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September 2, 1999

Councilor Karen Roberson
PO Box 251
Oakland, Oregon 97462

Dear Councilor Roberson:

This is in response to your letter dated August 3, 1999 concerning your taking official action in relation to the process of upgrading the City of Oakland's water system.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 99S-022**

STATED FACTS: The City of Oakland will soon seek proposals for the design work on a project to upgrade the city's water system. It is certain that the engineering firm which did the master plan portion of the project will submit a proposal.

A city councilor is living in a domestic partnership with the engineer who has previously done work on the project and who has continued to stay involved with the project by attending meetings, etc. The councilor and engineer did have a public commitment ceremony which might cause people to perceive that they are legally married. The engineer is a part-owner of the engineering firm and is compensated by salary and profit sharing.

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

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) 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:

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 244.020(16): Relative means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse.

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.

September 2, 1999
Page 3

QUESTION: Would a city councilor be in violation of Government Standards and Practices laws if the councilor took official action in a matter which could or would have a financial impact on a business of which the councilor's domestic partner is an employee and part-owner?

OPINION: No. The definitions of actual conflict of interest and potential conflict of interest in ORS 244.020 and the prohibition against using office for financial gain set forth in ORS 244.040(1)(a) apply **only** to a public official or a relative of a public official. As stated above, the definition of **relative** does not include domestic partner, significant other or any other such similar term. Accordingly, no statutory conflict of interest would arise for the councilor nor would the councilor be prohibited from taking official action would result in a financial benefit to the councilor's domestic partner's business.

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

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