

November 17, 1997

Dwight G. Purdy
Thorp, Purdy, Jewett, Urness & Wilkinson, P.C.
Attorneys at Law
644 North A Street
Springfield, Oregon 97477-4694

Dear Mr. Purdy:

This letter is in response to your correspondence dated October 29, 1997, concerning a possible conflict of interest of a member of the budget committee of the Willamalane Park & Recreation District and the member applying for a job as insurance broker for the district.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 97S-033**

STATED FACTS: An individual was appointed to the district budget committee by the Willamalane Park & Recreation District Board of Directors. The budget committee will propose a budget for Willamalane for the fiscal year 1998-99.

The budget committee member is applying for the job of insurance broker for Willamalane. If the member obtains that job, the member will be recommending insurance coverage for the district for the fiscal year 1998-99. As insurance broker, the member will be paid a commission based on the amount of insurance premiums.

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...

ORS 244.120(2): An elected public official, other than a member of the

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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: Does the member have a conflict of interest?

OPINION: The budget committee member would not have a conflict of interest until such time as the member was appointed as the insurance broker for Willamalane Park & Recreation District and the budget committee was faced with acting on that part of the budget involving insurance. If the issue could or would create a financial benefit to the member, a relative of the member or a business with which the member or a relative is associated, the member must proceed according to the requirements of ORS 244.120(2). The law prescribes different actions that the member must take 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 the official, a relative of the official or a business with which the official or a relative of the 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.

If a potential conflict of interest arises, the official may participate in the action, once a
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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 the conflict is disclosed pursuant to ORS 244.120(2).

In this instance, if the member, acting in an official capacity, were faced with taking official action which could impact the member, a potential conflict of interest would arise. The member would, therefore, be required to declare a potential conflict of interest pursuant to ORS 244.120(2)(a) and disclose the nature of the conflict. If the action to be taken would impact the member, an actual conflict of interest would arise and the member would be required to declare an actual conflict of interest pursuant to ORS 244.120(2)(b), disclose the nature of the conflict and abstain from participating in any discussion or vote unless the vote of the member is necessary to meet a requirement of a minimum number of votes to take official action. The member would then be eligible to vote, but would not be able to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

QUESTION #2: Must the member resign from the budget committee to apply for the insurance broker position?

OPINION: The member would not have to resign from the budget committee in order to apply for the insurance broker position. Government Standards and Practices laws do not prohibit a public official from having a conflict of interest; however, the law does require a public official to disclose the conflict of interest at the proper time and to act within the requirements set forth in ORS 244.120.

QUESTION #3: If the member were to notify the Willamalane Board of Directors pursuant to ORS 244.120(1)(c), could the board of directors decide that any potential conflict of interest is not significant and allow the member to continue to be on the budget committee?

OPINION: ORS 244.120(1)(c) is the incorrect statute citation for this issue. ORS 244.120(2) is the correct statute because the budget committee is a board or commission.

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The statutory definitions relating to conflicts of interest do not speak to the issue of significance or degree. If a public official takes official action which meets the elements of ORS 244.020(1) or ORS 244.020(7), a conflict of interest arises.

The authority to determine the applicability of ORS Chapter 244 is vested solely in the Oregon Government Standards and Practices Commission.

QUESTION #4: Can the Willamalane Board of Directors decide that the member may remain on the budget committee but not act on that part of the budget involving insurance?

OPINION: Yes. Conflicts of interest do not preclude public officials from serving. See opinion to question #1.

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.

Do not 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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