

July 20, 2000

Peter H. Wells
Office of the City Attorney
500 S.W. Dorion Avenue
Pendleton, OR 97801-2090

Dear Mr. Wells:

This letter is in response to your correspondence dated July 5, 2000, concerning a member of the city council, who, while working in the councilor's private employment capacity, might provide investment services to the police association.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 00S-013

STATED FACTS: A city council member is an investment advisor and securities dealer in the councilor's private employment.

The City of Pendleton is governed by a mayor-council-manager form of government. In the collective bargaining process the city manager negotiates for the city with general guidelines set by the city council. Any final agreement is approved by the council. If the city and the association were to reach a bargaining impasse, the city council would refer the dispute to arbitration.

A city council member, in the councilor's private employment capacity, is an investment advisor and securities dealer. The police association, a collective bargaining organization representing the city's police employees, has asked the city council member if, in the councilor's private employment capacity, the councilor could provide investment advice and invest the association's funds in products sold by the city council member.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issue 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 a 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 244.040: 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 or a relative of the public official is associated.

QUESTION: Would a conflict of interest arise for the city council if the councilor were to provide investment advice to, and invest funds from, the police association in products sold by the city council member in his professional employment capacity?

OPINION: ORS 244.040(1)(a) prohibits a public official from using, or attempting to use their official position or office to obtain a financial gain or the avoidance of a financial detriment that would not otherwise be available but for the official's holding of the official position or the office other than official salary, honoraria, the reimbursement of the expenses or an unsolicited award for professional achievement.

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 a public official would possibly have a financial impact on the official, the official's relative or a business which the official or a relative is associated.

A potential conflict of interest exists when an official takes action that could possibly have a financial impact on the official, a relative of the official or a business with which the official or a relative of the official is associated. Such possible financial impact is not certain.

The stated facts indicate that the councilor would provide the police association with advice and investment management services, not individual members of the association. The stated facts also indicate that any action taken by the councilor in his official capacity, in relation to a collective bargaining agreement with the association, would be to the financial benefit or detriment of the members of the association, not to the association as an entity.

It does not appear, therefore, that the councilor's engaging in the described professional relationship with the association would give rise to a potential or actual conflict of interest for the councilor or cause the councilor to violate any other provision of ORS Chapter 244.

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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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