

August 26, 2005

Scott A. Weninger  
Deputy Chief-Fire Marshal  
Clackamas County Fire District #1  
2930 S. E. Oak Grove Blvd.  
Milwaukie, Oregon 97267

Dear Chief Weninger:

This is in response to your correspondence dated August 8, 2005 regarding the fire district policy and personal use of wireless telephones with two lines, personal digital assistants and related issues.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**STAFF OPINION NO. 05S-010**

**STATED FACTS:** A fire district is considering changes to the existing policies with regard to district wireless devices such as telephones and personal digital assistants (PDA).

There are several issues that might be impacted by Government Standards and Practices law. Those issues are:

- Wireless telephones with two or more lines are offered under some service plans, which give public agencies the potential for one of the lines to be designated for personal use.
- Personal digital assistants are becoming more common and create the potential for a public official to use them for date and time management to include personal commitments.
- Wireless telephone plans often offer public agencies blocks of minutes to be shared by several telephones. This allows the potential for employees to make personal use without impact on the cost to the agency.
- Some public employers permit employees to reimburse the public agency for personal airtime charges to a public agency's wireless telephone.

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 a public official violate Government Standards and Practices law by using the second line of a public agency wireless telephone for personal calls?

OPINION: ORS 244.040(1)(a) prohibits public officials from using or attempting to use their official position or office to obtain a financial gain or to avoid a financial detriment through an opportunity that would not be available to them if they were not holding the public position. The only exceptions to the prohibition are official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement.

In applying this statute to the issue of a public official making personal use of a public agency's wireless device, there is one question that can be asked in two ways. In using the wireless device is it a financial benefit to the public official or; by using the wireless device, is the public official avoiding the cost of personal ownership? If the answer is yes, the personal use would violate ORS 244.040(1)(a).

ORS 244.040(1)(a) prohibits a financial benefit that would not be available to a public official but for the public position held. Previous opinions have been issued by the GSPC and staff that have allowed for the personal use of a second line on a public agency wireless telephone. It must be said that this is not a blanket approval of such a practice but approval given for use under the limitation of the stated facts in each opinion.

For example, there was a city that selected a service provider from which city employees also obtained personal service plans. The GSPC staff opined (GSPC Staff Opinion 02S-031) that if the public employees subscribed to their own service plans they could program their personal wireless number into the city issued wireless telephone. Since the employees were paying for their own service plan and use, the capability to accept personal calls on the city telephone was neither a financial gain nor the avoidance of the cost of wireless service.

Another example involved a large public agency that had a sufficient number of employees to qualify for a service plan offered by NEXTEL called the "Corporate Alternate Line Plan" (CALP). In that circumstance, the GSPC, in a formal opinion (GSPC Advisory Opinion 04A-1003), stated that public employees could use one of the multiple lines on the public agency wireless telephone for personal business. Under that particular plan, if an employee was issued a public agency wireless telephone, the employee could personally subscribe to wireless service on one of the lines available on the agency wireless telephone. The employee was personally responsible for all airtime charges on the personal line. In this circumstance, the practice did not violate Government Standards and Practices law because the CALP was available to both public and private entities alike. The service plan was available to entities that met a threshold number of users and not based on whether the users were public officials.

Since there is such a wide and changing variety of wireless plans available, it would be impossible to say that a public official can never make personal use of the second line of a public agency wireless telephone without violating Government Standards and Practices law. It would always depend on the circumstances and conditions of the proposed use.

QUESTION NO. 2: If a public agency issued a personal digital assistant (PDA) to an employee for time and date management, would the employee violate Government Standards and Practices law by also using the PDA for personal time and date management?

OPINION: In GSPC Advisory Opinion 98A-1003, there was an intent to address how ORS 244.040(1)(a) would apply to public employees who wished to make personal use of agency wireless telephones, computers and other new devices

that were being developed by advancing technology. PDAs have become more common since that opinion.

Regardless of the device or its capabilities, the application of ORS 244.040(1)(a) remains the same. A public official is prohibited from using public agency resources, of any type, to realize a financial gain or to avoid a financial detriment. In the case of a PDA, there is a cost to the agency for the PDA device, service plan and airtime charges. For a public official to use a public agency PDA for personal business, the official would be avoiding the cost of the device, service plan and airtime charges. Therefore, that benefit would not be available but for the public position held and it would violate ORS 244.040(1)(a) to make personal use of the PDA.

In GSPC Advisory Opinion 98A-1003, the GSPC indicated that a public official could use a public agency wireless telephone for personal business on a brief and infrequent basis (2 to 3 times per month) without violating ORS 244.040(1)(a). This same principle would apply to PDA's.

QUESTION NO. 3: If a public agency subscribes to a service plan that allocates a large block of minutes shared by multiple agency wireless telephones, can a public official make personal use of those minutes when there is no additional cost to the public agency?

OPINION: The GSPC often receives inquiries that are based on the premise that, if a public official makes personal use of a public agency resource and that use does not result in added cost to the public agency, the personal use would not violate Government Standards and Practices law.

The cost of personal use to a public agency is not part of the equation when applying ORS Chapter 244. ORS 244.040(1)(a) prohibits the public official from accepting a financial benefit that would not be available but for the public position held. It prohibits the public official from using a public position to avoid a financial detriment, the opportunity for which would not be available but for the public position held.

Accordingly, a public official could violate ORS 244.040(1)(a) by using a portion of the public agency's block of minutes for personal business. Whether or not the use impacts the public agency cost is not relevant. Of course, the brief and infrequent personal use, as discussed in GSPC Advisory Opinion 98A-1003, would be permitted.

QUESTION NO. 4: If a public official reimbursed the public agency for the airtime cost for personal calls on an agency wireless telephone, would that personal use violate Government Standards and Practices law?

OPINION: Yes. Again, it is not a question of whether the personal use impacts the public agency cost. Rather, it is whether or not the public official is deriving a financial benefit or avoiding a personal cost. Much of the discussion in response to the previous questions would provide the guidance in evaluating how ORS 244.040(1)(a) would apply in the question of reimbursement.

**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