

February 24, 2006

Damara Paris  
Telecommunication Assistance Programs  
Oregon Public Utility Commission  
P.O. Box 2148  
Salem, Oregon 97308-2148

Dear Ms. Paris:

This is in response to your correspondence received on 2/17/06 regarding a state employee responding to a private entity's recruiting notice for a position that requires skills related to those used in the employee's current public position.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**STAFF OPINION NO. 06S-007**

**STATED FACTS:** A Public Utility Commission (PUC) manager has been employed for eight years with duties related to the management of the Oregon telecommunications relay services (TRS). The manager's duties include oversight of the relay services, equipment and low income telephone subsidies provided to clients. The clients of these programs are deaf, hard of hearing, speech impaired and/or need assistance due to low income. The equipment and services enable people to communicate by using various telecommunication devices.

In 2004, the state entered into a contract with Sprint Nextel for telecommunications relay services. The relay services were to provide users with nationwide coverage. The contract was drafted and awarded by the Department of Administrative Services (DAS). The initial two year contract had an option for annual renewals of the agreement until 2009.

The PUC manager was part of the evaluation committee that participated in the preparation of the request for proposals used by DAS in early 2004. The committee also recommended appropriate candidates for the contract. Sprint Nextel responded with a bid that was awarded by DAS. The PUC manager did not have a role other than being a member of the committee in 2004. While

consulting with DAS occasionally regarding the relay services contract, all contract management decisions have been made by DAS.

The PUC manager has submitted applications for positions of employment with telecommunications relay provider companies including Sprint Nextel. The positions have been advertised and she has competed with other candidates for the positions. The manager learns of these vacancies primarily through notices listed in newsletters from Deaf Digest and Deaf weekly and through The Oregon Association of the Deaf (OAD).

Sprint Nextel has advertised a vacancy. The PUC manager learned of the vacancy through OAD and has applied to compete for the position. It appears that the position would involve management of the Sprint Nextel fulfillment of the telecommunications relay services under the DAS awarded contract with the state. If selected, the PUC manager would represent Sprint Nextel in carrying out the provisions of the Oregon relay program under the DAS awarded contract. The duties would require coordination with PUC on relay program issues.

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 the PUC manager violate Government Standards and Practices law by accepting employment with a private entity that would require

representing the private entity in coordinating contracted services to state agencies, including PUC?

OPINION: Oregon Government Standards and Practices law does not prohibit public officials from leaving their public employment for private employment, except for some state officials that hold specific positions identified in ORS 244.045.

There is a provision in ORS 244.040(1)(a) that prohibits public officials from using their official position to obtain personal financial gain that would not otherwise be available to them but for the holding of their official position. Accordingly, if a public official used that position to learn of or solicit an employment opportunity, such actions, may constitute the prohibited use of official position to obtain a financial benefit that would not otherwise be available.

It does not appear, from the stated facts, that the PUC manager has used the public position to gain an employment opportunity that would not otherwise be available, but for holding the PUC management position. Although the manager participated in a committee review of the telecommunications relay services contract specifications in 2004, that apparent minor role and the passage of time would appear to mitigate linkage with an employment opportunity offered two years later by Sprint Nextel. While the current management position requires official interaction with representatives of Sprint Nextel, the stated facts indicate that the opportunity to compete with others for the job opening was apparently advertised. The manager indicated that the advertised vacancy was learned through services of The Oregon Association of the Deaf (OAD). The opportunity, therefore, does not appear to be one that became available only because of the managerial position held at PUC, but resulted from the manager's association with OAD.

**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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