


Theodore R. Kulongoski, Governor

February 26, 2003

Mayor V. C. Lindekugel
City of Falls City
299 Mill Street
Falls City, Oregon 97344

Dear Mayor Lindekugel:

This is in response to your correspondence dated, February 8, 2003 regarding conflicts of interest that might arise when a city official is called to act on matters that might have an economic impact on a relative.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 03S-007**

STATED FACTS: A city council eliminated the city clerk position and replaced it with a clerk/recorder position.

The former city clerk was considered, along with other applicants, for the newly created position and was not selected.

One of the city councilors is the former mother-in-law of the departing city clerk and is grandmother to the children of the former city clerk.

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

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."

QUESTION: Would the city councilor, who is a former mother-in-law and the grandmother to children of a city job applicant, violate Government Standards and Practices law by participating in official action relating to the application for city employment?

OPINION: No. A public official's actions that might have an economic impact on a relative are either prohibited or restricted in ORS Chapter 244 law. ORS 244.040(1)(a) prohibits actions that would result in a financial gain to a relative or enable the relative to avoid a financial detriment.

A key factor in determining if the councilor in the stated facts may violate any provisions of ORS Chapter 244 is in the definition of "relative" given in ORS 244.020(16). A "relative" of the city councilor would include a spouse or their children. "Relative" could also include their brothers, sisters or parents. Former daughters-in-law or grandchildren are not considered relatives for the purpose of Government Standards and Practices law.

While relationships described in the stated facts could result in an official acting to benefit a person commonly understood to be a relative, ORS 244.020(16) limits the application of ORS Chapter 244 to those relatives identified in that subsection of the statute.

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