

May 27, 1997

Larry G. Daimler  
DHR Contracts Unit  
500 Summer St. NE, 4th Floor  
Salem, OR 97310-1004

Dear Mr. Daimler:

This letter is in response to your correspondence dated May 1, 1997 and May 7, 1997, concerning a member of the State Independent Living Council (SILC) who responded to a Request for Proposal (RFP) issued by the SILC.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION NO. 97S-016**

**STATED FACTS:** The purpose of the SILC is to work jointly with the Commission for the Blind and the Vocational Rehabilitation Division in the development of the Independent Living State Plan, and to monitor and assist in achieving the intended outcomes of the plan. The purpose of Independent Living is to promote a philosophy of independent living, including a philosophy of consumer control, peer support, self-help, self-determination, equal access, and individual and system advocacy...

On March 17, 1997, SILC issued RFP #149 for an outreach coordinator. The rate of compensation for the successful proposer will not exceed \$20,000. A base of \$12,000 maximum is allowed with an additional amount for travel expense up to a maximum of \$8,000. A member of the SILC has responded to the RFP.

**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.

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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...

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 244.040(4): No public official shall attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.

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: Is a member of the SILC board prohibited by the Oregon Government Standards and Practices laws from responding to RFP #149?

OPINION: A member of the SILC board may respond to the RFP if the information relied upon in the response is available to the public. ORS 244.040(4) prohibits a public official from using their position to obtain confidential information gained in the course of or by reason of their official position for personal financial gain. If the board member relied on information that SILC would have made available to anyone who asked for it, the information would not be considered confidential. However, if the information used to respond to the RFP was not generally available to the public, the prohibition of ORS 244.040(4) would apply.

QUESTION #2: Is the State board member prohibited by Oregon Government Standards and Practices laws from participating in and voting on the selection of a vendor in response to the Request for Proposal?

OPINION: Yes. The provisions of ORS 244.020(1), ORS 244.020(7), ORS 244.040(1)(a) and ORS 244.120(2) would apply to the stated facts. If the board member were to be selected as the vendor and realize a private pecuniary benefit as a result of the RFP, the member could not be in a position of determining the outcome of awarding the contract to the member.

The stated facts indicate that the rate of compensation for the position of outreach coordinator will not exceed \$20,000. The fact that the member would receive compensation under the terms of the RFP, the member would have an actual conflict of interest and would be required to publicly declare the actual conflict and refrain from taking any official action on the issue. If the member's vote would become necessary for the public body to take action on the matter, the member could vote but would not be able to 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 the avoidance of a financial detriment for the official, the official's relative or a business with which the official or the official's relative is associated regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120. If the result of a vote against a competitor's RFP would be to the financial benefit of the board member the board member's participation and vote would violate ORS 244.040(1)(a).

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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 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