

March 26, 1998

E. Andrew Jordan  
Tarlow, Jordan & Schrader  
Attorneys at Law  
P.O. Box 230669  
Portland, OR 97281

Re: City of Scappoose  
Your File No. 42629/21476

Dear Mr. Jordan:

This letter is in response to your correspondence dated March 24, 1998, concerning whether or not Scappoose City Councilor Rita Bernhard's position, and her vote, in opposition to the Columbia County Board of Commissioners' proposed changes to the Columbia County Zoning Ordinance are in conflict with her employment as the Legal Assistant to the County Counsel for Columbia County.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION 98S-009**

**STATED FACTS:** Scappoose City Councilor Rita Bernhard is an employee of Columbia County. She is the legal assistant to the county counsel for Columbia County.

For the past two years, a large aggregate mining company has been pursuing an approval from the Columbia County Board of Commissioners to construct and operate a surface mine next to the Scappoose Airport. The Scappoose City Council has opposed the proposal. Councilor Bernhard in particular has voted to continue that opposition.

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In addition, the Board of County Commissioners is now considering amendments to the County Zoning Ordinance which would make it easier for the mining company to obtain county approval for the project. Councilor Bernhard voted with the majority of the Scappoose City Council to oppose the amendments.

Councilor Bernhard has no financial interest or gain, to herself or her family, from any of the mining company's proposals or from the positions of either Columbia County or the City of Scappoose.

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

ORS 244.010(2): The Legislative Assembly recognizes that it is the policy of the state to have serving on many state and local boards and commissions state and local officials who may have potentially conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commissions, and declares it to be the policy of the state that the holding of such offices does not constitute the holding of incompatible offices unless expressly stated in the enabling legislation.

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

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

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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...

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:** Does Councilor Bernhard's employment with the county counsel's office for Columbia County create a conflict of interest for her when she participates in Scappoose City Council's deliberations on the proposed amendments to the County's zoning ordinance?

**OPINION:** The stated facts do not indicate that Councilor Bernhard's employment with Columbia County creates a conflict of interest. Government entities, such as Columbia County, are not operated for economic gain. Thus, such entities are not a business as defined by ORS 244.020(2). Accordingly, employees of a governmental entity do not come within the definition of business with which the person is associated as defined by ORS 244.020(3). They are not, therefore, subject to the definition of an actual conflict of interest as defined in ORS 244.020(1). Neither are they subject to the definition of a potential conflict of interest as defined in ORS 244.020(7). No conflict of interest arises when they serve on the governing body of another public body and take official action which results in a financial benefit or detriment to their employing public entity. The legislative intent of these statutes which define business clearly appears to have been referring to income producing private entities.

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The stated facts also state Councilor Bernhard has no financial interest or gain, to herself or her family, from any of the mining company s proposals or from the positions of either Columbia County or the City of Scappoose. Where there is no financial gain, or the avoidance of a financial detriment for the public official, the public official s relative, or for any business with which the public official or the public official s relative is associated, as a result of the public official s action, the public official would not be subject to the prohibitions of ORS 244.040(1)(a).

**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.**

Sincerely,

L. Patrick Hearn  
Executive Director

LPH:aip/bernhard.so