

October 8, 2004

Rob Ward
Ward Northwest Inc.
P.O. Box 105
Florence, Oregon 97439

Dear Mr. Ward:

This is in response to your correspondence dated October 4, 2004 regarding the application of Oregon Government Standards and Practices laws to issues that might arise for a local surveyor who serves as a mayor on a city council.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 04S-010**

STATED FACTS: The owner of a small land survey business holds the position of mayor and presides over city council meetings.

The mayor's survey business is planning to develop a piece of property located within the city boundaries. The mayor is the only person in the company that has a background in land use planning and the ability to represent the project before the city planning commission or city council.

The mayor is familiar with the methods that ORS Chapter 244 prescribes for dealing with conflicts of interest when they arise. The mayor also knows of the precautions that must be taken to avoid using a public position to obtain a prohibited financial benefit.

The mayor may need to represent the proposed development before the city council; however, ORS Chapter 244 prohibits a public official from representing a paying client before the governing body on which the official serves.

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

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;"

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(6) "No person shall attempt to represent or represent a client for a fee before the governing body of a public body of which the person is a member. This subsection does not apply to the person's employer, business partner or other associate."

QUESTION: Can the mayor appear before the city council as the owner of a private business and represent the business when the council is considering action on land development proposed by that same business?

OPINION: Yes. ORS 244.040(6) prohibits a public official from attempting to represent a client for a fee before the governing body on which the public official serves. The mayor, in the stated facts, owns a small business and wishes to represent his/her business' proposed development before the governing body, on which the mayor serves. The GSPC staff believes that the language of ORS 244.040(6) should be applied as stated, "No person shall...represent a client for a fee." The representation by the mayor for his/her own business would not appear to be representing "a client for a fee." Accordingly, it appears that the mayor could represent the proposed development of the mayor's business without violating ORS 244.040(6).

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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

LPH/dc 04S-010