

October 19, 1998

Nancy Blankenship, CMC  
City Recorder  
City of Redmond  
P.O. Box 726  
Redmond, OR 97756-0100

Dear Ms. Blankenship:

This letter is in response to your correspondence dated October 7, 1998, concerning city employees use of city owned cellular telephones for personal business.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION 98S-030**

**STATED FACTS:** The Oregon Government Standards and Practices Commission issued Advisory Opinion No. 98A-1003 relating to the personal use of public agency owned resources by employees. A League of Oregon Cities newsletter, in reference to the use of cellular telephones by public employees stated It is noted that if employees desire the convenience of a cell phone for personal use, then they must purchase their own cell phone and service. Some cellular telephones now have the capability to maintain two separate telephone numbers. This new technology would allow an individual to carry one cellular telephone with two telephone numbers. One telephone number could be used for official business and the second telephone number could be used for personal business. There would be no additional cost to the city for a cellular telephone with a dual number capability.

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

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.

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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.

QUESTION: If the city provided an employee with a cellular telephone that has the capability of maintaining two separate telephone numbers, would it be a violation of Oregon Government Standards and Practices laws if the employee purchased the cellular telephone service for the second line to make personal telephone calls?

OPINION: Yes. Public employees are not permitted to use city equipment at a cost that is not available to persons who are not public officials. If the city purchased cellular telephones for employees to use in the performance of official duties and the employees pay for the second phone number for personal use, the employee would avoid the activation and/or equipment charges for the cellular telephone. The avoidance of these expenses would violate ORS 244.040(1)(a) which states, 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...

Advisory Opinion 98A-1003 states that if public employees desire the convenience of a cellular telephone while on duty to make personal telephone calls, the employees must acquire and pay for their own personal cellular service. This requirement is independent of whether or not public employees also possess a cellular telephone assigned by their employing agency. The facts stated above vary slightly from the issues stated in the advisory opinion. However, the fact that one cellular telephone can be used for two separate telephone numbers does not change the law in this area. A public official cannot take advantage of official position to avoid the cost of paying for cellular telephone services or the equipment to make personal telephone calls.

If public employees want to avoid carrying two cellular telephones and also avoid violating Oregon Government Standards and Practices laws when they make personal telephone calls, they should purchase their own two-line personal cellular telephone

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and use the second number for agency related business. The employees could receive reimbursement of expenses for any telephone services related to agency business without violating Oregon Government Standards and Practices laws.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 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/blankenship.so