

May 2, 2000

Roger Currier
Newberg City Council
P.O. Box 45
Newberg, OR 97132

Dear Mr. Currier:

This letter is in response to your correspondence dated April 23, 2000 concerning a possible conflict of interest for you as a city council member arising from the city's adoption of a resolution to support state financing of a company that employs your relative.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
00S-011**

STATED FACTS: The sister of a city councilor is employed by a company that was requesting state financing for a recycling bond to expand the company. The particular bond was for expansion of the company's services. The resolution authorized the city to join the recommendation that the expansion of the company would benefit the community.

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...

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:

(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.

Roger Currier
May 2, 2000
Page 3

QUESTION #1: would it violate Oregon Government Standards and Practices laws for the city councilor to vote on a resolution for the city to support the company which employs the councilor's sister in the company's effort to obtain state financing in order to expand its services?

OPINION: Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. 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 the public official would directly and specifically affect the financial interest of the public official or the public official's relative or a business with which the public official or the public official's relative is associated. A potential conflict of interest exists when a public official takes action that could possibly have a financial impact on that public official, a relative of that public official or a business with which the public official or a relative of the public official is associated. Such possible financial impact is not certain.

It does not appear from the state facts that the city councilor had an actual conflict of interest. Even if the city council had adopted the resolution, the action was not reasonable certain to have resulted in a financial benefit to the company. It is possible that the city council could have adopted the resolution and the company still would not have received state financing. Accordingly, it appears from the stated facts that the city councilor had a potential conflict of interest. When the city council considered the resolution to support the company's request for state financing, it was possible the city's resolution could have had a financial impact on the company, a business with which the city councilor's sister is associated. The resolution could have enhanced the company's efforts to obtain state funding for a recycling bond to expand its business.

If the city councilor were to take any official action which could or would have a financial impact on the sister's employer, the GSPC staff believes that the councilor would have to proceed according to the requirements of ORS 244.120(2) and publicly disclose an actual conflict of interest or a potential conflict of interest.

QUESTION #2: Assuming there was a potential conflict of interest, was the city councilor required to abstain from participating in the city council's decision on the adoption of the resolution?

OPINION: If a potential conflict of interest arises, and elected official may participate in a governing body's action once a public disclosure has been made. In the case of an actual conflict of interest, an elected official must publicly declare the actual conflict of interest and refrain from taking any official action on the issue. It appears from the stated facts that the city councilor, after making the public disclosure that the councilor's sister was employed

Roger Currier
May 2, 2000
Page 4

by the company, could have participated in the city councils action on the resolution.

QUESTION #3: Would the city councilor have violated ORS 244.040(1)(a), after making a disclosure pursuant to ORS 244.120(2)(a), if the councilor had participated in the city council s vote on the resolution?

OPINION: No. The stated facts herein do not indicate that the adoption of the resolution by the city would have had a certain financial benefit to the sister s employer. Therefore, the city councilor would not have violated ORS 244.040(1)(a) by participating in the vote on the resolution.

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

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