

May 23, 2006

Wendy Fullerton
Pinehurst School District
15337 Highway 66
Ashland, Oregon 97520-9438

Dear Ms. Fullerton:

This is in response to your correspondence dated March 13, 2006 regarding board members participating in a decision that may allow their children, who are students in the district, to purchase used laptop computers from the school district at a discounted price.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 06S-012

STATED FACTS: There is a non-profit organization formed under the provisions of the Internal Revenue Code 501(c)(3). This organization, referred to in this opinion as a foundation, provides support to educational activities and programs in a school district.

The school district is governed by a five member board of directors. One position is vacant. Two members of the school district board are also members of the board of directors for the foundation.

In 2005, the foundation donated ten laptop computers to the school district for the purpose of providing one to each of the ten middle school students. The students were able to have the use of an assigned laptop for the school year. Four of the students are children of the two school district board members who are also members of the foundation's board of directors.

The foundation is considering a proposal that would provide the district with a subsidy that would enable the district to sell the laptop computers to the current middle school students at a reduced price. It is also proposed that the income from the sales would be placed in a school district fund designated for the purchase of new laptop computers for next year's incoming middle school students.

There are several procedures being considered by the foundation to accomplish the goal of making the computers available for purchase by the students at a reduced price. Two under consideration are as follows:

1. Have the school district return the laptops to the foundation and the foundation would then sell them at a discount to the middle school students.
2. The school district would give the laptops to the middle school students in return for a donation

The school district board of directors would have to take official action to authorize the disposition of the laptops computers by any means.

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)(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.”

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.”

244.020(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: Would the members of the school district board of directors be met with a conflict of interest when participating in official action that would ultimately result in providing their children the opportunity to purchase a laptop computer at a discounted price?

OPINION: Oregon Government Standards and Practices law defines an actual conflict of interest [ORS 244.020(1)] and a potential conflict of interest [ORS 244.020(14)]. The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could." An actual conflict of interest occurs when an official participates in official action that would directly and specifically affect the financial interest of the official or the official's relative. A potential conflict of interest exists when an official participates in official action that could have a financial impact on that official or a relative.

The school district board members with children in the district's middle school would ordinarily be met with a conflict of interest when participating in official action that would create an opportunity for their children to purchase a laptop computer at a discounted price. However, the stated facts describe a circumstance where any official action by the school district board of directors would result in an opportunity for all ten of the district's middle school students to purchase a laptop computer at a discounted price. Four of the students are children of two members of the district's board of directors. It appears that any official action the board members might take with regard to the disposition of the laptops would have the same financial impact on the board member's children as all other middle school students in the district.

For these stated facts, ORS 244.020(14)(b) provides that, if the official action of a member of the school district's board of directors would financially impact all of the middle school students to the same degree, the entire group is a "class" and a conflict of interest does not exist. The directors would not be required to

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provide public disclosure of a conflict of interest and would not be required to refrain from participation.

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 06S-012