

August 17, 1998

Scott W. Taylor  
Oregon Real Estate Commissioner  
Oregon Real Estate Agency  
1177 Center Street NE  
Salem, Oregon 97310-2503

Dear Mr. Taylor:

This letter is in response to your correspondence dated August 4, 1998 concerning your membership in a Realtor<sup>®</sup> organization (NAR) and possibly being faced with conflict of interest situations.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
NO. 98S-024

STATED FACTS: You are the Oregon Real Estate Commissioner. You administer laws governing the licensure and discipline of Oregon real estate professionals. You are a member of a Realtor<sup>®</sup> organization (NAR). It is a national association of real estate professionals whose purpose is to promote the ability to own, use and transfer real property. It also promotes education, professionalism and high ethical practices among its membership. There are three levels to the organization: the local board/association, the state association and the national association.

When you accepted this appointment, you resigned from your local association and took a leave of absence from the board of directors of the state association but you retained your membership. You do not actively participate in the state association. Your current participation includes serving as a director of the national association (you are one of approximately 700 directors) through November 1998. NAR and the Oregon associations are 501(c) corporations. You are the 1998 chair of the NAR license law committee and, by virtue of the chair position, have the directorship. The committee consists of many members of policy setting commissions throughout the country who are active real estate practitioners as well as others. Its purpose, in general, is to provide information and recommendations on real estate license laws.

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

Scott W. Taylor

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(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(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:

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 #1: Do Oregon Government Standards and Practices laws prohibit the Oregon

Scott W. Taylor  
August 17, 1998  
Page three

Real Estate Commissioner from belonging to the NAR?

OPINION: Oregon Government Standards and Practices laws do not prohibit the Oregon Real Estate Commissioner from belonging to the NAR or any other professional organization.

QUESTION #2: If membership in NAR is permitted, does it give rise to conflicts of interest?

OPINION: No. Conflicts of interest as defined by ORS 244.020(1), actual conflicts of interest and ORS 244.020(7), potential conflicts of interest require a public official to take action or make a recommendation ...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... . ORS 244.020(2) defines business as a legal entity ... operated for economic gain ... ..with which a public official is associated in a nonremunerative capacity. NAR is a 501(c) corporation and is not operated for economic gain. It is assumed that you are associated with NAR in a nonremunerative capacity. Therefore, NAR does not meet the definition of business as defined in ORS 244.020(2). The stated facts do not indicate any circumstance where you could take action which would create a conflict of interest situation.

**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

0904JP\so\