

October 29, 2002

Ray Cox
1176 Plat I Road
Sutherlin, Oregon 97479

Dear Mr. Cox:

This letter is being written in response to your correspondence dated October 21, 2002 concerning who is eligible to vote when more than one member of a water district board of directors has an actual conflict of interest.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-028**

STATED FACTS: The nine members of the board of directors of a water control board have the responsibility and authority to establish the rate charged, on a per acre foot basis, for stored water provided to a small number of landowners having irrigation contracts with the water district. To collect these charges for the per acre-feet of water contracted, the district board of directors adopts a resolution each year levying assessments on the lands designated in the irrigation contracts.

Four of the members of the board of directors have irrigation contracts with the district. The district has a total of approximately 55-60 irrigation water contracts with landowners.

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(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(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: If, when more than one member of the board of directors declares an actual conflict of interest, one vote is necessary to meet a requirement of the minimum number of votes to take official action, are all of the board members who have declared an actual conflict of interest eligible to vote?

OPINION: ORS 244.120(2)(b)(B) allows a public official to vote when their vote is needed to meet a minimum number of votes required for the governing body to take official action. The public official must announce the nature of the actual conflict of interest and refrain from any discussion on the issue, but can cast a vote if needed in order for the body to act.

If more than one of the members of the board of directors were to announce an actual conflict of interest over the same issue and one vote was required for the board to act and since there is no objective standard to determine which of the members should or could vote, it appears that all of the members who have declared an actual conflict of interest could vote in such a circumstance without violating Oregon Government Standards and 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