


Theodore R. Kulongoski, Governor

February 27, 2004

Edward M. Jensen
107 S.W. First Street, #105
Enterprise, Oregon 97828

Dear Mr. Jensen:

At its February 27, 2004 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 04A-1002**

STATED FACTS: A public official serves in two public positions. One is as a compensated halftime superintendent for an education service district (ESD) and the other is as a publicly elected member and chair of a board of directors for a health care district.

The health care district provides various health services to residents in the county to include hospital, emergency and nursing home care.

The health care district is a non-profit public entity that is funded, in part, with local property taxes. The district is planning to build a new hospital with a projected cost of \$15M. The district will soon be, or is now, inviting the submission of proposals (RFP) from persons interested in serving as the project manager. The estimated time for the construction is two years and the cost for a project manager is projected to be 1% to 3% of the total project cost.

Upon approval by the health care district board, the chair is willing to serve as the project manager. If the chair serves in the capacity as the project manager, the savings from such an arrangement would revert back to the health care district.

It is proposed that the compensation for the chair, as project manager, come from the ESD by changing the official's status from halftime to fulltime superintendent. The ESD would enter into an intergovernmental agreement with the health care district. Under this agreement, the ESD would bill the health care district for the superintendent's time and expenses related to the duties and responsibilities as project manager.

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

244.010(2) "The Legislative Assembly recognizes that it is the policy of the state to have serving on many state and local boards and commissions state and local officials who may have potentially conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commissions, and declares it to be the policy of the state that the holding of such offices does not constitute the holding of incompatible offices unless expressly stated in the enabling legislation."

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(14) " '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."

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) "An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:"

244.040 "**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 it be a violation of Government Standards and Practices laws for a part time superintendent of an ESD, who is also an elected member and chair of a health district board of directors, to serve as a paid project manager of the construction of the new hospital for the health care district?

OPINION: No. The legislative assembly recognized that there would be public officials who might hold multiple public positions in ORS 244.010(2). ORS Chapter 244 would not prohibit the chair of the health district board from holding the position of project manager.

The proposed intergovernmental agreement would link the two governmental agencies and the positions. The circumstances are such that the person holding these positions could be met with at least potential conflicts of interest, or even actual conflicts of interest, in either of the public positions depending on the official action to be taken.

When an elected public official is met with a conflict of interest, law requires a public declaration of the nature of the conflict. In the case of an actual conflict of interest, the official must refrain from taking official action on the matter from which the conflict of interest arose. When an appointed public official is met with a conflict of interest the official must notify the appointing authority in writing that a conflict of interest has arisen.

ORS 244.040(1)(a) would prohibit the public official from using either public position to gain a financial benefit or avoid a financial detriment through an opportunity that would not be available but for the public position(s) held. The only types of financial gain permitted a public official may obtain under ORS 244.040(1)(a) are official salary,

honoraria, reimbursement of expenses and unsolicited awards for professional achievement. This financial gain prohibition exists apart from the provisions regarding conflicts of interest in ORS Chapter 244.

The nature of public the positions described is such that it would be very difficult for the person holding them to avoid violations of ORS Chapter 244. Accordingly, each time the project manager issue comes before the health care district board for action, the chair should announce the nature of a conflict of interest and avoid participation in any further action. As the superintendent, if official action needs to be taken on the project manager issue, the superintendent should give the ESD board of directors written notification of an actual or potential conflict of interest and request to be relieved of that particular responsibility.

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 27th day of February 2004.

Edwin Golobay, Chairperson

Lynn Rosik, Assistant Attorney General