

1 "This request would represent an expansion of the Gravel Street Renovation Policy.
2 Normally, the Policy is applied to existing unpaved streets that have a grade and
3 roadway established. In this case, the request would apply to a platted but as yet
4 completely undeveloped roadway."
5

6 "It is staff's understanding that the Elk Horn developer will be paying all of the non-
7 City costs and other property owners would not be assessed for this project. If this
8 is incorrect, the consent of all other contributing property owners would need to be
9 obtained to proceed with the project. If approved, this project would be scheduled
10 for spring 2016 and coordinated with the developer."
11

12 The report includes an estimated cost allocation for the affected lot owners and the City:

- 13 1) Elk Horn Development 2 lots (SW and SE Elkhorn lots #1 and #5) = \$2,924
14 2) Owner of NE lot = \$412
15 3) Owner of NW lot = \$2,615*
16 4) City's costs = \$11,126 (labor \$6068) and (materials from the CLR fund \$5058)
17

18 *Owner of the NW lot declined to contribute, so Elk Horn paid their share. Elk Horn ended
19 up paying approximately \$5,540.
20

21 The minutes and the recording capture the comments from the owner of the NW lot, who
22 objected to contributing financially. She said that East 15th was a four-house street with
23 three driveways and that creating a street was unnecessary. She said that the project only
24 benefitted the developer and therefore he should bear the cost.
25

26 The written minutes show that, following the presentation of the staff's report, Councilor
27 Elliott "removed himself from discussion as he is part of the Elk Horn Development."
28 However, the written minutes do not reflect that he refrained from the vote.
29

30 On the audio recording, the Public Works Director can be heard making the following
31 statements:

1 "There isn't currently a roadway at this location; normally we have applied
2 this to existing gravel streets."
3

4 "We have somewhat generously applied the corner-lot relief to this project,
5 saying that for the lots with frontage also on Thompson, we are giving them
6 credit for the pavement that is already on Thompson Street."
7

8 The audio captures the Public Works Director answering questions and explaining the
9 Gravel Street Renovation Policy and the Corner Lot Relief Policy to the city councilors
10 during the Staff Report presentation.
11

12 Mr. Anderson explained that in the Elk Horn request, the City tried to somewhat
13 maintain consistency with how this Policy had been applied in the past, because the
14 developer, Elk Horn, would be required to provide rough excavation and finished
15 grade, and then the City would go in and excavate down from that level deep
16 enough to place the rock and asphalt up to the finished depth.
17

18 The City would also construct a storm line as part of this project, because due to the
19 LUDO revisions, the City is responsible for the storm lines attached to new
20 development.
21

22 Mr. Anderson explained that the City now has \$25,000 in the corner-lot relief fund,
23 so it is feasible to do this. For a while after the 2008 recession, the City did not
24 push the gravel street renovation policy because it was often dependent on corner
25 lot relief funds to make it feasible for property owners, and the corner lot relief fund
26 was depleted due to regular development.
27

- 28 • Following the staff report, Councilor Elliott can be heard on the audio stating the
29 following: "For the record, I am going to remove myself from any discussion
30 because I am part of Elk Horn Development."
31

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1 On the audio, after the voice vote to approve the exception to the gravel street
2 policy in this case, the Mayor can be heard stating that the motion to approve
3 passed unanimously and Councilor Elliott abstained. (#INV5 and #INV6)
4

5 STAFF INTERVIEW AND RECORDS

6 During the investigation, Dave Anderson, the Public Works Director, was interviewed and
7 provided much appreciated context and background. He explained the following terms and
8 processes: (#INV10)
9

10 Local Improvement District (LID) Districts are formed when owners in an established
11 neighborhood must share costs for improvements such as installing sidewalks or paved
12 roads that were not required at the time their homes were built. Usually these LIDs are
13 initiated by the City when improvements are needed, but sometimes they are formed at the
14 request of property owners. If a majority of affected property owners sign a petition in
15 support of an LID, the formal process of LID formation begins, which is a long and public
16 process with public hearings where affected property owners may express opposition. The
17 usual process is for the City to propose estimated costs of improvements and then
18 apportion actual costs to the property owners after the improvements are made. The LID
19 apportionment is recorded in the property records and the obligation runs with the property.
20

