



# Oregon

John A. Kitzhaber, MD, Governor

**Government Ethics Commission**

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October 30, 2012

Elisa J. Dozono  
111 SW 5<sup>th</sup> Avenue, Suite 3400  
Portland, OR 97204-3699

Dear Ms. Dozono:

At its October 30, 2012 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion:

**OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 12A-1004**

**STATED FACTS:**

Elisa Dozono, chair of the Oregon State Lottery Commission (Lottery Commission), is a non-equity partner in the law firm of Miller Nash.

Miller Nash is a large firm that provides services to many businesses, nonprofit organizations and public entities in the Northwest. Information indicates Miller Nash is aware of at least one client of the firm who is a current lottery retailer and believes it is possible the firm could represent additional clients who may also be lottery retailers. Ms. Dozono apparently does not perform services for the firm's client that is the known lottery retailer.

The five-member Lottery Commission oversees the governance of the Oregon Lottery. Information available on a website maintained on behalf of the Oregon Lottery indicates the Lottery Commission's responsibilities include: ratifying retailer contracts; approving the yearly budget and business plan; approving monthly financial reports; and adopting rule and policy changes.



**QUESTION 1:** Would it be a violation of Oregon Government Ethics law for Ms. Dozono to serve on the Oregon State Lottery Commission because of her law firm's representation of one or more clients that are current lottery retailers as outlined in the stated facts?

**ANSWER 1:** No. The provisions of ORS Chapter 244 neither authorize nor prohibit Ms. Dozono from serving on the Lottery Commission. Lottery Commission members are appointed by the Governor, confirmed by the Senate, and serve at the pleasure of the Governor.

**QUESTION 2:** Could Ms. Dozono be met with a conflict of interest when participating in official actions, decisions or recommendations in her capacity as a member of the Lottery Commission due to her law firm's representation of one or more clients that are current lottery retailers as outlined in the stated facts.

**ANSWER 2:** Yes. Oregon Government Ethics law defines actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(12)]. A public official is met with a statutory conflict of interest when participating in any official action, decision or recommendation, the effect of which would or could be to the private pecuniary benefit or detriment of the public official, the public official's relative or any business with which the public official or a relative is associated.

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 a public official participates in an official action that would have a direct and specific financial impact on that official, the official's relative or any business with which the official or a relative is associated. A potential conflict of interest exists when a public 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. The impact of such an action is not certain.

While the statutory definition of a "business with which the person is associated" [ORS 244.020(3)] does not always lend itself to easy application to law firms or other types of attorney/client relationships, Miller Nash is a business with which Ms. Dozono is associated. If official actions, decisions or recommendations in Ms. Dozono's capacity as a member of the Lottery Commission would or could result in a private pecuniary benefit or detriment for her, her relatives, Miller Nash, or any other business with which her or her relatives are associated then Ms. Dozono would be met with a conflict of interest.

Since the stated facts indicate that Ms. Dozono does not perform services for Miller Nash's client that is the known lottery retailer, it is unlikely that particular client is a business with which Ms. Dozono is associated; however, before Ms. Dozono

participates in any official action, decision or recommendation she must take particular care to evaluate if the action would or could financially impact her, her relatives, Miller Nash, or any other business with which her or her relatives are associated. The nature of Ms. Dozono's private profession coupled with her position as a non-equity partner in a large law firm that represents Northwest businesses will require Ms. Dozono to be vigilant and rigorous in understanding the potential financial impacts of her official actions, decisions and recommendations as a member of the Lottery Commission.

**QUESTION 3:** What steps should be taken by Ms. Dozono in the event that her role as a public official gives rise to an actual or potential conflict of interest?

**ANSWER 3:** When met with statutory conflicts of interest, Ms. Dozono would be required to handle them in accord with the methods described in ORS 244.120.

ORS 244.120 requires Ms. Dozono, on each occasion, to publicly announce the nature of any conflict of interest before taking action on the matter. In the case of an actual conflict of interest, Ms. Dozono would be required to refrain from further participation, including discussion and vote, in official action on the issue that gave rise to the conflict of interest.

On any occasion Ms. Dozono is met with a conflict of interest she should also ensure that the Lottery Commission records the conflict of interest and her announcement of the nature of the conflict of interest in the official records of the public body.

Further, Ms. Dozono must understand that ORS 244.040(1) prohibits public officials from using or attempting to use a public position to obtain financial gain or avoid financial detriment for the public official, a relative or household member of that official, or a business with which the official, a relative or household member is associated through an opportunity that would not be available but for the public position held. This financial gain prohibition exists apart from the provisions regarding conflict of interest in ORS Chapter 244.

This opinion is offered and based on the limited and specific facts provided in this opinion request. This opinion should not be applied to circumstances outside of those discussed in the stated facts.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS 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 COMMISSION MAY ALSO APPLY.**

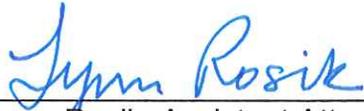
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Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on  
the 30th day of October 2012.



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Larry L. Campbell, Chairperson



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Lynn Rosik, Assistant Attorney General

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## ADDENDUM

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

ORS 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 (12) of this section.

ORS 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 or a relative of the public official is associated only as a member or board director or in a non-remunerative capacity.

ORS 244.020(3) "Business with which the person is associated" means:

- (a) Any private 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;
- (d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060(3).

ORS 244.020(12) "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:

- (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

- (b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.
- (c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

ORS 244.020(14) "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 as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

ORS 244.020(15) "Relative" means:

- (a) The spouse of the public official or candidate;
- (b) Any children of the public official or of the public official's spouse;
- (c) Any children of the candidate or of the candidate's spouse;
- (d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;
- (e) Siblings, spouses of siblings or parents of the candidate or of the candidate's spouse;
- (f) Any individual for whom the public official or candidate has a legal support obligation;
- (g) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
- (h) Any individual from whom the candidate receives benefits arising from that individual's employment.

**ORS 244.040 Prohibited use of official position or office; exceptions; other prohibited actions.** (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

244.040(7) The provisions of this section apply regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed under ORS 244.120.

**244.120 Methods of handling conflicts; Legislative Assembly; judges; appointed officials; other 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.

(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.

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.

244.120(4) Nothing in this section authorizes a public official to vote if the official is otherwise prohibited from doing so.

**ORS 244.130 Recording of notice of conflict; effect of failure to disclose conflict.**

(1) When a public official gives notice of an actual or potential conflict of interest, the public body as defined in ORS 174.109, that the public official serves, shall record the actual or potential conflict in the official records of the public body. In addition, a notice of the actual or potential conflict and how it was disposed of may in the discretion of the public body be provided to the Oregon government Ethics Commission within a reasonable period of time.

(2) A decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest.