

October 31, 2001

Jim Voytko
Executive Director
Gerald Lelack
Retirement Counselor
Public Employees Retirement System
P.O. Box 23700
Tigard, Oregon 97281-3700

Dear Mr. Voytko and Mr. Lelack:

This letter is in response to your correspondence dated October 5, 2001 concerning current Public Employees Retirement System (PERS) employees offering private one-on-one counseling services to pending retirees.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSIONS STAFF
OPINION NO. 01S-023

STATED FACTS: For many years OPERS has provided one-on-one counseling services to pending retirees. However, in response to legislative direction as expressed in the PERS 01-03 budget, this service has been largely eliminated. Instead, PERS has expanded its group counseling sessions as well as its call center and email customer response efforts.

Nevertheless, there may well remain a substantial number of PERS members that would utilize one-on-one counseling if it were available. For sometime private retirement advisory firms have offered such advice to PERS members for a fee. Several current PERS employees wish to offer such a service, either on their own time or in concert with a private advisory firm. They see a need to review and explain PERS options to members so that they can make informed decisions based on accurate, objective advice as to benefit choices in the context of their personal situations.

These employees have approached PERS senior management for guidance. The details behind their request are as follows:

- * There would be no use of PERS confidential data save that which might be provided by the individual seeking counseling.
- * If members wish to acquire their retirement system data for these sessions, they must do so personally through normal channels.
- * There would be no use of PERS facilities, computers or software.
- * The activities would take place solely in non-work hours and must not in any way affect the PERS employee's work, work schedule or fulfillment of their agency responsibilities.
- * The individual counselor may not claim to be representing PERS while conducting these activities.
- * The individual counselor (and any organization they may affiliate with) must acknowledge to the member full responsibility for all information and counsel provided in these sessions.

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."

244.040 "**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 PERS employees be in violation of Oregon Government Standards and Practices laws by providing counseling services to PERS members as described in the stated facts?

OPINION: According to the stated facts, no violation of Oregon Government Standards and Practices laws would occur. 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.
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 stated facts indicate that most of the guidelines have been covered. If the PERS employees follow the GSPC's guidelines for outside employment, it does not appear that there would be any violations of Oregon Government Standards and Practices laws.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN

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ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Please advise me if you would like this opinion placed on the agenda of a future meeting of the GSPC for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

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