

June 1, 2001

Celeste J. Doyle  
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Dear Ms. Doyle:

At its June 1, 2001 meeting, the Oregon Government Standard and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**ADVISORY OPINION 01A-1005**

STATED FACTS: You were hired as an assistant attorney general (AAG) in 1993 for a one year position. You were hired again in May 1994 on a permanent basis. You resigned your position as an AAG on January 31, 1999; however, you continued to work for the Department of Justice (DOJ) on contract as a special assistant attorney general (SAAG) until December 31, 1999. Less than two years have passed since the end of that contract and you may wish to enter into similar contracts in the future.

A SAAG provides legal advice to DOJ and specific agencies or officials pursuant to a personal services contract. Such contracts typically contain a provision stating the SAAG is an independent contractor and that the SAAG represents and warrants that they are not an employee of the state and not an officer, employee or agent of the state or department.

It is unclear whether a SAAG is subject to the post-employment limitations imposed by ORS 244.045(2).

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

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.

**244.045 Regulation of subsequent employment of public officials.**

244,045(2) A person who has been a Deputy Attorney General or an assistant attorney general shall not, within two years after the person ceases to hold the position, lobby or appear before an agency that the person represented while employed by the Department of Justice.

QUESTION: What is the effect of a SAAG contract? Is a SAAG employed by DOJ within the meaning of ORS 244.045(2) and therefore subject to its limitations when the contract ends?

OPINION: In preparation for this opinion the legislative history of SB159 (1993) was reviewed. The revolving door provisions pertaining to the deputy attorney general and assistant attorneys general were added very early on in that lengthy legislative process with virtually no discussion. During the hearings, it was suggested that the Attorney General's views had been solicited but no one from DOJ ever appeared and there is no written testimony on that subject.

In further research of your first service as an AAG, we believe you were grandfathered because you were hired as an AAG (as an Honors Attorney) before the November 4, 1993 effective date of the amended statute. You then went directly from that service to your new position as a regular AAG without any break in service. We do not believe that changing from one AAG job to another impacted the continuity of your employment with DOJ. You were an AAG before and after the effective date. We believe that your entire service as an AAG is exempted from the two year prohibition. Those two years have expired and need not be further addressed in this opinion. However, the remaining question involves your contract service as a SAAG from March to December 1999. The two years have not yet run on that service.

ORS 244.045(2) applies to a person who has been a Deputy Attorney General or an assistant attorney general for two years after the person ceases to hold the position. There is no definition of the terms deputy attorney general or assistant attorney general in ORS Chapter 244. However, other statutes do address those positions.

ORS 180.130 governs the appointment of the Deputy Attorney General. There is only one such person and no particular issue for this opinion's purposes about the application of the statute to this person.

ORS 180.140 addresses other assistants. ORS 180.140(1) says The Attorney General shall appoint the other assistants the Attorney General deems necessary to transact the business of the office, each to serve at the pleasure of

the Attorney General and perform such duties as the Attorney General may designate and for whose acts the Attorney General shall be responsible. Each assistant shall have full authority under the direction of the Attorney General to perform any duty required by law to be performed by the Attorney General. Paragraph 2 says the AAGs are to be lawyers qualified to practice in this state and shall take an oath of office. Paragraph 3 says the Attorney General may also appoint temporary assistants for up to 15 months, who need not be practicing lawyers. Paragraph 4 says the Attorney General shall pay salaries to AAGs fixed by the Attorney General, and that AAGs shall devote their full time to the state's business, unless hired on a part time basis (AAGs are not allowed to practice law in any other capacity, even the part time ones, except for a limited exception for pro bono work in ORS 180.140(6).) Paragraph 5 is the subsection that authorizes the hiring of special counsel. The statute does not call these counsel SAAGs, that is a term adopted by internal policy of DOJ. The statute says the following: Special legal assistants or private counsel may be employed by the Attorney General, under the direction and control of the Attorney General, in particular cases or proceedings, whenever the Attorney General deems it appropriate to protect the interests of the state. The cost of such special assistants or counsel shall be charge to the appropriate officer or agency pursuant to ORS 180.160.

The statutes draw pretty stark distinctions between AAGs who have full authority to do any act required of the Attorney General and who must devote all their time to the state's business, with special legal assistants or private counsel who are retained by the Attorney General in particular cases and proceedings.

ORS 180.140(5) never suggests that these private counsel are AAGs as that term is used in ORS 244.045. Special AAGs are brought in for special projects, but may also, at the same time, represent dozens or hundreds of other clients, unlike AAGs who by law can have no client other than the state.

We believe that some of the issue comes about because of the Attorney General's choice of the term SAAG to describe these private counsel. That is a choice that is not required by the law, and nothing in the statutes compels that label. It is one chosen by internal policy.

We believe that looking at the text of ORS 244.045(2) and the context of the term assistant attorney general in ORS 180.140 leads to the conclusion that the revolving door statute only applies to those persons employed by the Attorney General as an AAG. There is no reason to look beyond those who have that label (including the limited duration Honors Attorneys who are full AAGs for the full term of their appointment) to include private counsel who happen to have a contract with the state to perform specialized services.

We believe that service as a contract lawyer for the state (SAAG) is not covered by the restrictions in ORS 244.045 because those attorneys are not assistant attorneys general.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.**

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Katherine E. Tennyson, Chairperson

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Date

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Lynn Rosik  
Assistant Attorney General

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Date