

July 28, 2008

Dr. Gary Andeen
President
Oregon Independent Colleges Association
7150 SW Hampton Street, Suite # 101
Portland, Oregon 97223

Dear Dr. Andeen:

This is in response to your correspondence dated July 7, 2008, regarding how the provisions of Oregon Government Ethics law may apply when payments are provided to public school teachers who perform as mentors to student teachers by the colleges or universities in which the student teachers are enrolled.

The Oregon Government Ethics Commission issued Staff Advisory Opinion No. 08S-002 on June 18, 2008, to address issues nearly identical to those issues raised in your request. The only substantive change to the stated facts provided in your request was that teachers employed by private schools may have a similar opportunity to obtain compensation for supervising student teachers.

OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 08S-004

STATED FACTS: The president of the Oregon Independent Colleges Association indicated that, Oregon colleges and universities that offer degree or certification programs in education require supervised teaching experiences for their students in order to satisfy state licensing requirements. These colleges and universities establish relationships or contracts with public school districts in order to place student teachers under the supervision of certified, K-12, public school teachers. Teachers employed by private schools may have the opportunity to supervise student teachers if individual colleges or universities obtain approval to place their student teachers in a specific private school under the supervision of a certified, K-12, private school teacher.

Certified teachers mentor the student teachers who gain progressive responsibility in the school classroom. The student teacher provides varying levels of instruction to pupils. Mentor teachers guide and monitor student teacher progress, reporting this information to the appropriate college or university liaison.

In return for the mentoring services of the certified teacher, the colleges and universities offer compensation in the form of payments or educational credit vouchers, which would allow the mentor teacher to enroll in classes at no cost at the college or university.

QUESTION: Would a public school teacher violate Oregon Government Ethics law by accepting compensation from a college or university for mentoring a student teacher for that college or university?

ANSWER: A person employed as a public school teacher meets the definition of a public official as provided in ORS 244.020(13) and as a public official a teacher must comply with Oregon Government Ethics law.

ORS 244.040(1) prohibits a teacher as a public official from using or attempting to use the teacher's position to obtain a financial gain or to avoid a financial detriment for the teacher, if the opportunity for financial gain or avoidance of a financial detriment would not otherwise be available but for the teacher's holding an official position.

A teacher as a public official is allowed some financial benefits as identified in ORS 244.040(2), such as, any part of their official compensation package as determined by the public body or the school district they serve, reimbursed expenses, limited honoraria and unsolicited awards for professional achievement.

The stated facts indicate that the public school teacher would not have the opportunity to mentor student teachers, but for holding the position as a certified teacher in the public school. The college or university establishes relationships or agreements with the teacher's school district employer. The teacher has the use of the school district classroom and resources. The teacher receives compensation from the school district for the same time spent on mentoring a student teacher. While certified teachers in private schools may have a similar opportunity to mentor student teachers, teachers, as public officials in public schools, are prohibited by ORS 244.040(1) from using their governmental employer's time and resources to engage in a personal income producing venture.

The Commission has offered guidelines for public officials, who wish to engage in personal income producing ventures, to follow if they wish to avoid violating 244.040(1).

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a personal business the public official must disclose the nature of the conflict of interest using one of the following methods:

Employees of governmental agencies must give written notice to their appointing authority.

Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

ORS 244.040(1) prevents public school teachers from receiving direct compensation in any form from colleges or universities for mentoring student teachers as described in the stated facts. If the payment is provided by the college or university to the school district and the school district distributes the compensation to the teachers as an element of their official compensation package, the teachers would not be prohibited from accepting the payment from the school district that employs them. Any financial benefit offered to public school teachers for services provided in mentoring student teachers is not a gift as defined in ORS 244.020(5)(a)(A) because the financial benefit is offered in return for the services provided.

The statutes and rules cited in this opinion are provided as an addendum to this letter.

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 GOVERNMENT ETHICS COMMISSION.

Please contact this office again if you would like this opinion submitted to the Oregon Government Ethics Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

Ronald A. Bersin
Executive Director

RAB/dt 08S-004

ADDENDUM

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are applicable to the issues that are addressed in this opinion:

OAR 199-005-0035(3) an “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official’s “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official’s expenses by the public body, in accordance with the public body’s policies.

244.020(5)(a) "Gift" means something of economic value given to a public official or a relative or member of the household of the public official:

244.020(5)(a)(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relative or members of the household of public officials on the same terms and conditions; or

244.020(5)(a)(B) For valuable consideration less than that required from others who are not public officials.

244.020(13) "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 as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.

244.040 Prohibited use of official position or office; exceptions; other prohibited actions. (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

244.040(2)(a) Any part of an official compensation package as determined by the public body that the public official serves.

244.040(2)(b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.

244.040(2)(c) Reimbursement of expenses.

244.040(2)(d) An unsolicited award for professional achievement.