21 Waiver of Remonstrance. Waiving your right to oppose or object (to the formation of a City
22 initiated LID, e.g.)
23

24 Delayed Improvement Agreement (DIA). This is when conditions are placed on
25 undeveloped property prior to development. If, for some reason, it becomes not feasible
26 for the developer to proceed with the required improvements when developing their
27 property, the developer and City could enter into an agreement that the developer be liable
28 for the improvements in the future. This DIA is recorded in property records and the
29 obligation runs with the property.
30

31 ///

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1 Gravel Street Renovation Policy – This is a City of The Dalles policy allowing those whose
2 property abuts a gravel street to avoid an LID and public hearings and get the City to share
3 costs of paving their gravel street if 100% of financially contributing property owners
4 consent. The City contributes the labor and equipment, and contributing property owners
5 pay for materials. In the past, this occurred only when converting a gravel street to a paved
6 street. If a property owner does not wish to financially contribute, their neighbors may pick
7 up their costs. Only if a neighbor is going to be asked to financially contribute, do they
8 need to consent.

9
10 Corner Lot Relief – A City of The Dalles policy that provides financial discounts for property
11 owners when they make public improvements to a corner lot property with street frontage
12 on more than one side.

13
14 Network Street Designation was one feature of the development guidelines in Resolution
15 15-017. The changes to LUDO resulted in neither the developer nor the City being
16 required to provide public improvements (street, sidewalks, curbs, storm water) for any new
17 development that involved 4 or fewer homes. Resolution 15-017 designated 17 “network
18 streets” in the City for enhanced development. As a result of the network street adoption
19 and other guidelines in Resolution 15-017, if single family, residential property is developed
20 on a network street, the developer must provide sidewalks if the City has provided a curb
21 line, even if their development involves only one home. And the City must provide
22 engineering and construction for streets and storm water systems on the network streets.

23
24 Concerning the exception to the gravel street policy requested by Mr. Elliott and approved
25 at the city council’s 10/26/15 meeting, Mr. Anderson confirmed that Mr. Elliott’s business
26 owned 2 of the 4 lots affected, and that he paid the “property owner’s” share for 3 of those
27 lots and the owner of the remaining lot paid \$412.92 as her share. He also confirmed that
28 this gravel street variance was granted to pave approximately ½ block on East 15th Street,
29 which terminated in a dead end. He explained that 15th Street was platted, but there was
30 no existing roadway, no gravel street, it was an ungraded jeep trail, basically. Mr. Elliott
31 was the first, and apparently only person to date, that asked for and received a deviation

1 from the policy. It was an exception and the policy has not been revised as a result of this
2 exception. (#INV10)

3
4 Mr. Anderson explained that Thompson Street has 36 tax lots and is 9 blocks long. When
5 asked if there were any residential, single family vacant lots on Thompson Street to which
6 the network street designation would apply when the network street development
7 guidelines in Resolution 15-017 were adopted by the City Council, Anderson said that Mr.
8 Elliott's property was the only such property at the time located on Thompson Street. After
9 the partitions, Mr. Elliott had five lots on his property and he has now built on all or nearly
10 all of those lots. (#INV10)

11
12 Concerning the Thompson Street Improvement project, Mr. Anderson explained that
13 Thompson Street was a long standing problem due to its deteriorated condition and the
14 poor water drainage. It had been brought up again by the Mayor in the fall of 2014. The
15 Mayor wished to repave Thompson Street within the City's maintenance budget (not install
16 sidewalks or bike lanes). One of the ways to pay for the repaving was from savings on
17 other projects. Anderson said that in the 2015-16 budget, they had placed money in the
18 contingency fund for repaving Thompson. The City had considered an LID on 2 or 3 prior
19 occasions for Thompson that included a storm water system, widening of the street,
20 repaving the street, and installing sidewalks, but it never happened. When the project was
21 eventually done, the City undertook the storm water system and repaving. There was no
22 widening of the street for bicycles and no sidewalk construction. (#INV10)

