

February 22, 1999

Henry C. Lorenzen
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Dear Mr. Lorenzen:

This is in response to your correspondence dated February 1, 1999 regarding a potential conflict of interest for a nominee, who provides electrical inspector services under contract to local governments, to the board of directors of the Oregon Trail Electric Consumers Cooperative (OTEC).

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 99S-003

STATED FACTS: OTEC is an Oregon cooperative organized under the provisions of Oregon Revised Statutes Chapter 62. OTEC owns and operates an electrical distribution system which serves the cities of LaGrande, Baker City, John Day, Burns and a majority of the area lying between these cities. Its distribution system is located in the counties of Union, Baker, Grant and Harney. As a cooperative organization, OTEC is owned by the 22,000 members which it serves as customers.

The cooperative is governed by a nine member board of directors. The bylaws require that four of the directors reside in Union County, three in Baker County, one in Harney County and one in Grant County. The directors are elected by the members who are also the consumers of the electrical power and distribution services supplied by the cooperative. An individual may become a candidate for director through nomination by a nominating committee.

An individual who contracts with local governments in Baker and Union Counties to provide electrical inspector services has been nominated to serve as a director of OTEC. Electrical inspectors do not inspect or pass judgement upon electrical distribution or transmission facilities of electric utilities. They are responsible for reviewing and approving the electrical installations of customers who are members of the cooperative. The electric utility may not connect its distribution system to the customer's electrical facilities unless the electrical inspector has indicated his or her approval of the customer's facilities built under permit. Also, if an unsafe condition is discovered with a customer's existing facilities, the inspector will instruct the electrical
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cooperative to disconnect the customer's electrical service. In carrying out these functions, the electrical inspector has routine contact with personnel from the electrical utility cooperative.

Under ORS 62.283, the director must discharge his duties in a manner that the director reasonably believes to be in the best interest of the cooperative. In administering the electrical codes, an electrical inspector must faithfully and impartially apply the rules and regulations which have been adopted by the appropriate governmental agencies.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to this opinion:

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) 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.

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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 #1: Would an electrical inspector, who contracts that service to local governments, violate Oregon Government Standards and Practices laws by performing inspections of electrical installations of customers of an electrical cooperative if that inspector is also a member of the board of directors of the cooperative?

OPINION: Yes. As a contractor providing services on behalf of local governments, the inspector is a public official as defined in ORS 244.020(15). A public official is prohibited from using their official position to obtain financial gain or to avoid a financial detriment for themselves, their relatives or a business with which they or their relative may be associated.

The stated facts indicate the OTEC owns and operates an electrical distribution system in eastern Oregon with an annual gross revenue of approximately 38.5 million dollars. The OTEC is a cooperative owned by 22,000 members which it serves as its customers. The OTEC is a legal entity operated for economic gain as defined in ORS 244.020(2) and not a tax exempt entity under 501(c) of the Internal Revenue Code. If the electrical inspector were to become a director of the OTEC, the inspector would then be associated with the cooperative as defined in ORS 244.020(3) and would be prohibited from performing the inspections of the OTEC customer installations

pursuant to ORS 244.040(1)(a).
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Any electrical inspections of OTEC customer installations by the director would financially impact the cooperative. Therefore, the inspector, as a public official, would have an actual conflict of interest. Oregon Government Standards and Practices laws define actual conflict of 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 244.120(c) would require the inspector to make a written disclosure of a conflict of interest to the inspector's appointing authority whenever the inspector would be faced with the inspection of an OTEC customer's electrical installation. The disclosure must include the inspector's request that the appointing authority dispose of the matter.

QUESTION #2: Would the electrical inspector be disqualified from being a director of the OTEC?

OPINION: No. The inspector would be required to follow the conflict of interest disclosure requirements outlined in the opinion to question #1.

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.

Sincerely,

L. Patrick Hearn
Executive Director

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