

August 14, 2000

Howard L. George
Business Manager
Jackson Education Service District
101 North Grape Street
Medford, Oregon 97501

Dear Mr. George:

This letter is in response to your correspondence dated August 3, 2000 concerning your wish to clarify ORS 244.040(1)(a).

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 00S-020**

STATED FACTS: An employee of an Education Service District (ESD) receives a telephone call from an employee of another school district. The other district's employee requests assistance with the school district's accounting. The ESD employee receiving the telephone call offers to provide the assistance personally for a fee instead of the ESD employee's agency providing the assistance. The ESD employee would provide the assistance by taking paid time off from the ESD.

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

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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: Would the ESD employee violate Government Standards and Practices law by providing the requested assistance to the school district personally?

OPINION: Yes. ORS 244.040(1)(a) clearly prohibits public officials from taking any action in an official capacity which would result in financial gain to the public official, a relative of the public official or a business with which the public official or a relative is associated.

The Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712 p. 2d 87 (1985), identified the broad policy of Oregon's ethics laws as ensuring ...that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. The Court applied a but for test, i.e., but for his position, the public official would have been unable to purchase a car at a discounted government price and, thus, obtain a personal gain. 712 p 2d at 92.

According to the stated facts, but for the ESD employee's official position, the employee would not have been able to learn of the other district's need for assistance and offer the employee's personal services to the other district for a fee.

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