23
24 Mr. Anderson said that it was not unusual for him and other staff members to receive direct
25 emails or calls from residents seeking information or making requests about developing
26 properties or planning, legal requirements, etc. He confirmed that Mr. Elliott communicated
27 with him and other staff at the City about development issues prior to his becoming a city
28 councilor and continued the same practice after he was on the council. (#INV10)

29
30 Mr. Anderson submitted a letter to the Commission, at the request of Mr. Elliott, which is
31 excerpted below:

1 "I have been requested by Councilor Taner Elliot [sic] to provide you with some
2 additional information concerning the City's policies for public improvements
3 associated with residential streets, including 'network streets'. Thompson Street,
4 which is adjacent to the property developed by Mr. Elliott, is classified as 'network
5 street.'

6
7 "...On April 13, 2015, the Council adopted Resolution 15-017 which established new
8 guidelines for public improvements for residential streets. Under Resolution No. 15-
9 017, the City established a 'network' of streets to provide enhanced accessibility for
10 vehicular, pedestrian, and bicycle access. The standards adopted under Resolution
11 No. 15-017 were intended to apply on a City-wide basis."

12
13 "Thompson Street was included as part of the 'network street' classification.
14 Resolution 15-017 included a provision which applied to all network streets, that
15 when a single family dwelling which abutted a network street had been placed upon
16 a lot which was not part of a subdivision, the property owner shall be required to
17 install a sidewalk if the City had established a curb line. This provision was
18 intended to apply on a City-wide basis for all owners of single family dwellings
19 whose residence was placed adjacent to a network street, and not as part of a
20 subdivision." (#INV9)

21
22 Mr. Anderson quantified, in a later email, what it meant that Resolution 15-017 applied
23 "city-wide".

24
25 "There are a total of 1084 single family lots along Network streets. Of those, 91 lots
26 are currently vacant." (#INV13)

27
28 The investigator received a forwarded email and documents in response to a question
29 posed to Mr. Anderson concerning whether or not Taner Elliott or Elk Horn Development
30 had a delayed improvement agreement (DIA) or a waiver of remonstrance concerning his
31 property on 1/26/15 when the City Council voted to direct staff to remove those DIAs

1 currently in force within 30 days. Mr. Anderson forwarded the question to Mr. Elliott's
2 attorney, who is also the City's attorney, in this matter. Attorney Parker explains the
3 following in his responsive email:

4
5 "On January 26, 2015, the property owned by Elk Horn Development on Thompson
6 Street, of which Mr. Elliott was a member, did have a delayed Improvement
7 Agreement and Reimbursement for Costs of Stormwater Improvements which
8 applied to the property. This agreement was a condition of approval for a previous
9 subdivision on the property, and the application for the subdivision was withdrawn
10 by Mr. Elliott on behalf of Elk Horn Development. Mr. Elliott subsequently applied
11 for a Minor Partition for the property on Thompson Street and the Planning
12 Commission included a condition of approval requiring the execution of a waiver of
13 remonstrance. Mr. Elliott, who was not on the City Council at that time, filed an
14 appeal, and on September 22, 2014, the City Council sustained his appeal and
15 voted not to require the execution of a waiver of remonstrance in connection with
16 the minor partition..."

17
18 "I have also included a copy of the release of the Delayed Improvement Agreement
19 recorded in 2015, which was part of the process of releasing all waivers of
20 remonstrance and delayed improvement agreements associated with residential
21 development in the City." (#INV11)

22
23 The recital in the Release states "the City Council has directed City staff to file a Release
24 of all recorded Delayed Improvement Agreements which encumber residential real
25 property." Information indicates that City staff filed 138 releases as a result of the 1/26/15
26 direction by city council. (#INV7 and #INV11)

27
28 Information indicates that the DIA on Elk Horn Development was originally filed on 3/6/13
29 and removed 2/25/15. (#PR1 and #INV11)

