit that would not otherwise be available but for the public position the public official holds. The only exceptions allowed are official salary, honoraria, reimbursement of expenses and unsolicited awards for professional achievement. This would also apply to the district volunteers, which are included in the definition of public official in ORS 244.020(15).

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The stated facts indicate that the public officials would bear the cost of the wireless telephone, pay for all usage charges and gain reimbursement for any charges related to district business. It also appears that the opportunity to participate under the district wireless service plan may be available to interested parties throughout the district and not restricted to public employees. Accordingly, it does not appear that public officials would be accepting a financial gain prohibited by 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 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

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