

October 1, 1997

Jose Campos
The Center for Rapid Innovation
25000 S. W. Big Fir Road
West Linn, Oregon 97068

Dear Mr. Campos:

This letter is in response to your correspondence dated September 25, 1997, concerning possible conflicts of interest in serving as a member of the Oregon Economic Development Commission and also contracting with state agencies, in a private business capacity, as a management consultant.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
97S-027**

STATED FACTS: You have been confirmed for your second four year term as a State of Oregon, Economic Development Commissioner. In your private business capacity you have approached several state agencies to offer your services as a consultant. You have not been awarded any contracts at the present but it is your intent to address state government as one of your markets and to obtain consulting business from state agencies.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable 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(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(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 244.040: 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.

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:

ORS 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:

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(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.

QUESTION: Would it be a violation of Government Standards and Practices laws for a member of the Oregon Economic Development Commission to also provide consultative services to state agencies as a private contractor?

OPINION: No. A member of the Oregon Economic Development Commission is a public official pursuant to ORS 244.020(15). Anyone holding that position is prohibited from using the position for personal financial gain. The prohibition includes using the position for the financial gain of a business with which the person may be associated as defined by ORS 244.020(3).

Circumstances do not create conflicts of interest. It would not be a violation of Government Standards and Practices laws for a member of the Oregon Economic Development Commission, or any other state government official, to enter into private business contracts with various agencies within state government. Both potential and actual conflicts of interest relate to taking official action that could or would result in a financial impact to a public official or a business with which a public official is associated.

The law prescribes different actions depending on whether a conflict of interest is potential or actual. The difference between a potential and an actual conflict of interest is determined by the words could and would. A potential conflict of interest exists when an official takes official action that could possibly have a financial impact on that official, a relative of that official or a business with which the official or a relative of the 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.

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.

From the stated facts it cannot be determined whether or not you will be soliciting consultant work with the Oregon Economic Development Department. If you were to do

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so, you may be confronted with a situation in your official position as a commission member, which could or would have a financial impact on you, a relative or a business with which you or a relative is associated. When met with a potential conflict of interest a public official must announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official pursuant to ORS 244.120(2)(a). When met with an actual conflict of interest a public official must publicly disclose the nature of the conflict and refrain from taking any official action on the issue. If a public official's vote is necessary in order for the public body to take official action on the issue the official may vote but may not discuss or otherwise take action on the matter.

The consulting business must be kept totally separate and apart from your official position as a member of the Oregon Economic Development Commission.

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

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