

April 27, 1999

John Briggs
North Bend City Councilor
519 South 7th St.
Coos Bay, OR 97420

Dear Mr. Briggs:

This is in response to your facsimile transmission, which was received by the Oregon Government Standards and Practices Commission (GSPC) on April 20, 1999 concerning ACTUAL examples of conflict of interest situations that you and another member of the North Bend City Council may face as a city councilors.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 99S-010**

STATED FACTS: Two city councilors face conflict of interest disclosure decisions when issues involving a relative and business clients are presented to the city council. The following are examples of actual situations:

1. Example No. 1: A client of a city councilor has applied for job of City Attorney. The client's fee for services in 1998 represents 1.73% of the annual billing of the city councilor's private business. The city councilor in this situation does not believe he can vote or participate in the selection of the new City Attorney.
2. Example #2: This same city councilor has another client who is interested in purchasing a lot from the city. This client's fee for services in 1998 represents 9.06% of the annual billing of the city councilor's private business. The city councilor believes he has a conflict of interest in this situation.
3. Example #3: The city councilor's brother owns an eating establishment which applies for a liquor license. The city councilor believes he has a potential conflict of interest rather than an actual conflict of interest.
4. Example #4: A client of the city councilor was appointed interim City Administrator. The client's fee for services in 1998 represents .2% of the annual billing

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of the city councilor's private business. The city councilor believes he has a potential conflict of interest in this situation.

5. Example #5: A client of the a private firm that employs a city councilor brings a matter to the city council. The city councilor works directly with the client and receives bonuses from the firm as a result of that work. The city councilor believes this city councilor has a conflict of interest no matter how large is the bonus. The councilor also believes that if the city councilor had no direct dealings with this client, the city councilor would only have a potential conflict of interest.

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 244.020(16): Relative means the spouse of the public official, any children of the public official or of the public official s spouse, and brothers, sisters or parents of the public official or of the public official s spouse.

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:

(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: In the case of the city councilor in Example #1, what obligations does ORS Chapter 244 impose upon the city councilor?

OPINION: The facts in Example #1 make it clear that an applicant for the position of city attorney is a client of the city councilor. Accordingly, the city councilor is an agent of the attorney/applicant and the applicant is a business with which the councilor is associated.

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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 the official or the 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 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.

In Example #1, the city councilor is correct. The position of city attorney is a paid position. Therefore, any action by the city council to fill the position of city attorney would create an actual conflict of interest for the city councilor. The city councilor would be obligated to make a public disclosure of the conflict of interest for the record and comply with the requirements for an actual conflict of interest pursuant to ORS 244.120(2)(b).

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.

QUESTION #2: In the case of the city councilor in Example #2, what obligations does ORS Chapter 244 impose upon the city councilor?

OPINION: The business relationship in this example is the same as in Example #1. It is assumed that the client's purchase of the lot would result in a financial benefit or detriment to the client. If the city council were to take official action concerning the sale of a city lot to the client, the city councilor would be obligated to make a public disclosure of his business relationship with the client and comply with the requirements of ORS 244.120(2)(b).

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QUESTION #3: In the case of the city councilor in Example #3, what obligations does ORS Chapter 244 impose upon the city councilor?

OPINION: The brother of the city councilor is a relative of the city councilor as defined in ORS 244.020(16). In this example, the brother is applying for a liquor license. It can be assumed that the issuance of a liquor license would be a financial gain to the brother. Typically, the Oregon Liquor Control Commission (OLCC) will seek input from the governmental entity where the business establishment is located. The governmental entity then submits a recommendation to the OLCC. The OLCC is not, however, obligated to accept the recommendation.

A 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 any business with which the person or a relative of the person is associated.

Since the city council's action would be only advisory to the OLCC, the city councilor, acting in an official capacity, would be faced with taking action which could impact his brother's application for a liquor license. A potential conflict of interest would then arise. The councilor would be required to declare a potential conflict of interest and would be obligated to comply with ORS 244.120(2)(a).

QUESTION #4: In the case of the city councilor in Example #4, what obligations does ORS Chapter 244 impose upon the city councilor?

OPINION: The opinion to Example #4 is the same as for Example #1. The interim city administrator is associated in business with the city councilor pursuant to ORS 244.020(3) because he is one of the city councilor's clients. If the city councilor, acting in his official capacity, was faced with taking official action which would financially impact the interim city administrator through salary and/or benefits, an actual conflict of interest would arise. The city councilor would be obligated to comply with ORS 244.120(2)(b) in this situation.

QUESTION #5: In the case of the city councilor in Example #5, what obligations does ORS Chapter 244 impose upon the city councilor? What is the city councilor's obligation if the councilor has no actual dealings with the client?

OPINION: ORS 244.020(3) defines a business with which the person is associated to be any business that the person (public official) is a director, officer, owner or employee, or agent. It appears from the stated facts that the city councilor in Example #5 is at least an employee of the firm. A client of that firm pays for the services

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performed by the employees of that firm; thus, a partial source of the bonuses received by the city councilor for work that she/he performed for the client would be the client.

If the city councilor, acting in an official capacity, was faced with taking official action which could financially impact the councilor's client, a potential conflict of interest would arise. The councilor would therefore be required to declare a potential conflict of interest pursuant to ORS 244.120(2)(a). If the action to be taken would financially impact the councilor's client, an actual conflict of interest would arise and the councilor would be required to declare an actual conflict of interest pursuant to ORS 244.120(2)(b). If the official action taken by the councilor would have no financial impact on the client, a conflict of interest would not arise.

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

LPH:aip/briggs.so