

December 10, 1998

C. Randall Tosh
City Attorney
City of Coos Bay
936 Central
P.O. Box 1178
Coos Bay, Oregon 97420-0309

Dear Mr. Tosh:

This is in response to your correspondence dated December 2, 1998 concerning a member of the Coos Bay Volunteer Firefighters Association applying to serve as a member of the City of Coos Bay Budget Committee.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
98S-039**

STATED FACTS: The City of Coos Bay has a contract with the Coos Bay Volunteer Firefighters Association, an Oregon non-profit corporation, with 501(c)(3) status. Under the terms of the contract, the association provides trained volunteer firefighting assistance for payment by the city. The amount of payment is set each year by the budget committee as part of the city's appropriations process. In fiscal year 1998-99, the contract price was \$32,000. The association pays each volunteer \$300 per year out of the contract price. A member of the association has applied to be a member of the City of Coos Bay Budget Committee.

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(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:

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

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.

QUESTION: Would a member of the Coos Bay Volunteer Firefighters Association be confronted with an actual conflict of interest if the member was appointed to the City of Coos Bay Budget Committee and, if so, to what extent would the volunteer firefighters association member be able to participate in budget deliberations and voting?

OPINION: Oregon Government Standards and Practices laws define actual conflict of

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interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. For certain officials, the law prescribes different actions depending on whether a conflict of interest is actual or potential. The difference between an actual conflict of interest and a potential

conflict of interest is determined by the words would and could. An actual conflict of interest occurs when a public official takes action that would directly and specifically affect the financial interest of the public official, a relative of the public official or a business with which the public official or the public official's relative is associated. A potential conflict of interest exists when a public official takes action that could possibly have a financial impact on the official, the official's relative or a business with which the official or the official's relative is associated.

ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial affect on that official, a relative of that official or a business with which the official or the official's relative is associated. If other people in a class are also affected to the same degree by that action, the official would be exempt from conflict of interest disclosure requirements.

According to the stated facts, it appears that any action which would be taken by the volunteer firefighter association member, as a budget committee member, with regard to appropriation for payment of the contract with the firefighters association would impact all Coos Bay volunteer firefighters to the same degree. Accordingly, the volunteer firefighter/budget committee member would not have a conflict of interest.

Additionally, 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 ... other than official salary,

From the information provided in the stated facts, it appears that the \$300 per year payment provided to each of the volunteer firefighters is official salary. ORS 244.040(1)(a) specifically excludes official salary as a use of office for personal financial gain. Accordingly, it appears that there would be no violation of Government Standards and Practices laws for the Coos Bay Volunteer Firefighters Association member/City of Coos Bay Budget Committee member to take official action to appropriate funds for payment of the contract with the firefighters association.

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THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 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 further questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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