

May 5, 1998

Jan A. Peterson-Terjeson  
3299 SW Perkins  
Pendleton, Oregon 97801

Dear Ms. Peterson-Terjeson:

This letter is in response to your correspondence dated April 15, 1998, concerning a possible conflict of interest between your employment with the Pendleton School District and your private employment as a Dorling Kindersley Family Learning products distributor.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION**  
**98S-014**

**STATED FACTS:** A teacher is employed part time by the Pendleton School District. The teacher is the media specialist at Hawthorne Elementary School and has held that position for nine years. The teacher has become a distributor for Dorling Kindersley Family Learning (DKFL). DKFL is a publisher of award winning nonfiction books, videos and CD-Roms.

The teacher has set up an office and showroom of DKFL products in the teacher's home. All of the teacher's literature lists the teacher's home telephone number, home address and home e-mail address. The teacher is keeping receipts of photocopying and purchases that the teacher has made for the business. The teacher has found that the days off the teacher has; Tuesday mornings and all day Friday will be adequate for the teacher to make calls and place orders for media specialists in Umatilla County. Media specialists usually make purchases twice a year and the teacher would like to meet them at these times.

DKFL sells its products to the private sector through the use of catalogs and book looks in the community and registering schools for school sales. The teacher has gone beyond the distributor level and gained certification for school sales. The teacher's training and business attitude is purely professional. DKFL maintains a tight rein on its distributors and to begin with the teacher can only register and serve five schools.

As school certified, the teacher offers a catalog for media specialists to look through and a list of specials for the month. The media specialists then, at a later time, are able to look at the catalog and make selections based on their school's inventory. Each school has a

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different collection based on teacher, student level and interests and curriculum taught. Being school certified the teacher is able to extend credit to schools by utilizing purchase orders to order products.

The six elementary schools in Pendleton have all purchased DKFL products through a distributor in Vancouver, Washington. The teacher feels that the teacher would be able to offer excellent service by ordering preview materials and provide personal customer service. The motto in the teacher's community has been to Buy Locally. The teacher would like to be able to offer this option. However, the elementary school media specialists would make the choice of which DKFL distributor they wish to purchase from.

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

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (8)(a) to (c) of this section.

ORS 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.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is

associated, unless the pecuniary benefit or detriment arises out of the following:  
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ORS 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.

ORS 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.

(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.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION #1: Would it be a violation of Government Standards and Practices laws to sell DKFL products to the school district by which the teacher is employed?

OPINION: No. Oregon Government Standards and Practices laws, Oregon Revised Statutes Chapter 244 do not prohibit outside employment by a public official. This includes work which may bear a relationship to official duties. To avoid violating Government Standards and Practices laws, an individual who maintains both public and

private employment at the same time must maintain their duties and tasks as a public employee separate and apart from the duties and tasks associated with their private employment.

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The GSPC has previously issued advisory opinions related to outside employment or professional activity of public officials. Those opinions have established a set of specific guidelines which, if carefully followed, will assist public officials in conforming with Oregon Government Standards and Practices laws. The guidelines are as follows:

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.
5. That employees will notify their appointing authority in writing of a potential or actual conflict of interest if private endeavors could or would be affected by public employment.

While it is permissible for a public official to engage in private employment on their own time, state law does not permit a public official to use anything that a person who is not also a public official is not entitled to use. The law also prohibits the promotion of outside business pursuits while engaged in the performance of official duties. Private employment must always be kept separate from public employment in order to avoid a violation of ORS 244.040(1)(a).

It would be absolutely necessary for the teacher to make certain the teacher's role as either a private provider or a school district employee is clearly understood by school district staff.

QUESTION #2: Would this opinion change with regard to the actual school by which the teacher is employed?

OPINION: No; however, there is a greater chance of a conflict of interest occurring with regard to the actual school where the teacher is employed because of the probability of the teacher having a greater decision making responsibility in the purchase of items

needed by the teacher s department within the school.

The issue of whether or not a public official s official duties conflict with the person s private business generally arises when the official is required to take some sort of official action

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which would or could have a financial impact on the person or the person s relative or any business with which the person or a relative of the person is associated. An **actual** conflict of interest exists when a public official takes official action which would result in a pecuniary benefit or detriment as defined in ORS 244.020(1). A **potential** conflict of interest exists when a public official takes official action which could result in a pecuniary benefit or detriment as defined in ORS 244.020(7).

ORS 244.120(1)(c) requires an appointed public official, such as a media specialist at an elementary school, to notify the official s appointing authority in writing of any actual conflict of interest or potential conflict of interest. The appointing authority is then required to dispose of the matter giving rise to the conflict.

Because the teacher is the media specialist at Hawthorne Elementary School and the person who would normally select the types of products marketed by DKFL, it would be necessary for the teacher s appointing authority to be advised in writing of the teacher s position so that the appointing authority may appoint an alternate person to select such products for Hawthorne Elementary School.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Please don t hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director

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