

April 8, 2002

Eva Nimister
Oregon Youth Authority
Lead Contracts Officer
530 Center Street NE, Suite 200
Salem, Oregon 97301-3765

Dear Ms. Nimister:

This letter is in response to your correspondence dated March 29, 2002 concerning possible conflicts of interest with two Oregon Youth Authority (OYA) employees sitting as members of the board of directors of a contractor organization that provides services to youth upon referral by OYA personnel.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-014**

STATED FACTS: Oregon Youth Authority (OYA) has contractors to provide an array of transition services to minority youth and to maintain youth in the community. The OYA staff refer youth to these providers for services to meet the needs of the youth. One of the providers is in the process of organizing a board of directors and has asked two OYA employees to be members of the board. One employee works in an OYA youth correctional facility and the other works directly with this contractor and other contractors who provide the same services. This employee works in the OYA Minority Services Unit and refers youth to these contractors. This board of directors position would be strictly voluntary and neither employee would be compensated.

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(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 tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity."

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 \$1000 or more at any point in the preceding calendar year."

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."

244.040 "**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(1)(c) "If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the

matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.”

QUESTION: Would it be a violation of Oregon Government Standards and Practices laws for the two OYA employees to sit as members of the board of directors of a contractor who provides services to OYA?

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 impact is not certain.

The stated facts indicate that one of the OYA employees that the contractor has invited to be on the board of director’s works directly with this contractor. This employee refers youth to this contractor. With this employee being a board member on this contractor’s board of directors, this contractor would then be a “business with which the person is associated” as defined by ORS 244.020(3). It appears that, if this employee were in the position to refer youth to this contractor and such referrals financially impacted this contractor, the employee would have an actual conflict of interest pursuant to ORS 244.020(1). This employee would be required to comply with ORS 244.120(1)(c) and notify the employee’s appointing authority in writing of the conflict of interest and request that the appointing authority dispose of the matter giving rise to the conflict.

ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, official position or office to obtain financial gain or avoidance of financial detriment for the official, the official’s relative or a business with which the official or the official’s relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120. In other words, even if the OYA employee complied with the conflict of interest disclosure requirements and the employee took official action that financially impacted the contractor, the employee would most likely be in violation of ORS 244.040(1)(a).

The stated facts appear to indicate that the employee who works for the youth correctional facility does not have the responsibility of referring youth to contractors. Accordingly, it does not appear that this employee would be faced with conflict of interest situations or other possible violations of Oregon Government Standards and

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Practices laws.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 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 GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

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

Sincerely,

L. Patrick Hearn
Executive Director

02S-012-JP