

September 15, 1999

Dan R. Olsen
Washington County Counsel
155 N First Ave. Ste 340, MS #24
Hillsboro, OR 97124

Dear Mr. Olsen:

This is in response to your correspondence dated September 13, 1999 regarding prizes offered to public officials who choose to utilize other modes of transportation instead of driving their cars.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 99S-024

STATED FACTS: Washington County has been asked to participate in a week of activities directed toward encouraging alternate transportation options. The Westside Transportation Alliance, a non-profit organization, is offering prizes for persons who do not drive their cars. The purpose of this promotion is to reduce traffic congestion, improve air quality, foster economic vitality, and improve the quality of life. The Westside Transportation Alliance is working with employers to create programs that provide information, incentives, and unique ways to motivate employees to alternatives to driving alone. The prizes are randomly drawn from entrants who have certified their participation. This promotion is open to both private and public-sector employees.

Washington County offers discounted annual transit passes to employees through a program approved by Tri-Met for both private and public employers. Thus, some of the commuters will use subsidized passes. Some rides will be on county time (such as going to meetings in Portland).

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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.

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: Would Washington County employees violate Oregon Government Standards and Practices laws by taking advantage of such an incentive program?

OPINION: No. The stated facts indicate the Westside Transportation Alliance offered an incentive program to private and public-sector employees. The GSPC believes there may be limited circumstances when public officials may take advantage of group discounts or other marketing incentives. Those would include instances when the benefit is unsolicited by the public official and is available to others who are not public officials. Generally speaking, if public officials participate in an incentive program such as described in the stated facts and the prizes are not available to persons who are not public officials, the public officials would be receiving personal financial gain only because of the holding of official position. In this case, the prizes are offered to anyone who certifies their participation, whether they work for a private employer or a public employer. Accordingly, employees of Washington County who participate in the program would not violate ORS 244.040(1)(a) if they were to receive a prize.

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.

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Please don't hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/olsen.so