

November 19, 1999

Ms. Nancy Ellison
831 Cottage NE
Salem, OR 97301

Dear Ms. Ellison:

The Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion at its November 19, 1999 meeting:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION ADVISORY
OPINION NO. 99A-1002**

STATED FACTS: XYZ Company is incorporated under the laws of State A, a state contiguous to Oregon. XYZ is a private employer and has operations that require it to be licensed as a health carrier and regulated by the applicable governmental agency of State A. XYZ is licensed to provide coverages for health benefits in more than one state. XYZ is not, however, licensed by the State of Oregon to provide health insurance coverages and is not regulated by the Oregon Department of Consumer and Business Services (DCBS). Accordingly, the administrator of the Insurance Division (a division of DCBS) does not have regulatory authority over XYZ. XYZ has obtained a certificate of authority to transact business in Oregon as a foreign corporation from the Oregon Secretary of State. This is because XYZ has contractual relationships with providers who are located in Oregon counties that are contiguous to State A. Such relationships are necessary to the operations of XYZ for a variety of reasons. A primary reason is to allow State A residents who are insured by XYZ and who reside in counties that are contiguous with the State of Oregon to obtain health care services from such Oregon providers.

ABC Company is incorporated under the laws of the State of Oregon and is licensed by DCBS as a health insurance carrier. ABC is, therefore, under the regulatory authority of the administrator of the Insurance Division. ABC is an affiliated entity of XYZ. ABC is a wholly owned subsidiary of MNO which is a wholly owned subsidiary of XYZ. As the parent company of ABC, MNO has the right to elect the members of the board of directors of ABC. Similarly, XYZ has the right to elect members of the board of directors of MNO. No overlap in board membership currently occurs between ABC and XYZ. One or more employees of XYZ serve on the board of ABC. The XYZ employees comprise less than a majority of the members of the ABC board.

XYZ may seek to employ a person to manage and coordinate certain legislative and regulatory activities that may affect or relate to XYZ's operations. The position would be located in State A, not in Oregon. Duties of the position would involve review and analysis of proposed legislation and regulations affecting XYZ in State A and other states. The person holding the position would represent XYZ before the legislatures and regulatory agencies of such states. For the applicable periods of time prescribed in ORS 244.045(1), the position would have no involvement in the operations of ABC and would not represent XYZ or any of its affiliates before the Oregon legislature or any Oregon governmental agency.

RELEVANT STATUTE: The following provision of Oregon Revised Statutes is applicable to this issue:

ORS 244.045 Regulation of subsequent employment of public officials. (1) A person who has been a Public Utility Commissioner, the Director of the Department of Consumer and Business Services, the Administrator of the Division of Finance and Corporate Securities, the Administrator of the Insurance Division, the Administrator of the Oregon Liquor Control Commission or the Director of the Oregon State Lottery shall not:

(a) Within one year after the public official ceases to hold the position become an employee of or receive any financial gain, other than reimbursement of expenses, from any private employer engaged in the activity, occupation or industry over which the former public official had authority; or

(b) Within two years after the public official ceases to hold the position:

(A) Be a lobbyist for or appear as a representative before the agency over which the person exercised authority as a public official...

QUESTION: Would it be a violation of ORS 244.045(1) if the administrator of the Insurance Division left that position and immediately entered into employment with XYZ Company?

OPINION: No. According to the stated facts, XYZ Company does not operate in Oregon. It is not licensed to provide health insurance benefits in Oregon and is not under the regulatory authority of the administrator of the Insurance Division of the Department of Consumer and Business Services.

November 19, 1999

Page 3

While ABC Company, which does operate in Oregon and is regulated by the Insurance Division, is a wholly owned subsidiary corporation of MNO Company and MNO Company is a wholly owned subsidiary corporation of XYZ Company, each is an independent business entity.

The language of ORS 244.045 focuses on the activity, occupation or industry over which a public official exercised authority. Although the statute does not specify only businesses or activities within Oregon, that qualification is clearly implied by the phrase ...over which the public official had authority... because such authority is limited solely to the state. This position is consistent with a 1997 opinion by Attorney General Hardy Myers to Kerry Barnett, who was then director of the Department of Consumer and Business Services. 77 Or. Op. Atty Gen. 3. The following are relevant excerpts from that opinion:

...the purpose of the statute is to prevent, for a specified period of time, former public officials from profiting from or otherwise trading upon their contacts and associations acquired during their tenure as public servants. Such contacts and associations presumably refer to contacts and associations between the former public official and other Oregon officials and employees. The legislative history of the statute supports this interpretation. The legislation was proposed in response to acts of certain former public officials. At the time the bill was introduced, the former Insurance Commissioner had accepted employment with an Oregon insurer and the former Public Utility Commissioner was employed by a utility company with operations in Oregon.

We therefore reason that ORS 244.045(1)(a) was not intended to apply to a former public official who accepts employment with a business that has no operations in Oregon. In such a situation, the former public official's contacts and associations with the state regulatory agency are irrelevant.

It is not relevant whether a business was subject to the authority of the former regulator while the person was still a public official. What is relevant is whether the business operates in Oregon during the time periods specified in ORS 244.045(1) while employing the former regulator.

A public official identified in ORS 244.045(1) would not violate that provision by accepting employment with an entity engaged in the business or activity over which the official exercised authority provided that the entity does not operate in Oregon during the time periods specified therein.

Nancy Ellison
November 19, 1999
Page 4

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the _____ day of _____, 1999.

Rachel Gerber, Chairperson

Lynn Rosik
Assistant Attorney General

Date

LPH:ph