

October 25, 2002

J. Kenneth Jones
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Dear Mr. Jones:

This letter is being written in response to your correspondence dated October 9, 2002 concerning conflicts of interest when an elected official's daughter works for the government entity.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 02S-027**

STATED FACTS: An elected official's (governing body member) daughter works for the government entity. The entity only has three to four employees all performing various tasks.

Because of budget constraints, the entity is reviewing its options relating to personnel. Options being reviewed include benefits, reduction in wages, reduction in number of employees, reduction in hours and changes in duty assignments.

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(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)(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 the elected official violate Oregon Government Standards and Practices laws by participating in general discussions regarding budget issues and alternatives for solving potential shortfalls?

OPINION: ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official position or office to obtain a financial gain or the avoidance of a financial detriment for the public official or a relative of the public official that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, the reimbursement of expenses or an unsolicited award for professional achievement for the public official.

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.

It appears that the elected official could have a potential conflict of interest as defined in ORS 244.020(7) because action taken by the official could create a financial impact on the official's daughter. When this occurs the official would be required to adhere to the guidelines set forth in ORS 244.120(2)(a). Accordingly, the official must publicly disclose the nature of the conflict after which the official may carry on with discussion, debate and vote on the matter giving rise to the potential conflict of interest.

QUESTION #2: Would the elected official violate Oregon Government Standards and Practices laws by participating on a subcommittee and reviewing or working on personnel issues?

OPINION: See opinion to question #1.

QUESTION #3: Would the elected official violate Oregon Government Standards and Practices laws by entering into general discussion that might impact personnel benefits or decisions?

OPINION: See opinion to question #1.

QUESTION #4: Would the opinion change if the elected official were talking individually to other elected officials or employees about these issues?

OPINION: By talking individually to other elected officials or employees about these issues, the elected official is not taking official action. It appears that no violation of Oregon Government Standards and Practices laws would occur.

QUESTION #5: Does any of the above change if the elected official in question only votes in case of a tie?

OPINION: In the case of an actual conflict of interest 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 must announce the nature of the public official's 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.

However, ORS 244.120(2)(b)(B) does not allow a public official with an actual conflict of interest to vote to break a tie. If a tie vote results, one of the public officials on one side of the tie would be required to change their vote in order for the governing body to act.

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.

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