

November 24, 2004

Chris Earnest  
Finance Director  
City of Redmond  
P.O. Box 726  
Redmond, Oregon 97756

Dear Mr. Earnest:

This is in response to your correspondence dated November 15, 2004 regarding the city providing meals at public meetings.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION  
STAFF OPINION NO. 04S-012**

**STATED FACTS:** A city manager wants to provide meals to persons who attend public meetings that have been announced for the purpose of discussing or acting on specific issues or special topics. It is not anticipated that the meals would be offered at the regular meetings of the city government.

It is anticipated that these meetings would occur 6 to 10 times in a calendar year. The availability of a meal may or may not be included in the public notifications of the meeting. The participants will be a varying combination of regular city staff, elected officials, committee appointees and public attendees. All persons present would be invited to partake of the meal provided by the city.

**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 NO.1: If a city provides all attendees with a meal at a public meeting, would it be a violation Oregon Government Standards and Practices law for a public official to accept the meal, if the availability of the meal was not included in public notifications of the meetings?

OPINION: City employees and officials, appointed or elected, are public officials as defined in ORS 244.020(15). ORS 244.040(1)(a) prohibits public officials from accepting any financial benefit that would not otherwise be available to those public officials, but for the public positions held.

The participating city public officials, from the stated facts, would most likely know that a meal was to be provided at the meeting. Most of the general public would be unlikely to know of the availability of a meal. Accordingly, if a public official accepted the free meal it would appear to be a financial benefit that would not have been available but for the public position held. The only exceptions to prohibited financial gain ORS 244.040(1)(a) are official salary, reimbursement for expenses, honoraria and unsolicited awards for professional achievement.

Depending on the value of the meals accepted by the city public officials, 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 the aggregate value of \$50.00.

QUESTION NO.2: If a city provides all attendees with a catered meal at a public meeting, would it be a violation Oregon Government Standards and Practices law for a public official to accept the meal, if the availability of the meal was included in public notifications of the meeting?

OPINION: If the meals were available to a significant segment of the general public and public officials on the same terms and conditions, a free meal would not appear to be a financial benefit available only because of the public position held. Accordingly, it appears that a public official could accept the meal under these circumstances without violating 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**

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**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

LPH/dc 04S-012