

  
Theodore R. Kulongoski, Governor

May 27, 2004

Senator Rick Metsger  
Metsger Forbes  
P.O. Box 18152  
Portland, Oregon 97218

Dear Senator Metsger:

This is in response to your correspondence dated May 12, 2004 regarding the listing of service in the Oregon Legislative Assembly in the biographical information of literature for a private venture.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 04S-006**

**STATED FACTS:** A member of the Oregon Legislative Assembly is entering into a business venture that includes public and media relations work.

The business is preparing documents that will profile the company and its principles. It is anticipated that any response to a request for proposal from any public or private entity will have to include some biographical information and work experience for the principal employees.

ORS Chapter 244 prohibits the use of public office for a financial benefit other than official salary, expense reimbursements and unsolicited awards for professional achievement. In the past, the GSPC has held that a member of the Legislative Assembly may not use business cards or stationary from a private venture that bears the member's name with the title of their public position.

The legislator described in these facts is attempting to determine what information can be included in the private businesses' literature relating to legislative work experience. Currently the information proposed for inclusion is the office title, length of tenure and fields of interest such as business, transportation and healthcare.

The legislator indicated that, as a precaution regarding Government Standards and Practices laws, the private business would not entertain requests for proposals from primary Oregon State agencies like the Department of Education or the State Police.

On the other hand, the business would respond to requests for proposals from other public entities such as school districts, community colleges and local police departments.

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 NO. 1: Would it be a violation of Oregon Government Standards and Practices laws if a member of the Oregon Legislative Assembly listed service in the Legislature in the biographical information of literature used in a private business venture?

OPINION: The stated facts indicate that the listing of service in the Legislative Assembly would be limited to and included along with all of the other elements of work history in a biographical profile of the legislator. Such casual or incidental listings of experience in the Legislative Assembly would not appear to be a use of public position for financial gain. The GSPC staff does not see this proposed practice as one intended to exploit the holding of public office.

The issue raised in the question is distinctly different from past issues involving the use of the title of a public office held in the advertisements, letterheads or business cards. Such more prominent uses of a public office title would continue to be interpreted as the use of office prohibited by ORS 244.040(1)(a).

QUESTION NO. 2: Would a legislator, also in private business, avoid violations of Oregon Government Standards and Practices laws by restricting private business dealings to subdivisions of Oregon government that are not primarily state agencies?

OPINION: The answer to this question would have to be tailored to a specific set of facts and cannot be answered in general. The distinction between state agencies and those that are not state agencies does not mean that non-state agencies are not impacted by legislative action. This is because school districts, community colleges and other agencies receive legislatively approved funds. Accordingly, any opinion on this question would be dependent on factors such as the degree of funding a public agency receives from the Legislature and the purposes of such funding. It would be significant, for example, if legislatively approved funding received by a non-state public entity was used to pay for services under contract with the legislator's business

**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