


Theodore R. Kulongoski, Governor

May 30, 2003

Jeff M. Wilson
County Counsel
Crook County
300 N.E. 3rd Street
Prineville, Oregon 97754

Dear Mr. Wilson:

At its May 30, 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-1004**

STATED FACTS: A County Commissioner is a Certified Public Accountant (CPA) and maintains an office and practice within the county over which the Board of Commissioners has jurisdiction.

The current practice is for the commissioners to provide the finance department with a list of persons or entities that might cause conflicts of interest to arise during commission meetings. In preparing the monthly bills for payment approval by the commissioners, the finance department compares the payees with each commissioner's list. When the bills are delivered to the commissioners for approval there is an accompanying list of possible conflicts of interest identified by the finance department.

Under Title V of the Federal Privacy Act it appears that a CPA firm would be defined as a "financial institution." Section 502 of Title V prohibits a financial institution from disclosing any non-public personal information to a third-party. One of the exceptions to this prohibition is a disclosure "necessary to effect, administer, or enforce a transaction requested or authorized by the consumer."

Title V appears to prohibit the commissioner, as a CPA, from disclosing his client list until such time as disclosure is required to meet a client's request for the county to pay a sum for services or supplies provided to the county.

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

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(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:"

244.040 **"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)(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 NO. 1: Would Government Standards and Practices law authorize a County Commissioner to provide the county finance department with a list of his/her CPA firm clients to be used in preparing the county's monthly bills for payment approval by the Board of Commissioners?

OPINION: The provisions of ORS Chapter 244 would neither authorize nor prohibit the commissioner from providing a client list to the finance department. The prohibitions of Title V of the Federal Privacy Act would appear to be more relevant in determining the propriety of the practice.

Oregon Government Standards and Practices law defines 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.

ORS Chapter 244 provides the procedures a public official is to follow **when met** with either an actual or potential conflict of interest. There are no requirements before that moment. The commissioner, in the stated facts, **would be met** with a conflict of interest when asked to participate in approving county payments to a person or business represented by the commissioner's CPA firm.

When met with such a conflict of interest, the commissioner must identify the nature of the conflict of interest on the public record. In the instance of an actual conflict of interest the commissioner would be required to refrain from further official action. In the instance of a potential conflict of interest the commissioner could continue participating.

QUESTION NO. 2 Would it violate Government Standards and Practices law for the county finance department to accumulate a list of persons or entities the county commissioner has identified as presenting conflicts of interest during meetings of the Board of Commissioners?

OPINION: No. ORS Chapter 244 would not prohibit or authorize the county finance department from creating and adding to such a list.

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. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 30th day of May 2003.

Dave Moss, Chairperson

Lynn Rosik, Assistant Attorney General