

October 11, 2002

On October 11, 2002 the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion on its own motion.

This advisory opinion replaces advisory opinion 01A-1003 issued June 1, 2001 and rescinded on April 12, 2002.

OREGON GOVERNMENT STANDARDS AND PRACTICE COMMISSION ADVISORY OPINION NO. 02A-1009

STATED FACTS: On occasion, a public official who is employed by a small public body is the only person in a position to make salary recommendations for themselves and/or relatives and otherwise take official action that could or would result in a financial benefit to the official or a relative of the official.

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 it be a violation of Oregon Government Standards and Practices laws for public officials of small bodies to make recommendations to their governing bodies regarding salary increases for themselves and/or a relative?

OPINION: No. ORS 244.040(1)(a) prohibits a public official from using or attempting to use official position or office to obtain financial gain or the avoidance of a financial detriment that would not otherwise be available but for the holding of the official position or office, other than official salary, honoraria, reimbursement of expenses and an unsolicited award for professional achievement for the public official or a relative of the public official or a business with which the public official or a relative of the public official is associated. The GSPC interprets salary to mean the receipt by the public official of the public official's salary and benefits.

Recommendations between a public official and another official charged with making decisions or the governing body are appropriate when: 1) they are part of a performance evaluation process; 2) during the Oregon budget law process; 3) if the elected body directs the appointed official to conduct a salary survey; 4) when the action is a part of a multi-year agreement implementation; or 5) in such other venues where both parties would expect a reasonable and open dialogue to take place. Securing and offering various salary and benefit comparisons or providing options to compensation packages for a governing body to consider is not considered a violation of law.

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 11th day of October 2002.

Alice Schlenker, Chairperson

Lynn Rosik
Assistant Attorney General

Date