

April 14, 2000

Jerry B. Hart
Craig, Brand, Lake & Hart
Attorneys at Law
330 North Evans Street
McMinnville, Oregon 97128

Dear Mr. Hart:

At its April 14, 2000 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 00A-1002**

STATED FACTS: Palmer Creek Water District Improvement Company was organized as a non-profit corporation under the provisions of Oregon Revised Statutes Chapter 554. Its members are the owners of property, including both individuals and corporate entities, who have elected to include their property within the district. Members elect a board of directors which governs the affairs of the district. The board elects various officers including a president, secretary and treasurer who have the authority to act on certain matters for the corporation. Members vote based upon the number of acres they have included in the district pursuant to ORS 554.070.

Chapter 554 corporations have characteristics of both governments and private corporations. They are organized similarly as private corporations but have the following government like powers:

1. The right to have assessments collected by the county assessor.
2. The right to issue bonds which may be payable through the county treasurer.
3. The right to eminent domain.

However, in other ways Chapter 554 corporations do not have government-like characteristics. This is analyzed in *Comeaux v. Water Wonderland Improvement District*, 315 Or. 562 (1993) in which the Supreme Court held that a Chapter 554 corporation was not a "governmental unit" within the means of constitutional limitation on property taxes and therefore its assessments were not subject to the limits. The court noted that the word "government" does not appear in ORS Chapter 554 and that 554 corporations can not do

the things that governments commonly can or must do. They are not subject to special district election laws; they are not subject to local budget laws; they are not subject to public contract and purchasing laws; nor are they subject to municipal audit laws. See 315 Or. at 568.

Another case which needs to be read is *Miller v. Water Wonderland Improvement District*, 326 Or. 306 (1998) in which Justice Durham noted in a dissenting opinion that the trial court and court of appeals were probably correct in ruling that the Chapter 554 corporation was not a “public body” under Oregon’s Public Meeting and Records laws.

Chapter 554 corporations such as Palmer Creek Water District Improvement Company are generally formed for the sole purpose of providing economic benefits to its members. Directors and officers of the corporation are always either the owners of the real property included in the district or the owners or managers of corporate members. This means that the directors and officers will always be called upon to make decisions which have economic impact to the directors and officers. They will constantly be presented with issues which constitute either potential or actual conflicts of interest.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

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.”

QUESTION: Is the Palmer Creek Water District Improvement Company a public entity and, if so, do the provisions of the Oregon Government Standards and Practices laws apply to its directors and officers?

OPINION: ORS 244.020(15) defines public officials as persons “serving the state of Oregon.” The Palmer Creek Water District Improvement Company was formed as a non-profit organization whose members are owners of property, both individuals and corporate entities, who have elected to include their property within the district.

While the Palmer Creek Water District Improvement Company may have some characteristics of government entities the word “government” does not appear in ORS Chapter 554 and 554 corporations can not do the things that governments commonly can and must do.

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The GSPC does not believe that the Palmer Creek Water District Improvement Company is a political subdivision of the State of Oregon as stated in ORS 244.020(15). Accordingly, it appears that the provisions of Oregon Government Standards and Practices laws do not apply to the directors and officers of the Palmer Creek Water District Improvement Company.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 1999.

Rachel Gerber, Chairperson
Chairperson

Lynn Rosik
Assistant Attorney General

Date