


Theodore R. Kulongoski, Governor

August 22, 2003

Ray Fields
McMinnville Rural Fire Protection District
P.O. Box 384
McMinnville, Oregon 97128-0384

Dear Mr. Fields:

At its August 22, 2003 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 03A-1005

STATED FACTS: A rural fire protection district must prepare an annual budget. The district does not have employees or volunteers on the staff that can be assigned this responsibility. The district contracts with a municipal fire department for fire protection services.

Historically, a member of the board of directors has volunteered to prepare budgets as one of the responsibilities of being a board member. The board of directors is considering having a member of the board prepare the budget for compensation. Past budgets have had funds designated for "personal services" and these funds were used for expenses related to the preparation of the annual budget.

ORS 198.190 restricts the maximum compensation that may be received by a member of the governing body to \$50 per day for services performed as a member of the body.

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.”

198.190 **“Compensation and expenses of members of certain boards.** A member of the governing body of a district may receive an amount not to exceed \$50 for each day or portion thereof as compensation for services performed as a member of the governing body. Such compensation shall not be deemed lucrative. The governing body may provide for reimbursement of a member for actual and reasonable traveling and other expenses necessarily incurred by a member in performing official duties.”

QUESTION NO. 1: Would a member of the district board of directors violate Government Standards and Practices law by accepting compensation from the district for preparing the district’s annual budget?

OPINION: No. ORS 244.040(1)(a) prohibits public officials from using his/her official position to obtain a personal financial benefit, the opportunity for which would not be available but for the official position held. There are four exceptions allowed to this prohibition against financial benefit. Public officials may receive official salary, honoraria, reimbursement of expenses and unsolicited awards for professional achievement.

It appears that the “compensation” allowed to be received under ORS 198.130 would be the limited “salary” allowed under ORS 244.040(1)(a). That is the compensation for performing official duties as a member of the governing body. If a district board member received compensation for preparing the proposed annual budget, it would appear to be financial gain permitted by ORS 244.040(1)(a) because budget preparation has traditionally been among the official duties of a member of the board of directors.

QUESTION NO. 2: Would the board member avoid a violation of Government Standards and Practices law if the compensation accepted for preparation of the annual proposed budget were limited to the \$50 per day allowed under ORS 198.190?

OPINION: The GSPC has no jurisdiction in regard to ORS 198.190. The GSPC has no authority to opine as to the application of that law; however, it appears that if a board member were to prepare the budget as part of the official duties of being a board member, the board member would not be able to receive more than \$50 per day.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 22nd day of August 2003.

Dave Moss, Chairperson

Lynn Rosik, Assistant Attorney General