

January 7, 2000

Lieutenant John Tuthill, Division Commander  
Parole and Probation Division  
Linn County Sheriff s Office  
118 SE 2nd Avenue, Suite F  
Albany, Oregon 97321

Dear John,

This letter is in response to your correspondence dated December 29, 1999 concerning questions that surface during classes which you teach as a component of the Department of Public Safety Standards and Training (DPSST) leadership series.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
00S-001**

**STATED FACTS:** Several questions continue to surface in an ongoing supervisors class which is taught as a component of the DPSST leadership series. The following are six sets of stated facts which outline these situations.

1. A number of law enforcement officers purchase firearms through 911 Distributors, which sells the same at a discount from what an officer would pay at a retailer such as Wal-Mart. This particular vendor ostensibly only sells firearms and accessories to law enforcement officers.
2. A state trooper has indicated that he pays for cell phone service at the state rate. He uses the phone for both employment and personal purposes.
3. A state trooper indicated that he purchased a COSTCO card at the state rate in his capacity as a state employee.
4. Several supervisors have reported that pizza parlors and other restaurants have delivered food to their agencies after the restaurants have closed for the evening. The food would ostensibly have to be disposed of by throwing it out were it not for the deliveries.

Lieutenant John Tuthill

5. A number of officers have purchased duty weapons from Glock, Inc. at a discount from what a member of the general public would pay.
6. Some agencies allow employees to use department equipment with the provision the employee pays for the use of same. One state agency apparently allows employees very limited use of equipment if it is job related, e.g., higher education which is job related.

**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 #1:** As indicated in the first group of stated facts would it be a violation of Oregon Government Standards and Practices laws for a law enforcement officer to purchase a firearm through a distributor who sells to only law enforcement officers at a discount not available to the general public?

**OPINION:** ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official position or office to obtain a financial gain or the avoidance of a 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, the reimbursement of expenses or an unsolicited award for professional achievement for the public official.  
Lieutenant John Tuthill

January 7, 2000  
Page three

The Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712 p. 2d 87 (1985), identified the broad policy of Oregon ethics laws as ensuring, ...that government employees do not gain personal financial advantage through their access to assets and other attributes of government. In that case, the Supreme Court held that a public official could not use his official position to obtain financial gain for himself where, through access to his governmental body's buying power, he purchased an automobile at a discount price. The Court emphasized that the term "use" in ORS 244.040(1) includes availing oneself of a benefit not available to the general public. The Court applied a but for test, i.e., but for his position, the public official would have been unable to purchase the car at the discount price and, thus, obtain a personal gain. 712 p 2d 92.

The GSPC staff does not believe that it would be a violation of Oregon Government Standards and Practices laws for an officer to purchase a weapon at the discount price when the weapon is to be used in the performance of official duties.

If the law enforcement officer were to purchase a firearm at the discount price described in the stated facts and then re-sell the weapon for profit, the GSPC staff believes that a use of official position for personal financial gain would occur and the officer would be in violation of ORS 244.040(1)(a).

**QUESTION #2:** As indicated in the second group of stated facts would it be a violation of Oregon Government Standards and Practices laws for a law enforcement officer to pay for cell phone service at the state rate if the officer uses the cell phone for both personal and employment purposes?

**OPINION:** If the law enforcement officer pays for the cell phone service at the state rate, and the state rate is cheaper than that which the general public pays for cell phone service, the officer would be obtaining a financial gain through the use of the officer's official position or office for the officer's personal cell phone use and would be in violation of ORS 244.040(1)(a).

**QUESTION #3:** As indicated in the third group of stated facts would it be a violation of Oregon Government Standards and Practices laws for a law enforcement officer to use a COSTCO card which the officer purchased at the state rate for personal purchases?

**OPINION:** Although it is not indicated in the stated facts, it is assumed that the state rate is the membership rate that an entity of state government would pay. It is assumed that the state rate for COSTCO membership is less than the cost of membership available to non-government entities or persons. Accordingly, it appears that, if the officer used the Lieutenant John Tuthill

January 7, 2000  
Page four

membership card for personal purchases, the officer would be gaining a benefit that, but for the officer's official position, would not be available to the officer and the officer would be in violation of ORS 244.040(1)(a).

**QUESTION #4:** As indicated in the fourth group of stated facts would it be a violation of Oregon Government Standards and Practices laws for law enforcement officers to receive food from pizza parlors and other restaurants which have closed for the evening if the food would have been disposed of by throwing out if not for the deliveries?

**OPINION:** The GSPC staff believes that, if the pizza parlors and restaurants furnish this left-over food to non-public officials such as private security guards, tow truck operators or hospital personnel, no violation of Oregon Government Standards and Practices laws would occur. If, however, the food is offered only to law enforcement officers or those who are public officials, the receipt of such food would be a violation of ORS 244.040(1)(a).

**QUESTION #5:** As indicated in the fifth group of stated facts would it be a violation of Oregon Government Standards and Practices laws for law enforcement officers to purchase duty weapons from Glock, Inc. at a discount rate less than that of the general public?

**OPINION:** The opinion to question #1 also applies to this question.

**QUESTION #6:** As indicated in the sixth group of stated facts would it be a violation of Oregon Government Standards and Practices laws for law enforcement officers, with agency approval, to utilize department equipment for job related endeavors, such as higher educational pursuits, if the officers pay the agency for the use of the equipment at the same rate they would pay a private vendor?

**OPINION:** If the department equipment is available to the general public at the same rate for usage that the law enforcement officers pay it would appear that no violation of Oregon Government Standards and Practices laws would occur. Conversely, if the department equipment was not available to the general public at the same rate the officer pays for usage, it would appear to be a violation of ORS 244.040(1)(a). These circumstances would be ameliorated if the employing agency formally designated employees' use of agency equipment to be part of official compensation.

**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**

Lieutenant John Tuthill  
January 7, 2000

Page five

**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

1112JP