

July 28, 2000

Mary Miller, Office Manager
Roberts Creek Water District
4336 Old Highway 99 S
Roseburg, OR 97470

Dear Ms. Miller:

This letter is in response to your correspondence dated July 5, 2000, regarding conflicts of interest arising for a member of a governing body when taking official action which would financially impact the public official's relative who is an employee of the public body.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 00S-016

STATED FACTS: The Roberts Creek Water District is governed by an elected board of commissioners. One of the responsibilities of the board is to vote on cost of living increases, insurance and other elements of employee compensation. One of the commissioners has a son who works for the district.

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(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 :

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

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 244.020(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 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:

ORS 244.120(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:

244.120(2)(b)(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: According to the stated facts, would it be a violation of Oregon Government Standards and Practices laws for a public official to take official action on matters that financially impact all employees of the official's public body, including relatives of the official, to the same degree?

OPINION: 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 public official would directly and specifically affect the financial interest of the public official or the public official's relative or a business with which the public official or the public official's relative is associated.

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

If a potential conflict of interest arises, an elected official may participate in a governing body's action once a public disclosure has been made. In the case of an actual conflict of interest, an elected official must publicly declare the actual conflict of interest and refrain from taking any official action on the issue.

ORS 244.020(7)(b) is one of the two authorized exceptions to potential and actual conflict of interest. This exception states that a conflict of interest does not arise when a public official takes action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. According to the stated facts,

Mary Miller
July 28, 2000
Page 4

financial benefits extended equally to all employees of the water district would appear to qualify as a class exception. When a public official acts in an official capacity on issues regarding all of the employees of the public entity equally, the official would not be required to disclose a conflict of interest pursuant to ORS 244.120.

QUESTION 2: As indicated in the stated facts would it be a violation of the Oregon Government Standards and Practices laws for the commissioner to participate in actions that only affect the commissioner's son?

OPINION: ORS 244.040 states "...The following actions are prohibited **regardless of whether actual conflicts of interest or potential conflicts of interest are disclosed pursuant to ORS 244.120**" (emphasis added). Prohibited actions include using, or attempting to use official position or office to obtain financial gain or the avoidance of 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 for the public official or the official's relative. Accordingly, participation in any action that would result in a public official's relative obtaining financial gain or avoiding financial detriment would constitute a violation of ORS 244.040(1)(a).

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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