

May 10, 1999

Bev Russell
Bureau of Labor and Industries
Civil Rights Division - Operations Manager
165 East 7th. Street, Room 220
Eugene, Oregon 97401

Dear Ms. Russell:

This is in response to your correspondence dated April 30, 1999 concerning a possible conflict of interest on the part of a civil rights investigator whose spouse is employed by an organization receiving funds from the respondent in one of the investigator's cases.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
99S-013

STATED FACTS: As a manager of the Civil Rights Division of the Bureau of Labor and Industries, you direct the work of senior civil rights investigators who conduct investigations into allegations of unlawful discrimination. One of your senior investigators is currently investigating a complaint filed against Lane County. The investigator's spouse works at Lane County Psychiatric Hospital (LCPH), which is housed in the Lane County jail. The investigator's spouse is employed by PeaceHealth, a non-profit hospital and health care organization. Lane County and PeaceHealth have an agreement for the latter to provide the staffing for and management of LCPH in exchange for a management fee which is based on a fixed percentage of the direct expenses associated with the running of LCPH. PeaceHealth submits a monthly bill to Lane County for reimbursement of direct expenses incurred, including the wages and salaries of all PeaceHealth employees who work at LCPH. The medical director of LCPH is a Lane County employee.

The investigator's spouse does not work with anyone in Lane County Parole and Probation (the respondent in the complaint) as part of the spouse's job. The spouse is required to work on a frequent basis with Lane County Mental Health Services and, on occasion, deals with employees of Lane County Health and Human Services. The employees involved in responding to the complaint on behalf of Lane County work in Health and Human Services. The investigator does not know any of these individuals.

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The investigator's son attends a child care center which was the result of a cooperative effort by the federal government and Lane County and which possibly receives funding from those bodies. As such, federal and Lane County employees who use the center are entitled to a lower rate for child care services while state and other employees pay a higher rate. The investigator qualifies for the preferential rate because the director of the center decided that the investigator's spouse's employment is funded through Lane County.

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(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(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(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 244.020(16): Relative means the spouse of the public official, any children of the public official or of the public official s spouse, and brothers, sisters or parents of the public official or of the public official s spouse.

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:

(c) If the public official is any other appointed official subject to this chapter, notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon receipt of the request, the appointing authority shall designate within a reasonable time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.

QUESTION: Would the investigator have a conflict of interest by participating in the investigation of this complaint?

OPINION: The Government Standards and Practices Commission has stated in previously issued opinions that a governmental entity is not a business as defined by ORS 244.020(2); therefore, no actual or potential conflict of interest as defined in ORS 244.020(1) or ORS 244.020(7) exists when a member of a governing body takes official action which results in a financial benefit or detriment to their employing governmental

body or other governmental agencies.
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The stated facts do not indicate any involvement by the spouse of the investigator in the case under investigation other than being employed by an entity receiving funds from Lane County. Likewise there is no indication in the stated facts that the attendance of the investigator's child at the child care facility would be impacted in any way by the outcome of the investigation.

It appears that there would be no conflict of interest on the part of the investigator by participating in this investigation.

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 don't hesitate to call or write again if you have further questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director