

November 24, 2004

Daniel E. Underwood
High Desert Education Service District
145 S.E. Salmon Avenue
Redmond, Oregon 97756

Dear Mr. Underwood:

This is in response to your correspondence dated October 27, 2004 regarding school district board members receipt of free passes to district athletic events.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 04S-011

STATED FACTS: The general public must pay for admission to athletic events held by schools within a school district. The school district administration has passes that can be distributed for admission to athletic events at the district schools.

In the past, the district has provided school board members with free passes to attend varsity athletic events. The purpose of this practice has been to improve the board's ability to govern by providing members the opportunity to observe district activities in their official capacity.

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."

244.020(16) " 'Relative' means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse."

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.”

RELEVANT ADMINISTRATIVE RULES: The following Oregon Administrative Rule (OAR) is applicable to the issues that are addressed in this opinion:

OAR 199-001-0040 “Exercise of prosecutorial discretion in enforcement of ORS 244.040(1)(a)

(3) The Commission will not find a violation in the following circumstances:

(b) The financial gain or avoidance of financial detriment is offered to the public official or the public official’s relative by a single source and the aggregate value of the gain or avoidance of detriment from that single source does not exceed \$50 within a calendar year. The source shall either be a person with no legislative or administrative interest or a governmental agency. The source of the financial benefit or avoidance of financial detriment must consciously offer the public official or public official’s relative the financial benefit or avoidance of detriment.

QUESTION: Would the board member of a school district violate provisions of Oregon Government Standards and Practices laws by accepting free admission to school district athletic events?

OPINION: Members of a school district board of directors are public officials as defined in ORS 244.020(15). ORS 244.040(1)(a) prohibits a public official from accepting any financial benefit that would not otherwise be available to that public official, but for the public position held. Put another way, board members, in the stated facts, would have to ask themselves, “Would free admission be

offered to me if I were not a member of the school board of directors?" If the answer was no, then accepting the free admission would be a prohibited financial benefit. The only exceptions to prohibited financial gain are official salary, reimbursement for expenses, honoraria and unsolicited awards for professional achievement.

In the stated facts, the free passes provided to board members are to enable the board to better govern the district by observing district school activities. If a board member were provided a free pass to attend events in an official capacity, accepting free admission would not appear to violate ORS 244.040(1)(a). However, there must be an objective standard for what constitutes official capacity. For example, if a board member were attending to better understand funding, regulating or managing athletic events the official purpose would be apparent. Official capacity would also be apparent if a board member had assigned duties, such as chaperoning, ticket sales or managing concession sales.

If a board member were given free admission to merely watch the event for social or recreational purposes, the acceptance of the free pass would appear to constitute a violation of ORS 244.040(1)(a).

Depending on the value of the free admission to events accepted by a board member, OAR 199-001-0040 may affect the enforcement actions taken by the Government Standards and Practices Commission (GSPC) on any alleged violation of ORS 244.040(1)(a). In exercising its prosecutorial discretion, the GSPC has indicated that no enforcement action of ORS 244.040(1)(a) will be initiated when the value of a prohibited financial benefit accepted from a single source in one calendar year does not exceed \$50.00.

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.

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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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