

October 2, 2000

Douglas M. McGeary
Office of the County Counsel
Jackson County
10 S. Oakdale, RM 118A
Medford, Oregon 97501

Dear Mr. McGeary:

This letter is in response to your correspondence dated September 26, 2000, regarding the county council's office contracting with court reporters and court reporting firms to provide services on a rotational basis. Your spouse is a partner and a court reporter in one of the firms that could provide such services.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 00S-024

STATED FACTS: The Jackson County Counsel's office is taking on additional litigation in-house. This increases the need for the services of court reporters. There are several court reporting firms and individual court reporters from which the office could choose. The method of selecting court reporters would be on a rotational basis as each case comes up. The selection would be a task for the office legal assistant. An employee (public official) of the county council's office spouse is a court reporter and is a partner with another court reporter in a court reporting firm. The partnership is one of association and dividing cost as opposed to sharing profits. There is no guarantee that, if the attorney's office calls the business, the public official's wife would be the one to actually do the job.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

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,

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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.

QUESTION: Can the county counsel's office contract with the spouse of an employee or her partner for court reporting services?

OPINION: As indicated in the relevant statutes cited above, ORS 244.040(1)(a) prohibits a public official from using their official position to obtain financial gain for the public official's relative or any business with which the public official or a relative of the public official is associated.

According to the stated facts, the job of selecting the court reporter or firm to be hired would be the task of a legal assistant. The selection would be based on a rotational basis as each case comes up. It appears, therefore, that as long as the public official would have no involvement in hiring the spouse or firm with which the spouse is associated, there would be no violation of ORS chapter 244, Government Standards and Practices laws.

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

LPH: dz/mcgeary.so