

February 14, 1997

Barbara A. Burton
Water Quality Manager
Western Region, Or. DEQ
750 Front St. NE, Ste. 120
Salem, OR 97310

Dear Ms. Burton:

This is in response to your correspondence dated January 24, 1997, concerning questions of possible conflicts of interest by an employee of the Oregon Department of Environmental Quality (DEQ).

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 97S-003

STATED FACTS: Mr. Raghu Namburi, an employee of DEQ, wishes to work after normal working hours, on a part time basis, for the City of Lincoln City. Mr. Namburi is a storm water specialist for DEQ's Western Region and works in the Salem office. Part of his assigned territory is Lincoln County including Lincoln City. Mr. Namburi is responsible for the following major duties:

- ¥ Reviewing and approving or denying all storm water permits in a seven county area, including Lincoln County.
- ¥ Reviewing and approving erosion control plans in a seven county area, including Lincoln County.
- ¥ Investigation of complaints relating to storm water runoff, and some routine inspections on sites with an active DEQ storm water permit. For all sites inspected, Mr. Namburi determines whether a violation has occurred, provides suggestions for correcting problems and prepares enforcement packets or letters as appropriate.
- ¥ Providing technical assistance to contractors and permit holders on matters ranging from preparing an effective erosion plan to the proper placement and installation of a slit fence.

Barbara A. Burton

Lincoln City currently has a wastewater discharge permit issued by DEQ for their sewage treatment plant. Mr. Namburi does not have any involvement with the city's permit. Any other environmental regulatory issues would be handled by another section of DEQ and Mr. Namburi would have no involvement.

Lincoln City would like to hire Mr. Namburi as a contractor, but strictly for the purpose of putting on training sessions and providing technical assistance to contractors.

If Mr. Namburi goes to work for Lincoln City, DEQ would place on him the following restrictions:

- ¥ No work for Lincoln City shall be done during normally scheduled DEQ work hours
- ¥ No DEQ property is to be used in the work done for Lincoln City
- ¥ In any training session given, Mr. Namburi will not state or imply that the training is sponsored by the Oregon Department of Environmental Quality
- ¥ Mr. Namburi will refrain from discussing with any other DEQ staff any other regulatory issue relating to Lincoln City

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

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(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(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...

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 244.040: 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.

(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.

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:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified

by the appointing authority.

QUESTION: Would it be a conflict of interest for an employee of the Oregon Department of Environmental Quality to engage in outside employment with a city if he complies with the restrictions imposed by the employing state agency?

OPINION: There would not appear to be a conflict of interest given the stated facts. Government entities, such as the City of Lincoln City, are not a business as defined by ORS 244.020(2). Employees who work for one governmental entity do not come within the definition of business with which the person is associated as defined by ORS 244.020(3). Accordingly, an actual conflict of interest as defined in ORS 244.020(1) or a potential conflict of interest as defined in ORS 244.020(7) does not arise when they take official action which results in the financial benefit or detriment to another governmental entity for whom they are also employed.

Employees working for more than one government entity would likewise not be subject to the prohibitions of ORS 244.040(1)(a) in relation to using ...official position...to obtain financial gain...for any business with which the public official...is associated. The legislative intent of these statutes, defining business, clearly appears to have been referring to income-producing private entities.

Public officials are always subject to the provisions of ORS 244.040(1)(a) which prohibits the use of official position for personal financial gain. In instances where public officials engage in employment outside their official duties, the Government Standards and Practices Commission (GSPC) has issued specific guidelines. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

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.

Page 5

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.

Mr. Namburi should observe these guidelines for outside employment for public officials if he plans to put on training for the City of Lincoln City.

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.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/burton.so