

May 17, 2001

Darce Driskel
Human Resources Manager
Hermiston School District
341 N.E. Third Street
Hermiston, Oregon 97838-1890

Dear Mr. Driskel:

This letter is in response to your correspondence dated May 8, 2001 concerning whether or not some members of the Hermiston school board may have conflicts of interest.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION 01S-011

STATED FACTS: A school district has a school board that is comprised of seven members. Two of the school board members have spouses who are teachers employed by the school district. Two other members are teachers who retired from the district. The other board members have no employment connections to the district even though one of them is a teacher for the Education Service District.

The school board will be negotiating a contract effecting 250 teachers. The teacher spouses of the school board members will not benefit from the results of the negotiations to any greater degree or to any less degree than the other teachers in the bargaining unit.

The school district provides insurance for a retiree and his or her spouse for up to seven years upon retiring from the school district. This is sure to be a negotiations issue during the negotiations. There are approximately 50 former employees of the school district receiving insurance benefits.

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

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(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(7)(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 class that qualify under this exception.

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.

244.020(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.

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:

244.040(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.

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:

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:

244.120(2)(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

244.120(2)(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

244.120(2)(b)(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.

244.120(2)(b)(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.

QUESTION #1: Would it be a violation of Oregon Government Standards and Practices laws for the school board members that have spouses who are teachers to be a part of the negotiating team?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest in ORS 244.020(1) and potential conflict of interest in ORS 244.020(7). The difference between an actual conflict of interest and a potential conflict of interest is determined by the words would and could.

An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action taken by a public official would directly and specifically affect the financial interest of the official, the officials **relative** or a business with which the official or the official's relative is associated.

A potential conflict of interest exists when an official takes action that could possibly have a financial impact on the official, a **relative** of the official or a business with which the official or a relative of the official is associated.

ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, official position or office to obtain financial gain or avoidance of a financial detriment for the official, the official's **relative** or a business with which the official or the official's relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120. However, in this instance there would be no violation of ORS 244.040(1)(a) because the action taken by the school board member would have a financial impact on the school board member's spouse's salary and/or benefits and salary is excluded as being prohibited by this statute.

If the school board member takes official action with regard to his spouse's salary and the spouse is affected to the same degree as the other 250 teachers, it appears that a class exception would exist and no conflict of interest would arise. ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. In this instance it appears that the class would be the 250 teachers. If all members of the class are affected to the same degree by the action the school board member takes the school board member would be exempt from conflict of interest disclosure requirements and no violation of Oregon Government Standards and Practices laws would occur.

QUESTION #2: Would it be a violation of Oregon Government Standards and Practices laws for a school district retiree to sit on the negotiating team when the outcome of the negotiations could effect whether the retirees have to pay toward their insurance benefits?

OPINION: The stated facts do not indicate whether the 50 retirees would be affected to the same degree but we assume that this is the case. If all 50 of the retirees are affected to the same degree the opinion to question #1 would also apply here.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.28. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Darce Driskel
May 17, 2001
Page 5

Please feel free to call or write again if you have further questions or desire additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

SO-01s-00 -JP