

July 26, 2001

Joe Montisano
Saving Grace, Inc.
Fax: 541-679-6761 Ext. 204

Dear Mr. Montisano:

This letter is in response to your Facsimile transmittal dated July 17, 2001 concerning your status as a volunteer on the board of directors of Saving Grace, Inc. and a member of the advisory committee of the Douglas County Animal Shelter.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 01S-017**

STATED FACTS: A group of concerned citizens formed a corporation to assist Douglas County in the operation and management of the Douglas County Animal Shelter. The group incorporated under the name Saving Grace, Inc. The group has applied for 501(c)(3) status from the Internal Revenue Service but that status has yet to be granted.

The first step in assisting the county is for Saving Grace to be named as the advisory committee to the existing animal shelter.

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

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.

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.

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 \$1000 or more at any point in the preceding calendar year.

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:

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.

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:

244.040(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.

QUESTION #1: Are advisory board members to the county animal shelter considered public officials?

OPINION: Yes. ORS 244.020(15) defines a public official as 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. [Emphasis added] The county animal shelter is a public body and its advisory committee members serve that public body.

QUESTION #2: Is Saving Grace a business with which its board members are associated that could give rise to conflicts of interest for its board members in their capacity as public officials?

OPINION: The stated facts indicate that Saving Grace, Inc. is a not-for-profit corporation that has applied for tax exempt status under section 501(c)(3) of the Internal Revenue Code. Until that status is granted, Saving Grace fits the definition of business in ORS 244.020(2) and any action its board members take in their capacities as public officials that could or would result in a financial impact to Saving Grace could give rise to a potential conflict of interest or an actual conflict of interest and/or violations of ORS 244.040(1)(a). Once Saving Grace receives tax exempt status and its members remain uncompensated, Saving Grace would not be a business as defined in ORS 244.020(2).

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

If you have other questions or desire additional clarification, please do not hesitate to contact this office again.

Sincerely,

L. Patrick Hearn
Executive Director