

May 12, 1997

John McGinn
Administrator
Administrative Services Division
Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97310-0110

Dear Mr. McGinn:

This letter is in response to your correspondence dated April 17, 1997, concerning a supervisor of the animal health laboratory acting as a consultant to a business under contract with the Department of Agriculture.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
97S-015**

STATED FACTS: A supervisor of the Oregon State Department of Agriculture (OSDA), Animal Health Laboratory has been asked by a microbiological company which contracts with the Department of Agriculture to act as a consultant for the company. As a consultant for the company the supervisor of the animal health laboratory would prepare a line of microbiological media and kits for use by veterinarians in their practices. The role of the supervisor would be to advise the company on the types of media, the methodology for use of that media and the commonly expected reactions of animal isolates on this media. The supervisor would advise the company on the necessary media, reagents and materials to be incorporated into kit form for use by veterinarians within their clinics for isolation of potential pathogens from urine, wound and other sources. The supervisor could possibly be asked to conduct periodic wet workshops and seminars for veterinarians and their staff at the company's facilities. The workshops would be on Saturdays only. The company is a provider of microbiological media for use in human and animal laboratories and clinics. The supervisor has had an association with the company since approximately 1979.

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The State of Oregon currently has a contract with this company for the purchase of microbiological media, blood cells and other products used within the laboratories operated by the state.

The OSDA Animal Health Laboratory is currently purchasing only sheep cells from the company. In the future, if the animal health laboratory were to increase its microbiological culturing procedures and the cost were justified, there could exist a situation wherein OSDA would purchase additional products from this company. Such purchases would be subject to review by the head of the division and whatever contract was in effect at the time such a decision was made.

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, unless the pecuniary benefit or detriment arises out of the following:

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 violation of Government Standards and Practices laws for a supervisor of the OSDA Animal Health Laboratory to act as a private consultant to a business under contract to OSDA?

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OPINION: No. To avoid violating Government Standards and Practices laws, an individual who maintains both public and private employment at the same time must maintain their duties and tasks as a public employee separate and apart from the duties and tasks associated with their private employment. While it is permissible for a public official to engage in private employment on their own time, state law does not permit a public official to use anything that a person who is not also a public official is not entitled to use. The law also prohibits the promotion of outside business pursuits while engaged in the performance of official public duties.

The GSPC has previously issued advisory opinions related to outside employment or professional activity of public officials. Those opinions have established a set of specific guidelines which, if carefully followed, will assist public officials in conforming with Oregon

Government Standards and Practices laws. The guidelines are as follows:

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.

There does not appear to be a conflict of interest given the stated facts; however, the supervisor of the animal health laboratory would be precluded from taking any official action with regard to contracts involving OSDA and the company with which the supervisor is acting as a private consultant. Should a situation arise where the supervisor would be confronted with having to make a decision which would have a financial impact to the outside employer, the supervisor must comply with the requirements of ORS 244.120(c) and notify the supervisor's appointing authority, in

writing, of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict.

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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 don't hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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