

March 30, 2007

Bruce A. Warner
Executive Director
Portland Development Commission
222 Northwest Fifth Avenue
Portland, Oregon 97209-3859

Dear Mr. Warner:

At its March 30, 2007 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 07A-1001

STATED FACTS: The Portland Development Commission (PDC) is the urban renewal agency of the City of Portland. ORS Chapter 457 authorizes the PDC to use tax increment financing to increase the assessed value of properties within designated urban renewal areas through focused investment. Currently there are eleven urban renewal areas that remain out of the twenty three that have been designated since the PDC was formed.

The PDC is governed by a board of commissioners of five persons who are appointed by the Mayor and confirmed by the city council. Commissioners are volunteers and are described as "semi-autonomous" in that they cannot be replaced except for absence from three consecutive meetings, resignation or death. The board of commissioners has sole authority to approve annual budgets, expenditures, property transactions and to hire staff.

To formalize a past practice of soliciting feedback from stakeholders in urban renewal areas, the PDC has established Urban Renewal Advisory Committees in four of the current eleven urban renewal areas. Appointed through a resolution of the board of commissioners, members of the advisory committees are selected from among the various stakeholders in the urban renewal area represented by the advisory committee. Advisory committee members may include residents, property owners or business owners.

The Urban Renewal Advisory Committees provide feedback to the board of commissioners on budgeting, planning and implementation of renewal activities in the area represented. Advisory committee meetings are convened and conducted in accord with provisions in the Oregon Public Meeting laws. PDC staff provides the committees with information on the renewal activities in the area represented by the committees. Committee members may comment, question and make recommendations to the PDC board of commissioners on issues where the impact may be on the entire urban renewal area or specific properties.

The recommendations of the Urban Renewal Advisory Committees are not binding on the PDC board of commissioners. The recommendations are discussed in open meetings, approved by vote of the committee and conveyed in writing to the board of commissioners.

QUESTION: Would members of the Urban Renewal Advisory Committees be defined as public officials and come under the jurisdiction of Government Standards and Practices law?

ANSWER: Yes. A public official is defined in ORS 244.020(15) as any person who 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.

The stated facts indicate that members of the Urban Renewal Advisory Committees are volunteers appointed through resolution by the board of commissioners. The members are selected from among the various stakeholders in the urban renewal area represented by the advisory committee. The advisory committees receive information on the plans and progress of urban renewal activities in the areas the committees represent. The committees make non-binding recommendations concerning urban renewal activities to the PDC board of commissioners.

Members of the Urban Renewal Advisory Committees meet the definition of public official in ORS 244.020(15). The committee members serve a public body of the state in an advisory capacity to the PDC, which is the urban renewal agency for the City of Portland. Currently, the committees submit recommendations to the PDC board of commissioners. If procedures were changed and the recommendations were submitted directly to the executive director or to PDC staff instead of the board of commissioners, the definition of public official would continue to apply to the committee members.

QUESTION: If met with conflicts of interest, what procedures would the members of the Urban Renewal Advisory Committees use to avoid violations of Government Standards and Practices law?

ANSWER: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(14)]. 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 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.

Members of the Urban Renewal Advisory Committees may be met with conflicts of interest when participating in the committee’s creation and submission of recommendations to the PDC. Since the PDC is not obligated to accept or enact the recommendations through any subsequent action the members of the Urban Renewal Advisory Committees could be met with potential conflicts of interest, but not actual conflicts of interest. An actual conflict of interest would not occur because there would be no certain or specific financial impact from a non-binding recommendation.

When any member of an Urban Renewal Advisory Committees is met with a potential conflict of interest ORS 244.120(2)(a) requires that the nature of the potential conflict of interest be publicly disclosed. Once the disclosure has been entered into the public record the member may participate in any subsequent discussion and vote on the issue giving rise to the conflict of interest. Each time a public official is met with a conflict of interest this disclosure must be made, but only one time on each occasion [ORS 244.120(3)].

The stated facts do not present hypothetical circumstances where members of the Urban Renewal Advisory Committees would be using or attempting to use their memberships to gain personal financial benefits or financial benefits for a relative or a business with which either are associated. It is important to note that ORS 244.040(1)(a) prohibits such use of office and would apply regardless of a member’s compliance with the conflict of interest provisions in ORS Chapter 244.

QUESTION: Whether residents, property owners or business owners, would members of the Urban Renewal Advisory Committees constitute a “class,” as provided in ORS 244.020(14)(b), and not be met with a conflict of interest?

ANSWER: ORS 244.020(14)(b) could apply to any action by members of the Urban Renewal Advisory Committees which would affect, to the same degree, a class consisting of all residents, business owners, property owners or other identifiable group within the area the committee represents. If committee members, their relatives or businesses with which they are associated, belong to such an identifiable group, the “class exception” may apply and the member would not be met with a conflict of interest

only so long as the action, discussion or recommendation affected every member of the class to the same degree.

The GSPC has the authority to determine whether or not the exception applies in specific fact circumstances. The stated facts present hypothetical and anticipated circumstances that are too general for the commission to make a definitive statement on whether or not a class exception would apply. Such determinations can only be made on specific circumstances where the financial impact of a committee action on an identifiable group can be analyzed and evaluated.

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 (14) 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(3) " 'Business with which the person is associated' means:

244.020(3)(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;"

244.020(14) " '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(14)(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. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller class that qualify under this exception."

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."

244.040 "**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) "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."

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 March 2007.

Judith Stiegler, Chairperson

Lynn Rosik, Assistant Attorney General