

January 10, 2003

Bev Holzman  
Executive Director  
Oregon Board of Massage Therapists  
3218 Pringle Rd., S.E., Suite 250  
Salem, Oregon 97302-1596

Dear Ms. Holzman:

At its January 10, 2003 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**ADVISORY OPINION NO. 03A-1002**

**STATED FACTS:** The Oregon Board of Massage Therapists regulates the practice of massage. The board oversees licensing, educational requirements, competency testing and enforces professional behavior and standards.

The board chair is a licensed massage therapist. Over the recent past, the chair has conducted investigations to assist the board in fulfilling its responsibilities. The chair has not received compensation for the time spent investigating, but has been reimbursed for mileage and lodging expenses.

The board is considering the propriety of entering into a personal services contract with the chair. The contract would provide the hourly rate of compensation to the chair for time spent as an investigator and provide for the reimbursement of expenses.

**RELEVANT STATUTES:** The following Oregon Revised Statutes (ORS) are relevant to the issues discussed in this advisory 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(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.”

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)(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.”

QUESTION NO. 1: Would the board chair violate the prohibition of using his or her position for financial gain by entering into a personal services contract to conduct investigations for the board?

OPINION: ORS 244.040(1)(a) prohibits public officials from using official public position for personal financial gain or to avoid a personal financial detriment. The action of entering into a contract runs a high risk of multiple violations of ORS Chapter 244. The relationship between the role as chair and the role as investigator creates a substantial risk for a violation.

The board chair would violate ORS 244.040(1)(a) if the chair took any action in his or her official capacity that might result in a financial gain to the chair as an investigator. For example, as chair, he or she could not make a recommendation, discuss or vote on the creation, requirements or existence of a contract, or on the amount of work assigned to the investigator.

QUESTION NO. 2: Would the board chair be met with a conflict of interest if he or she participated in board actions with regard to the proposed personal services contract?

OPINION: Yes. An actual conflict of interest would exist due to the personal financial interest the board chair would have in the approval or disapproval of such a personal services contract. The stated facts do not describe the procedures used by the board in entering into personal services contracts; however, if the board must consider and approve such a contract, the chair, in this case, would be met with an actual conflict of interest. This would require the chair to announce the nature of the conflict of interest and refrain from any official action as a board member on the issue.

QUESTION NO. 3: How would Government Standards and Practices law apply if the chair/investigator conducted investigations, made recommendations or took other official actions on matters involving other massage therapists?

OPINION: As previously mentioned, the role of board chair and the role as investigator appear to create circumstances that place the chair/investigator in a position where violations of Government Standards and Practices law would occur regardless of any precautions taken.

The chair would be met with an actual conflict of interest, as defined in ORS 244.020(1), each time the board was to act on an issue that would result in or further an investigation. The chair would have to announce the nature of the conflict, according to ORS 244.120(b)(A), and then refrain from further participation in the matter.

It appears that a person that tries to fulfill the role as chair while acting as an investigator runs a great risk of violating ORS Chapter 244. Further, the chair or any board member would appear to limit their ability to participate to the point that they would not be able to fulfill the purpose and mandate for their appointment to the board.

**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. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.**

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 10th day of January 2003.

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Dave Moss, Chairperson

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Lynn Rosik, Assistant Attorney General