

April 8, 2002

Paul Benoit
Community Development Director
City of Astoria
1095 Duane Street
Astoria, Oregon 97103

Dear Mr. Benoit:

This is in response to your correspondence dated, March 27, 2002 regarding the awarding of a scholarship for you to attend training provided by the American Leadership Forum (ALF).

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 02S-013

STATED FACTS: A city official was nominated and selected to participate in the American Leadership Forum (ALF). The program provides training over a two-year period. ALF is a non-profit organization that provides this program to leaders in public and private entities. The training presents models of civic leadership and approaches to complex problems of public concern.

The tuition is \$8,750. The public employer cannot afford the tuition cost. A private corporation, whose former Chief Executive Officer participated in the founding of the Oregon Chapter of ALF, provides funding for some scholarship assistance.

The city official was selected to be the recipient of a scholarship, funded in part or in whole by this private corporation. The corporation submitted a list of scholarship candidates to the ALF and selection committee then chose. This same corporation owns a 9 acre parcel of land within the boundaries of this official's city. The land has been judged as environmentally contaminated. The city official has been working to gain the corporation's cooperation over several years to clean their land for redevelopment.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

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 or detriment arises out of the following:"

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: If the public official accepts the scholarship, underwritten by the private corporation, to attend the American Leadership Forum, could he/she be met with conflicts of interest in relation to the clean-up of the land owned by the corporation?

OPINION: No. In order for a public official to be met with a conflict of interest under Oregon Government Standards and Practices law there must be a link between the official action and a personal financial benefit.

ORS Chapter 244 provides the definition of an actual conflict of interest in ORS 244.020(1) and a potential conflict of interest in 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 a financial detriment. A potential conflict of interest occurs when there is less certainty of a financial benefit or a financial detriment from an action taken by the official.

The stated facts do not present the likelihood that a personal financial benefit or detriment could or would result from any action taken by the city official in regard to the private corporation's property. The scholarship, while underwritten by the

corporation, was awarded to the city official by ALF, not the corporation. The participation by the city official in the ALF program is a benefit mutually shared by the city and the official.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON STANDARDS AND PRACTICES COMMISSION.

Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

LPH/dc