

September 4, 1997

Bill Garland
Assistant Director
Academy Training
550 N Monmouth Ave.
Monmouth, OR 97361

Dear Mr. Garland:

This letter is in response to your correspondence, dated August 20, 1997, concerning the propriety of Board on Public Safety Standards and Training (BPSST) employees using their employee developed and marketed public safety related products or publications for private profit.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 97S-025

STATED FACTS: Several BPSST employees have written texts and other training materials, using their own time and resources. These products would be primarily intellectual properties such as publications. Some constituent agencies have expressed an interest in purchasing these publications. The employee would privately profit either directly or through a marketing entity. The privately written and published works could be potentially useful in BPSST programs.

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

ORS 244.010(3): Nothing in this chapter is intended to affect:

(b) Any statute prohibiting or authorizing specific conduct on the part of any public official or public employee.

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...

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ORS 244.020(2): Business means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

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...

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 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 #1: Would it be a violation of Oregon Government Standards and Practices laws for employees of BPSST to privately develop and market public safety related products to BPSST s constituent agencies for profit?

OPINION: No. Oregon Government Standards and Practices laws do not prohibit private employment by public officials. ORS 244.040(1)(a) prohibits public officials from using their official position to obtain personal financial gain that would not otherwise be available to them but for their holding official position. A public employee s private endeavors must always be kept totally separate from their official duties and tasks in order to avoid violation of ORS Chapter 244.

In previous advisory opinions of a similar nature, the Oregon Government Standards and Practices Commission (GSPC) has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

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.

If public employees follow the GSPC s guidelines for outside employment, there will most likely not be any violations of ORS Chapter 244.

According to the stated facts, BPSST employees used their own time and resources to produce written texts and other training materials. This appears to be in compliance with #1 and #2 of the guidelines. Caution should be exercised by these employees before they begin to market any subject matter that relates to their area of expertise at BPSST that they are also in compliance with #3, #4 and #5 of the guidelines.

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QUESTION #2: Could BPSST purchase these privately developed and marketed products from its employee for use in BPSST programs?

OPINION: Nothing in ORS Chapter 244 is intended to affect the operations of public agencies. Assuming that a BPSST employee has followed the guidelines for outside employment, Oregon Government Standards and Practices laws would not prohibit the employee from entering into a private agreement with BPSST for the sale of privately produced products useful to BPSST.

QUESTION #3: May a BPSST employee provide public safety training services for profit to BPSST's constituent agencies, such as instruction or consultation, if the employee uses their own private time and resources?

OPINION: Yes. The opinion to Question #1 also applies here.

QUESTION #4: If the answer to Question #3 is permissible in terms of conflict of interest, could BPSST, by policy, limit or prohibit such activities?

OPINION: ORS Chapter 244 applies to public officials that might be affected financially by the use of their official position or office. Other statutes may authorize public entities to regulate the behavior of public officials. ORS 244.010(3)(b) provides that where other statutes prohibit or authorize specific conduct on the part of public officials or public employees, ORS Chapter 244 is not intended to affect that statute. It appears that where BPSST is authorized, by statute, to regulate the conduct of its employees, ORS Chapter 244 will not affect that authority.

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.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/bpsst.so