

April 22, 1999

Dennis Mattoon
Director Elect
Oregon Trail School District Board
12777 Bobby Bruce Lane
Boring, Oregon 97009

Dear Mr. Mattoon:

This letter is in response to your correspondence dated April 3, 1999 concerning possible conflicts of interest between your paid position as a teacher for the Reynolds School District and your elected position as a director of the Oregon Trail School District Board.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
99S-007**

STATED FACTS: You are a secondary level school teacher in the Reynolds School District. You have been elected to serve on the Oregon Trail School District (OTSD) Board of Directors. Issues have been raised concerning a possible conflict of interest you may have pertaining to ongoing contract negotiations between OTSD and Wy'East Education Association/EastCounty Bargaining Council (ECBC). At the time these issues were raised you stated publicly that Reynolds School District teachers are in no way affiliated with ECBC, since Reynolds School District teachers formally decertified ECBC as the Reynolds Education Association bargaining agent years ago.

It was suggested that, since unions often use regional salary averages as a bargaining strategy, if you should vote for any increase in salary for OTSD staff, it would raise the East County area average salary. Then, indirectly, when Reynolds Education Association bargains its next contract, the higher regional average could, in fact, influence a salary raise from which you would benefit financially. Not only do you consider this to be a stretch of the conflict of interest issue, you believe that, since Reynolds School District currently

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pays the top salaries regionally and OTSD is not only the lowest, but is far below its next closest district salary, it was highly unlikely that you would gain financially from a salary raise for OTSD teachers.

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 (7) 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."

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:"

ORS 244.120(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

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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: Would it be a violation of Government Standards and Practices laws to participate as an OTSD Board Director in labor agreement ratification votes and/or discussions and negotiations between the OTSD and Wy'East Education Association/ECBC while concurrently being employed as a teacher in the Reynolds School District?

OPINION: 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 that official, a relative of that official or a business with which that official or a relative of that 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 public disclosure has been made. In the case of an actual conflict of interest, the official must publicly disclose the actual conflict of interest 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 actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

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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.

If, as the stated facts seem to indicate, the action the director takes affects, to the same degree all teachers in the Reynolds School District, or affects the regional salary averages which could be used as a bargaining stragedy, the class exception would apply and it would appear that the director would be exempt from conflict of interest disclosure requirements.

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 questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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