

October 3, 2000

Mary Graham
Business Manager/Deputy Clerk
Butte Falls School District #91
720 Laurel Avenue
Butte Falls, Oregon 97522

Dear Ms. Graham:

This letter is in response to your correspondence dated September 13, 2000 concerning possible conflicts of interest between school board members and school staff of Butte Falls School District.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 00S-023**

STATED FACTS: A small school district of approximately 221 students has a board of directors consisting of five members and a town of approximately 450 residents. The district would be hard pressed to find enough employees if the employees could not be chosen from qualified town residents. Three of the board members have a relative on the payroll as follows:

Board member #1: Daughter is a high school teacher and also has an extra duty contract as a high school academic advisor for which the teacher receives compensation.

Board member #2: Wife is a classified employee and also has an extra duty contract for athletic coaching for which the employee is compensated.

Board member #3: Wife is a classified employee and also has an extra duty contract for athletic coaching for which the employee is compensated.

Mary Graham
October 3, 2000
Page two

The district has approximately 51 extra duty contracts. Of these 51 extra duty contracts 16-20 are for athletic coaching. The majority of the others are for academic coaching or advisors.

The following are situations which arise as a result of the relationships stated above:

1. At each monthly board meeting a list of the bills of the district for that time period is presented to the board for their perusal, questions and approval. One of the submissions is a list of paychecks that was paid which includes check number, employee name and dollar amount. This list includes the relatives of board members 1, 2 and 3.

Some of the lists that are presented may consist of checks that have been paid to one of the relatives/employees if they bought supplies on an approved purchase order and are asking for reimbursement or for travel to an approved class or workshop.

Once the board is satisfied with the bills a motion is made and seconded to approve the bills as presented.

- 2, The contracts for the teachers and all extra duty contracts are brought to the board for approval. Generally the teacher contracts come to the board all at one time and one motion is made for all of the contracts. The extra duty contracts either come to the board all at one time or are broken up depending upon when the extra duty assignments are to begin. Again, a motion is made for all of the extra duty contracts that are presented.
3. Keeping in mind board members 1, 2 and 3 and the family members that work for the district, the board also negotiates and approves collective bargaining contracts. The board will discuss negotiations in executive session and there have been times that one or two members have sat with the negotiator that the district hires and either approves or disapproves requests at the time that are made by the union. Ultimately it is the whole board that approves/disapproves the final contract.

There have been times in all of these situations that board members 1, 2 and 3 have abstained from voting due to a conflict of interest. However, having a majority of the board with relatives in the district can present a problem when it does come time to discuss, approve and make a motion.

4. Employees or non employees who work athletic events are allowed into the event without paying. All others pay. Some of the staff members feel that they should not have to pay if they come to the athletic event just to watch the game.

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:

(b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

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.

October 3, 2000
Page four

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:

(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.

(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.

Mary Graham
October 3, 2000
Page five

QUESTION #1: Would it be a violation of Oregon Government Standards and Practices laws for a school board member to approve payment of salary and/or reimbursement of expenses to a relative?

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

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 disclose the actual conflict of interest and refrain from taking any official action on the issue. If the official's vote is necessary for the public body to take 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 official, the official's relative or a business with which the official or the official's relative is associated. Approving the payment of salary or reimbursement of expenses to a relative would appear to violate this provision. This prohibition exists regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

The board member having the conflict is not precluded from taking action on the district's payables, with the exception of the payment to the relative of the board member. The payments to the relatives of board members must be removed from the other payables and those payables acted upon. The payments to the relatives of board members must then be acted upon separately with each board member disclosing the member's actual conflict of interest and taking no official action.

Mary Graham

October 3, 2000
Page six

QUESTION: Would it be a violation of Oregon Government Standards and Practices laws for a school board member to take action on the employment contract or the extra duty contract of a relative?

OPINION: ORS 244.020(7)(b) provides an exception to conflicts of interest when an official action affects all members of a class to the same degree. Sometimes a public official may take action that would have a financial affect on that official, a relative of that official or a business with which the official or the official s relative is associated. If other people in the class are also affected to the same degree by that action, the official would be exempt from conflict of interest disclosure requirements.

If all of the contracts of all of the teachers in the district come before the school board for approval, and if these contracts financially affect all of the teachers in the district to the same degree, it appears that all of the teachers in the district would constitute a class and, pursuant to ORS 244.020(7)(b), the board members would be exempt from the conflict of interest disclosure requirements.

If the extra duty contracts for athletic coaching, academic coaching and student advisor that come before the board for approval affect each member in that specific area to the same degree i.e., all athletic coaches are affected to the same degree, all academic coaches are affected to the same degree and all student advisors are affected to the same degree, it appears that the class exception would apply. If all of the members are not affected to the same degree, as is suspected, the appropriate conflict of interest disclosure must be made and the contracts involving the relatives of the board members must be acted upon separately as stated in the opinion to question #1.

It should be noted that only the Oregon Government Standards and Practices Commission is authorized by law to determine the existence of a class for the purpose of compliance with the conflict of interest provisions of ORS Chapter 244.

QUESTION #3: Would it be a violation of Oregon Government Standards and Practices laws for a school board member to take action on a collective bargaining contract for school employees when one of the employee s is a relative of the member?

OPINION: Collective bargaining contracts affect all members of the collective bargaining unit to the same degree. Therefore, the members of a collective bargaining unit are a class as defined by ORS 244.020(7)(b) and the board members would be exempt from conflict of interest disclosure requirements.

Mary Graham
October 3, 2000

Page seven

QUESTION #4: Would it be a violation of Oregon Government Standards and Practices laws for school staff members to obtain admission to school athletic functions free of charge when all other members of the public must pay?

OPINION: Yes. The Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712 p. 2d 87 (1985), identified the broad policy of Oregon's ethics laws as ensuring, ...that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. In that case, the Supreme Court held that a public official could not use his official position to obtain financial gain for himself. The Court emphasized that the term use in ORS 244.040(1)(a) includes availing oneself of a benefit not available to the general public. The Court applied a but for test, i.e., but for his position the public official would have been unable to avail himself of the benefit.

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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