

October 13, 1999

Lisa Bradley
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P.O. Box 35
Stayton, OR 97383

Dear Ms. Bradley:

This is in response to your correspondence dated September 20, 1999 regarding your possible conflict of interest as an employee of the Office of the State Fire Marshal and your private endeavor as the owner of a specialized computer programming business that would like to develop a program that would be acceptable to the Fire Marshal's office.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 99S-025

STATED FACTS: An employee of the Office of the State Fire Marshal uses a computer program, the Oregon All Incident Reporting System (OAIRS), for the entry of fire reports sent to the Fire Marshal's office by the fire service. The employee has not been directly involved in the development of the OAIRS.

The employee owns a private business that develops specialized computer programs. The employee would like to develop a program that would be compatible with the OAIRS program and NFIRS, a national reporting program.

When a private vendor wants to create a program that is acceptable by the Fire Marshal's office, the vendor would contact the employee's supervisor to get either a copy of the OAIRS program or the specifications for the program to make the vendor's program compatible with the OAIRS program.

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

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

Lisa Bradley
October 13, 1999
Page Two

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.

QUESTION: Do Oregon Government Standards and Practices laws prohibit the employee from getting a copy of the State Fire Marshal's OAIRS program for personal private financial benefit?

OPINION: No. The provisions of ORS 244.040 apply here. The law states that public officials cannot use their position as a public official to obtain financial gain for themselves, a relative or for a business with which the official or a relative is associated. The Oregon Supreme Court has held that the term "use" in ORS 244.040(1)(a) includes availing oneself of a benefit available only because of holding official position.

The stated facts indicate that the Fire Marshal's office provides copies of its computer programs to private vendors upon request. If the employee wishes to use the OAIRS program in private business without violating ORS Chapter 244, the employee must follow the GSPC guidelines for outside employment. In previous advisory opinions of a similar nature, the Oregon Government Standards and Practices Commission (GSPC) has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

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.

Lisa Bradley
October 13, 1999
Page Three

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.

The employee should follow the procedures established by the Fire Marshal's office for handling private vendors' requests for computer programs. The employee should follow the guidelines for outside employment while creating a specialized computer program acceptable to the Fire Marshal's office in order to avoid violating Oregon Government Standards and Practices laws.

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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