

May 28, 1997

David G. Hoppe  
Brandsness, Brandsness & Rudd, P.C.  
Attorneys at Law  
411 Pine Street  
Klamath Falls, Oregon 97601

Dear Mr. Hoppe:

This letter is in response to your correspondence dated May 14, 1997, concerning whether or not the medical examiner of a county is prohibited from owning and operating a crematorium and providing embalming services.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
97S-017**

STATED FACTS: There are four funeral homes in this Oregon county. Removal of bodies is done on a monthly rotational basis among these four funeral homes. Two of the funeral homes have crematoriums. Currently the other two homes send their corpses out of the county for cremation purposes.

The medical examiner of this county was appointed by the state medical examiner. The appointment was approved by the county board of commissioners. Since the appointment the county medical examiner has performed autopsies at the funeral homes and has not provided embalming services for the county.

A former employee of one of the county's funeral homes submitted a request for a conditional use permit to the city planning commission, on behalf of the county medical examiner, for the use of an existing building for human and pet cremation. In addition there will be a preparation room for the autopsy and embalming of human remains.

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

ORS 244.020(2): Business means any corporation, partnership, proprietorship,

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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.

ORS 244.020(3): Business with which the person is associated means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

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 244.040: 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.

QUESTION: Is the county medical examiner a public official?

OPINION: Yes. When performing the duties of the position, the county medical examiner is a public official as defined by ORS 244.020(15).

QUESTION: Would the county medical examiner be prohibited by the code of ethics under ORS Chapter 244 from owning and operating a crematorium?

OPINION: No. Simply owning and operating a crematorium and offering embalming services would not violate Government Standards and Practices laws. The stated facts indicate that there are other providers of these services in the county and the immediate surrounding area. If all qualified providers have an equal opportunity to be selected to provide the services, such as the rotational basis that is presently in place, it appears that the county medical examiner would be able to own and operate a crematorium and provide embalming services; however, the county medical examiner would be precluded from using the official capacity of medical examiner to advance the private cremation and embalming business. This means that the medical examiner could take no part in developing the criteria to be used in distributing work to all providers nor could the medical examiner refer or recommend the families of decedents to use the medical examiner's own facility or otherwise take action to realize financial gain if the opportunity for such gain is available only because of holding the official position.

To avoid violating Government Standards and Practices laws, an individual who maintains both public and private employment at the same time must maintain their duties and tasks as a public employee separate and apart from the duties and tasks associated with their private employment, in this case the owning and operating of a crematorium and providing embalming services. The GSPC has previously issued advisory opinions related to the outside employment or professional activity of public officials. Those opinions have established a set of specific guidelines which, if carefully followed, will assist public officials in conforming with Oregon Government Standards and Practices laws. The guidelines are as follows:

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.
5. That employees will notify their appointing authority in writing of a potential or actual conflict of interest if private endeavors could or would be affected by public employment.

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Your request that the GSPC also issue a formal advisory opinion on these issues is noted. A draft formal advisory opinion will be submitted for adoption on the agenda of the next meeting of the GSPC which is set for July 9, 1997.

**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.**

Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn  
Executive Director

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