

November 22, 2002

James M. Coleman
Clackamas County Counsel
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Oregon City, Oregon 97045-1881

Dear Mr. Coleman:

At its November 22, 2002 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 02A-1012

STATED FACTS: A county is considering the adoption of a policy regarding employee use of cellular telephones for county business. The proposal defines three distinct categories of employees who would use cellular telephones for official business:

Category A

These employees have county cellular telephones assigned. The use of these telephones would be restricted to official county business. The only personal calls allowed for this category would be for family emergencies, but only if a landline telephone is not available within a reasonable period of time. These emergency personal calls are restricted to brief duration and are not to occur more than 2 to 3 times per month. The county would not require reimbursement for personal calls made within these restrictions.

Category B

These are non-represented employees that are provided a cellular telephone allowance, as part of their county compensation. The allowance will be credited to the selected employees as taxable income. The county administrator would designate employees that would receive this monthly allowance and assign an amount to each, either \$40, \$75 or \$125. The cellular telephones obtained with the allowance would be for conducting county business, but personal calls would not be prohibited.

Category C

These are employees who only have a county cellular telephone and do not have access to a county landline telephone. Since the employees in this category do not have access to a landline, the policy on personal calls reverts from the more restrictive one for cellular telephones to the one applying to county landline telephones.

These employees would be permitted to talk to family members, make medical appointments, schedule service technicians, confer with a child's school and take care of a variety of other matters, which can only be accomplished during regular working hours. Personal calls, made by this category of employee, must be brief and infrequent and long distance calls are prohibited. These guidelines appear, in large part, to be drawn from the GSPC Advisory Opinions numbered 98A-1003 and 01A-1004, which are affirmed in Advisory Opinion number 02A-1008.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are relevant to the issues discussed in this advisory opinion:

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: If the county adopted the proposed policy governing employees' use of cellular telephones, would the employees who complied with the policy violate Government Standards and Practices law?

OPINION: No. In each category of use, the proposed policy appears to comply with Government Standards and Practices law and with the application of that law as found in GSPC Advisory Opinions numbered 98A-1003, 01A-1004, and 02A-1008.

The policy appears to underscore that it is a violation of Government Standards and Practices law for public officials to avail themselves of a public agency resource, such as a cellular telephone, that results in a financial benefit or avoidance of a financial detriment. The policy appears to incorporate the degree of latitude given by the GSPC for some limited personal use of the public agency cellular telephones. It restricts permitted personal calls to family emergencies such as a sudden, unexpected hospitalization or a motor vehicle accident. If such calls do occur, they must be brief and infrequent, such as 2 to 3 times monthly.

While ORS 244.040(1)(a) prohibits public officials from using their position to gain a personal financial benefit, compensation is one exception to that prohibition. It appears that the proposed county policy, for one employee category, declares this allowance to be part of the employee's compensation package and administers it as such. This approach was suggested in Advisory Opinion 98A-1003 and is also addressed in 02A-1008 as an approach public agencies could take to ensure that employees could avoid violating Government Standards and Practices 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. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 22nd day of November, 2002.

Alice Schlenker, Chairperson

Lynn Rosik, Assistant Attorney General