

February 27, 1997

Jim Comini  
Region 9 WQC Chair  
400 E. Scenic Dr., Suite 207  
The Dalles, OR 97058

Dear Mr. Comini:

At its February 27, 1997 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION ADVISORY  
OPINION NO. 97A-1001**

**STATED FACTS:** Region 9 WQC is a regional extension of the Oregon State Executive Department Workforce Quality Council. Region 9 WQC has received funds from the state's Workforce Quality Council. These funds are to be used for administration and employment training for the emerging, transitional, and existing workforce. The WQC voted to use \$78,500 for grant projects to pursue the committee's strategic goals.

A Request For Proposal (RFP) process was initiated and notices were widely distributed. Eleven proposals were received and a review panel of representatives of the executive committee and general membership scored proposals. The reviewers were alerted in writing that the conflict of interest laws would be applied to them.

On November 15, 1996, the review panel brought a recommendation to the entire WQC to fund five proposals, based on the scores related to addressing the strategic plan and other relevant criteria. A motion was made, seconded, and considerable discussion followed. After opposing views were heard, the committee voted on the motion.

The Workforce Quality Council's technical assistant (an attorney) received information from the Oregon Department of Justice (DOJ) that indicated the members of the Region 9 Workforce Quality Committee whose agency(ies) were getting proposals to be in

conflict of interest if they voted. The Region 9 Workforce Quality Committee's fiscal agent representative and other members noted that if no personal, relative, or business connection existed, there was no conflict.

Section 7(3) of the Oregon Workforce Quality Act and the Region 9 WQC charter provides for a total of 28 members plus 1 ex-officio. Members of the workforce committee shall include representatives of: (a) Secondary school districts, including professional and technical education providers (5); (b) Job Training Partnership Act providers (1); (c) Community colleges (1); (d) The Adult and Family Services Division (1); (e) The Employment Division (1); (f) Community action agencies; (g) Business and industry (7); (h) Labor (2); (i) Local private industry councils created by 29 U.S.C. 1512 (1); (j) Local elected officials (5); (k) Economic Development (2); (l) Vocational Rehabilitation (1); and (m) Labor Economist ex-officio (1).

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 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.

ORS 244.020(1): Actual conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (7)(a) to (c) of this section.

ORS 244.020(7): Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

ORS 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.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

ORS 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.

ORS 244.120: Methods of handling conflicts; generally; application to elected officials or members of boards. (1) Except as provided in subsection (2) of this section, when met with an actual or potential conflict of interest, a public official shall:

(2): An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

**QUESTION #1:** Did the nine members of the Region 9 Workforce Quality Committee have conflicts of interest when the committee voted on the recommendation to fund the five proposals?

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)]. These relate to taking official action which could result or would result in financial benefit or detriment to a public official, an official's relative or a business with which an official or an official's relative is associated.

Potential conflicts of interest arise when a public official takes action in an official capacity which could financially impact the official, a relative of the official or a business with which the official or a relative of the official is associated. When potential conflicts of interest arise, public officials are required by ORS 244.120(2)(a) to announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.

Actual conflicts of interest occur when the action to be taken is reasonably certain to result in a financial benefit or detriment. It will occur when an action is taken that directly and specifically affects land, a business, or any other financial interest of the office holder or office holder's relative.

Before a public official takes action, the official should determine if the action (a) actually would, or (b) potentially could, result in a financial benefit or avoidance of a financial detriment to the official, a relative or a business with which the official or the official's relative is associated.

Allowable actions vary depending on the official's position. Elected officials and members of boards and commissions must publicly disclose the nature of a potential or actual conflict of interest prior to any discussion, recommendation, vote or other official action of the issue. The disclosure must be recorded in the minutes of the meeting. If the conflict of interest is potential, the official may thereafter participate in the action. In the case of an actual conflict of interest, the official must refrain from participating in any discussion, recommendation or vote on the issue.

ORS 244.020(7)(a) exempts certain individuals from conflicts of interest disclosure requirements because their membership in a specific occupation is necessary in order for them to hold a particular office. The nature of that occupation could otherwise give rise to what would be conflicts of interest.

When a public official is associated, in a nonremunerative capacity, with a non-profit corporation that is tax-exempt under 501(c) of the Internal Revenue Code, the official need not declare a conflict of interest when the circumstance arises from that affiliation. The GSPC has held that a government entity, such as community colleges and school districts, are not businesses as defined in ORS 244.020(2) because they are not

operated for economic gain.

1. Dr. Keller was exempted by ORS 244.020(7)(a) from the conflicts of interest requirements because he represents school districts, a statutorily required member of the WQC. In addition, Dr. Keller's employer, Region 9 Education Service District, is a governmental entity and not considered a business as defined by ORS 244.020(2).

Therefore, Dr. Keller did not have a conflict of interest through his association with Region 9 ESD.

2. Mr. Patrick Lynch is employed by Columbia Gorge Center, a tax-exempt non-profit corporation under 501(c)(3) of the Internal Revenue Code. The stated facts indicate the Columbia Gorge Center received a grant under the proposal and that Mr. Lynch will not derive any direct pecuniary benefits from the grant. The stated facts do not indicate whether or not Mr. Lynch was a compensated employee. A public official, that is a noncompensated employee of a tax-exempt non-profit corporation, need not declare an actual or a potential conflict of interest when the circumstance arises from that official's association with that corporation. If the official is a compensated employee of the non-profit corporation, the public official would be required to publicly disclose the nature of the conflict pursuant to ORS 244.120(2).

