

  
Theodore R. Kulongoski, Governor

November 21, 2003

Scott R. Cooper  
Judge for Crook County  
300 N.E. Third Street, Room 10  
Prineville, Oregon 97754

Dear **Judge Cooper**:

At its November 21, 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-1007**

**STATED FACTS**: The spouse of a county court judge is an attorney. The spouse is an associate in a law firm, whose members occasionally represent clients before the county court.

As an associate in the law firm, the spouse is salaried and does not participate in the firm's profit sharing plan. In the near future, the spouse will become a partner in the law firm and will be eligible to participate in profit sharing.

When lawyers of the firm have appeared for clients before the county court, the judge has always declared a potential conflict of interest due to the spouse's employment with the law firm. The judge has declared conflicts as such because a decision made by the judge might make a client of the firm increase or decrease its utilization of the firm.

**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(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."

244.020(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."

244.120 **"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.”

QUESTION: When the spouse of the county court judge becomes a partner in the law firm, would the judge be met with a potential conflict of interest or would the promotion change the nature enough to become an actual 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 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.

The stated facts rightly identify the judge as being met with a potential conflict of interest when representatives from the spouse’s law firm appear before the county court. The change in the spouse’s status from associate to partner would not change current potential conflicts of interest to actual conflicts of interest.

The law firm remains a business with which the spouse of the judge is associated. From the stated facts, there does not appear to be a certainty to any economic impact to the law firm and/or the spouse from the judge’s participation in official actions. Accordingly, the conflicts of interest would remain potential.

**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**

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**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 21st day of November 2003.

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Dave Moss, Chairperson

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Lynn Rosik, Assistant Attorney General

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