

January 24, 2003

John M. Gray, Jr.  
Office of County Council  
Yamhill County  
535 N.E. 5<sup>th</sup> Street  
McMinnville, Oregon 97128

Dear Mr. Gray:

This is in response to your correspondence dated, January 19, 2003 regarding a county commissioner who has a spouse with business interests that might be affected by official actions of the commissioner.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 03S-003**

**STATED FACTS:** The spouse of a county commissioner is employed by a business in the county with financial interests in solid waste hauling and disposal. The spouse's employer is the parent company of a business that holds a solid waste collecting franchise in the county. The spouse also serves within the county on a city planning commission and on a county solid waste advisory committee.

The county charges a franchise fee to businesses that haul solid waste in the unincorporated parts of the county. A solid waste hauling business can request an adjustment of the franchise fee annually. The county board of commissioners must vote on the request.

Each commissioner is assigned to supervise different county departments that have appointed managers. The commissioners are also assigned liaison responsibility with different county departments that are managed by elected officials. Commissioners have authority to make decisions on the expenditure of funds within their assigned areas of responsibility. Some examples of these areas of responsibility are a solid waste advisory committee, county planning department and a city urban area management commission.

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

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."

244.020(16) "'Relative' means the spouse of the public official, any children of the public official or of the public official's spouse, and brothers, sisters or parents of the public official or of the public official's spouse."

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."

QUESTION NO. 1: Would the commissioner be met with an actual or potential conflict of interest if the board of commissioners were to take official action to increase or decrease the franchise fee for a business with which a relative is associated?

OPINION: The commissioner would be met with an actual conflict of interest. ORS 244.020(1) states that an actual conflict of interest exists when any action, decision or recommendation would affect the financial benefit or detriment of any business with which a relative is associated.

The stated facts indicate the commissioner's spouse is employed by the parent company of the business that would be required to pay a higher or lower franchise fee. A financial benefit or detriment to the business would result from the action taken by county commission.

In this circumstance the county commissioner would be required to publicly announce the nature of the actual conflict of interest and refrain from further official action.

In addition to the proper handling any conflict of interest, the commissioner must avoid any official action, such as voting or signing an order that would result in the financial benefit or the avoidance of a financial detriment to the business with which the relative is associated. ORS 244.040(1)(a) prohibits such actions apart from the statutory requirements for disclosure of conflicts of interest.

QUESTION NO. 2: If the commissioner was assigned oversight responsibility for the county waste advisory committee of planning department, would it impact any determination as to whether or not the commissioner is met with actual or potential conflicts of interest?

OPINION: The responsibilities assigned to the commissioner would not be the determining factor of whether or not the commissioner is met with a conflict of interest. The determining factors would be whether or not the commission was to take official action that would result in a financial benefit or detriment to a relative or a business with which the relative is associated.

The areas of responsibility assigned to the commissioner may affect the frequency with which the commissioner is met with a conflict of interest. For example, oversight of the county waste advisory council may create the necessity to publicly announce conflicts of interest more frequently than oversight of the planning department.

Again, the commissioner must avoid any official action that would result in the financial benefit or the avoidance of a financial detriment by the relative or a business with which the relative is associated in order to avoid violating ORS 244.040(1)(a).

QUESTION NO.3: If the commissioner was assigned oversight responsibility for a regional urban management commission, would it impact any determination as to whether or not the commissioner would be met with actual or potential conflicts of interest when taking official action on planning matters involving a city for which a relative serves on the planning commission?

OPINION: As previously stated, the responsibilities assigned to the commissioner would not determine whether the commissioner is met with a conflict of interest. If the commissioner participated, as a member of the regional urban management commission, in an official action that had an impact on the city where the spouse served on a planning commission, there would not be a conflict of interest as defined in ORS Chapter 244. However, the commissioner would be met with a conflict of interest, if the commissioner participated in an official action that would (actual) or could (potential) result in the spouse or a business with which the spouse is associated gaining or losing a financial benefit.

**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 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