

May 9, 2001

Douglas M. McGeary
Assistant County Counsel
Jackson County
10 South Oakdale, Room 118A
Medford, Oregon 97501

Dear Mr. McGeary:

This letter is in response to your correspondence dated March 9, 2001 concerning frequent flyer miles and other travel awards being included in an employee's personal compensation package.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION 01S-005

STATED FACTS: A number of officials of an Oregon county wish to include in their personal compensation package, frequent flyer miles and other travel awards they have accrued on official county business.

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

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.

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

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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 it be a violation of Oregon Government Standards and Practices law for public officials to receive frequent flyer miles and other travel awards for personal use as part of the official compensation package of a public official?

OPINION: No. ORS 244.040(1)(a) prohibits a public official from using official position or office to obtain financial gain or the avoidance of financial detriment that would not otherwise be available but for the public official's holding of official position or office, **other than official salary**, honoraria, reimbursement of expenses or an unsolicited award for professional achievement for the public official, the public official's relative, or for any business with which the public official or relative of the public official is associated. (Emphasis added)

The Oregon Government Standards and Practices Commission (GSPC) staff believes that, if the frequent flyer miles and other travel awards for a public official as a result of business travel on behalf of the employing public agency officially adopted for the personal use of the public official as a part of the public official's compensation package, this becomes a part of the public official's **official salary** and is not prohibited financial gain pursuant to ORS 244.040(1)(a).

It must be emphasized, however, that such benefits must be formally adopted by the governing body of a public body in the same manner as salary adjustments, health insurance and all other elements of a public official's compensation.

The GSPC anticipates that it will issue a formal advisory opinion specifically addressing the personal use of frequent flyer miles earned as a result of a public official's official business travel later in the calendar year 2001.

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THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION THAT WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY PURSUANT TO ORS 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Do not hesitate to call or write again if you have questions or desire additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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