

April 2, 1998

Ray Elliott
Public Safety Sergeant
City of Grants Pass
101 Northwest A Street
Grants Pass, OR 97526

Dear Mr. Elliott:

This letter is in response to your correspondence dated March 31, 1998, concerning whether or not the City of Grants Pass representative on Josephine County's ambulance services advisory committee would have a conflict of interest which would affect the representative's ability to participate in the committee's deliberations if the city seeks to obtain an ambulance services franchise when the process is open for bid.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 98S-011**

STATED FACTS: Josephine County has promulgated an ordinance pursuant to ORS 682.205 which regulates ambulance services. The ordinance creates an advisory committee and prescribes membership of the committee. The committee's charge is to advise and make recommendations to the Board of County Commissioners. One of the positions on the committee is representing Grants Pass Public Safety. The representative is an employee of the Public Safety Department.

Ambulance service is currently provided by a private company through a competitive franchising process. It is presumed the City of Grants Pass will be a competitor for an ambulance service franchise when the process is again opened for bid.

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

ORS 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

Ray Elliott
April 2, 1998
Page 2

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.

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 (7)(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:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

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.

QUESTION: Do Oregon Government Standards and Practices laws permit the Grants Pass Public Safety Department employee to participate in the advisory committee's deliberations and recommendations for ambulance services if the City of Grants Pass seeks to obtain an ambulance service franchise?

Ray Elliott
April 2, 1998
Page 3

OPINION: Yes. Government entities, such as the City of Grants Pass, are not operated for economic gain. Thus, such entities are not a business as defined by ORS 244.020(2). Accordingly, employees of a governmental entity do not come within the definition of business with which the person is associated as defined by ORS 244.020(3). They are not, therefore, subject to the definition of an actual conflict of interest as defined in ORS 244.020(1). Neither are they subject to the definition of a potential conflict of interest as defined in ORS 244.020(7). No conflict of interest arises when they serve on a public body and take official action which results in a financial benefit or detriment to their employing public entity. The legislative intent of these statutes which define business clearly appears to have been referring to income producing private entities.

Another factor which would exclude the city's representative from conflict of interest provisions is that the Josephine County Board of County Commissioners, by ordinance, created an advisory committee that prescribes the membership of the ambulance services advisory committee. One of the positions on the committee represents the Grants Pass Public Safety Department. This representative is clearly exempt pursuant to ORS 244.020(7)(a) from the actual conflict of interest or the potential conflict of interest definitions in ORS 244.020(1) and ORS 244.020(7) and is not required to declare conflicts of interest pursuant to ORS 244.120. The representative may participate in all discussions and actions of the ambulance services advisory committee.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 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

LPH:aip/elliott.so