

September 2, 1998

Carol Compton  
Falls City City Attorney  
P.O. Box 10  
Falls City, OR 97344

Dear Ms. Compton:

This letter is in response to your correspondence dated August 26, 1999, concerning a candidate for the Mayor of the city of Falls City who is currently a party to two contracts with the city of Falls City.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION 98S-027**

**STATED FACTS:** A candidate has filed a petition for the position of Mayor for the city of Falls City. The candidate has a contract for personal services with the city in effect, together with a related contract to lease city property. The latter contract is also the subject of a city resolution and ordinance.

Section 75 of the City Charter of Falls City provides as follows:

The mayor and councilmen are not entitled to, and must not receive, any salary or compensation for their official services, nor shall they, or any of them, be in any manner interested in any contract made with or on behalf of the city during their term of office.

**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:

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 244.020(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 244.120: 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:

(2) An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, shall:

(a) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or

(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

(A) Except as provided in subparagraph (B) of this paragraph, refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

(B) If any public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

QUESTION #1: Are there any special disclosure requirements needed by the candidate in order to run for election?

OPINION: Oregon Government Standards and Practices laws require only public officials to disclose conflicts of interest. The stated facts give no indication that the candidate is yet in a position to take any official action. Accordingly, the conflicts of interest disclosure requirements of Government Standards and Practices laws do not apply.

QUESTION #2: If the candidate is elected mayor, should either or both contracts be terminated, and if so, when?

OPINION: Government Standards and Practices laws do not prohibit public officials from entering into agreements with their public agency. Government standards and Practices laws regulate action which the public official may take when the public entity they serve is involved. It appears from the stated facts that an actual conflict of interest or a potential conflict of interest would arise in relation to the city of Falls City paying the mayor for his personal services and/or his payment to the city to lease city property.

Oregon Government Standards and Practices laws define actual conflict of interest in ORS 244.920(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. Such possible financial impact is not certain.

If a potential conflict of interest arises, the official may participate in the action, once a public disclosure has been made. In the case of an actual conflict of interest, the official must publicly declare the actual conflict and refrain from taking any official action on the matter, the official may vote but, may not discuss, debate or otherwise participate in the matter.

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

Carol Compton  
September 3, 1998  
Page 4

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, the mayor would be prohibited from taking any official action which would impact the personal service contract and/or the lease agreement that the mayor has with the city. When confronted with taking official action as mayor which would financially impact the mayor in the mayor's personal business dealings with the city, the mayor would be required to properly disclose a conflict of interest pursuant to ORS 244.120(2).

According to the stated facts, it appears that the city charter would prevent a mayor from being a party to any contract agreement with the city of Falls City. The GSPC has no jurisdiction over the issue of compliance with the City Charter.

**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

LPH:aip/compton2.so