

May 26, 2006

Harry Abel
Abel Insurance Agency
P.O. Box 1780
Coos Bay, Oregon 97420

Dear Mr. Abel:

This is in response to your e-mail dated April 19, 2006 regarding you being the insurance agent of record for a community college while also serving on the college board of directors.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 06S-015**

STATED FACTS: There is an insurance agency that provides insurance services to a community college. The insurance agency is the agent of record for the community college. The insurance agency owner is an elected member of the college board of directors.

For the past three years, the member has publicly disclosed a "possible" conflict of interest when issues related to insurance have been discussed by the board. In addition, the insurance agency has assigned another employee to handle matters involving the college.

The college has invited proposals (RFP) from insurance agencies with regard to insurance coverage for the college. The college president has refused to consider the insurance proposal submitted by the board member's insurance agency because of concerns as to conflict of interest.

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.”

QUESTION NO. 1: Is it a violation of Government Standards and Practices laws for the owner of a community college’s insurance agent of record to serve as a member of the college’s board of directors?

OPINION: The existence of a particular set of circumstances never creates a conflict of interest or any violation of Oregon Government Standards and Practices law as set forth in ORS Chapter 244. The law does not prohibit the owner of a business from serving as an elected member of a governing body of a public body, even if the business of the member has a financial relationship with the public body.

Since the board member described in the stated facts is the owner of the business that serves as the college insurance agent of record, when an issue related to insurance services that are or could be provided, by the board member’s business, arises in the course of official duties, the nature of conflicts of interest must be disclosed. According to the stated facts, the board member has done this consistently during the three years the member has served on the board.

QUESTION NO.2: Would it be a violation of Government Standards and Practices law for the insurance agency, which the board member owns, to submit an insurance coverage proposal to the community college?

OPINION: The provisions of Government Standards and Practices law do not strip a person or business of rights held by those who do not hold a public office or position.

ORS Chapter 244 provides guidelines within which public officials are to conduct themselves.

The insurance agency owned by the board member described in the stated facts is not precluded from engaging in business with the government entity the person serves. Rather, a public official is restrained by certain requirements in ORS Chapter 244. For example, as indicated in the opinion to question number one, the nature of conflicts of interest must be disclosed and the public official must refrain from participating in certain official actions. The stated facts indicate that the board member has complied with these requirements when participating in official action on issues related to the insurance agency and the conduct of its business with the college.

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