

December 5, 2005

David A. Schutt
District Attorney
Lake County
513 Center Street
Lakeview, Oregon 97630

Dear Mr. Schutt:

This is in response to your correspondence dated November 23, 2005 regarding a reserve county sheriff's deputy accepting free firearms training offered by a private business to area law enforcement agencies.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 05S-015

STATED FACTS: There is a private business that offers training in the use of various firearms, which would include handguns, shotguns and rifles. The typical cost to a private citizen, who receives this training, is about \$700.

The private business reserves one to two vacancies in each class of trainees for law enforcement personnel from agencies in the surrounding area. The county sheriff or the chiefs of police are notified of the training opportunity and select personnel from among the full-time and reserve deputies or officers to attend this training.

The district attorney for the county in which this business is located is a reserve deputy sheriff. As a reserve sheriff's deputy, the district attorney regularly participates in training to include firearms proficiency. The sheriff has selected the district attorney, as a reserve deputy, to attend the training provided by the private business. Due to concern as to whether Government Standards and Practices law would allow the district attorney to accept the training the offer has not been accepted.

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.”

QUESTION: If a county sheriff selects a reserve deputy, who is also the county district attorney, to attend firearms training provided by a private business, would the district attorney violate Government Standards and Practices law by accepting the training?

OPINION: No. ORS 244.040(1)(a) prohibits public officials from using an official position or office to obtain financial gain or to avoid a financial detriment, the opportunity for which would not otherwise be available but for the public official's holding of the official position or office. Exceptions are official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement.

The stated facts describe a situation where a reserve deputy regularly participates in training offered by and through the county sheriff's department. One of those training opportunities is to attend firearms training offered by a private business. The private business offers the training at no cost to the sheriff's department and the sheriff designates the department deputies to be trained.

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It appears that the financial benefit, the market value of the training, is offered to and accepted by the sheriff's department, not the trainee. While the designated trainee would benefit from the training through a private vendor, it is related to sheriff's department duties and brings the benefit of trained reserve deputies to the department. Accordingly, the district attorney/reserve sheriff's deputy could attend the firearms training without violating 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-015