

July 29, 2009

Colt Gill
Superintendent
Bethel School District #52
4640 Barger Drive
Eugene, Oregon 97402

Dear Mr. Gill:

This is in response to your correspondence dated July 2, 2009, regarding the offer of monetary rebates from the Azna Education & Family Foundation, Inc. to Bethel School District employees.

OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 09S-002

STATED FACTS: According to the request, the Azna Education & Family Foundation, Inc. was founded by Mark T. Wieger and other Bethel School District alumni. It appears Mr. Wieger and corporate sponsors have donated \$500,000 and the foundation has allocated that money to a program known as the Community Coalition for Education (CCE). It appears that some of the funds for the program may also be provided through grants and non-profit organizations, although the information describing these circumstances is limited.

Apparently, the CCE program was created to assist Bethel School District employees who lost wages from reduced school days, working hours and staff layoffs as well as to build financial resources to help sponsor school programs. It appears that initial participation in the program is by personal invitation and limited to 100 selected Bethel School District employees. Future plans indicate this program will likely be available to all district employees within one year as additional corporate sponsors agree to provide funding to the foundation.

Information provided with the request indicates that the employees enrolled in the program must submit personal monthly grocery and dining receipts detailing their household food costs in order to receive a 10% monetary rebate that is either provided directly to the district employee or applied to a fund designed to reinstate school programs. It appears, upon enrollment, an account is established for each employee

who identifies a preference to receive a personal rebate check or have their rebate deposited to the fund for school programs. Information indicates that funds are distributed within 45 to 60 days after submission of receipts and failure to submit receipts for any two months would result in removal from the program.

QUESTION: Would Bethel School District employees violate Oregon Government Ethics law if they accepted monetary gifts in the form of rebates from the Azna Education & Family Foundation, Inc.?

ANSWER: ORS 244.040(1) prohibits public officials from using or attempting to use an official position to obtain financial benefits for the public official, a relative or member of the household of the public official that would not otherwise be available but for the holding of the official position. Under specific circumstances set forth in ORS 244.040(2), there are exceptions allowing public officials to accept certain financial benefits. The exceptions relevant to these circumstances are described in ORS 244.020(2)(e) and (f) as follows:

ORS 244.040(2)(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."

ORS 244.040(2)(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."

ORS 244.025(1) and (2) place a limit on the aggregate value of gifts that a public official, a relative or member of the public official's household may be offered or accept during a calendar year. The aggregate value of gifts from a single source that could reasonably be known to have a legislative or administrative interest in the governmental agency represented by the public official may not exceed \$50. A legislative or administrative interest is defined in ORS 244.020(8) as an economic interest that is distinct from the economic interest held by a member of the general public in the actions of a governmental agency.

A monetary rebate, as discussed in the stated facts, provided to a public official representing the Bethel School District from the Azna Education & Family Foundation, Inc. appears to constitute a gift as defined in ORS 244.020(5)(a). If the Azna Education & Family Foundation, Inc., as the source of the gift, could reasonably be known to have a legislative or administrative interest in the Bethel School District, the public official

could not accept and the foundation could not offer monetary rebates exceeding the aggregate value of \$50 in one calendar year [ORS 244.040(2)(e)]. On the other hand, if the Azna Education & Family Foundation, Inc. does not have a legislative or administrative interest in the Bethel School District, the public official may accept unlimited monetary rebates from the foundation [ORS 244.040(f)].

The information that was provided in the request for this opinion was insufficient to permit the agency to make a determination whether Oregon Government Ethics law allowed or prohibited the activity described in the stated facts. Additional information regarding the Azna Education & Family Foundation, Inc. was requested from you but was not provided; therefore I am unable to provide an opinion on whether Oregon Government Ethics law would allow Bethel School District employees to accept monetary gifts in the form of rebates from the Azna Education & Family Foundation, Inc.

QUESTION: Would laid off Bethel School District employees violate Oregon Government Ethics law if they accepted monetary gifts in the form of rebates from the Azna Education & Family Foundation, Inc.?

ANSWER: A public official is defined in ORS 244.020(13) as any person who 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 their services.

If the employee is no longer employed by the Bethel School District and could not be defined as a public official related to another public position, the provisions of ORS Chapter 244 discussed in the previous answer would not be applicable as the recipient of any gifts would not appear to be a public official.

The statutes relevant to issues addressed in this opinion are provided as an addendum to this Staff Advisory Opinion.

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.

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Please contact this office again should you need further clarification or 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,

Ronald A. Bersin
Executive Director

09S-002dt

ADDENDUM

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

244.020(5)(a) “Gift” means something of economic value given to a public official or a relative or member of the household of the public official:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials.

244.020(8) “Legislative or administrative interest” means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

244.020(9) “Member of the household” means any person who resides with the public official.

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.

244.020(14) “Relative” means:

- (a) The spouse of the public official;
- (b) The domestic partner of the public official;
- (c) Any children of the public official or of the public official’s spouse;
- (d) Siblings, spouses of siblings or parents of the public official or of the public official’s spouse;
- (e) Any individual for whom the public official has a legal support obligation; or

(f) 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.

244.025 Gift limit; entertainment prohibition. (1) During a calendar year, a public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

244.025(2) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

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.