

December 24, 2002

Linda Riddell  
Interim Administrator  
Oregon Department of Consumer and Business Services  
Building Codes Division  
P.O. Box 14470  
Salem, Oregon 97309-0404

Dear Ms. Riddell:

This letter is in response to your correspondence dated December 3, 2002 concerning the Building Codes Division Chief Electrical Inspector and the Assistant Chief Electrical Inspector assuming outside employment in off-duty hours with the Central Electrical Training Center.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 02S-032**

**STATED FACTS:** The Central Electrical Training Center (CET) has requested to hire or contract with and compensate certain Department of Consumer and Business Services (DCBS) employees to provide training services on behalf of their organization. The electrical industry wants to comply with the electrical specialty code. By hiring the technical experts from DCBS, the CET believes that their industry will be best informed of the changes in laws, rules and codes governing electricians so they may provide their services lawfully.

The CET is a non-profit training trust established through the International Brotherhood of Electrical Workers and the National Electrical Contractors Association. The primary function of CET is to train apprentices and provide advanced training for licensed electricians. Although the Building Codes Division (BCD) regulates the work of the electrical industry, it does not regulate the work of CET.

The BCD, a division within DCBS, is responsible for the administration of training for inspectors and licensed tradespersons. In carrying out those duties, the division administers the 1% training program which funds some of the training provided by contracted entities, directly provides some training courses, establishes the requirements for continuing education training of tradespersons and provides recommendations to policy boards for approval of courses and instructors.

CET does not participate in any of the training programs funded by the division; however, they do teach courses related to continuing education for licensed electricians. As such, these courses, along with the instructors, are approved by the State of Oregon Electrical and Elevator Board (Board).

BCD employs a chief electrical inspector and an assistant chief electrical inspector. The chief, and the assistant chief, in the chief's absence, currently review course applications only for completeness and to ensure that they meet the criteria established by the Board through rule. Neither the chief or the assistant chief can approve courses; therefore, after course applications are reviewed, they are forwarded to the Board for approval.

Currently, the chief approves course instructors; however, the division will be recommending to the Board that they amend their rules and transfer the authority for course instructor approval from the chief to the Board. If approved by the Board, the chief will no longer be involved in the approval of course instructors.

The CET has requested authorization to individually hire or contract with the chief and assistant chief to teach journey level continuing education courses at their training center.

As mentioned above, the BCD has certain responsibilities in providing continuing education courses to licensed electricians in Oregon. The positions of chief electrical inspector and assistant chief electrical inspector, as a part of their assigned job responsibilities, develop and teach continuing education curricula. The chief electrical inspector is a management service exempt employee. The assistant chief inspector is a classified non-exempt 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 laws for the chief electrical inspector and/or the assistant chief electrical inspector to be hired or contracted by CET to teach continuing education courses to licensed electricians assuming that no public supplies, facilities or state paid time is used?

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 chief electrical inspector is a management service overtime exempt employee. Part of the job description of the chief electrical inspector is to provide continuing education training during his normal work hours. It appears that, under no circumstances, would the chief electrical inspector be permitted to contract to provide this training for compensation. If the chief electrical inspector were required to perform this training, either during normal working hours or after normal working hours, the chief electrical inspector would be required to perform such training for no compensation. To accept compensation for this training in any way would appear to be a violation of ORS 244.040(1)(a).

The assistant chief electrical inspector is a classified non-exempt employee. Although part of the job description of the assistant chief electrical inspector is to provide continuing education training during normal working hours, the assistant chief electrical inspector is not prohibited from conducting outside employment during his non-working hours. The GSPC staff believes that, if the assistant chief electrical inspector provided training to CET, the compensation received by the assistant chief electrical inspector should be paid by BCD. An arrangement could be entered into between BCD and CET for CET to reimburse BCD for such compensation. It appears that no violation of ORS 244.040(1)(a) would occur for the assistant chief electrician to enter into such an arrangement.

The GSPC staff believes that, whenever the question of outside employment arises, the agency employing the individual requesting to work the outside employment or after hours job, has the responsibility of either approving or disapproving the request. To allow an employee the option of working outside employment appears to be the sole discretion of the employing agency.

QUESTION #2: Would the fact that the chief electrical inspector and the assistant chief electrical inspector review and evaluate proposals from organizations such as CET or others result in a conflict of interest?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. The difference between an actual conflict of interest and a potential conflict of interest is determined by the words would and could. An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action taken by the official would directly and specifically affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on that official, a relative of that official or a business with which the official or the relative of that official is associated. Such impact is not certain.

With regard to the chief electrical inspector, because the person holding that position would be prohibited from employment for compensation by CET this question is moot. With regard to the assistant chief electrical inspector, it appears that the function of reviewing and evaluating proposals would not create either a potential or an actual conflict of interest because reviewing and evaluating the proposals with the Board having the final approval of the proposals would have no financial impact on the assistant chief electrical inspector.

In previous advisory opinions related to this issue the GSPC has provided guidelines for public officials who engage in outside employment. Those guidelines are base upon ORS Chapter 244 laws and are as follows:

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.

In this particular case, the assistant chief must be careful not to use, in any outside employment teaching assignment, the continuing education curricula that is developed on BCD time as a part of the assigned job duties of the assistant chief.

**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