

November 21, 2005

R. Charles Pearson, PLS
Clackamas County Surveyor
9101 S.E. Sunnybrook Blvd., Suite 428
Clackamas, Oregon 97015

Dear Mr. Pearson:

This is in response to your correspondence dated November 4, 2005 regarding a private surveyor, acting as a city surveyor, accepting payment directly from the developer.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 05S-014

STATED FACTS: Oregon law currently allows the governing body of a city to designate the city surveyor to serve in lieu of a county surveyor.

A city has entered into a professional services contract with a practicing private surveyor. Under the conditions of the contract, the surveyor is not considered a full-time or part-time city employee. The compensation under the contract would be the surveyor's fee for services provided under the contract, which would be paid by the developer directly to the surveyor without passing through the city.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020(2) " 'Business' means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity."

244.020(3) " 'Business with which the person is associated' means:

(a) Any business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

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: When performing contracted services for the city, would the private surveyor violate Government Standards and Practices law by accepting payment of fees directly from the developer rather than being paid by the city for those services?

OPINION: The stated facts describe a surveyor that provides services through a private business. The surveyor has entered into a contract with a city to provide surveying services on behalf of the city. It appears that the surveyor would be defined as a public official under this agreement as provided in ORS 244.020(15). The surveyor's private business would apparently be a business with which the surveyor is associated as defined in ORS 244.020(3)

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ORS 244.040(1)(a) prohibits a public official from using or attempting to use an official position or office to obtain financial gain or to avoid a financial detriment that would not otherwise be available but for the public official's holding the official position or office. The use of official position for the financial benefit of a business with which the public official is associated is also prohibited. The only exceptions are official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement.

It appears that payment by the developer to the surveyor would be "official salary" permitted by ORS 244.040(1)(a); therefore, it does not appear that the surveyor's acceptance of payment directly from the developer would violate Government Standards and Practices law.

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 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 05S-014