

July 20, 2001

J. Kenneth Jones
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Dear Mr. Jones:

This is in response to correspondence dated May 24, 2001 and June 11, 2001 concerning possible conflicts of interest between a fire district board member who is the mother of the president of the union for the district.

At its July 20, 2001 meeting the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION 01A-1009**

STATED FACTS: A newly elected fire district board member is the mother of the president of the union for the fire district. Management and employment issues are frequently brought before the fire district board. The fire district union contract will expire during this new board member s term of office which means that a new pay schedule, all other union benefits, management reservations, etc., will be negotiated and a new contract entered into during this new board member s term of office.

The fire district has 19 union member employees and 32 employees total. Ranges include:

Lieutenant:	three positions
Engineer Medic:	six positions
Fire Fighter EMT:	nine positions
Mechanic:	one position

The union president is one of the six engineer medics.

J. Kenneth Jones

July 20, 2001

Page 2

Each employee has different hire years and is treated differently, depending on the year they were hired and their longevity with the department, as well as their position.

Also negotiated are additional incentives for being involved in continuing education, having a BS degree or an Associate Science degree. These must relate to the fire service. Additionally, fire fighters receive money for being swift water rescue team qualified, Hazmat qualified, SCBA qualified or having an EMT P or an EMT I classification. The amounts for each of these areas are included in the upcoming union contract negotiations.

The district is also concerned that its negotiating powers will be seriously compromised. Prior experience indicates a likelihood that this new board member may breach the confidentiality between the negotiating parties and inform the new member's son of the board's position (or bottom line) on disputes or matters of contention. Contract negotiations constitute just one concrete example where management confidentiality could become a real problem were there to be communications between the new board member and the new member's son.

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

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.

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 arises out of the following:

244.020(7)(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 class that qualify under this exception.

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.

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.

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:

244.040(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.

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:

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:

244.120(2)(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

244.120(2)(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.

244.120(2)(b)(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: Would the new board member violate conflict of interest laws if the new member took official action on the district's union contract when there may be a financial benefit to her son?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. The difference between an actual conflict of interest and a potential conflict of interest is determined by the words would and could. 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 official would directly and specifically affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on that official, a relative of that official or a business with which the official or the relative of that official is associated. Such financial impact is not certain.

ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial effect on that official, a relative of that official or a business with which the official or a relative of that official is associated. If other persons or entities are also affected to the same degree by that action, the official would be exempt from conflict of interest requirements on the basis of a class exception.

Only the Oregon Government Standards and Practices Commission (GSPC) is authorized by law to determine the existence of a class or the size of a class for the purpose of compliance with ORS Chapter 244.

The stated facts indicate that there are 19 union member employees that would be impacted by the action of the board with regard to pay schedule, all other union benefits, management reservations, etc. Because the president of the

union is the son of the new board member he would be financially impacted by the action taken by the new member as a member of the board. The stated facts indicate that the 19 union member employees would each be impacted to a different degree depending on length of service, education, special qualifications, etc. Because all union members are each impacted to a different degree, the class exception would not apply and the new member would not be exempt from conflict of interest disclosure requirements. The new member would be required to publicly disclose a conflict of interest as required by ORS 244.120 and would have to refrain from taking any official action that might financially impact her son.

The board's concern about the possibility of the new member breaching the confidentiality between the negotiating parties and informing the son of the board's position on disputes or matters of contention is understood. Although there are no facts stated about this issue, we believe that there could be instances where, if the board member were to share confidential information with her son that resulted in a financial benefit specifically to him, a violation of ORS 244.040(1)(a) would occur.

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 _____, 2001.

Katherine E. Tennyson, Chairperson

Date

Lynn Rosik
Assistant Attorney General

Date