

March 22, 1999

Jill Van Buren  
Supervisor of Elections  
Department of Administrative Services  
County of Benton  
120 NW 4th. Street  
Corvallis, Oregon 97330-4785

Dear Ms. Van Buren:

This letter is in response to your correspondence dated February 8, 1999 concerning fire district purchase of uniform jackets for board members and volunteers.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
NO. 99S-004**

**STATED FACTS:** A local rural fire protection district wishes to purchase jackets to be worn by district board members and volunteers. These jackets would display the fire district's logo. The fire district board feels that such apparel would fall in the category of uniforms. The board believes that, with the board members and volunteers wearing these jackets, it would remind the residents of the area that they are an active presence in the community. The board would be voting to approve the expenditure of district funds for the jackets.

**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(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:

(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: Would it be a violation of Government Standards and Practices laws for the rural fire protection district board of directors to approve the expenditure of district funds to purchase jackets to be worn by both members of the board of directors and fire district volunteers?

OPINION: It is assumed that the jackets would be worn in relation to official duties. Accordingly, the board members and volunteers should not wear the jackets to avoid the necessity of wearing clothing they would have had to purchase themselves. To do so would be construed as use of official position or office for personal financial gain. If the district's purpose in providing jackets with the district logo is for the jackets to be worn as a promotion of the district and to acquaint the community with the identity of emergency personnel, the wearing of the jackets would be for the benefit of the district and not a violation of ORS Chapter 244.

In addition, ORS 244.040(1)(a) specifically excludes official salary as a use of official position or office for personal financial gain. If the fire district board formally adopted a policy to provide the board members and volunteers with the jackets as a part of their compensation package, the jackets would be considered official salary. Accordingly, there would be no violation of Government Standards and Practices laws for the board members and volunteers to receive the jackets. Prior to adopting such a policy, however, the district should inquire with both the Internal Revenue Service and the Department of Revenue to determine any income tax issues which might arise.

With regard to the board members voting to approve the purchase of jackets for themselves, ORS 244.040(1)(a) clearly prohibits public officials from taking action in an official capacity which would result in financial gain to the public official or to a relative of the public official or to a business with which the public official or a relative is associated.

In addition, ORS 244.120(1) defines actual conflict of interest as any action taken by a public official in an official capacity which would result in financial benefit to the public official. It would appear, therefore, that the action contemplated in the stated facts, the governing body members voting to outfit themselves with district jackets would create an actual conflict of interest for the board members and would also constitute a prohibited use of public office for personal financial gain by each board member.

The situation described in the stated facts does not, however, appear to have been contemplated when the language of the relevant statutes cited above was drafted. A majority of members of the governing body is the only lawful authority to approve the expenditure of the public body's funds. In addition, the procedure for disclosing an actual conflict of interest and then refraining from participation in the matter as prescribed by ORS 244.120(2)(b)(A) and 244.120(2)(b)(B) would not be practicable under the stated facts because an actual conflict of interest would arise for each and every member of the governing body.

The Oregon Supreme Court issued an opinion in the matter of Oregon State Police Officers Association v. State of Oregon. 323 OR 356 (1996). This case was a challenge

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to a ballot

initiative passed by Oregon voters in 1994 which required public employees to pick up the 6% contribution to the Public Employees Retirement System (PERS) which has been employer paid on behalf of employees since 1979. In that opinion, the court acknowledged that its members were also public employee members of PERS and would be financially impacted by the outcome of the litigation at hand. They further stated that because there was no alternative tribunal to make the ruling they were about to render, a rule of necessity authorized the justices to decide the issues.

We believe such a rule of necessity likewise applies to the stated facts being addressed in this opinion. The governing body of the public body possesses the sole authority to approve the expenditure of funds to purchase the jackets. While the individual board members will be financially impacted by the outcome of the action, the rule of necessity requires that the governing body take the official action to purchase the uniform jackets. Accordingly, an actual conflict of interest as defined by ORS 244.120(1) would not arise nor would the governing body members be in violation of ORS 244.040(1)(a) by acting in their official capacities to purchase the jackets.

**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.**

If you have further questions or desire additional clarification do not hesitate to call or write again.

Sincerely,

L. Patrick Hearn  
Executive Director

c: Hoskins-Kings Valley Rural Fire Protection District Board of Directors

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