

January 22, 1997

Robert Chizum  
City Councilor  
City of Lake Oswego  
380 A Avenue  
Lake Oswego, OR 97034

Dear Mr. Chizum:

This letter is in response to your correspondence dated January 8, 1997, concerning a conflict of interest issue that may arise as a result of your being on the Lake Oswego City Council and a possible redevelopment project.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION NO. 97S-001**

**STATED FACTS:** You were elected to the Lake Oswego City Council on November 5, 1996. As a city councilor, one of your responsibilities is to serve on the Lake Oswego Redevelopment Agency (LORA) pursuant to ORS 457.035. LORA is the city's urban renewal agency.

The focus of LORA has been to acquire and develop Block 138, located at the south west corner of State Street (Highway 43) and A Avenue in downtown Lake Oswego. In the spring of 1996, a developer made an unsuccessful bid for Block 138. As a result, LORA made a decision to expand its focus to include the adjacent Blocks 137 and 136 in order to create a large enough project to attract an experienced commercial developer.

Block 137 is currently occupied by Wizer's Oswego Shopping Center. For many years you owned and managed a retail clothing business in this shopping center. You recently retired and sold the business to your two sons. They continue to operate the business. This past month, LORA voted to enter into an exclusive negotiation agreement with PacTrust to develop a three-block project. If negotiations are successful, LORA will be presented with a development agreement sometime in the

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spring of 1997. The agreement is proposed to include the acquisition, by condemnation, negotiated sale or long term lease, of Block 137. Such agreement/acquisition will almost certainly result in the demolition or substantial modification of the existing improvements and the relocation of the current tenants, specifically including the business owned by your sons.

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 (8)(a) to (c) of this section.

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(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:

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 244.040: "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:

(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  
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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."

ORS 244.120(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: Does a public official, who serves as a member of a city council and the city's urban renewal agency, have a conflict of interest in relation to taking official action on the redevelopment of a shopping center where his two sons own and operate a business?

OPINION: Yes. If the proposed redevelopment plan could or would create a financial benefit to the business owned by the public official's sons, the public official must proceed according to the requirements of ORS 244.120(2). The law prescribes different actions by the public official depending upon whether the conflict of interest is actual or potential.

Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on that official, a relative of that official or a business with which the official or the relative of that official is associated. Such possible financial impact is not certain. An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action taken by the official would directly and specifically affect the financial interest of the official or the official's relative or a business with which the official or the official's relative is associated.

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If a potential conflict of interest arises, the official may participate in the action, once a public disclosure has been made. In the case of an actual conflict of interest, the official must publicly declare the actual conflict and refrain from taking any official action on the issue. If the official's vote is necessary for the public body to take action on the matter, the official may vote but may not discuss, debate or otherwise participate in the matter.

ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, official position or office to obtain financial gain or avoidance of financial detriment for the official, the official's relative or a business with which the official or the official's relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

In this instance, if the public official, acting in the capacity of either a city councilor or a board member of the redevelopment agency, were faced with taking official action which could impact the business owned by relatives, a potential conflict of interest would arise. The public official would therefore be required to declare a potential conflict of interest pursuant to ORS 244.120(2)(a). If the action to be taken would impact the business owned by the relatives of the public official, an actual conflict of interest would arise and the official would be required to declare an actual conflict of interest pursuant to ORS 244.120(2)(b).

**THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Please advise this office if you would like this matter submitted to the GSPC for adoption as a formal advisory opinion at a future meeting. Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director

LPH:aip/chizum.so