

April 5, 2005

Shawn Campbell
570 W. Main Street
Sublimity, Oregon 97385

Dear Mr. Campbell:

This is in response to your correspondence dated March 16, 2005 regarding a public official engaging in an income producing business during personal time.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 05S-006**

STATED FACTS: There were some professional firefighters that saw a need for improving the quality of radio communications used by their employer and other fire departments.

The firefighters obtained some radio equipment similar to that currently used in various military, police and fire department applications. The equipment was obtained from dealers who also sell to the general public.

The equipment was assembled without modification and tested by the firefighters. They gained permission from their employer to test and evaluate the devices. The value of the radio communication devices became apparent when used in a high noise environment.

The firefighters now wish to establish a private business, which would be managed during their personal time. The business would package and sell the radio communication devices to other fire departments and agencies that deliver emergency services.

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

244.020(2) " 'Business' means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-

producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity.”

244.020(3) " 'Business with which the person is associated' means:

(a) Any business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

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.”

244.020(16) " 'Relative' means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.”

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: Would it be a violation of Government Standards and Practices law for the firefighters to start a private business to sell radio communication equipment to fire departments or other emergency service agencies?

OPINION: ORS 244.040(1)(a) would prohibit the firefighters, as public officials, from using or attempting to use their official positions to obtain financial gain for themselves, their relatives or a business with which any or all are associated, if that gain would not otherwise be available but for holding their firefighter positions.

The stated facts indicate that the firefighters saw a need for improved radio communications for firefighters. They learned of radio communication equipment used in various military, police and firefighting applications. The firefighters obtained radio equipment through a dealer that sold to the general public. The firefighters assembled the equipment without modification. They tested and evaluated the equipment. Any interested citizen could have taken any or all of these actions. Accordingly, it appears that the activity of the firefighters would not constitute the prohibited use of a public position for personal financial gain.

Public officials may engage in personal interests on personal time. That would include establishing and operating a private business. The GSPC has issued the following guidelines for public officials to follow when engaged in outside employment or when operating a private business on their personal time.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

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.

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.

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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

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