

September 3, 2002

Andrea F. Denton  
Morrow County Personnel Director  
P.O. Box 788  
Heppner, Oregon 97836

Dear Ms. Denton:

This letter is in response to your correspondence dated August 9, 2002 concerning per diem reimbursement.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION 02S-023**

**STATED FACTS:** A county in eastern Oregon does not have a per diem policy. Travel expenses such as lodging, meals and transportation are generally paid by the county directly, by use of county credit cards, vehicles, etc. Occasionally, an employee may personally bear a travel expense and then submit that expense to the county for reimbursement. In that event, receipts of the expense are required.

A small number of employees may periodically travel on business that is paid through a federal grant or fund stream. Such travel expenses may be reimbursed by the federal government using a per diem. At times, the per diem by the federal government exceeds the employee's actual travel expenses.

**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: If an employee pays for their travel expenses out of their own pocket can they keep the federal per diem reimbursement?

OPINION: 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 a 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 reimbursement of expenses is one of the four exceptions to the prohibitions listed in ORS 244.040(1)(a). Because a county has no per diem policy has no bearing on this exception. Travel expenses for employees of the county are generally paid directly by the county. Occasionally, the employee may bear a travel expense and then submit that expense to the county for reimbursement.

If an employee travels on business that is paid through a federal grant or fund stream, or travels on business for any agency with a per diem policy, the employee is entitled to collect the allotted per diem set forth in that policy regardless if it exceeds the actual travel expenses expended by the employee. This is because per diem is a form of compensation for the inconvenience, etc., employees undergo when they must travel on an employer's behalf. Accordingly, the GSPC staff does not believe that this would put the employee in violation of ORS 244.040(1)(a).

QUESTION #2: Can the employee keep the per diem amount in excess of their actual travel expenses, if any?

OPINION: Yes. See opinion to question #1.

QUESTION #3: How would it affect the per diem reimbursement if part of the expense, such as airline tickets, were paid by the county and part were paid by the employee, such as meals?

**OPINION:** The reimbursement of expenses would not be affected as long as the employee did not obtain reimbursement from both public entities. In other words, the employee would be prohibited from obtaining a reimbursement for the airline tickets from the federal grant or fund stream when the airline tickets were paid for by the county. In this case, the only reimbursement the employee would be entitled to from the federal grant or fund stream would be those actual expenses paid by the employee. For the employee to obtain a reimbursement of expenses from both entities would put the employee in violation of ORS 244.040(1)(a).

**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 Oregon Government Standards and Practices Commission (GSPC) for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn  
Executive Director