

March 18, 1997

Jim McDonald
Personnel Officer
Employee Services
Oregon Youth Authority
530 Center Street NE, Suite 200
Salem, Oregon 97301-3740

Dear Mr. McDonald:

This letter is in response to your correspondence dated March 7, 1997, concerning an employee of the youth authority providing services to county juvenile department clients and families on a private contract basis.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
97S-007**

STATED FACTS: An employee of the Oregon Youth Authority (OYA), a parole assistant, has requested to engage in outside work providing counseling services to youth by conducting Family Partnership Meetings in the community. Part of the employee's normal assigned duties as a parole assistant are to assist youth offenders and families by conducting similar meetings; however, other more pressing and routine tasks hinder much time to be devoted to this staff function. The employee would provide these services to county juvenile department clients and families on a private contract basis.

The employee has completed a job rotation assignment designed to organize and develop the Family Partnership program in three counties. The employee has particular skills and expertise in this area. The employee intends to provide such service on an after hours basis, working on weekends and evenings. Funding would come from state general funds routed through OYA to the Central and Eastern Oregon Juvenile Justice Consortium. Client families would pay some nominal fees for services.

The referrals of clients to the program would come mostly from county juvenile department staff. OYA staff, probation and parole officers, diversion specialists and parole assistants work closely with local county juvenile department staff using a partnership model derived from Senate Bill 1.

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Day to day operations and assigned duties of the employee regularly involve contact and working relationships with county staff; however, some OYA probation and parole officers might also want to refer youth on their case loads to the Family Partnership program as well.

The program or services this employee would be providing are based on a project the employee personally established. The employee developed the program as an OYA employee and now proposes to continue such in a private capacity. In the first case he acted as an OYA employee. In the latter, the employee would be a private provider. It appears there would be financial gain which is indirectly derived from the employee's position in state government.

There apparently are other professional counseling resources in the community which could provide such services; however, they have not yet been fully developed. The potential exists that clients the employee is working with in the capacity as private contractor could later become clients of OYA. The referrals to the Family Partnership Meetings would come from county staff members with whom the employee has a regular working relationship. County staff may not be able to make a clear distinction between the employee's role as a contract service provider and the employee's role as a OYA state employee. Some of the interest overlaps.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (8)(a) to (c) of this section.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

ORS 244.020(15): Public official means any person who, when an alleged

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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.

ORS 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.

(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.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION: Would there be a violation of Government Standards and Practices laws for the OYA employee to become involved in the Family Partnership Meetings as a private contract service provider since the program or services the employee would be providing are based on a project the employee personally developed and established and given that there are, at the present time, no other professional counseling resources in the community which could provide the services?

OPINION: The GSPC has historically determined that the use of non-confidential knowledge and information gained as a result of public employment does not constitute a violation of ORS Chapter 244. To avoid violating Government Standards and Practices
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laws, an individual who maintains both public and private employment at the same time must maintain their duties and tasks as a public employee separate and apart from the duties and tasks associated with their private employment. The GSPC has previously issued advisory opinions related to the outside employment or professional activity of public officials. Those opinions have established a set of specific guidelines which, if carefully followed, will assist public officials in conforming with Oregon Government Standards and Practices laws. The guidelines are as follows:

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.

The OYA employee's position in developing and establishing the program or services the employee would be providing on a private contract basis puts the employee in a unique position that may not be available but for the holding of the official position. If the program was developed so as to require someone with the employee's qualifications, the employee would probably not be able to provide the services on a private contract basis. It appears that, if the employee were to do so, it would constitute the use of official position for personal financial gain in violation of ORS 244.040(1)(a). The stated facts indicate that there are other professional counseling resources in the community which could provide such services but these resources are not, at the present time, fully developed. If the other professional counseling resources in the community become fully developed and are able to participate in the program, and a mechanism were in place to assure that all qualified providers had an equal opportunity to be selected to provide the services, the employee would probably then be able to provide the services on a private basis.

It would be absolutely necessary for the employee to make certain the employee's role as either a private provider or a state employee was clearly understood by county staff.

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There could not be any overlap.

THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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