

June 26, 1998

Deborah Lincoln
Acting Director
Oregon Department of Consumer & Business Services
350 Winter St. NE
Salem, OR 97310

Dear Ms. Lincoln:

This letter is in response to correspondence from Insurance Division Administrator Nancy Ellison dated May 28, 1998, and June 16, 1998 concerning the participation by Oregon Department of Consumer & Business Services (DCBS) employees in the department's review of Standard Insurance Company's proposed conversion from its current organizational form of mutual ownership to a stock ownership.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 98S-019

STATED FACTS: Standard Insurance Company (Standard) is a mutual insurer and is Oregon's largest domestic insurance company. A mutual insurer is one that is owned by its policyholders, who are also known as members. Undifferentiated ownership of the company is one of the elements of policy ownership, in addition to insurance coverage. Policy ownership also entitles some members to dividends, depending on the mutual insurer's financial success in any year. The interests that any policyholder holds by virtue of policy ownership (other than insurance coverage) are often referred to as membership interests.

Standard announced late last year that it would convert its organizational form from mutual ownership to stock ownership. This conversion is subject to review and approval by the Director of DCBS under Oregon Revised Statutes 732.600 to 732.630. As part of the conversion process, certain categories of member-policyholders may be allocated stock, cash or policy credits in compensation for their membership interests under a conversion plan that Standard will submit to DCBS.

Standard has submitted an initial draft version of its conversion plan. Department employees, primarily from the Insurance Division, are now reviewing the proposed conversion and drafts of the plan. These employees have met and will continue to meet periodically with representatives of Standard as the plan progresses through stages of development and refinement. The employees have varying responsibilities in their view of various aspects of the conversion. Some will be responsible for making final recommendations on the question of whether the Director of DCBS should approve or disapprove the plan. Others will review financial and other matters connected with the conversion. The director will make the final decision.

Because the organization of insurance companies is regulated at the state level, DCBS's decision will affect Standard's relationship with its group and individual policyholders throughout the United States, and not only with those living in Oregon. The State of Oregon currently has six group life insurance policies with Standard, in which the state is the master policyholder. Nationally, Standard has 95,000 policyholders. The percentage of all Standard policies that is represented by group policies issued to the State of Oregon is less than one percent.

DCBS employees who are engaged in the review and who are also insured by Standard fall within three broad categories. The first category includes those who are insured under group life insurance coverage issued by Standard to the state, which is the policyholder. Employees are insured as certificate holders because of their state employment. Coverage may include life insurance or disability insurance. The employee pays through payroll deductions the portion of the premium attributable to the amount of coverage that exceeds the minimum life insurance coverage for each state employee.

The second category includes those who are insured under individual life insurance policies. These policies are normally obtained in transactions that are not connected to employment with the state. The third category includes state employees who participate in a tax sheltered annuity plan pursuant to which an employee regularly defers receipt of a portion of compensation, which goes into the annuity plan and is paid out later, normally following retirement. This annuity plan, under the Internal Revenue Code section 457, is administered by Standard.

All DCBS employees are included in the first category. The second category is primarily, if not entirely, composed of state employees who have obtained coverage on their own. The third category is comprised of state employees who have chosen optional coverages that are not available because of their employment with the state. It is not clear which categories of member-policyholders will qualify for compensation

for membership interests from the company, or whether any DCBS employees working on the proposal will be eligible.

There is concern that DCBS employees who are enrolled in one or more of these coverages could be perceived as having a conflict of interest between their regulatory duties in connection with Standard's conversion and their personal financial interest arising from their membership interests in Standard.

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 (7) 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.

QUESTION: Do Oregon Government Standards and Practices laws preclude DCBS employees from participating in the review and approval or disapproval of Standard's

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proposed conversion?

OPINION: No. 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.

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.

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 associate. If other people in the class are also affected to the same degree by that action, conflicts of interest do not arise within their meanings in ORS Chapter 244.

It appears that the effect of any review and approval or disapproval of Standards plan for converting its organizational form from a mutual ownership to a stock ownership would affect the 95,000 Standard policyholders across the United States. Policyholders in Oregon represent less than one percent of all policyholders nationwide. The GSPC staff believes the 95,000 policyholders create a class and that the DCBS employees are members of the class. Accordingly, a class exception would exist and a potential conflict of interest or actual conflict of interest would not arise pursuant to ORS Chapter 244.

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

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**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

LPH: aip/lincoln.so