

October 19, 2001

Gary Ruskin
Executive Director
Commercial Alert
2226 SE 55th Avenue
Portland, Oregon 97215-3928

Dear Mr. Ruskin:

On October 19, 2001 the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION 01A-1011**

STATED FACTS: Channel One Communications Corporation (Channel One), a school based marketing company owned by Primedia Inc., is conducting a Share It Program. Through this program, Channel One is offering \$500 to its key operators, teachers or administrators overseeing its daily news broadcast in their schools, for convincing a principal of a neighboring school to enter into a contract to receive the Channel One service.

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

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.

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 \$1000 or more at any point in the preceding calendar year.

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.

244.020(16) " Relative means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.

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:

244.040(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: Would it be a violation of Oregon Government Standards and Practices laws for public school teachers or administrators to receive compensation from Primedia for signing up other schools to receive Channel One service?

OPINION: Yes. ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official position or office to obtain a financial gain or the 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, the reimbursement of expenses or an unsolicited award for professional achievement for the public official.

The Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712p. 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. In that case, the Supreme Court held that a public official could not use his official position to obtain financial gain for himself where, through access to his governmental body's buying power, he purchased an automobile at a discount price. The Court emphasized that the term use in ORS 244.040(1)(a) includes availing oneself of a benefit not available to the general public. The Court applied a but for test, i.e., but for his position, the public

official would have been unable to purchase the car at the discount price and, thus, obtain a personal gain. 712 p 2d 92.

The stated facts indicate that Primedia Inc. is offering \$500 to teachers or administrators who oversee its daily news broadcast in their schools for convincing a principal of a neighboring school to enter into a contract to receive the Channel One service. The but for test can be applied in this case. But for the teachers or administrators having contact with Primedia because of their official positions, they would not have the opportunity to avail themselves of the \$500 offered by Primedia. Whether or not the action required to earn the money were to occur on school district time or on personal time is not relevant.

Acceptance of the money for personal use would place the teacher or administrator in violation of ORS 244.040(1)(a). A violation would not occur, however, if the teacher or administrator gave the money to their school or disposed of the money in some other way that did not result in a personal financial benefit to the public official, a relative of the public official or a business with which the public official or a relative of the public official is associated.

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

Lynn Rosik
Assistant Attorney General

Date