

  
Theodore R. Kulongoski, Governor

May 13, 2003

Joan S. Kelsey  
Beery & Elsner, LLP  
1750 S.W. Harbor Way, Suite 380  
Portland, Oregon 97201-5164

Dear Ms. Kelsey:

This is in response to your letter of April 14, 2003 regarding a city's proposal to adopt a compensation package for city councilors that would include the cost of bi-monthly dinners for the official and his/her guest as a benefit.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 03S-010**

STATED FACTS: Members of a city council participate in city-county dinners that occur bi-monthly. Councilors attend these events in their official capacities. The city pays for the councilor's dinner as a reimbursed expense allowed as an exception to financial gain prohibited by ORS 244.040(1)(a).

A policy proposal is being considered to authorize the city to pay the cost of these dinners for a spouse or guest accompanying a councilor. The cost would be identified and administered as compensation to the accompanied councilor

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."

244.020(16) "'Relative' means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse."

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 a councilor violate Oregon Government Standards and Practices law by accepting a dinner paid for by the city, for a relative or guest, if the city made the cost of such a dinner part of the councilor's compensation?

OPINION: No. This would not be a violation for either the relative or the guest. Government Standards and Practices laws apply only to actions of a public official as they affect a relative. The law would not apply to a public official's actions, that affect a guest, who is not defined in ORS 244.020(16) as a “relative.” Accordingly, Government Standards and Practices law does not restrict or otherwise address the issue of the city paying the cost of a meal for a guest of a public official.

Regarding relatives of public officials, the GSPC has issued opinions on similar inquiries in the past. Some examples are staff opinion 97S-020 and advisory opinion 98A-1004. In these opinions the GSPC has indicated that, when public officials attend a function in an official capacity, the governing body could pay for the dinner of the official under the “reimbursement of expenses” provision of ORS 244.040(1)(a). The GSPC has also indicated that the cost of such dinners for a relative is the personal responsibility of the public official.

The stated facts propose that the governing body (city) adopt, as part of the compensation package of council members, the payment of the cost of dinner for relatives of councilors. If such a benefit were formally adopted in the same manner as all other forms of compensation, the councilors could avail themselves of the free dinners for relatives and not be in violation of ORS 244.040(1)(a).

**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**

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**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 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

LPH/dc 03S-010