

February 12, 2003

Reginald R. Davis
Klamath County Counsel
305 Main Street
Klamath Falls, Oregon 97601

Dear Mr. Davis:

This letter is in response to your correspondence dated January 13, 2003 concerning Klamath County's telephone use policy.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 03S-001**

STATED FACTS: The Klamath County Board of Commissioners has approved, in principle, a telephone use policy. The policy includes the permitted use of personal telephone calling cards on county supplied telephones. The use of personal telephone calling cards is a sign of the times and Klamath County feels that it needs to be addressed in the policy. One section of the policy states "**Personal Telephone Calling Cards:** An emergency telephone call may be made on a county provided telephone if the employee uses his/her personal telephone calling card. Such calls should be brief and infrequent."

One of the five sections under "**General Policy**" states "Any necessary personal non-emergency telephone calls should be conducted during break time whenever possible." The Klamath County telephone policy has referred quite extensively to Oregon Government Standards and Practices Commission (GSPC) Advisory Opinions 98A-1003 and 02A-1008.

The draft policy is attached hereto and incorporated herein as part of the stated facts.

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: Would a Klamath County employee violate Oregon Government Standards and Practices laws by following the proposed guidelines set forth in the Klamath County telephone use policy?

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 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.

The second paragraph under “**General Policy**” states “Any necessary personal non-emergency telephone calls should be conducted during break time whenever possible.” It appears that this paragraph needs to be expanded or clarified. The reader could interpret this provision to mean that county cellular telephones could be used for such calls.

Under “**Amplification of Policy**” the draft policy refers to GSPC Advisory Opinion 98A-1003. That opinion states that a public official may use a public agency's regular telephone for non-urgent matters such as “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.”

That opinion is more restrictive regarding cellular telephones. It states “an occasion when an employee's personal use of a public agency cellular phone would not violate the provisions of ORS 244.040(1)(a) would be the need 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. Another permitted personal use of a public agency cellular phone by an employee would be receiving an incoming call regarding a family emergency.”

The policy heading “**Personal Telephone Calling Cards**” appears to be an agency issue and not a GSPC issue. This policy appears to be more restrictive than what the GSPC has opined in the past. The county has the discretion to make its policies more restrictive than opinions issued by the GSPC. The county policies cannot, however, be less restrictive.

The draft policy references GSPC Advisory Opinions 98A-1003 and 02A-1008 and, other than the two exceptions noted above, appear to follow those advisory opinions accurately.

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