

September 18, 2008

Charles Fletcher
Associate General Counsel
Office of the President
Oregon State University
600 Kerr Administration Building
Corvallis, Oregon 97331-2128

Dear Mr. Fletcher:

This is in response to your correspondence dated August 27, 2008 regarding the collaboration being planned between Oregon State University and INTO University Partnerships, Ltd., a for-profit business based in the United Kingdom.

OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 08S-005

STATED FACTS: Oregon State University (OSU) is planning to collaborate with INTO University Partnerships, Ltd. (INTO), a for-profit business based in the United Kingdom. Under the terms of the partnership, INTO will establish a for-profit subsidiary named INTO OSU, Inc.

INTO will control INTO OSU and hold a majority interest while the minority interest will be held by the Oregon State University Foundation (Foundation), a 501(c)(3) non-profit organization.

INTO OSU will enter into a contract with OSU to develop and support a new program for international students who attend OSU. The OSU program for international students will be overseen by OSU administrators.

In forming the partnership, INTO and OSU would require OSU administrators to participate in the governance of INTO OSU. The OSU administrators would receive no compensation from INTO, INTO OSU or any other source. These administrators would continue to receive their compensation from OSU.

INTO, INTO OSU and the Foundation will share profits from this partnership. OSU will not profit from the arrangement.

QUESTION: If administrators who manage the OSU programs related to the partnership represented by INTO OSU accepted positions on the Board of Directors of INTO OSU would the OSU administrators violate Oregon Government Ethics law?

ANSWER: Public officials are defined in ORS 244.020(13) and OSU administrators meet that definition, which means ORS 244.040(1) would apply to their use of administrative positions.

ORS 244.040(1) would prohibit OSU administrators from using or attempting to use their administrator positions to obtain financial gain or to avoid a financial detriment for any private business with which an administrator is associated, if the financial gain or avoidance of financial detriment for the business would not otherwise be available but for an administrator holding a position with OSU.

According to the stated facts, in establishing INTO OSU through an agreement between INTO and OSU, OSU administrators would be required to fill some positions as members of the board of directors for INTO OSU. The administrators would not be personally compensated as directors and would not receive any other personal financial benefit. OSU would also not receive a financial benefit from INTO OSU as profits would be shared between INTO and the Foundation.

It appears that INTO OSU would be defined as a business with which the OSU administrators are associated as defined in ORS 244.020(3)(a). This is because the proposed agreement would require the administrators to hold positions as members of the board of directors.

When OSU administrators are required, as OSU administrators, to participate in actions that would have a financial impact on INTO OSU, a business with which they are associated, they would risk violating ORS 244.040(1).

The proposed partnership could also have conflict of interest implications for OSU administrators who serve on the INTO OSU board of directors. They could be met with a conflict of interest if their duties, as OSU administrators, require them to participate in any official action that could be to the private pecuniary benefit or detriment of INTO OSU.

If met with a conflict of interest public officials, such as the OSU administrators, are required by ORS 244.120(1)(c) to give a written notice to their manager or appointing authority that they are met with a conflict of interest and describe the nature of the conflict.

QUESTION: If administrators who manage the OSU programs related to the partnership represented by INTO OSU accepted positions as members of an advisory

board established by INTO OSU would they violate Oregon Government Ethics law in providing consulting services to the INTO OSU board of directors?

ANSWER: ORS 244.020(3) defines a business with which a public official is associated as any private business or closely held corporation of which the public official is a director, officer, owner, employee or agent.

If the OSU administrators were not compensated as advisors to INTO OSU it does not appear that offering advice and consulting with the board of directors would constitute being officers, owners, employees or agents of INTO OSU. Therefore, INTO OSU would not be defined as a business with which the OSU administrators are associated.

It does not appear that OSU administrators would violate Oregon Government Ethics law by accepting positions on an advisory board that provides advice and consults with the INTO OSU board of directors.

The statutes cited in this opinion are provided as an addendum to this letter.

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 GOVERNMENT ETHICS COMMISSION.

Please contact this office again if you would like this opinion submitted to the Oregon Government Ethics Commission for adoption as a formal Commission Advisory Opinion pursuant to ORS 244.280.

Sincerely,

Ronald A. Bersin
Executive Director

ADDENDUM

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this 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 (11) 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 or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

244.020(3) "Business with which the person is associated" means:

(a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060 (3).

244.020(11) "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(13) "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 as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.

244.040 Prohibited use of official position or office; exceptions; other prohibited actions. (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

244.040(2) Subsection (1) of this section does not apply to:

- (a) Any part of an official compensation package as determined by the public body that the public official serves.
- (b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.
- (c) Reimbursement of expenses.
- (d) An unsolicited award for professional achievement.
- (e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.
- (f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be

known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.

(g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.

244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other 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:

(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.