

November 17, 1997

Michael Jewett
Attorney at Law
Two North Oakdale Avenue
Medford, Oregon 97501

Dear Mr. Jewett:

This letter is in response to your correspondence dated October 21, 1997, concerning a possible conflict of interest with regard to a letter you wrote to the patrons of the Grants Pass Irrigation District in your capacity as Vice Chair, Oregon Water Resources Commission.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
97S-031**

STATED FACTS: You wrote a letter to the patrons of the Grants Pass Irrigation District in which you identified yourself as Vice Chair, Oregon Water Resources Commission. The letter concerned upcoming elections for the board of directors of the irrigation district. The letter stated that its purpose was to assure that irrigation district members had accurate information for the election.

You indicated in the letter that the Water Resources Commission has, for several years, worked with the current board of the irrigation district in an attempt to save the district. You pointed out that a unique agreement was worked out between the commission and the district board to let the district keep diverting the water it needs for survival, if it replaces the dam with pumps. You said that the commission has strived to protect that agreement and keep environmental groups from giving up and suing the district. You stated in the letter that you were sure the irrigation district board, as individuals, preferred to save the dam; however, as representatives of members of the district the board must act in the best interests of the bill paying patrons of the district. You pointed out that if the irrigation district removes the dam, the district patrons would not lose water because the dam would be replaced with pumps, at a lower cost than other options, and the ditches would continue to carry water. You stated that the dam removal agreement does not threaten the irrigation water and may be the only realistic hope of saving it.

Michael Jewett

November 17, 1997
Page two

In the letter you told the district patrons that if the district board changes its vote and abandons the agreement, that would breach its water rights permit and expose the district to immediate enforcement action. This would probably be fatal to the irrigation district.

It was contemplated that the district would include the letter in its newsletter to patrons. The district decided against using the letter.

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

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: Did a violation of Government Standards and Practices laws occur when a member of the Oregon Water Resources Commission sent a letter regarding district election issues, which identified the commissioner as a member of the commission, to the attorney representing the Grants Pass Irrigation District?

OPINION: No. 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 public official, the official's relative or a business with which the official or the official's relative is associated.

There is no indication in the stated facts that the issues addressed in the letter had any

Michael Jewett
November 17, 1997
Page three

financial impact on the commissioner, a relative or a business with which the commissioner or a relative is associated. It appears that Government Standards and Practices laws were not violated when the commissioner sent the letter to the counsel for the irrigation district.

The GSPC lacks jurisdiction to determine the issue of whether or not the water commissioner was acting on behalf of the Water Resources Commission or in an extra-official capacity which was not sanctioned by the 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.

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

Sincerely,

L. Patrick Hearn
Executive Director

0830JP