

January 31, 2002

David B. Williams  
Assistant County Counsel  
Lane County Office of Legal Counsel  
Courthouse — Public Service Building  
125 East 8<sup>th</sup> Avenue  
Eugene, Oregon 97401

Dear Mr. Williams:

This letter is in response to your correspondence dated November 21, 2001 concerning police officers residing in public housing at reduced rent.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NUMBER 02S-005**

**STATED FACTS:** The Housing and Community Services Agency of Lane County (HACSA) is a housing authority under ORS 456.005(2). Under federal law, HACSA is also a public housing agency (PHA) subject to regulations of the federal department of Housing and Urban Development (HUD). HACSA's primary function is to provide low income housing in Lane County. In keeping with that purpose, HACSA owns and manages numerous multi-unit apartment structures in Lane County. Public subsidies result in tenants paying below-market rents. With an exception noted below, federal and state law generally provide that a person cannot qualify for HACSA provided housing if the person's (or family) income exceeds various specified levels.

Under federal law, there is a limited exception for police officers to the income qualification requirement. For purposes of increasing security for residents in a public housing development, a PHA, such as HACSA, is specifically permitted to allow a police officer to reside in the public housing even though the police officer would not otherwise be eligible for occupancy in public housing. By definition, a police officer must be employed by a governmental unit.

HACSA wishes to have a police officer live in one of its public housing units. To attract prospective police officer tenants, HACSA will offer a police officer a rental unit at below-market rent. Maintaining status as a police officer will be a condition of continued occupancy and reduced rent. The rent to be charged to the officer must be specifically approved in advance by HUD.

Deputy sheriffs are employees of Lane County. A deputy s residing in a HACSA housing unit would not be considered part of the deputy s assigned duties as a Lane County employee.

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 #1: Would it be a violation of Oregon Government Standards and Practices law for a deputy sheriff to accept an offer from HACSA to reside in a HACSA unit at a below-market rental rate?

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

Initial consideration of the stated facts may create the perception that officers who were to participate in this program would violate this law; however, further analysis leads to a different conclusion. The purpose of this federal law provision is to enhance the security of residents who live in public housing developments. It appears, therefore, that the real beneficiaries of the program would not be the officers as a result of obtaining financial gain but the residents of public housing developments as a whole due to greater public safety. Accordingly, I do not believe that an officer taking advantage of reduced rent would violate Oregon Government Standards and Practices

laws.

QUESTION #2: How, if at all, is the analysis affected by the provisions of ORS 456.122?

OPINION: Neither the Oregon Government Standards and Practices Commission (GSPC) nor the GSPC staff has authority to render an opinion on this statute. Nevertheless, ORS 456.122 appears to have no bearing on the application of ORS Chapter 244.

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

Please contact this office again if you would like this opinion submitted to the GSPC for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn  
Executive Director