

September 5, 2000

Klaus G. Rohde
14675 S.W. Osprey Drive, Apt. 424
Beaverton, Oregon 97007

Dear Mr. Rohde:

This letter is in response to your correspondence dated August 23, 2000 concerning numerous questions pertaining to Oregon OSHA employees.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 00S-022**

STATED FACTS: All of the following questions concern the application of Oregon Government Standards and Practices laws as they pertain to employees of Oregon OSHA.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable 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 (7) 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 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 an Oregon OSHA employee, on the employee's own time and using the employee's own resources, to be compensated by another party for conducting business that is part of the employee's regular job duties at Oregon OSHA?

OPINION: No. Oregon Government Standards and Practices laws, Oregon Revised Statutes Chapter 244, do not prohibit outside employment by a public official. This includes work which may bear a relationship to official duties. 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:

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.

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 agency resources that a person who is not also a public official is not entitled to use in the course of private employment. 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).

QUESTION #2: Would it be a violation of Oregon Government Standards and Practices laws for an Oregon OSHA employee, on the employee's own time and using the employee's own resources, to write health and safety programs and safety training programs for Oregon employers?

OPINION: No. The opinion to question #1 also applies here.

QUESTION #3: Would it be a violation of Oregon Government Standards and Practices laws for an Oregon OSHA employee, on the employee s own time and using the employee s own resources, conduct safety and health work in other states?

OPINION: No. The opinion to question #1 also applies here.

QUESTION #4: Would it be a violation of Oregon Government Standards and Practices laws for an Oregon OSHA employee to be a member of a volunteer fire department?

OPINION: There is nothing is Oregon Government Standards and Practices laws which would prohibit any government employee from serving in any volunteer position.

QUESTION #5: Would it be a violation of Oregon Government Standards and Practices laws for an Oregon OSHA employee, on the employee s own time and using the employee s own resources, to teach fire science courses at a community college?

OPINION: No. The opinion to question #1 also applies here.

QUESTION #6: Would it be a violation of Oregon Government Standards and Practices laws for an Oregon OSHA employee, on the employee s own time and using the employee s own resources, teach safety and health courses at a community college?

OPINION: No. The opinion to question #1 also applies here.

QUESTION #7: Is the appearance of impropriety a violation of Oregon Government Standards and Practices laws?

OPINION: No. The appearance of impropriety is not addressed by Oregon Government Standards and Practices laws.

QUESTION #8: Would it be a violation of Oregon Government Standards and Practices laws for an Oregon OSHA employee, on the employee s own time and using the employee s own resources, conduct safety and health activities within an Oregon company which is under federal jurisdiction?

OPINION: No. The opinion to question #1also applies here.

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QUESTION #9: Would it be a violation of Oregon Government Standards and Practices laws for Oregon OSHA or the Oregon Department of Consumer and Business Services to prohibit activities which are not prohibited by ORS Chapter 244?

OPINION: Oregon Government Standards and Practices laws must be adhered to by all public officials. There is nothing to preclude any government entity from setting rules and regulations within their own agency which are more restrictive than state law; however, a government entity cannot set rules and regulations within their agency which are less restrictive than state law.

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

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