

August 30, 1999

Richard Rodeman
City Attorney
City of Independence
1100 Van Buren Avenue
Corvallis, Oregon 97330

Dear Mr. Rodeman:

This letter is in response to your correspondence dated August 26, 1999 concerning possible conflicts of interest involving City of Independence City Council members who are also board members of the Polk YMCA taking action as city council members which financially impacts the Polk YMCA.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
99S-021**

STATED FACTS: The mayor of the City of Independence is the president of the Polk YMCA organization. The YMCA is a non-profit organization, in good standing with the Secretary of State. The mayor receives no salary for this activity and is a volunteer. His liability for actions, or inactions, as president are covered by the organizations insurance. He has not signed any notes or financial instruments guaranteeing funds on behalf of the YMCA personally.

Another Independence City Councilor is a board member of the YMCA, but not an officer.

The YMCA organization has asked the city to grant them \$10,000 because of a deficit caused by an insufficient fund drive.

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(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.

QUESTION: Would the mayor and city councilor who are board members of the YMCA

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organization violate Oregon Government Standards and Practices laws by voting on the \$10,000 grant request made by the YMCA organization?

OPINION: No. Oregon Government Standards and Practices laws prohibit public officials from using official position or office for the financial gain or avoidance of a financial detriment of the public official, a relative of the public official or a business with which the public official or a relative of the public official is associated, other than official salary, honoraria or the reimbursement of expenses.

A 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 is not a business as defined by ORS 244.020(2). Accordingly, the YMCA organization is not a business with which the mayor or city councilor are associated as described in ORS 244.040(1)(a) or ORS 244.120 and Government Standards and Practices laws do not preclude the mayor and city councilor from taking action in their official capacity which may financially have an impact on the YMCA organization.

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.

Don't 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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