

September 30, 1998

Pat Harmon
Oakridge Real Estate
47494 Highway 58
P.O. Box 1037
Oakridge, OR 97463

Dear Ms. Harmon:

This letter is in response to your correspondence dated September 4, 1998, concerning your efforts to assist the city of Oakridge in the acquisition of a replacement location for the city's public works department.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 98S-028**

STATED FACTS: In December, 1997, the city of Oakridge was in need of a building to replace the public works building that had burned down. A city councilor is a licensed real estate broker. In February, 1998, the city entered into a lease-option agreement to purchase another building in Oakridge that had been listed for sale by another real estate agency, Metco Investment Realty, Inc., Eugene, Oregon. The city administrator was aware that the city councilor had worked with Metco on another real estate matter.

The administrator asked the councilor to check with Metco to see if they would be interested in a lease-purchase option, rather than an outright sale.

In the councilor's capacity as a real estate broker, the councilor negotiated the monthly price of the lease for the city. The councilor accepted no money for those services. When the city council voted on the lease agreement, the councilor declared a conflict of interest and did not vote.

The six month lease on the building has now expired. The city council decided to exercise its option to purchase the building as soon as the city receives the money from the insurance company for the building destroyed by the fire. The councilor declared a conflict of interest and abstained from voting on this decision. The councilor informed the city administrator that, should the city exercise its option to purchase the property, the councilor would donate the councilor's portion of the real

estate fees (commission of approximately \$6,000) to the city of Oakridge to apply against the net purchase price.

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)(a) to (c) 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 244.020(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.

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.

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:

ORS 244.120(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: Based upon the state facts, do Oregon Government Standards and Practices laws prohibit the councilor from receiving a real estate commission for professional services which the councilor would then donate to the city?

OPINION: No. Oregon Standards and Practices laws require **disclosure** of conflicts of interest for the benefit of other voting members of the government body and the public at large. A public official is required by ORS 244.120 to declare a conflict of interest when an action or any decision or recommendation made in an official capacity would be or could be to the private pecuniary benefit or detriment of the person or person's relative or any business with which the person or a person's relative is associated. The stated facts indicate the councilor followed the requirements of ORS 244.120(2) when the councilor declared a conflict of interest and abstained from voting when the city council voted to approve both the lease-purchase option agreement in February and the decision to purchase the building.

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 official, the official's relative or a business with which the official or the official's relative is associated. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS

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244.120.

It appears from the stated facts that the city councilor was acting in a private professional capacity, at the request of the city administrator, when the councilor negotiated the lease-purchase option agreement on behalf of the city. There is no indication from the facts that the city councilor took any official action in negotiating the agreement. In addition, the councilor intends to give the commission to the city which will not result in financial gain to the councilor.

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.

Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/harmon.so