

March 1, 2002

Jim Azumano  
County Manager  
County of Clatsop  
P.O. Box 179  
Astoria, Oregon 97103

Dear Mr. Azumano:

At its March 1, 2002 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**ADVISORY OPINION NO. 02A-1003**

**STATED FACTS:** The father of an Oregon county manager founded a travel agency, Azumano Travel, and may still hold a minority interest in the company. The county manager's sister and her husband are shareholders in the company. The county manager has no interest whatsoever in the company.

The travel agent for the State of Oregon for prisoner extradition has been Azumano Travel and its predecessor, Away Travel, since 1993. The county utilizes the state contract with Azumano Travel for prisoner transport only. The county has not used Azumano Travel for general purpose travel for at least one year.

The county manager is the county budget officer and normally signs the check register for the county. Since learning of the existence of this contract the county manager has attempted to have the county administrative assistant sign the check register to approve the payment of all invoices, claims and bills.

**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(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(1)(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION: Does the relationship between the county manager and his relatives who own the travel agency, as described in the stated facts, place the county manager at risk of violating Oregon Government Standards and Practices laws?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [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 the official would directly and specifically affect the financial interest of the official, a relative of the official or a business with which the official or a relative of the official 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. Such financial impact is not certain.

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, a relative of the official or a business with which the official or a relative of the official is associated. This prohibition exists regardless of whether actual or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

If the county manager were to take any official action that would or could have a financial impact on the county manager's relatives, or a business with which either or both are associated, the county manager could violate both ORS 244.120 and ORS 244.040(1)(a).

The county manager must notify the county manager's appointing authority, in writing, of the nature of the conflict of interest and request that the appointing authority dispose of the matter giving rise to the conflict pursuant to ORS 244.120(1)(c). The county manager's appointing authority could, as the stated facts indicate is presently being done, assign someone other than the county manager to sign the check register for all business between the county and Azumano Travel.

If the county manager avoids taking any official action, such as approving county employees' travel arranged through this agency and signing the check register to approve the payment of invoices, claims and bills to Azumano Travel, it appears that no violation of Oregon Government Standards and Practices laws would occur.

**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 1<sup>st</sup> day of March, 2002.

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Katherine Tennyson, Chairperson

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Date

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Lynn Rosik  
Assistant Attorney General

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Date