

January 11, 2002

The Honorable Ryan Deckert
Oregon State Senator
Washington County District 4
P.O. Box 2247
Beaverton, Oregon 97075

Dear Senator Deckert:

On January 11, 2002 the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 02A-1002**

STATED FACTS: An Oregon State Senator has received a job offer from the Superb Team of Architects (STOA), a private international company of architects, planners and managers. The senator would work with STOA International to develop contacts and prospective clients, some of whom develop capital projects and receive public funds. The senator would engage in activities to develop name recognition in the public and private sectors for this company. This may entail attending service club meetings, trade shows and other such meetings so as to be visible to the construction community in order to secure architectural services for STOA.

The senator would also be involved in utilizing the senator's marketing and public relations skills to local communities to secure architectural services for the company. The senator would contact and pursue projects that STOA could bid on, such as the Hillsboro City Hall and Library Project and school construction and remodeling projects throughout the state.

The senator does not foresee involvement by STOA in any state financed projects during the course of this job; however, in a letter to the senator from two executives of STOA they listed another goal of monitoring and identifying upcoming state projects for STOA to pursue.

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.

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(1)(a) If the public official is a member of the Legislative Assembly, announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

QUESTION: Would it be a violation of Oregon Government Standards and Practices laws for a member of the Oregon Legislative Assembly to engage in the employment activities outlined in the stated facts?

OPINION: No conflict of interest or other violation of Oregon Government Standards and Practices laws would result from a member of the legislature being engaged in the activities outlined in the stated facts. Conflicts of interest arise for public officials as a result of taking official action, not from the existence of circumstances or situations.

Oregon Government Standard 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 a public official takes action that 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. A potential conflict of interest exists when an official takes action that could possibly have a financial impact on the official, a relative of the official or a business with which the official or a relative is associated. Such possible financial impact is not certain.

ORS 244.120(1)(a) requires that, when met with an actual conflict of interest or a potential conflict of interest, a member of the Legislative Assembly shall announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official.

A member of the Legislative Assembly must take particular care to insure that the member's official position is not used in any manner in the conduct of a private employer's business. The stated facts indicate that the potential employer would not be involved in any state financed projects. The stated facts also indicate that school districts would be potential clients of the proposed employer. Public schools in Oregon are largely financed by the state general fund, expenditures from which are authorized by the legislature. Accordingly, the senator should act to insure that any contact with

school officials on behalf of the private employer would not cause them to feel pressured due to the senator's legislative position.

In previous advisory opinions of a similar nature the GSPC has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.

In addition to the above guidelines public officials must always keep their official position completely separate and distinct from private employment.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 11th day of January, 2002.

Katherine Tennyson, Chairperson

Date

Lynn Rosik
Assistant Attorney General
MismacMM-01A-1002-JP

Date

Ryan Deckert
January 11, 2002
Page 5