

February 7, 2003

Brian D. Little
City Administrator
City of St. Helens
P.O. Box 278
St. Helens, Oregon 97051

Dear Mr. Little:

This is in response to your correspondence dated, January 17, 2003 regarding employee benefits proposed during negotiations with union representatives.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 03S-005

STATED FACTS: City officials met with employee union representatives to develop a collective bargaining agreement.

The union representatives proposed a policy that would allow city employees to use city tools and equipment for personal purposes.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this 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 NO. 1: Would city employees violate Government Standards and Practices law if they used city tools and equipment for personal purposes allowed for under provisions of a collective bargaining agreement?

OPINION: No. ORS 244.040(1)(a) prohibits public officials from using their positions to gain a financial benefit or avoid a financial detriment that would not be available but for the position held. However, public officials are allowed to accept official salary, honoraria, reimbursement of expenses and unsolicited awards for professional achievement.

Without a provision in a collective bargaining agreement, the city employees described in the stated facts would be prohibited from personal use of agency tools and equipment. However, the Government Standards and Practices Commission has held that any benefit granted to a public employee, under a collective bargaining agreement, is part of the overall compensation of the employee. Accordingly, in this circumstance, the use of city tools and equipment would be considered official salary permitted by ORS 244.040(1)(a).

It is important to note that the proposed personal use would have some limitations imposed by ORS 244.040(1)(a). An employee covered by the bargaining agreement would be prohibited to use city equipment or tools in personal projects that would result in additional personal income as a result of outside employment. For example, an employee could not repair automobiles for other parties and receive compensation or use a city backhoe for compensation on personal time.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 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

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

Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

LPH/dc 03S-005