

  
Theodore R. Kulongoski, Governor

February 17, 2004

Joyce Gieszler  
Board/Superintendent Secretary  
Hillsboro School District 1J  
3083 N.E. 49<sup>th</sup> Place, #200  
Hillsboro, Oregon 97124-6008

Dear Ms. Gieszler:

This is in response to your correspondence dated February 9, 2004 regarding possible violations of Government Standards and Practices law by district board members in regard to conflicts of interest.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF  
OPINION NO. 04S-003**

**STATED FACTS:** Two members of a school district board of directors also serve as members of the board of directors for the Oregon School Boards Association (OSBA). One serves as president of the OSBA board of directors.

A patron of the school district has expressed the view that there is a “massive public perception of an ethics violation.” This perception is apparently based on the two board members holding the two board positions combined with the fact that school district funds are spent on or with the OSBA.

**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(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(14) " '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.”

244.120 “**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:”

QUESTION: Would it be a violation of Government Standards and Practices laws for members of a school district board of directors to also serve as members of the board of directors for the OSBA?

OPINION: No. When enacting ORS 244.010(2), the Legislative Assembly anticipated situations where one person may serve simultaneously in two or more public positions. The assembly recognized that in these situations there might be the potential for conflicting public responsibilities by virtue of dual positions held. The assembly declared 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.

Government Standards and Practices laws define actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(14)]. Conflicts of interest occur when the official action of the public official could or would result in a financial benefit or detriment. They occur when an action taken by the official could (potential) or

would (actual) 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.

The district patron in the stated facts refers to the "public perception of an ethics violation." ORS Chapter 244 does not deal with perceptions but has defined terms and addresses practices that are prohibited for public officials.

There are several assumptions in the information attributed to the district patron that need to be clarified. First, the patron refers to the OSBA as a private organization. In 2003, the GSPC held that the OSBA is a public entity. Accordingly, the board members and employees of OSBA are public officials as defined in ORS 244.020(15). The members of the school district board of directors are also public officials in that capacity. Second, the GSPC has also held that a government agency is not operated to create profit and is not a "business" as defined in ORS 244.020(2). Accordingly, the OSBA is not a "private" business and conflicts of interest cannot occur when a person, who is both a district board member and an OSBA member, takes action as an official of one entity that could or would financially impact the other entity.

**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