


Theodore R. Kulongoski, Governor

November 4, 2003

J. Kenneth Jones
Speer, Hoyt, Jones, Feinman, Poppe, Wolf & Griffith, P.C.
975 Oak Street, Suite 700
Eugene, Oregon 97401-3121

Dear Mr. Jones:

This is in response to your correspondence dated October 17, 2003 regarding conflicts of interest that may arise from relatives holding public positions and/or being employed within the same fire district.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 03S-018**

STATED FACTS: A former fire fighter of a fire district has retired and gained a position on the board of directors. A brother of the board member is a fire fighter in the district and his spouse (sister-in-law to the board member) is the district administrative assistant.

The district fire fighters are represented by a bargaining unit of 36 members. The administrative assistant is not a member of the union.

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:"

244.020(7)(b) "Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. The commission may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller class that qualify under this exception."

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 Government Standards and Practices laws permit the board member to participate in official action on issues related to the union bargaining agreement, such as, contracts, budgeting or grievances?

OPINION: Yes. ORS 244.020(16) defines the sibling of a public official as a relative. The stated facts present circumstances where the board member might be required to participate in official action on matters that would have a financial impact on the board member's brother. In similar situations a public official is often met with conflicts of interest. In this case, the brother is a member of a bargaining unit. Members of the bargaining unit have uniform working conditions, benefits and compensation prescribed in an agreement negotiated with the public agency employer.

ORS 244.020(7)(b) describes circumstances wherein a public official is not required to announce the nature of a conflict of interest. This is called a "class exception." In brief, if the official action would affect to the same degree each person that is a member of the group, identified as a "class" by the GSPC, the exception would apply. In the stated facts, the brother of the board member would appear to be a member of a class, the 36 members of the bargaining unit. Official board action that could or would have a financial impact on members of the bargaining unit, in which the board member were to participate, would impact all members to the same degree. Accordingly, the board member would not have a conflict of interest and would be exempt from the public disclosure requirement for conflicts of interest.

Only the Oregon Government Standards and Practices Commission (GSPC) is authorized by law to determine the existence of a class or the size of a class for the purposes of compliance with ORS Chapter 244.

In matters regarding grievances or financial impact that could or would specifically affect only the brother, the board member would most likely be met with conflicts of interest and a class exception would not apply.

Regardless of whether actual or potential conflicts of interest are announced pursuant to ORS 244.120, the board member is prohibited (ORS 244.040(1)(a)) from using his official position to gain a financial benefit or to avoid a financial detriment for himself or his relatives through an opportunity that would not be available, but for the official position he holds. The only exceptions to the prohibited financial gain are official salary, honoraria, reimbursement of expenses or unsolicited awards for professional achievement.

QUESTION NO. 2: Would the board member be met with a conflict of interest if required to participate in official action on issues that would financially impact the sister-in-law?

OPINION: No. The sister-in-law of a public official is not included in the definition of a "relative" in ORS 244.020(16). Accordingly, the provisions of ORS Chapter 244 would not apply to the board member's official participation in issues that would have a financial impact on a relative.

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