

September 30, 2005

Deputy Chief Marc Crain
Clackamas County Fire District #1
15990 S. E. 130th Street
Clackamas, Oregon 97015

Dear Deputy Chief Crain:

This is in response to your correspondence dated September 26, 2005 regarding issues that would arise if a public official performed duties for an outside employer on public agency time.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 05S-012

STATED FACTS: There is an employee in the training division of a fire district that has a second employment. The additional employment is with a non-profit regional training association that consists of training officers from 25 fire agencies from four counties. The duties from the outside employment are performed primarily during the district employee's personal time. The non-profit association provides and coordinates regional fire training services. The employee's work for the fire district and the association are interrelated.

The fire district employee is able to accomplish most of the work for the non-profit association while on personal time. However, there are occasions when a need arises for the fire district employee to handle business for the non-profit association during fire district working hours. The most common task that might occur could be placing or receiving telephone calls to facilitate the training offered by the non-profit. The district employee has a personal wireless telephone that is used for personal and non-profit business. There are occasions when the fire district employee could use other fire district resources besides district paid time. These might include a computer, copying, facsimiles or telephones.

The fire district, an agency member of the association, and the fire district employee want to continue the current arrangement, but wish to insure that Government Standards and Practices law is not violated.

Several steps have been proposed. One, is for the fire district employee to use personal vacation time when engaged in work on association business. Another, is for the association to reimburse the fire district for the time the fire district employee spends on association business. Finally, the fire district would prohibit the use of fire district resources for association business.

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 the fire district employee be able to work for a non-profit association on personal time without violating Government Standards and Practices law?

OPINION: In ORS 244.040(1)(a) there is a prohibition against a public official using or attempting to use an official position or office to obtain financial gain or avoidance of a financial detriment for the public official, public official's relative, or for any business with which the public official or a relative of the public official is associated. The prohibited financial benefit is one that would not otherwise be available but for the public official's holding the official position or office. Exceptions are provided for official salary, honoraria, expense reimbursement or unsolicited awards for professional achievement.

The GSPC has always held that public officials, who have private employment interests, may pursue those interests on personal time. In the past, the GSPC has provided the following guidelines that would help a public official avoid violating Government Standards and Practices law when engaged in private employment:

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.
5. That employees will notify their appointing authority in writing of a potential or actual conflict of interest if private endeavors could or would be affected by public employment.

If a public official followed these guidelines when working for a private employer, a violation of Government Standards and Practices law would be avoided. However, the stated facts introduce some elements that raise concern beyond the simple question and answer about outside employment. For example, the duties of the fire district employee are closely related to the work done for the non-profit association. This raises the question, would the fire district employee have the opportunity to work privately for the regional fire training association if the district employee were not employed in the fire district training division? If the answer is no, then the fire district employee would risk violating ORS 244.040(1)(a). The violation being that, but for holding the public position, the fire district employee would not have the opportunity for this additional employment and income.

QUESTION NO.2: If a fire district employee performs personal work for a non-profit organization during agency time, would a violation of Government Standards and Practices law be avoided if the organization reimbursed the fire district for the district costs?

OPINION: Whether or not the fire district requests and obtains reimbursement is not a question answered in ORS Chapter 244. Government Standards and Practices law speaks to conduct and behavior of individual public officials, not the public employing agency.

The stated facts indicate that the district employee has taken measures to avoid using district time and resources on personal work for the non-profit. One measure taken was to have a personal wireless telephone available for non-profit association work. It appears that, although much of the district employee's work is done on private time, the nature of the non-profit work, coordinating fire training events, may sometimes require the district employee to accomplish association work on fire district paid time and with fire district resources.

As stated, seeking reimbursement for the related costs is a fire district decision, but if the fire district employee must do association work on fire district time and with fire district resources to retain the private employment, then the district employee runs a risk of 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 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