

December 26, 2002

John Harelson
Josephine County Treasurer
500 NW Sixth Street
Grants Pass, Oregon 97526

Dear Mr. Harelson:

This letter is in response to your e-mail dated December 9, 2002 concerning the draft "Information Technology Systems Policy" for the Josephine County Treasurers Office.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-034**

STATED FACTS: The Josephine County Treasurer has developed a proposed "Information Technology Systems Policy" for the Josephine County Treasurer's Office. One of the purposes of the policy is to assure that the technology used by the treasurer's office is in alignment with "county and state standards."

The definition of Information Technology "includes, but is not limited to, any systems, components, devices, or services utilized for the purpose for telecommunication, data processing or office automation."

The portions of the proposed policy that encompass Oregon Government Standards and Practices laws are as follows:

- "5. Personal Use Restricted
Employees are needed to remain at work despite personal needs and interests. It is also necessary for employees to continuously develop their knowledge and skills. For those reasons, certain personal uses of systems may be allowed...
 - a) Use of the IT [Information Technology] system is permitted on a limited basis for incidental personal purposes. This does not include uses requiring substantial expenditures of time, uses for profit, or uses that would otherwise violate Departmental or County policy... Personal use of departmental systems must be at no cost to the County...

- b) Examples of personal uses:
 - i) Limited personal use of County telephones.
 - ii) Limited receipt of and sending of personal E-mail.
 - iii) A short incoming or outgoing local fax.
 - iv) Incidental use of County owned cell phones and pagers.
 - v) Limited access to Internet while off duty. Information queries not requiring a (sic) monetary transactions are allowed on a limited basis.

- c) Examples of allowed mixed County and personal uses:
 - i) Printing and photocopying a County job application, resume or personnel papers.
 - ii) Printing and photocopying material for Treasurer authorized courses of study.

- d) Examples of personal uses that must be reimbursed at posted public rates:
 - i) Copying personal papers.
 - ii) Use of office printers for personal printing. I.e.: internet downloads, email, etc.
 - iii) Any use of IT systems that creates a cost for the County.

- e) Examples of personal use not allowed:
 - i) Outgoing long-distance fax's;
 - ii) Toll calls;
 - iii) Personal soliciting;...
 - iv) No personal gain...This prohibition also includes the avoidance of a financial detriment...
 - v) Unlawful and offensive use;...
 - vi) Political Purposes;...
 - vii) Personal Use of County Cell Phone. Employees are not allowed to use cell phones on a regular basis in a manner that would create ongoing costs to the County, even if reimbursable. Employees use of cell phones that takes advantage of preferential government rates is a violation of Oregon State Ethics Laws...
 - viii) Any use that creates a significant charge to the County; Uses of IT systems that creates more than a diminimus charge to the County...
 - ix) Personal buying or selling on the Internet;..."

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:"

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: Do the policies described in the stated facts comply with Oregon Government Standards and Practices laws?

OPINION: The Oregon Government Standards and Practices Commission (GSPC) staff believes that the policies contained in the stated facts appear to comply with Oregon Government Standards and Practices laws.

It should be noted that any personal use of the county owned telephones and cellular telephones must be limited, **brief and infrequent.** GSPC Advisory Opinion 98A-1003 states that the personal use of a government agency desk telephone is more liberal than the use of an agency owned cellular telephone. Some of the approved uses of an agency desk telephone are "to talk to family members, make medical appointments, schedule service technicians, confer with a child's school and take care of any of a variety of other matters which can only be accomplished during 'regular' working hours."

The personal use of an agency cellular telephone is more limited. Some of the approved uses would be "to contact a spouse or child care giver to advise that the employee is going to be late getting home or picking up children for a reason directly related to official duties such as a meeting which ran later than expected or a last minute change of schedule... [or] receiving an incoming call regarding a family emergency."

With regard to Internet access, if a public employee uses Internet access on an agency computer in order to avoid the financial expense of purchasing a computer and/or subscribing to an Internet service at home it would be a violation of ORS 244.040(1)(a). Agency Internet access should not be used for personal financial transactions.

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