

September 23, 2002

Sharon E. McKeehan
Oregon State Payroll Services Manager
155 Cottage Street NE, U50
Salem, Oregon 97301-3969

Dear Ms. McKeehan:

This letter is in response to your facsimile correspondence dated September 12, 2002 concerning "Hotel Hilton Vouchers."

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-025**

STATED FACTS: During periods of 2001 many hotels charged an energy surcharge in addition to their room rate. They ranged from \$1.50 to as much as \$10 if you were staying at the "Ritz."

There have been a number of class action suits against some major hotel chains, Hilton being one of them. The suits contend that the hotels didn't notify the guest of the energy surcharge until check out or that the guest was not told of the charge when they made the reservation.

In the case of Hilton, there is a proposed settlement of a \$10 discount coupon to be applied to a night's stay. The court has preliminarily approved this settlement; however, the court won't issue final approval of the settlement until October 30, 2002.

Hilton has been sending out the coupons attached to pages of settlement information and an opt out form. Using the coupon requires that the user (class member) sign an agreement to accept the \$10 as full settlement. The redemption of the coupon finalizes the deal. The coupons are not transferable to anyone other than a family member. The coupons are usable, presuming final approval of the court, from December 2002 to December 2003.

A couple of state agencies have asked for guidance on this issue as their employees have been receiving the coupons. They are mailed to the employee's home and not to the state offices.

The coupons could easily be used to lower the cost of future state travel if the holder has occasion to travel and can stay in a Hilton property. The Hilton brand extends to a

number of other properties including Red Lion. However, if the holder of the coupon doesn't have an occasion to travel on state business the coupon cannot be transferred to another employee at the agency who is going to travel.

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."

244.020(16) "'Relative' means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse."

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:"

244.040(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: If the coupon holder was not going to be traveling before the expiration date of the coupon would it be a violation of Oregon Government Standards and Practices laws for the coupon holder to use the coupon for personal travel or to give the coupon to a family member?

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 for the public official or a relative of the public official 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.

If a public official travels and the government agency the public official represents pays for the hotel accommodations it appears that the public official would be in violation of

ORS 244.040(1)(a) by using the discount coupon for personal travel or by giving the discount coupon to a relative.

Because the government agency paid for the hotel accommodations the discount coupon is the property of the government agency even though the stated facts clearly indicate that the discount coupon is not transferable to other than a family member. It appears that the only way the discount coupon could be used without a violation of Oregon Government Standards and Practices laws occurring would be for the coupon holder to use the discount coupon on future agency related travel.

QUESTION #2: Does the agency have the obligation to ask that employees report receipt of a coupon? Should the agencies request that the coupons be turned over to the agency for record keeping and disposition?

OPINION: Since the coupons are technically the property of the agency it appears that the agency should keep possession of the coupons; however, this is an agency decision and not something that the Oregon Government Standards and Practices Commission (GSPC) has jurisdiction over.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH 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 OPINION PURSUANT TO ORS CHAPTER 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.

Please contact this office again if you would like this opinion submitted to the Oregon Government Standards and Practices Commission (GSPC) for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director