

July 28, 2000

Art Alexander  
IT Strategic Planning/BIT  
1120 SW 5th Ave R, 450  
Portland, OR 97204

Dear Mr. Alexander:

This letter is in response to your correspondence dated July 5, 2000, concerning public employees who access the Internet, by using the employer's computer at the workplace, to conduct personal financial transactions.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION 00S-017**

**STATED FACTS:** The City of Portland has a policy already in place covering the Internet, Intranet and E-mail technologies. The following are excerpts from that policy:

The Internet, Intranet and e-mail technologies (hereafter Internet Technologies) provide convenient, rapid, cost-effective communication with the public and other audiences, allow the City and bureaus to provide information about services and programs, and enable the public to conduct business with the City.

The purpose of the City of Portland Internet Technologies policies is to provide bureaus and employees with standards for their appropriate use. The policies cover the use of Internet Technologies: for internal and external communication, as a tool for conducting the City's business, as a Web page publisher, and as a research tool and information resource . . .

City employees' use of City-paid Internet access or technologies, including remote access to such accounts, shall be for official City business purposes. Unless restricted by bureau standards, city employee use of Internet Technologies for occasional, brief, important, non-toll personal communication is authorized providing it is reasonable and kept to a minimum. This limited authorization may include participation in community or professional organizations with the knowledge or approval of an employee's immediate supervisor or manager. . .

Unacceptable Use of Internet Technologies . . . Use of the City's technological resources for private gain, or avoidance of personal expense.

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Some City employees have access to the Internet in their homes.

**RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the issue 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 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 or a relative of the public official is associated.

**QUESTION :** Would it be a violation of Oregon Government Standards and Practices laws if an employee, who has Internet access at home, uses the city Internet access connection, from a city work station during an agreed upon break time to buy and sell personal items on an Internet auction site or trade personal financial instruments at an online brokerage?

**OPINION:** ORS 244.040(1)(a) states that 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. This provision applies equally to elected persons, compensated public employees and uncompensated persons who volunteer their time to a public entity.

The Oregon Government Standards and Practices Commission issued Advisory Opinion NO. 98A-1003 on July 9, 1998 (copy attached). That opinion addressed the

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personal use of telephones, cellular telephones and computers by public officials. The opinion states, on page 4, that publicly owned equipment is intended to be used for the official business of the government entity. Thus, computers owned by public agencies may not generally be used by employees for personal purposes. Employees must also comply with any employer policies which may place additional restrictions on the use of computers.

The time of the day is critical to the success of online financial trading and auction transactions. Therefore, the fact that an employee may have Internet access at home and makes the online transaction during breaks does not mitigate the problems for purposes of applying the provisions of ORS Chapter 244. According to the stated facts, public officials only have access to the computer and the Internet during business hours because they are employees of the City of Portland. The stock market and online auctions are fluid and dynamic with prices changing constantly. If an employee's use of the city's Internet access while at work results in a personal financial benefit that would not otherwise be available, a violation of ORS 244.040(1)(a) would likely occur.

(We also note that use of the city's technological resources for private gain constitutes an unacceptable use of Internet Technology under the current city policy).

**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.**

Sincerely,

L. Patrick Hearn  
Executive Director

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