

December 4, 2002

Captain Jim Burge
Roseburg Police Department
205 S.E. Jackson Street
Roseburg, Oregon 97470

Dear Captain Burge:

This is in response to your correspondence dated, November 20, 2002 regarding police officers and other city employees programming personal numbers into city issued cellular telephones.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 02S-031

STATED FACTS: A city has entered into an agreement with a local cellular telephone service provider. The cellular telephones provided to city personnel will have the programming capacity for up to three cellular telephone numbers. The telephones will also serve as pagers with the capability to display brief text messages.

The service provider will issue the cellular telephones with no acquisition cost. The provider will charge for airtime by the minute with the rate decreasing as the total minutes of city use increase.

Before this recent agreement, several police officers and other city employees were personal subscribers to cellular telephone service from the same provider. They purchased their own telephones and pay for cellular telephone service.

The city is considering a policy that would allow employees to program their personal cellular telephone number into the city issued cellular telephone. An employee would then be able to activate either the city or personal cellular

telephone number to make or receive calls. The airtime charges for business calls would be paid by the city. The employee would pay the airtime charges for personal calls.

To participate under this policy, a city employee must have and retain a personal cellular telephone and a subscription to cellular service.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

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:"

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 NO. 1: Would it violate Oregon Government Standards and Practices laws for city employees to program a personal cellular telephone number into an assigned city cellular telephone?

OPINION: No. In ORS 244.040(1)(a) public officials are prohibited from realizing a personal financial gain or from avoiding a financial detriment by availing themselves of public assets or resources that would not be possible but for the public office he or she holds.

In the stated facts, city employees will be required to purchase personal cellular telephone service before they can participate under the proposed policy. To activate and route personal cellular calls to a city cellular telephone would not appear to result in a financial gain or the avoidance of a financial detriment to

employees as they will have paid the costs associated with personal cellular service.

Employees will have to be careful to avoid making and receiving personal calls over the city line. Since the city policy will provide employees with access to a personal cellular line, there will be no justification for personal calls on the city telephone number.

QUESTION NO. 2: If employees prefer to use personal cellular telephones when on duty, would it be a violation of Oregon Government Standards and Practices law to program the city assigned cellular telephone number into the personal cellular telephone?

OPINION: No. As in the discussion of the first question, employees would not appear to realize a personal financial gain or avoid a financial detriment by engaging in this practice.

QUESTION NO. 3: If city employees do not subscribe to a personal cellular telephone service, would it be a violation of Oregon Government Standards and Practices law for them to make and receive personal calls from an assigned department cellular telephone?

OPINION: Yes. The application of ORS 244.040(1)(a) to personal use of the public employer's cellular telephones is discussed in GSPC Advisory Opinion 98A-1003 issued July 9, 1998. If the city provided employees with cellular telephones they could not be used for receiving or making personal calls.

The 1998 opinion states that public officials may make or receive emergency personal calls, such as in relation to a sudden hospitalization or motor vehicle accident, on an agency cellular telephone. The opinion specifies that such calls must occur infrequently (2 to 3 times per month) and must be brief in duration. Personal long distance calls are not permitted on any agency telephones. Even if the city's cellular telephone plan includes long distance telephone calls at no extra charge, employees will be prohibited from making personal long distance calls.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 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

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**TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION.
THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE
DIRECTOR OF THE OREGON STANDARDS AND PRACTICES
COMMISSION.**

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

Sincerely,

L. Patrick Hearn
Executive Director

02S-031dc