



# Oregon

John A. Kitzhaber, MD, Governor

Government Ethics Commission  
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January 27, 2015

Dexter A. Johnson, Legislative Counsel  
Oregon Legislative Assembly  
900 Court St NE S101  
Salem, OR 97301-4065

Dear Mr. Johnson:

This is in response to your correspondence dated January 15, 2015 regarding the application of Oregon Government Ethics law to the installation of state owned Microsoft Office software on private computers and other devices owned and used by legislators and legislative staff for personal purposes.

**OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 15S-001**

**STATED FACTS:** The Oregon Legislative Assembly has acquired an enterprise-level license from the Microsoft Corporation that allows the Microsoft Office suite of software to be installed on personally-owned computers, laptops and related devices in addition to state-owned and furnished devices. The Assembly is considering permitting installation of Microsoft Office software on personally-owned devices of legislators and legislative staff. In doing so, the Assembly assumes that the personally-owned devices and the software purchased by the Assembly will be used for personal purposes, including obtaining private financial gain or avoiding private financial detriment, and for political campaign related purposes.

Microsoft's Enterprise Agreement Program Guide states that the Enterprise Agreement is designed for organizations with at least 250 users and/or devices that want to license software and cloud services for a minimum three-year period.

**QUESTION:** Does ORS 244.040(1) prohibit members of the Legislative Assembly and their staff from installing and using the state owned and licensed Microsoft Office suite of software on their personally-owned computers, laptops and related devices?

**ANSWER:** Yes. Members of the Legislative Assembly and their staff members, regardless of whether they are paid or unpaid, are public officials subject to the limits and restrictions in ORS Chapter 244. ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but

for the position held by the public official. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

In this case, members of the Legislative Assembly are considering a decision which would allow legislators and their staff to avoid a personal expense through the installation of state-owned and licensed Microsoft Office software on personal computers and devices owned by legislators and their staff and used for private purposes.

As the opportunity to avoid the cost of buying Microsoft Office software licenses for their own personal computers and devices is available to legislators and their staff only because they are public officials, the avoidance of the personal expense would be considered a prohibited use of office under ORS 244.040(1).

As you know, exceptions to the use of office prohibitions are found in ORS 244.040(2), but from the facts provided in your request, it does not appear that any exceptions apply.

**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

## ADDENDUM

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

ORS 244.020(14) "'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 or agent, irrespective of whether the person is compensated for the services."

ORS 244.040(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."

(2) "Subsection (1) of this section does not apply to:"

- (a) "Any part of an official compensation package as determined by the public body that the public official serves."
- (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."
- (c) "Reimbursement of expenses...."