

February 11, 2003

Ronald Eber  
Farm and Forest Lands Specialist  
Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, Oregon 97301-2540

Dear Mr. Eber:

This letter is in response to your correspondence dated January 15, 2003 concerning appearing at a conference in your official capacity and having the expenses paid by an outside agency and private individual.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 03S-004**

STATED FACTS: The Farm and Forest Lands Specialist for the Oregon Department of Land Conservation and Development (DLCD) has been invited to attend a conference as a guest speaker in the specialist's official capacity. The theme of the conference is "Farms, Forests and Open Spaces." The conference is being held in St. Petersburg, Florida. Because this is out-of-state travel state general fund money cannot be utilized for the cost of the trip.

The State and Local Government Law Section of the American Bar Association has offered to pay for lodging and meals while the specialist is attending the conference. The program chair, who is an Oregon attorney, has offered to obtain round trip air travel for the specialist.

The specialist is a member of the department's staff and is a represented employee who is hired by the agency director. The Land Conservation and Development Commission hires the agency director. Under the commission's statutory authority they establish policy. The specialist does not decide any matters that come before the commission.

The Oregon attorney practices in the land use area and occasionally appears before the commission. The bar association does not lobby the commission. The specialist has been invited to make a formal presentation within the theme of the conference and the

trip does not have the direct or indirect purpose to lobby or influence the specialist regarding any issue in general or that has or may come before the commission.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

244.020(8) "'Gift' means something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials. However, 'gift' does not mean:"

244.020(8)(c) "The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, subject to the reporting requirement of ORS 244.060(6)."

244.020(11) "'Legislative or administrative interest' means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official."

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."

244.040(2) "No public official or candidate for office or a relative of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority."

QUESTION: Would it be a violation of Oregon Government Standards and Practices laws for the specialist to have the American bar association and the private attorney provide the DLCD employee's food, lodging and travel expenses to attend this conference?

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 payment by the bar association of food and lodging and the provision by the private attorney of round trip air travel to the conference for the specialist would be reimbursement of expenses. Accordingly, the specialist would not violate Oregon Government Standards and Practices laws by accepting these payments.

ORS 244.040(2) prohibits a public official from accepting a gift with an aggregate value in excess of \$100 from any single source who could reasonably be known to have legislative or administrative interest in any governmental agency in which the public official would have any official position or over which the official exercises any authority.

ORS 244.020(11) defines legislative or administrative interest as an "economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official."

The stated facts indicate that the specialist works for the agency director and not the commission. The specialist exercises no authority and makes no decisions on any matter coming before the commission. Accordingly, it appears that no legislative or administrative interest would be present in this situation and the provisions of ORS 244.020(8) and ORS 244.040(2) would not apply.

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**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

03S-004-JP