

May 17, 2005

Dwane P. Brenneman
3150 Canterbury Drive South
Salem, Oregon 97302

Dear Mr. Brenneman:

This is in response to your correspondence dated May 8, 2005 regarding conflict of interest issues arising when a member of a city advisory board also serves on the board of a non-profit organization that receives city funds.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 05S-008

STATED FACTS: A city that has an advisory board, which is filled by appointed volunteers. One responsibility of the board is to submit recommendations to the city council on how public money is to be allocated to various city historical or cultural projects.

An advisory board member also serves on the board of directors of an organization that is a non-profit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code. The board member is not compensated.

There are occasions when a member of the city advisory board might participate in forming recommendations that would include funding for the non-profit organization for which the member is also on the board of directors.

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 (14) of this section."

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:"

ORS 244.020(14)(c) "Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code."

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:"

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"

QUESTION: Would the member of a city advisory board, also a board member of a non-profit organization, violate Government Standards and Practices law when participating in a recommendation to the city council designating funds to the non-profit organization?

OPINION: Oregon Government Standards and Practices law defines actual conflict of interest [ORS 244.020(1)] and potential conflict of interest [ORS 244.020(14)]. A public official is met with an actual conflict of interest when an action would result in a financial benefit or detriment to the official, a relative of that official or a business with which the official or the relative of that official is associated. A potential conflict of interest is met when an action could have a financial impact on the official, a relative or a business with which the official or relative are associated.

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ORS 244.020(14)(c) exempts public officials from the requirement to disclose the nature of a conflict of interest if the pecuniary benefit or detriment arises out of membership on the board of directors of a non-profit corporation. The stated facts indicate that the city advisory board member also serves as a board member with a non-profit organization without compensation. Accordingly, a conflict of interest would not arise and public disclosure would not be required.

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 05S-008