The stated facts also indicate Mr. Lynch is an ex-officio/non-voting member of the WQC. The Columbia Gorge Center provides vocational rehabilitation training to the adult handicapped. Mr. Lynch represents vocational rehabilitation providers on the WQC and would therefore be exempted from the conflict of interest requirements pursuant to ORS 244.020(7)(a).

3. Dr. Bell is the president of Columbia Gorge Community College and a statutorily required member of the WQC, representing community colleges. Dr. Bell was exempted from conflict of interest requirements by ORS 244.020(7)(a). The stated facts also indicate Columbia Gorge Community College received funding from the grant. Columbia Gorge Community College is a public entity and not a business as defined by ORS 244.020(2). Therefore, Dr. Bell's association with the college did not create a conflict of interest for him.

4. Mr. Leroy Martin represented the private sector membership on the WQC. Mr. Martin appears to be representing business and labor required by the Workforce Quality Act. ORS 244.020(7)(a) requires the person to have an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding of the office or position. Representing business or labor is not specific enough to exempt Mr. Martin under ORS 244.020(7)(a).

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The information provided indicates that Mr. Martin was not associated with any business that received grant funds. Therefore, it does not appear that Mr. Martin had a conflict of interest when he voted. In the event the review panel had recommended grant funding to a business with which Mr. Martin, or a relative of Martin, was associated, Mr. Martin would have been required to declare his conflict of interest pursuant to ORS 244.120(2).

5. Dr. Evenson-Brady's membership on the WQC, is as a statutorily required representative of school districts. Dr. Evenson-Brady would be exempted from conflict of interest requirements by ORS 244.020(7)(a). In addition, the Hood River School District could not be considered a business as defined by ORS 244.020(2) because it is a governmental entity which is not a for-profit business.

6. Ms. Rita Rattray is employed by the Condon School District. She is a statutorily required representative of school districts. She is therefore exempted from conflict of interest disclosure requirements by ORS 244.020(7)(a). The Condon School District did not receive a grant under the five proposals. Even if the review committee had recommended that the Condon School District receive a grant under the five proposals, the Condon School District would not be considered a business as defined by ORS 244.020(2) because it is not operated for economic gain. Therefore, Ms. Rattray's association with the school district would not have represented a conflict of interest.

7. Mr. Marty Miller is statutorily required representative of Job Training Partnership Act providers. He was therefore exempt by ORS 244.020(7)(a) from the conflict of interest disclosure requirements.

8. Ms. Della Heideman is employed by Chemical Waste Management. She is one of the 7 business representatives on the WQC, representing Gilliam county. Like Mr. Martin, Ms. Heideman appears to be representing business and industry on the WQC. Representing business is not specific enough to exempt Ms. Heideman from the conflict of interest disclosure requirements by ORS 244.020(7)(a).

However, it does not appear that Ms. Heideman had a conflict because Chemical Waste Management was not a recipient of any grants proposed by the review committee. In the event the review panel had recommended funding a Chemical Waste Management program, to be used for the administration and employment training of an emerging, transitional, and existing workforce, Ms. Heideman would have had an actual conflict of interest and would have been required to adhere to the disclosure requirements of ORS 244.120(2).

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9. Mr. Scott Hege is employed by the Port of The Dalles and is the economic development representative on the WQC. Economic development is not a statutory prerequisite for membership on the WQC. Accordingly, the exemption found in ORS 244.070(a) does not apply to him. Mr. Hege is, however, employed by a governmental entity that is not considered a business as defined by ORS 244.020(2). Mr. Hege therefore, did not have a conflict of interest through his association with the Port of The Dalles.

QUESTION #2: Do the conflict of interest issues in Appendix A have a material relevance and meaning for possible improper actions taken by any of the one through nine voters above?

( Appendix A is attached to this opinion)

OPINION: The information provided in Appendix A is generally consistent with the Oregon Government Standards and Practices Commission's 1993 publication A Guide for Public Officials. The guide sets forth the requirements applicable to all public officials under Oregon Revised Statutes (ORS) Chapter 244. It deals exclusively with the concepts of financial disclosure, use of office for personal financial gain, conflicts of interest, and other areas in which the official, a relative or a business with which the official or a relative is associated might be affected financially by his or her public role.

QUESTION #3: Do the issues in Appendix B have a material relevance to the actions of Region 9 WQC and any of the one through nine voters above?

( Appendix B is attached to this opinion)

OPINION: The statements in Appendix B do not provide sufficient information to enable me to render an opinion. However, the elements in the opinion to Question #1 above should be helpful in relation to this question.

I would be happy to put on a seminar at Columbia Gorge Community College with respect to government standards and practices laws for the Region 9 Workforce Quality Committee.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 OR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.**

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Issued by Order of the Oregon Government Standards and Practices Commission at  
Salem, Oregon \_\_\_\_\_, 1997.

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Mary McCauley Burrows, Chairperson  
Oregon Government Standards and  
Practices Commission

Legal Counsel Review:

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Lynn Rosik  
Assistant Attorney General

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Date

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