

July 21, 2005

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

Dear Mr. Jones:

This is in response to your correspondence dated July 14, 2005 regarding conflict of interest issues related to a board member in a rural fire protection district.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 05S-009

STATED FACTS: There is a member of the board of directors for a rural fire protection district. The board member belongs to one of the largest local unions in the state. The board member is an employee of a department other than the one governed by the board on which the member serves.

The district governed by the board has four employees who belong to the same union local as the board member, however, the board member and the district employees work under different union contracts.

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(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(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."

QUESTION: Would either a potential or actual conflict of interest arise for the board member as a result of participating in bargaining and related employment/union contract issues?

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)]. Both definitions include the element of an official action linked to a financial benefit or detriment impacting the public official, the official's relative or a business with which the official or a relative of the official is associated.

The stated facts describe a board member who would not be financially impacted by official participation in board actions on a union contract for the district employees. In addition, the board member, while belonging to the same union local as the four district employees, would not be acting to impact a business (union local) with which the board member is associated since the union local does not meet the definition of a business [ORS 244.020(2)], but is a non-profit organization.

J. Kenneth Jones
GSPC Staff Opinion 05S-009
July 21, 2005
Page 3

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-009