

May 26, 2006

Sabrina Absolon
City Administrator
City of Rufus
P.O. Box 27
Rufus, Oregon 97050

Dear Ms. Absolon:

This is in response to your e-mail dated April 6, 2006 regarding a mayor and a city councilor with investments in a business that could be financially impacted by official actions.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION
STAFF OPINION NO. 06S-014

STATED FACTS: There is a private business that wishes to begin fabricating homes. The business has expressed an interest in renting a building a city owns. The business also wants to purchase some land owned by the city.

The mayor and one member of the city council have each invested in the business an amount that exceeds \$1,000. When the city council discussed the issue of what the rental rate should be offered to the business, the mayor and councilor refrained from participation.

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(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(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."

244.040 "**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."

244.050(1)(i) "Every elected city or county official except elected officials in those cities or counties where a majority of votes cast in the subject city or county in any election on the issue of filing statements of economic interest under this chapter was in opposition."

QUESTION NO. 1: Would the mayor or the councilor violate Government Standards and Practices law by participating in official action on issues that may have a financial impact on the business in which they hold an investment?

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)]. 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 the action is certain to result in a financial benefit or detriment. It will occur when an action taken by the official would directly and specifically 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. A potential conflict of interest exists when an official takes action that could have a financial impact on that official, a relative of that official or a business with which the official or the relative of that official is associated.

While there may be some exceptions, the mayor and councilor would apparently be met with either a potential or actual conflict of interest when participating in official action, such as discussion, recommending or voting, on issues that would

have a financial impact on the business with which they are associated through their investments. In either case, the public officials must publicly disclose the nature of the conflict of interest once at each public meeting during which the conflict of interest arises. If a actual conflict of interest is actual, the public officials must publicly disclose the nature of the conflict and refrain from further participation on the issue.

Regardless of whether actual or potential conflicts of interest are publicly disclosed, the public officials would need to be aware of the restrictions in ORS 244.040(1)(a), which prohibit the use of an official position that would result in a financial benefit to the official, a relative or a business with which either is associated. For example, the mayor in the stated facts may disclose an actual conflict of interest and refrain from participating in council action on a resolution to sell property to the business in which the mayor is invested. After the public meeting the mayor may be asked to sign the resolution approved by the city council. By signing the resolution, the mayor may risk a violation of ORS 244.040(1)(a).

QUESTION NO. 2: Would the mayor or the city councilor have to report their investment on the Annual Verified Statement of Economic Interest form filed with the Government Standards and Practices Commission?

OPINION: No. ORS 244.250(1)(i) indicates that elected city officials are not required to file statement of economic interest forms if a majority of votes cast in the city in the November 1974 general election were opposed to filing statements of economic interest under ORS 244.250. The city in which the mayor and councilor hold office is such a city.

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.

Sabrina Absolon
GSPC Staff Opinion 06S-014
May 26, 2006
Page 5

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-014