

October 25, 2002

Sarah Jacobson
Eugene – Springfield Solidarity Network
P.O. Box 10272
Eugene, Oregon 97440

Dear Ms. Jacobson:

This is in response to your correspondence dated, October 11, 2002 regarding a city councilor participating in the anticipated research and deliberation on a living wage proposal by the city council, when the councilor owns a business that could be economically affected.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-026**

STATED FACTS: A city council voted to research and deliberate on a proposal to establish a living wage. If adopted the established living wage and accompanying benefits would apply to three different groups of employees:

- City employees, including part-time and temporary employees who work more than 600 hours per year.
- Employees of businesses or non-profit organizations having service contracts with the city valued at \$10,000 or more.
- Employees, of businesses, that receive financial assistance exceeding \$25,000. An example of this assistance might be a tax exemption or reduction.

If the employer of an affected group of employees provides health benefits the proposed living wage is \$11.42 per hour. If no health benefit is provided the proposed living wage is \$14.28 per hour.

It appears that there are 57 contractors that would be affected by the adoption of this living wage proposal. A member of the city council is one of those contractors. The

councilor's business currently has a service contract with the city to provide waste collection and recycling services to various city facilities. The current contract calls for the councilor's business to provide these services until April 5, 2003.

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

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:

(a) Any business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business from which 50 percent or more of the total annual income of the person and members of the person's household is derived during the current 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 or detriment 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:"

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:"

(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."

244.120(3) "Nothing in subsection (1) or (2) of this section requires any public official to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated."

QUESTION NO. 1: Would the city councilor and business owner be met with an actual conflict of interest when the council researches and deliberates on the living wage proposal?

OPINION: No. An actual conflict of interest is defined, in ORS 244.020(1), as 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 business.

In the stated facts, the city council has voted to research and deliberate on the proposal to establish a living wage for three different groups of employees. When a governing body undertakes such research and deliberation there is no certainty as to the end result. Accordingly, if the city councilor/business owner participated in such research and deliberations, the outcome **could** affect the private pecuniary benefit or detriment of the councilor or the councilor's business.

ORS 244.020(7) defines a potential conflict of interest as 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 business.

The stated facts indicate that the business owned by the city councilor has a current contract to provide services to the city. The councilor's business would be financially impacted if the living wage proposal were to be adopted. Accordingly, the city councilor would be met with a potential conflict of interest when the living wage issue came before the city council for discussion or consideration.

On those occasions, the councilor would be required to publicly announce the **nature** of the potential conflict of interest. Then when the issue is discussed the councilor would be free to participate in the council research and deliberations on the living wage issue.

QUESTION NO. 2 Would the city councilor be met with an actual conflict of interest during any city council action taken on a living wage proposal that results from the research and deliberations on the issue?

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OPINION: Yes. Refer to the discussion of the definition of an actual conflict of interest in the opinion offered to the first question. Based on the stated facts, the councilor's business and the city councilor **would** experience a pecuniary benefit or detriment if the city council adopted the proposed living wage.

If the living wage was listed on a city council meeting agenda for adoption the councilor would be met with an actual conflict of interest. The **nature** of the actual conflict of interest would have to be publicly announced by the councilor at that meeting. ORS 244.120(2)(b)(A) would require the councilor to then refrain from participating in any discussion, debate or vote as a public official on this issues.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 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 CHAPTER 244.280. 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 STANDARDS AND PRACTICES COMMISSION.

Please contact this office again if you would like this opinion submitted to the Government Standards and Practices Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn
Executive Director

LPH/dc