


Theodore R. Kulongoski, Governor

June 13, 2003

Sue Bond
P.O. Box 955
Oakridge, Oregon 97463

Dear Ms. Bond:

This is in response to your correspondence dated June 9, 2003 regarding a member of a city council who is also the city's insurance agent. In addition, you mentioned an issue regarding a city's hiring decision.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 03S-012**

STATED FACTS: There is a city council member who is an insurance agent by profession. This same councilor also serves as the insurance agent of record for the city.

Not directly related to the councilor, the city recently consolidated two employment positions into one. The duties of finance director were combined with the duties of the city recorder. The two employees who held the old positions will apparently become unemployed, but able to apply for the new position that was created.

The city administrator is reported to have told the president of the city council that, if the council selects the current city recorder for the new position, the administrator would resign.

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(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:"

244.040 "**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 it be a violation of Oregon Government Standards and Practices (GSPC) law for the city's registered insurance agent to serve on the city council?

OPINION: No. ORS Chapter 244 has within it provisions that address the behavior of public officials, who are also employed in the private sector. These laws prohibit such individuals from using his/her public office to obtain a personal financial benefit or from obtaining a financial benefit for a relative or a business with which either are associated. The prohibited financial benefit is one that would not have been available to the public official but for the public position held. Public officials are allowed to accept official salary, reimbursement of expenses, honoraria and unsolicited awards for professional achievement.

ORS Chapter 244 also contains requirements for public officials, when met with conflicts of interest, to announce the nature and kind of a conflict of interest when it arises. A conflict of interest arises when a public official must take official action on an issue that could (potential conflict of interest) or would (actual conflict of interest) have a personal financial impact on the official, a relative of the official or a business with which either are associated. The law also defines the actions the public official is to take following such an announcement.

The insurance agent in the stated facts could serve as a member of the city council without violating ORS Chapter 244 if the requirements of the law are fulfilled.

QUESTION NO. 2: Would it be a violation of Government Standards and Practices law for a city administrator to threaten to resign if the city council took an action the administrator has opposed?

OPINION: No. The provisions of ORS Chapter 244 do not address the dynamics of personal interaction between public officials. These are local issues that the elected and appointed public officials must address.

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.

Shirla Sue Bond
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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

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