

December 20, 2002

Jeannette Holman
Assistant Director, Finance and Administration
Division of State Lands
775 Summer Street, N.E.
Salem, Oregon 97301-1279

Dear Ms. Holman:

This is in response to your email inquiry of 12/4/02 regarding a State employee serving on a county commission.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 02S-033

STATED FACTS: A state employee has been appointed to and has agreed to serve on a county commission on children and families. The person will remain a state employee, while serving as an unpaid volunteer of the county commission. The county commission networks with other commissions throughout the state over shared interests.

Responsibilities, as a state employee, include legislative coordination. This entails reviewing bills being considered and, at times, requires lobbying on behalf of the state agency. The employee has registered to lobby for the state agency in the past. As a member of the county commission, the employee might be asked to offer testimony before legislative bodies. This testimony would be performed during vacation time.

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

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(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.”

QUESTION NO. 1: Is the state employee met with a conflict of interest, as defined in ORS Chapter 244, when serving on a local commission?

OPINION: No. The legislature anticipated that public officials might simultaneously serve in more than one public position in ORS 244.010(2). The

state employee, in the stated facts, would not be met with a conflict of interest because there is no indication that the employee would ever take official action, in either public official capacity, that would result in a personal financial benefit or detriment to the employee, a relative of the employee or a business with which the employee or a relative is associated.

QUESTION NO. 2: Would it be a violation of Government Standards and Practices law for the state employee to use the state agency computer and email system on matters related to county commission issues?

OPINION: No. According to the stated facts, ORS Chapter 244 would not prohibit the employee from using the agency computer for commission related email because such usage would not involve personal financial gain or avoidance of a personal financial detriment for the employee.

QUESTION NO.3: Would it be a violation of Government Standards and Practices law for the state employee to review pending legislation for the state agency and the county commission simultaneously?

OPINION: No, because such activity would not result in personal financial gain or the avoidance of a financial detriment for the employee.

QUESTION NO. 4: Would it be a violation of Government Standards and Practices law for the state employee to testify before legislative committees on issues related to the county commission interests?

OPINION: No. Government Standards and Practices laws would not apply because there would be no issue related to the use of a public position for personal financial gain or the avoidance of a financial detriment.

(If the employee reached the threshold requiring registration for one entity and then also lobbied on behalf of the other agency, the employee would be required to also register on behalf of the second agency. However, if the lobbying activity is limited solely to registered public testimony, registration as a lobbyist is not required.)

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 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR

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**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.**

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

Sincerely,

L. Patrick Hearn
Executive Director

02S-033dc