

January 7, 2005

The Honorable Rick Metsger  
Oregon State Senator  
P.O. Box 287  
Welches, Oregon 97067

Dear Senator Metsger:

At its January 7, 2005 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION  
ADVISORY OPINION NO. 05A-1001**

**STATED FACTS:** A member of the Oregon Legislative Assembly is a partner in a private firm that provides media and public relations services. Being an elected public official and working as a partner in a public relations firm presents circumstances that give rise to questions as to how the provisions of ORS Chapter 244 might apply.

One example comes from anticipated land use decisions to be made by a county board of commissioners or a regional governing body. An organization interested in the outcome of the decisions may hire the public relations firm. The firm will be asked to build, among stakeholders and the general public, awareness and support for the organization's position on the land use decisions. The firm's work will include research and developing position papers, talking points and public outreach strategies. The firm would approach media outlets with story ideas, present opinion articles for publication and arrange editorial board meetings. State level legislative changes are not anticipated and the partner, who is a legislator, will not be asked to lobby. However, the partner/legislator might attend meetings where the organization's lobbyist(s) will participate in discussions of strategy and positions on issues.

Another example is a private organization that has retained lobbying services by contract with a lobbyist. It is anticipated that this organization also intends to retain the services of the public relations firm in which the legislative member is a partner. The services provided under the contract will be media training and assistance. The assistance will include proposing and writing stories and opinion articles for main and

industry oriented media. None of the proposed work by the public relations firm will involve issues that would be subject to legislative action.

Finally, a membership organization is planning for an annual convention. One of the convention events being planned is a media-training seminar. The public relations firm has been asked to present the seminar. The member of the legislative assembly and firm partner would be the seminar instructor. As the instructor, the partner/legislator would receive a fee and payment of expenses for travel, lodging and food. Among convention attendees, will be other members of the legislative assembly, who will be there in their official capacity.

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

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(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.”

**244.060 “Form of statement of economic interest.** The statement of economic interest filed under ORS 244.050, shall be on a form prescribed by the Oregon Government Standards and Practices Commission, and the person filing the statement shall supply the information required by this section and ORS 244.090, as follows:”

244.060(3) “Sources of income received at any time during the preceding calendar year by the person or a member of the household of the person that produce 10 percent or more of the total annual household income.”

244.060(4) “The name, principal address and brief description of the source of income from which 50 percent or more of the total annual income of the person and members of the household of the person was received during the preceding calendar year and whether the source existed during the preceding year, and whether the source is derived from an entity that now does business or could reasonably be expected to do business or has legislative or administrative interest in the governmental agency of which the public official is or the candidate if elected would be a member or over which the public official has or the candidate if elected would have authority.”

244.060(6)(a) “Notwithstanding ORS 244.020 (7)(c), if a public official has received food, lodging and payment of travel expenses exceeding \$100 when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity, the name, nature and business

address of the organization paying the expenses and the date and amount of that expenditure.”

**244.070 “When additional statement of economic interest required.** The following additional economic interest shall be reported for the preceding calendar year only if the source of that interest is derived from an individual or business which has been doing business, does business or could reasonably be expected to do business with or has legislative or administrative interest in the governmental agency of which the public official is or the candidate if elected would be a member or over which the public official has or the candidate if elected would have authority:”

**244.090 “Report on association with compensated lobbyist.** (1) Each public official of this state or candidate required to make a statement of economic interest shall report by name any compensated lobbyist who, during the preceding calendar year, was associated with a business with which the public official or candidate or a member of the household of the public official or candidate was also associated. Holding stock in a publicly traded corporation in which the lobbyist also holds stock is not a relationship for which a statement is required.”

QUESTION NO. 1: What restrictions would ORS Chapter 244 place on a member of the Oregon Legislative Assembly, if the member performed work for his/her private public relations firm on land use issues that will be disposed of before a county or regional governing body?

OPINION: The stated facts present circumstances that do not include any prospect of the firm partner being required to participate in any official action on the land use issues as a member of the Legislative Assembly. Accordingly, it appears that the provisions in ORS Chapter 244 that apply to the public disclosure of the nature of conflicts of interest would not apply.

ORS 244.040(1)(a) has an abiding application to the actions of every public official in both public and private pursuits. In fulfilling the duties and responsibilities that come with any position held by a public official, actions taken must not result in accepting a financial gain that would not otherwise be available, but for the public position held. The only financial benefits exempt from this prohibition are official salary, reimbursement of expenses, honoraria and unsolicited awards for professional achievement.

In private pursuits, ORS 244.040(1)(a) would prevent a public official from using the public position title or description as an asset in pursuing private economic pursuits. For example, in the stated facts a member of the Legislative Assembly is a partner in a public relations firm. The partner/legislator would run the risk of violating ORS

244.040(1)(a) if the legislative position was used on business cards, business letterhead or other such. Additionally, in promoting the services of the public relations firm to prospective clients, the partner/legislator would need to avoid using the current public position as an asset of the public relations firm.

QUESTION NO. 2: If a member of the Oregon Legislative Assembly was a partner in a private public relations firm that provided media training to a private organization, which employed the services of a lobbyist, would this relationship have to be disclosed in the legislator's Annual Verified Statement of Economic Interest (SEI) form under question number 5 regarding "shared business with lobbyist"?

OPINION: No. Question number 5 asks the public official to list business interests that are shared with a lobbyist. The information requested applies to substantial economic relationships with a compensated lobbyist. The circumstances in the stated facts are that the public relations firm provides media training to a private organization. The private organization has a contract with a lobbyist for services. In this case, the relationship between the partner/legislator and the lobbyist would appear to be too distant to be described as a substantial economic relationship.

QUESTION NO. 3: If a member of the Oregon Legislative Assembly was a partner in a private public relations firm and was the paid instructor for a media training seminar at a membership organization's convention, would the legislator have to disclose the fee and paid expenses on the legislator's Annual Verified Statement of Economic Interest (SEI) form?

OPINION: In the stated facts, the legislator is not participating in the convention in the official capacity of a member of the Legislative Assembly, but as a paid instructor from a private business. The fee and paid expenses would not be itemized, but considered as part of the whole when completing a response to question number 3 on the SEI related to sources of income.

Since the stated facts presented the partner of a public relations firm attending the convention in a private capacity and not as a member of the Legislative Assembly, the legislator would not be required to list the event in response to question number 6 pertaining to office related events.

**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.**

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Issued by Order of the Oregon Government Standards and Practices Commission at  
Salem, Oregon on the 7th day of January 2005.

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John P. Kopetski, Chairperson

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Lynn Rosik, Assistant Attorney General

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