

March 23, 1998

Barbara Warren
1964 Kingfishers Circle
Redmond, Oregon 97756

Dear Ms. Warren:

This letter is in response to your correspondence dated March 2, 1998, concerning you selling privately held real estate to the County of Deschutes which may financially involve the City of Sisters where you are employed as the City Administrator and action you may take as the City of Sisters, City Administrator concerning the proposed city sewer system and the effect it would have on your personal real estate holdings within the city limits of the City of Sisters.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
98S-008**

STATED FACTS: You are the City of Sisters, City Administrator. You personally own real estate within the City of Sisters comprised of two large commercial buildings and a small home, all situated on eight city lots very near the City of Sisters City Hall. The Deschutes County Sheriff operates a sub-station in the City of Sisters and is exploring the possibility of purchasing a building to house the sheriff's sub-station in addition to other county offices within the City of Sisters.

The City of Sisters mayor has suggested to the sheriff that the sheriff lease space for his county offices and the city would pay half the lease costs for the sheriff's sub-station as part of the city agreement with the sheriff to provide law enforcement services in the city.

The sheriff is considering your building as well as others in the city that may be available. The sheriff has talked about the possibility of the county buying a building or buildings and have them serve as a government center, housing not only the sheriff's sub-station, but other county services and possibly the Sisters School District executive offices and other agency offices.

You did not feel that you had a conflict of interest in discussing the county leasing space or buying the buildings you own since it did not directly involve the City of Sisters and your position as city administrator. When the mayor suggested that city money may be used to pay a portion of the lease you became concerned.

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A second issue involves you working on a proposed sewer bond issue. Such an issue, whether it passes or fails will impact your property in the City of Sisters. Your position as an advocate of a sewer system for the city is well known and has been for a number of years. You believe that the sewer system will benefit your properties in that it would free up land currently in use for septic drain fields. You are not actively campaigning for passage of the measure and the city has hired a person to promote and coordinate the dissemination of information on the issue without advocating a position on either side of the bond issue.

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(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:

(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 classes that qualify under this exception.

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.

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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:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION #1: Would it be a violation of Government Standards and Practices laws for you to lease or sell your personal real estate to Deschutes County if the City of Sisters is financially involved in the transaction?

OPINION: Government Standards and Practices laws do not prohibit to whom you may sell your real property. Government Standards and Practices laws regulate action which you, as a public official, may take when the public entity you serve is involved. It appears from the stated facts that an actual conflict of interest or a potential conflict of interest would arise if the City of Sisters was involved in paying a portion of the monies of either the lease or sale of your personal real estate.

Oregon Government Standards and Practices laws define actual conflict of interest in ORS 244.020(1) and potential conflict of interest in ORS 244.020(7). The difference between an actual and a potential conflict of interest is determined by the words would and could.

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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 a public 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 is associated.

A potential conflict of interest exists when an official takes action that could possibly have a financial impact on the official, a relative of the official or a business with which the official or a relative is associated. Such possible financial impact is not certain.

ORS 244.120((1)(c) requires an appointed public official, such as a city administrator, to report, in writing, to the official's appointing authority any actual conflict of interest or potential conflict of interest. The appointing authority would then be required to dispose of the matter giving rise to the conflict.

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 a relative of the official is associated, regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

In this situation you would be prohibited from taking any official action which would impact the successful completion of the lease or sale of your real property if the City of Sisters is in any way involved. When confronted with any of the decisions which would normally be made by the city administrator, you would be required to notify your appointing authority in writing of your conflict and have the appointing authority dispose of the matter giving rise to the conflict.

QUESTION #2: Would it be a violation of Government Standards and Practices laws for you to take official action as the City of Sisters, City Administrator regarding the proposed sewer bond issue?

OPINION: ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial affect on that official, a relative of that official or a business with which the official or the official's relative is associated. If other people in the class are also affected to the same degree by that action, the official would be exempt from conflict of interest disclosure requirements. The GSPC staff believes that any outcome of the proposed sewer bond issue would not impact you to any greater or lesser degree than it would impact other property owners in the City of Sisters.

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Accordingly, it appears that if you took action in your official capacity with regard to the city sewer system proposal a class exception would exist and you would be exempt from conflict of interest disclosure requirements pursuant to ORS 244.020(7)(b).

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Please feel free to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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