

May 18, 1998

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

Dear Mr. Jewett:

This letter is in response to your correspondence dated April 6, 1998, April 23, 1998, and May 5, 1998 concerning your role as a member of the Oregon Water Resources Commission and the financial impact that your decisions may have on the law firm of Jacobson, Jewett, Thierolf & Dickey and its clients.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 98S-015

STATED FACTS: As an appointed member of the Oregon Water Resources Commission, you are required to file an Annual Verified Statement of Economic Interest (SEI) form with the Oregon Government Standards and Practices Commission (GSPC) pursuant to the requirements of ORS 244.050(1)(p)(X). On April 8, 1998, the GSPC received your 1998 SEI. Your SEI shows that you are a partner in the law firm of Jacobson, Jewett, Thierolf & Dickey. The SEI also shows the firm as a source of your income. You also attached a letter to your SEI to augment your answers to questions 3D and 5 on the form.

Question #3D asked you to state whether or not the income source listed in question 3 has an economic interest, distinct from that of the general public, in matters of interest to the public body you serve, the Oregon Water Resources Commission. Question #5 asked you to identify the name of any lobbyist, the name of the business and the type of business if you or a member of your household shared a partnership, joint venture, or similar substantial economic relationship with a paid lobbyist during 1997 or were employed by or employed a paid lobbyist during 1997.

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Robert G. Hunter is an employee of Water Watch of Oregon, an environmental interest organization which lobbies in the legislature. Mr. Hunter is very active in appearing before the Water Resources Commission, of which you are the vice-chair. Water Watch is also a party in several quasi-judicial cases now pending before either the Water Resources Commission or the Water Resources Department which the commission oversees. The Oregon Water Resources Commission is conducting hearings, meetings and sessions on issues involving the Grants Pass Irrigation District.

Mr. Hunter is retired from the practice of law. Mr. Hunter is listed on the stationery of the law firm of Jacobson, Jewett, Thierolf & Dickey as Of Counsel. Your three partners have made an arrangement with Mr. Hunter to take over some of his clients and active files. The precise nature of their relationship is unknown to you. Due to the potential controversy of your position on the Water Resources Commission, you have taken precautions to insulate yourself from that arrangement. Your financial relationship with your partners is such that you do not commingle earned legal fees. You keep the fees you bring in after overhead. Though you and your partners share some expenses, any fees earned by your partners from Mr. Hunter's clients (or from any other source) are theirs, not yours. Mr. Hunter's law practice involved matters representing small-business clients and routine legal work. You have no financial nor partnership relationship with Mr. Hunter. Further, neither you nor your law firm will be doing any legal work for Water Watch, nor will either be deriving any income from Water Watch or its activities. It is obvious to you and your partners that members of the law firm cannot represent a client on any matter who would likely appear before the WRC even if the representation was on a non-water issue.

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

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(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: Would a conflict of interest arise if the lawyer/commissioner took official action on matters involving Water Watch of Oregon, which employs an attorney that has a financial relationship with the commissioner's law partners but not the commissioner?

OPINION: No. The stated facts indicate that an attorney who has retired from the practice of law entered into an agreement with the three partners of the commissioner's law firm to have some of his former clients represented by the firm. The commissioner is not involved in the arrangement. The partners in the firm do not commingle earned legal fees; however, they do share some expenses of the firm.

A public official who is a partner in a law firm is defined in ORS 244.020(3) as a person associated with a business. For certain officials, the law prescribes different actions depending on whether a conflict of interest is "**potential**" or "**actual**." The difference between a potential and actual conflict of interest is determined by the words "**could**" and "**would**." A potential conflict of interest exists when an official takes action that could possibly have a financial impact on that official, a relative of that official or a business with which the official or the relative of that 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.

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The stated facts do not indicate that WRC action could or would financially impact other members of the commissioner's law firm. According to the stated facts, neither Mr. Hunter nor Water Watch fall under the statutory definition of a business with which the commissioner is associated. Accordingly, it does not appear that action taken by the commissioner which involved Mr. Hunter or Water Watch would give rise to a conflict of interest.

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/jewett.so