

February 5, 1997

Paulina M. Cockrum  
P.O. Box 2405  
Gearhart, Oregon 97138

Dear Ms. Cockrum:

This letter is in response to your correspondence dated January 22, 1997, concerning conflicts of interest which may arise should you be elected to a position on the board of the Union Health District (UHD) of Clatsop County in the UHD election to be held March 9, 1997.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
NO. 97S-002**

**STATED FACTS:** You are a registered nurse and have been employed by Seaside Hospital, currently Providence Seaside Hospital, for the past 20 years. You have a broad range of experiences in the delivery of health care in the rural setting.

Your current position at the hospital is Director of Staff Support which is a support position to all hospital departments, particularly in the areas of regulatory compliance such as JCAHO, OSHA, workers compensation, medical staff affairs, infection control, utilization review and quality improvement.

Providence Seaside Hospital is managed as a non-profit organization by the Sisters of Providence in Oregon at the request of the Union Health District.

Much of the Union Health District's business includes the spending of money to support the hospital building, which is owned by Union Health District, as well as to purchase equipment that may be used by the hospital in the care of patients. Some of this equipment when used is billed to a patient, or the patient's insurance company, as a billable service of the hospital. Historically, most of the UHD's tax money has been spent within the walls of the hospital.

The mission of Providence Seaside Hospital is to work toward a healthier community through increased access for needed medical services in the community with particular attention on the poor and the elderly.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 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 (8)(a) to (c) of this section.

ORS 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.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

ORS 244.020(7): 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:

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

ORS 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.

ORS 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.

(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.

ORS 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:

ORS 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:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

February 5, 1997  
Page four

QUESTION: Would there be a potential conflict of interest or an actual conflict of interest between my position as an employee of the Sisters of Providence and that of a UHD board member, should I be elected?

OPINION: Since Providence Seaside Hospital provides a service (the delivery of all health care services by the hospital) that would otherwise be provided by the government (UHD) the hospital employees are public officials as defined by ORS 244.040(15). Therefore, you are a public official in your position as Director of Staff Support for Providence Seaside Hospital. You would also be a public official as a member of the Union Health District Board of Directors.

Both potential conflicts of interest and actual conflicts of interest relate to taking official action that **could** or **would** result in a financial impact to a public official, a relative of a public official or a business with which a public official or a relative is associated. Merely being employed as the Director of Staff Support for Providence Seaside Hospital and holding a position as a board member on the Union Health District Board of Directors would not, in itself, create a conflict of interest.

A potential conflict of interest occurs when an official action **could** have a financial impact on the public official taking the action, a relative of the public official or a business with which the public official or a relative is associated. An actual conflict of interest occurs when the action definitely **would** have such an impact.

When a potential conflict of interest exists as defined in ORS 244.020(7), a public official who serves on a board or commission must publicly disclose the nature of the conflict and may then proceed to take official action. When an actual conflict of interest arises, the public official must disclose the conflict and then refrain from taking action unless the official's vote is necessary in order to obtain the minimum number of votes necessary for the body to take action.

A potential conflict of interest would occur if you, as a board member, take action which would result in a decision by the board of directors to conduct a study on salaries of all employees of Providence Seaside Hospital. This **could** have a financial impact on your position of Director of Staff Support but at the time the action was taken the impact, if any, was uncertain.

An actual conflict of interest would occur if you, as a board member, take action which would result in a pay increase for the Director of Staff Support at Providence Seaside Hospital. This clearly **would** have a financial impact on you and you would be required to follow the guidelines set forth in ORS 244.120(2)(b)(A).

Paulina M. Cockrum  
February 5, 1997

Page five

Statutes provide an exception to conflicts of interest when the official action affects all members of a class to the same degree. In this situation, such an exception would exist if the members of the board of directors took action such as an across the board salary increase which would impact all employees of Providence Seaside Hospital to the same degree.

**THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.**

Sincerely,

L. Patrick Hearn  
Executive Director

0749JP