



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

E-mail: ogec.mail@oregon.gov

Web Site: www.oregon.gov/ogec

May 7, 2015

Dwight G. Purdy
Thorp Purdy Jewett Urness & Wilkinson, P.C.
1011 Harlow Road, Suite 300
Springfield, Oregon 97477

Dear Mr. Purdy:

This is in response to your correspondence received March 11, 2015 regarding how Oregon Government Ethics law may apply to the acceptance of certain paid expenses for the spouses of members of the Board of Directors of the Lane Transit District when attending various community events.

OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 015S-003

STATED FACTS: Lane Transit District (LTD) is a mass transit special purpose district organized under ORS Chapter 267. LTD is governed by a seven-member board of directors, who are appointed by the Governor. The board of directors and staff of LTD are active in the Eugene-Springfield and greater Lane County community. At certain community events, organizations are given the option of purchasing individual tickets or purchasing a table. If an entity elects to purchase a table, the price for the table is fixed, regardless of how many individuals may attend the event and sit at the table. In the event LTD purchases a table and is unable to fill all of those seats with board members or high-level employees, LTD would like to make unused spots available to the spouses of board members and other employees.

QUESTION 1: May LTD board members or employees accept from LTD paid expenses for their spouses to attend various community events as described in the stated facts?

ANSWER 1: No, with one exception. Public officials may not accept payment of expenses from the government agency employer or the public body represented by the public official for the attendance of their relatives at community events unless the expenses are paid to the public official as part of an official compensation package.

ORS 244.040(1) prohibits a public official from using or attempting to use an official position to obtain financial gain or to avoid financial detriment for the public official, a relative of the public official or a business with which either are associated, if the opportunity would not otherwise be available but for the public official's holding the position.

The stated facts appear to indicate that the opportunity for the spouses of board members and other employees to attend various community events at the expense of LTD may be an opportunity that would not otherwise be available but for the official positions held by the board members and other employees.

While ORS 244.040(2)(a) allows public officials to accept any part of an official compensation package as determined by the public body that the public official serves, OAR 199-005-0035(3) prescribes the meaning of "official compensation package" as used in ORS 244.040(2)(a). An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package," the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials.

The stated facts appear to indicate that LTD would like to provide paid expenses for the board members' or employees' spouses to attend various community events only in the event that LTD purchases a table and is unable to fill all of the seats with board members or high-level employees. In light of this prerequisite, it appears unlikely such a financial benefit could be administered with the formality required by OAR 199-005-0035(3) and ORS 244.040(2)(a).

QUESTION 2: Does the answer to QUESTION 1 depend upon the availability of board members or certain high-level employees of LTD? In other words, must LTD offer a seat at the purchased table to all board members and employees who may want to attend the event in their official capacity before offering any available seat to board members' spouses or employees' spouses?

ANSWER 2: No. The availability of board members or certain high-level employees has no bearing on the prohibitions in ORS 244.040(1).

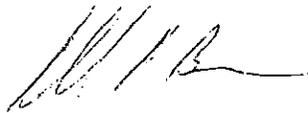
THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT

Dwight G. Purdy
Commission Staff Advisory Opinion 15S-003
May 7, 2015
Page 3

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 advisory opinion pursuant to ORS 244.280.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Bersin', with a horizontal flourish extending to the right.

Ronald A. Bersin
Executive Director

RAB/dt 15S-003

ADDENDUM

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

244.020(14) "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 or agent, irrespective of whether the person is compensated for the services.

244.020(15) "Relative" means:

- (a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
- (b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate;
- (c) Any individual for whom the public official or candidate has a legal support obligation;
- (d) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or

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.
- (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.
- (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.
- (h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.

The following Oregon Administrative Rules are applicable to the issues addressed herein:

199-005-0035(3) An "official compensation package" means the wages or other benefits provided to the public official. To be part of the public official's 'official compensation package', the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. 'Official compensation package' also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies."