

March 31, 1997

James A. Mazza
Hazardous Materials Planning Coordinator
Oregon State Police
595 Cottage St. NE
Salem, OR 97310

Dear Mr. Mazza:

This letter is in response to your correspondence dated March 4, 1997, concerning possible conflicts of interest for a member of the Local Emergency Planning Committee's Oversight subcommittee.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 97S-008**

STATED FACTS: The Oregon State Emergency Response Commission (SERC) has declared the entire state as one Local Emergency Planning District (LEPD) and established one Local Emergency Planning Committee (LEPC) to provide hazardous materials emergency response planning and training. LEPCs consist of volunteers from both the public and private sector.

Though generally unfunded, federal grants are currently available to assist LEPCs. The grants mandate that at least 75% of the grant funding be passed through to the LEPC. The LEPC has established an Oversight subcommittee to set goals and approve projects for the committee at large.

Funding is available under the grant for a graphics production assistant for the newsletter. A maximum of four newsletters a year is possible. \$1,000 per issue has been budgeted for these services. One public member of the Oversight Committee has responsibility for production of the newsletter. The member's spouse is a free lance graphics production assistant. The member has proposed using his spouse to provide the required assistance. The Oregon Department of Administrative Services Personal Services Contract Rules indicate no requirements for a competitive bid for services less than \$5,000.

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RELEVANT STATUTES: The following Oregon Revised Statutes are relevant to the issues addressed herein:

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 (8)(a) to (c) of this section.

ORS 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:

ORS 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.

ORS 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.

ORS 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.

(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.

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ORS 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:

(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.

QUESTION #1: Are voluntary public sector members of the LEPC subject to Oregon Government Standards and Practices laws pursuant to ORS Chapter 244?

OPINION: Yes. ORS 244.020(15) defines a public official as 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. The Local Emergency Planning Committee and its Oversight subcommittee are public bodies of the State of Oregon. All volunteer members of these committees are public officials as defined by ORS 244.020(15) and are subject to the regulations of ORS Chapter 244.

QUESTION #2: Can the Oversight subcommittee select the member's spouse to provide services to the LEPC without violating Oregon Government Standards and Practices laws?

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OPINION: Yes. ORS Chapter 244 does not regulate the actions of public bodies. The Oversight subcommittee is not prohibited by Oregon Government Standards and Practices laws from entering into a personal services contract with a subcommittee member's spouse.

QUESTION #3: What actions must a member of the LEPC take regarding decisions where they may have an identifiable and direct financial or other gain?

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)]. For certain officials, the law prescribes different actions depending on whether a conflict of interest is potential or actual. The difference between a potential and actual conflict of interest is determined by the words could and would. 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 possible financial impact is not certain. 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 or the official's relative or a business with which the official or the official's relative is associated.

The stated facts indicate that the oversight subcommittee is looking for someone to produce a newsletter. The subcommittee has budgeted \$1,000 per issue for these services. It appears that if the subcommittee takes action to select the member's spouse, the subcommittee will enter into a personal services contract with the spouse to produce the newsletter. It would appear that, under the terms of the contract, she would be paid for her services. The subcommittee's action would directly and specifically impact the financial interest of the subcommittee member's relative. The subcommittee member would then have an actual conflict of interest and would be required to comply with the disclosure requirements of ORS 244.120(2)(b).

ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, official position or office to obtain financial gain or avoidance of financial detriment for the official, the official's relative or a business with which the official or the official's relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120. This prohibition prevents public officials from gaining personal financial advantage through the use of their public office or position. Once the subcommittee member has disclosed the actual conflict of interest, the

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member must thereafter abstain from participating in the subcommittee s
discussion or action on the selection of the spouse.

**THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR
WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO
ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE
DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES
COMMISSION.**

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/mazza.so