

April 13, 2000

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Hermiston SD 8R Superintendent  
341 N.E. Third Street  
Hermiston, Oregon 97838-1890

Kelly Bissinger  
Hermiston SD 8R Board Chairperson  
341 N.E. Third Street  
Hermiston, Oregon 97838-1890

Dear Mr. Pratton and Ms. Bissinger:

This letter is in response to your correspondence dated April 5, 2000 concerning the potential purchase, by school board members, of property which is owned by the school district. The board members have been involved in executive session discussions concerning the property.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
NO. 00S-010**

STATED FACTS: A school district governing board has listed land the district owns for sale. The school district has set a price and is prepared to accept offers. The school board has received two offers on the property and has rejected both of them. Two school board members have now expressed a desire to purchase this land.

All meetings and discussions by the school board concerning the property have been held in executive session. The superintendent was directed to negotiate on the property and bring the results of the negotiations to the school board.

All board members took part in discussions involving the purchase of specific land, the sale of specific land, direction to the superintendent to list the land for sale, accept offers of purchase, set the price and to accept or reject an offer of \$390,000.

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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.

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 244.040(4): No public official shall attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.

QUESTION: Would it be a violation of Government Standards and Practices law for the school board members to purchase the property the school has for sale?

OPINION: Yes. ORS 244.040(1)(a) prohibits a public official from using official position or office for personal financial gain or the avoidance of a financial detriment for the public official, for the public official's relative or for any business with which the public official or a relative of the public official is associated.

ORS 244.040(4) prohibits a public official from attempting to further or furthering the personal gain of the public official through the use of confidential information gained in the course of or by reason of the official position or activities of the public official in any way.

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The stated facts indicate that the board members wishing to purchase the school district property have been involved in the executive session meetings when all aspects of the sale of the land were discussed. The board members know the acceptable price range of the land the district is selling. The board members would not have possessed this information had they not been board members. Executive session discussions are confidential. Accordingly, it appears that the board members would be in violation of ORS 244.040(1)(a), use of official position for personal financial gain, as well as ORS 244.040(4), attempting to further, or furthering, the personal financial gain of the board member through the use of confidential information, if they were to attempt to purchase or or if they were to purchase this school district property.

**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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