

January 10, 2003

Linda Riddell
Interim Administrator
Oregon Department of Consumer and Business Services
Building Codes Division
P.O. Box 14470
Salem, Oregon 97309-0404

Dear Ms. Riddell:

At its January 10, 2003 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 03A-1003**

STATED FACTS: The Central Electrical Training Center (CET) has requested to hire or contract with and compensate certain Department of Consumer and Business Services (DCBS) employees to provide training services on behalf of their organization. The electrical industry wants to comply with the electrical specialty code. By hiring the technical experts from DCBS, the CET believes that their industry will be best informed of the changes in laws, rules and codes governing electricians so they may provide their services lawfully.

The CET is a non-profit training trust established through the International Brotherhood of Electrical Workers and the National Electrical Contractors Association. The primary function of CET is to train apprentices and provide advanced training for licensed electricians. Although the Building Codes Division (BCD) regulates the work of the electrical industry, it does not regulate the work of CET.

The BCD, a division within DCBS, is responsible for the administration of training for inspectors and licensed tradespersons. In carrying out those duties, the division administers the 1% training program which funds some of the training provided by contracted entities, directly provides some training courses, establishes the requirements for continuing education training of tradespersons and provides recommendations to policy boards for approval of courses and instructors.

CET does not participate in any of the training programs funded by the division; however, they do teach courses related to continuing education for licensed electricians. As such, these courses, along with the instructors, are approved by the State of Oregon Electrical and Elevator Board (Board).

BCD employs a chief electrical inspector and an assistant chief electrical inspector. The chief, and the assistant chief, in the chief's absence, currently review course applications only for completeness and to ensure that they meet the criteria established by the Board through rule. Neither the chief or the assistant chief can approve courses; therefore, after course applications are reviewed, they are forwarded to the Board for approval.

Currently, the chief approves course instructors; however, the division will be recommending to the Board that they amend their rules and transfer the authority for course instructor approval from the chief to the Board. If approved by the Board, the chief will no longer be involved in the approval of course instructors.

The CET has requested authorization to individually hire or contract with the chief and assistant chief to teach journey level continuing education courses at their training center.

As mentioned above, the BCD has certain responsibilities in providing continuing education courses to licensed electricians in Oregon. The positions of chief electrical inspector and assistant chief electrical inspector, as a part of their assigned job responsibilities, develop and teach continuing education curricula. The chief electrical inspector is a management service exempt employee. The assistant chief inspector is a classified non-exempt employee.

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 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(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 #1: Would it be a violation of Oregon Government Standards and Practices laws for the chief electrical inspector and/or the assistant chief electrical inspector to be hired or contracted by CET to teach continuing education courses to licensed electricians assuming that no public supplies, facilities or state paid time is used?

OPINION: ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official position or office to obtain a financial gain or the avoidance of a 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, the reimbursement of expenses or an unsolicited award for professional achievement for the public official.

The chief electrical inspector is a management service overtime exempt employee. Part of the job description of the chief electrical inspector is to provide continuing education training. It appears that, under no circumstances, would the chief electrical inspector be permitted to contract to provide this training for compensation. If the chief electrical inspector were to perform this training, either during normal working hours or after normal working hours, the chief electrical inspector would be required to perform such training for no additional compensation. To accept compensation for this training would appear to be a violation of ORS 244.040(1)(a) because providing training is part of the chief's official duties and the chief is not eligible for overtime pay.

The assistant chief electrical inspector is a classified non-exempt employee. Although part of the job description of the assistant chief electrical inspector is to provide continuing education training, the assistant chief electrical inspector is not prohibited from performing work for additional compensation. The GSPC believes that, if the assistant chief electrical inspector provided training to CET, the compensation received by the assistant chief electrical inspector should be paid by BCD as either regular salary or overtime pay, depending on the timing of the training. An arrangement could be entered into between BCD and CET for CET to reimburse BCD for such training services, whether provided by the chief electrical inspector or assistant chief electrical inspector. It appears that no violation of ORS 244.040(1)(a) would occur because the assistant chief would be receiving official compensation directly from BCD

QUESTION #2: Would the fact that the chief electrical inspector and the assistant chief electrical inspector review and evaluate proposals from organizations such as CET or others result in a conflict of interest?

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, the official's relative 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 that official, a relative of that official or a business with which the official or the relative of that official is associated. Such impact is not certain.

With regard to the chief electrical inspector, because the person holding that position would be prohibited from employment for compensation by CET, this question is moot. With regard to the assistant chief electrical inspector, it appears that the function of reviewing and evaluating proposals would not create either a potential or an actual

conflict of interest provided the assistant chief's role in evaluating could or would have no financial impact to the assistant chief.

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 10th day of January 2003.

Dave Moss, Chairperson

Lynn Rosik
Assistant Attorney General

Date