

  
Theodore R. Kulongoski, Governor

June 11, 2003

James M. Coleman  
County Counsel  
906 Main Street  
Oregon City, Oregon 97045-1881

Dear Mr. Coleman:

This is in response to your correspondence dated, May 22, 2003 regarding a county official participating as a golf team member in national tournament competition sponsored by the John Deere Corporation.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 03S-011**

**STATED FACTS:** The Clackamas County Board of Commissioners entered into a public/private partnership agreement for the county to participate in the development and operation of Stone Creek Golf Course.

Under this agreement, the county provided land and some funding. The private partner, Clackamas Golf (CG), LLC, completed the construction and provided the balance of the funding. The county retained an option to purchase CG's interest in the golf course.

While CG was obligated to operate and maintain the golf course, they assigned this obligation in a contract with Total Golf Management (TGM). Net operating revenue is shared by the county and CG.

John Deere Corporation sponsors a nationwide golf team competition each year. Teams participate, by invitation only, in regional tournaments and winners go on to the national tournament. The teams are configured to include the course superintendent, the professional and representatives of ownership.

The Stone Creek Golf Course was invited to enter a team in 2003. The team was composed of TGM employees and a county official. The county official participated as an owner's representative. In the private/partnership agreement, this county employee was designated to represent the county's interests and participate in the course management.

The team competed in the regional tournament and is eligible to participate in the national tournament to be held in Arizona. TGM has offered to pay the county official's expenses to participate in this tournament. The expenses would include food, lodging and travel. The tournament sponsor (John Deere) will provide payment of green fees and a dinner for team participants. Members of winning teams will receive prizes.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020(8) "'Gift' means something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions; and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials. However, 'gift' does not mean:"

244.020(8)(c) "The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, subject to the reporting requirement of ORS 244.060(6)."

244.020(8)(d) "The giving or receiving of food or beverage if the food or beverage is consumed by the public official or the public official's relatives in the presence of the purchaser or provider thereof."

244.020(8)(e) "The giving or receiving of entertainment if the entertainment is experienced by the public official or the public official's relatives in the presence of the purchaser or provided thereof and the value of the entertainment does not exceed \$100 per person on a single occasion and is not greater than \$250 in any one calendar year."

244.020(11) "'Legislative or administrative interest' means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official."

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.”

244.040(2) “No public official or candidate for office or a relative of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.”

244.040(5) “No person shall offer during any calendar year any gifts with an aggregate value in excess of \$100 to any public official or candidate therefore or a relative of the public official or candidate if the person has a legislative or administrative interest in a governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.”

The GSPC staff believes that, when public bodies enter into agreements with private enterprises, as in the stated facts, the public officials involved must exercise due caution to avoid violation of Government Standards and Practices law. Private enterprises have few limitations on giving or receiving gifts and benefits intended to engender goodwill and commerce. ORS Chapter 244 prohibits public employees from engaging in many of these practices. The circumstances described in the stated facts and the questions posed by the requester highlight the risks to any public official directly involved in these ventures.

QUESTION NO. 1: Would the county official violate Government Standards and Practices law in accepting the payment of food, lodging and travel expenses from TGM when attending and participating in the national team tournament?

OPINION: No. The stated facts describe a relationship between the county official and TGM where TGM would have a legislative or administrative interest in the official

position occupied by the county employee. It also appears that the county official would be attending and participating, in an official capacity, in an event (golf tournament) that “bears a relationship” to the official’s position. Accordingly, the county employee would be allowed to accept TGM’s payment of food, lodging and travel expenses. These would be permitted as exceptions to prohibited gifts under the provisions of ORS 244.020(8)(c) and (d).

QUESTION NO. 2: Would the county official violate Government Standards and Practices law in accepting the payment of green fees and a dinner from the John Deere Corporation and event sponsors when attending and participating in the national team tournament?

OPINION: The stated facts do not indicate that John Deere Corporation has a legislative or administrative interest in the public position held by the county official. This opinion assumes that John Deere Corporation has a legislative or administrative interest due to its manufacture and marketing of equipment commonly used in the maintenance of golf courses.

Since the county employee is participating in an event (golf tournament) that appears to bear a relationship to the public employee’s office, ORS 244.020(8)(c) permits accepting and consuming food and beverage in the presence of the provider. The county employee could accept the dinner described in the stated facts.

The county employee would be permitted to accept the payment of green fees as long as each single occasion does not exceed \$100 and the aggregate total does not exceed \$250 in a calendar year. ORS 244.020(8)(e) permits a public official to accept entertainment experienced in the presence of the provider under these monetary restrictions as another exception to prohibited gifts.

QUESTION NO. 3: If the county official’s team won or placed in the tournament competition, would the county official violate Government Standards and Practices law in accepting a prize or any portion of a team prize?

OPINION: ORS Chapter 244 places limitations on the value of items that can be accepted by a public official from persons or entities that have a legislative or administrative interest in the position held by the official.

ORS 244.040(2) places these restrictions on the public official’s accepting gifts and ORS 244.040(5) places these restrictions on the provider of gifts. Under these statutes, the county employee could not accept a prize or any portion of a prize that exceeds \$100. This same provision is mirrored in a previous GSPC opinion. In Advisory Opinion 01A-008, the GSPC stated that public officials attending conferences and other

such events may accept gifts, such as raffle and door prizes, when the aggregate value does not exceed \$100 from any single source in a calendar year.

Therefore, the county employee, described in the stated facts, could accept a prize or a portion of a prize that does not exceed the \$100 limitation.

**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 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