

March 18, 1997

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1254 Ruge Street NW
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Dear Christy,

This letter is in response to your correspondence dated March 6, 1997, concerning possible conflicts of interest in being employed by one state agency and performing private consulting work for another.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
97S-009**

STATED FACTS: You are employed as a training specialist by Vocational Rehabilitation Division (VRD) of the Oregon State Department of Human Resources . You have learned of an opportunity for a consulting position with the Oregon Family Support Council. The money for this position are a combination of funds from the Health Division and the Department of Human Resources. These funds would be disbursed through the Developmental Disabilities Council, which is federally funded. Your current agency is not among the targeted agencies who may participate in the project.

You have personal resources for producing the work and would not use VRD property or materials for production of materials for the Oregon Family Support Council. You have some flexibility in your work schedule and a substantial amount of vacation and comp time accrued. You would use your own time (a combination of off hours and vacation and comp time accrued) to perform all functions as a consultant for the Oregon Family Support Council.

RELEVANT STATUTES: The following Oregon Revised Statutes are relevant 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 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

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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 it be a violation of Government Standards and Practices laws to perform consulting services on a private contract basis for a state agency while being employed by another state agency?

OPINION: No. Oregon Government Standards and Practices laws, Oregon Revised Statutes Chapter 244, do not prohibit outside employment by a public official. In previous opinions of a similar nature, the GSPC has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines include the following:

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.

While it is permissible for a public official to engage in private employment on their own time, state law does not permit a public official to use anything that a person who is not also a public official is not entitled to use. The law also prohibits the promotion of outside business pursuits while engaged in the performance of official public duties. Private employment must always be kept separate from public employment in order to avoid a violation of ORS 244.040(1)(a).

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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.

Please don't 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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