

August 13, 2001

Kathy Figley
601 S. Settlemier Avenue
Woodburn, Oregon 97071

Dear Ms. Figley:

This is in response to your correspondence dated, July 17, 2001 regarding future conflicts of interest you may face as a city councilor taking official action which could have or would have an economic impact on commercial property you own.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 01S-018**

STATED FACTS: In this city the city council also serves as the city urban renewal board. When this dual role of the council was established a member of the council who owned commercial property in what was planned to be the urban renewal area, took steps to avoid violating provisions of the Oregon Government Standards and Practices laws. This councilor refrained from participation in voting to begin the process and in voting to assign the council this dual role.

As an owner of property in the planned urban renewal area, the councilor, who has not and will not participate in the final establishment of the area, desires to know what laws and principles should guide the official actions of a member of the city council and the urban renewal board, who also owns property in the renewal area.

The proposed urban renewal district consists of 260 acres. The district has property designated for a variety of uses and it appears that commercial designations are assigned to about 122 acres. The property owned by the councilor is located on two tax lots in the downtown area and is site of a 3200 square foot building.

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

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(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(7)(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 class that qualify under this exception.

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.

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:

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:

244.120(2)(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

244.120(2)(b) When met with an actual conflict of interest, announce publicly the nature of the actual conflict and:

244.120(2)(b)(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.

244.120(2)(b)(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.

QUESTION: Would it be a violation of Government Standards and Practices laws for a city councilor/urban renewal board member to initiate, discuss, vote or otherwise participate in matters pertaining to the urban renewal district where the official owns commercial property?

OPINION: There are two issues in ORS Chapter 244 that the public official in the fact circumstance must consider. One is how to address conflicts of interest that might arise and the other is to avoid use of public office for financial gain or to avoid a financial detriment.

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 that 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 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.

Mere abstention does not satisfy the law as the act of abstaining is an official action. The stated facts indicate that the city councilor did not participate in voting. Each time an issue, from which a conflict of interest arises, is to be acted upon by a public official, the official who has the conflict must publicly disclose it. The stated facts indicate that the councilor/board member may be exempt from declaring a conflict of interest under the provisions of ORS 244.020(7)(b), often referred to as the class exception. This exception to the requirement to declare a conflict of interest exists when the official action being considered would affect all members of a class to the same degree.

The stated facts indicate that the city councilor/board member owns commercial property in the downtown area of a proposed urban renewal district. Actions taken as a public official in regard to urban renewal could have the same financial impact on all commercial properties in the downtown area. If so, the class exception would apply. However, if the results of official action would financially impact the owners of all affected properties to differing degrees, the class exception would not apply.

It should be noted that only the GSPC 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.

The second issue in the stated facts that the official must consider is the prohibition in ORS 244.040(1)(a) against the use of public office for personal financial gain or the avoidance of a financial detriment. This prohibition exists regardless of the class exception or whether actual or potential conflicts of interest arise and are properly declared in accord with ORS 244.120.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 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

Kathy Figley
August 13, 2001
Page 5

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 STANDARDS AND PRACTICES COMMISSION.

Do not hesitate to call or write if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

01S-018dc