

March 4, 2002

Susan M. Hiller  
Commodity Commission Program Manager  
Oregon Department of Agriculture  
1207 NW Naito Parkway, Suite 104  
Portland, Oregon 97209-2832

Dear Ms. Hiller:

This letter is in response to your facsimile transmission dated January 31, 2002 concerning the newly reinstated County Fair Commission.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 02S-007**

**STATED FACTS:** The County Fair Commission (CFC) has been reinstated pursuant to ORS 576.410 to ORS 565.450. The CFC will review audits of county fairs for compliance with policies and data reporting. If the CFC determines that a fair is in "good standing", they will disburse monies from the County Fair Board Sub-account to the "good" county fair boards in equal shares. The CFC may also submit nominations to the Governor for appointments to the Oregon State Fair Commission.

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

ORS 244.010(2): "The Legislative Assembly recognizes that it is the policy of the state to have serving on many state and local boards and commissions state and local officials who may have potentially conflicting public responsibilities by virtue of their positions as public officials and also as members of the boards and commissions, and declares it to be the policy of the state that the holding of such offices does not constitute the holding of incompatible offices unless expressly stated in the enabling legislation.

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(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 #1:** Would it be a violation of Oregon Government Standards and Practices laws for a board member of the CFC to also be a board member of a county fair?

**OPINION:** According to the stated facts, there does not appear to be any violations of Oregon Government Standards and Practices laws, specifically the statutes dealing with conflicts of interest. Governmental entities, such as the CFC and boards of county fairs, are not a business as defined by ORS 244.020(2) because they are not entities that are operated for economic gain. Accordingly, members of the CFC and members of county fair boards do not come within the definition of "business with which the person is associated" as defined by ORS 244.020(3). They are not subject to the definitions of an "actual conflict of interest" as defined by ORS 244.020(1) or a "potential conflict of interest" as defined by ORS 244.020(7), when they take official action which would result or could result in the financial benefit or detriment of other public entities. The legislative intent of these statutes which define business and conflict of interest clearly appears to have been referring to income producing private entities.

**QUESTION #2:** Would it be a violation of Oregon Government Standards and Practices laws for a board member of CFC to be an employee of a county fair?

**OPINION:** Oregon Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(7)]. The difference between an actual conflict of interest and a potential conflict of interest is

determined by the words would and could. 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, the official's relative or a business with which the official or a relative of the official is associated. 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 impact is not certain.

The stated facts indicate that if the CFC determines that a fair is in "good standing," the CFC will disburse monies from the County Fair Board Sub-account to the "good" county fair boards in equal shares. Although it is not clear from the stated facts, the money disbursed by CFC to a specific county fair board may, in part, be used for county fair employees' salaries, including the salary of the CFC member/county fair employee. Accordingly, the county fair employee, acting in the capacity of a CFC member, could have either an actual conflict of interest or a potential conflict of interest.

If the CFC member has no doubt that the money disbursed by the CFC to the county fair board **would** financially impact the CFC member in the position of county fair employee, the CFC member would have an actual conflict of interest and must disclose such and take no action whatsoever.

If the CFC member believes that there is the possibility that the money disbursed by the CFC to the county fair board **could** financially impact the CFC member in the position of county fair employee, the CFC member must disclose a potential conflict of interest. After the disclosure is made the CFC member may then discuss, debate and vote on the issue. There is no Oregon Government Standards and Practices law prohibition for a CFC member being an employee of a county fair.

**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.**

Susan M. Hiller  
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Please contact this office again if you would like this opinion submitted to the Oregon Government Standards and Practices Commission (GSPC) for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,

L. Patrick Hearn  
Executive Director

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