

February 22, 2001

John Turchi  
City Councilor  
380 A Avenue  
PO Box 369  
Lake Oswego, Oregon 97034

Dear Mr. Turchi:

This letter is in response to your correspondence dated February 5, 2001 concerning possible conflicts of interest between your position as the principal of Rivergrove Elementary School, which is part of the Lake Oswego School District, and your newly elected position as a Lake Oswego City Councilor.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION 01S-002**

**STATED FACTS:** You are employed as the principal of Rivergrove Elementary School, which is part of the Lake Oswego School District. You were recently elected to a four-year term on the Lake Oswego City Council. The City of Lake Oswego has a joint use agreement with the school district relating to the use of recreational facilities. It also has administered public contracts for the installation of artificial turf and/or renovation of school fields that are also used by the general public. The city is currently also discussing a number of potential projects with the school district. You expect that these and other similar city / school district issues, will continue throughout your term on the City Council.

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

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 potential conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commission, and 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.

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.

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.

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 \$1000 or more at any point in the preceding calendar year.

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 arises out of the following:

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.

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 which the public official or a relative of the public official is associated.

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:

(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.

**QUESTION:** Could an actual or potential conflicts of interest arise for you as a City Councilor by reason of your employment by the school district?

**OPINION:** Matters that come before the city council do not create a conflict of interest in and of themselves. A conflict of interest may occur when the public official takes official action on the issue giving rise to the conflict of interest.

A potential conflict of interest arises when the person acting in their capacity as a public official takes any action or makes any decision or recommendation, 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.

An actual conflict of interest arises when the person acting in their capacity as a public official takes any action or makes any decision or recommendation, 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.

As stated in your letter and in previously issued opinions by the Government Standards and Practices Commission, a governmental entity is not operated for economic gain and, therefore, is not a business as defined by ORS 244.020(2). Accordingly, no actual or potential conflict of interest as defined in ORS 244.020(1) and ORS 244.020(7) arises when a public official takes official action that results in a financial benefit or detriment to a governmental body in which they hold any position.

A violation of Government Standards and Practices laws may occur if the effect of the official action by the public official could or would result in a private pecuniary benefit or detriment to the public official, a relative or a business with which the person or a relative of the person is associated. Examples of a private pecuniary benefit or detriment include, but are not limited to, an impact on salary or benefits, a change in the value of real or personal property and other financial changes which could or would result from the official action.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TOP 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