

May 31, 2002

Lloyd Hindman
85 S.W. 3rd Street
Madras, Oregon 97741

Dear Mr. Hindman:

At its May 31, 2002 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
ADVISORY OPINION NO. 02A-1007**

STATED FACTS: Jefferson County has three members on the board of commissioners. Two commissioners constitute a quorum. Two of the three county commissioners work for the same realty company.

RELEVANT STATUTES:

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:

(a) Any business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business from which 50 percent or more of the total annual income of the person and members of the person's household is derived during the current 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(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: Can two county commissioners, who work for the same realty company, serve in their public positions without violating Oregon Government Standards and Practices laws?

OPINION: Yes. ORS Chapter 244 allows for public and private roles to coexist. These statutes prescribe conduct and procedures, which enable public officials to avoid using their positions for personal financial gain and allows them to properly declare the nature of any conflicts of interest.

ORS 244.040(1)(a) prohibits a public official from using their official position for personal financial gain or to avoid a financial detriment. These prohibited

opportunities are described as those that would not be available but for the public position held. The prohibition of gain or the avoidance of the detriment is also extended to a business with which the public official is associated.

The two commissioners would be required by ORS Chapter 244 to avoid any official action that would result in a financial gain or the avoidance of a financial detriment to themselves or their employer.

ORS Chapter 244 defines conflicts of interest and ORS 244.120 sets down the procedures on how conflicts of interest are to be handled by the public official when they arise. ORS 244.020(1) describes an actual conflict of interest as occurring when an action taken by the official would directly and specifically affect the financial interest of the official or a business with which the official is associated. ORS 244.020(7) describes a potential conflict of interest as occurring when an action taken by the official could possibly have a financial impact on that official or a business with which the official is associated.

When met with conflicts of interest, the two commissioners would be required to handle them in accord with the methods described in ORS 244.120. They would be required to announce the nature of any conflict of interest before taking any action on the matter. In the case of an actual conflict of interest a commissioner would be required to refrain from any further action.

With two out of three commissioners having an association with the same realty business, the situation could arise when they would both have an actual conflict of interest, but be required to vote so the commission could conduct county business. ORS 244.120(2)(b)(B) allows a public official to vote when their vote is needed to meet a minimum number of votes required for the governing body to take official action. The public official, in this situation, must announce the nature of the actual conflict of interest and refrain from any discussion on the issue, but can cast a vote if needed in order for the body to act.

If both commissioners were to announce an actual conflict of interest over the same issue, at least one would be required to vote for the commission to act. Since there is no objective standard to determine which of the commissioners should or could vote, we believe that both could vote in such a circumstance without violating Government Standards and Practices laws.

The circumstances presented in the stated facts could result in hypothetical questions about the potential for illegal meetings and/or quorum violations. Except for the executive session provisions, the Government Standards and Practices Commission (GSPC) does not have jurisdiction over the Oregon Public Meeting laws. Therefore, this opinion does not address these concerns.

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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. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE GSPC MAY ALSO APPLY.

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 31st day of May, 2002.

Katherine E. Tennyson, Chairperson

Lynn Rosik, Assistant Attorney General

LPH/dc