30
31 Taner Elliott is represented by attorney Gene Parker in this matter. Mr. Parker is also City

1 Attorney for The Dalles. Mr. Parker provided a letter of representation for Mr. Elliott dated
2 10/20/16, as well as a second letter and other records in response to the complaint. During
3 this investigation, Mr. Parker confirmed that Councilor Elliott, upon receipt of the complaint
4 in this matter, contacted Mr. Parker and requested his assistance in responding to the
5 complaint. Mr. Parker explained that he is in-house counsel to the City of The Dalles, and
6 that no individual councilor is his client, but he did agree to assist Councilor Elliott in this
7 matter. (#PR5 and #INV12)

8
9 Mr. Parker's 10/20/16 letter will be provided in its entirety to the Commissioners with this
10 report, and is excerpted below:

11
12 "Mr. Wood alleges that Mr. Elliott used his position on the City Council of the City of
13 The Dalles to 'change land use laws and save himself \$80,000, then modified the
14 gravel street policy and saved himself \$12,000.'...Much of the material submitted in
15 support of the complaint, concerning the issue of improvements for the subdivision
16 application submitted by Elkhorn Development LLC, of which Mr. Elliott was the
17 manager, which application was subsequently converted to an application for a
18 minor partition, concern actions or decisions made by Mr. Elliott as a private citizen,
19 prior to the time he officially took office."

20
21 "The allegations described in Mr. Wood's complaint were presented to the City
22 Council during the audience participation portion of the Council's agenda for the
23 meeting of November 9, 2016 [sic]. I prepared a memorandum dated November
24 16, 2015, which analyzed the conflict of interest allegations raised by Mr.
25 Wood....The memorandum was provided to the City Council at the Council's
26 meeting on November 23, 2015....The summary of my analysis was that I could not
27 establish a basis for referring Mr. Wood's allegations to the Ethics Commission for
28 further investigation." (#PR5)

29
30 As attorney Parker explains in the memorandum he presented to the City Council in
31 November of 2015 and in the letter excerpted above, he believes that Mr. Elliott was part of

1 a "class" of property owners who benefitted equally from the City Council actions at issue in
2 this case, and therefore Mr. Elliott was exempted from complying with the conflict of
3 interest provisions in Oregon Government Ethics law. Mr. Parker also believes that Mr.
4 Elliott did not use or attempt to use his position as City Councilor to financially benefit
5 himself or his business during the City Council meetings described in Mr. Wood's
6 complaint. (#PR5)

7
8 Attorney Parker sent Commission staff an email on 5/2/17, with an attached copy of a
9 document entitled "Summary to be provided to The Dalles Chronicle". Mr. Parker's email
10 states: "Councilor Elliott requested that the enclosed summary, which was provided in
11 response to an editorial published in The Dalles Chronicle, be provided to the Ethics
12 Commission in relation to the above referenced case." Mr. Parker confirmed that he was
13 the primary author of this summary. He said that he drafted it in 2015 with input from Mr.
14 Elliott. This document will be provided to the Commissioners in its entirety with this report
15 and is excerpted below: (#INV11)

16
17 In April of 2015, "...[T]he City Council adopted Resolution No. 15-017, which
18 replaced the public improvement guidelines set forth in Resolution No. 10-007.
19 Resolution No. 15-017 did designate Thompson Street as part of a 'network' of
20 streets throughout the City, designed to provide enhanced accessibility for vehicular,
21 pedestrian, and bicycle access. Paragraph 6 of the...guidelines included a
22 provision that for single family dwellings that abut a network street and which were
23 placed upon an individual lot which was not part of a subdivision, the property owner
24 would be required to install a sidewalk if the City has established a curb line.
25 Councilor Elliott did make the motion to recommend adoption of Resolution No. 15-
26 017. As a member of Elk Horn Development, he was a member of a large group of
27 property owners throughout the City who owned single family dwellings which
28 abutted a network street and which were placed upon a lot which was not part of a
29 subdivision. All of these property owners affected by paragraph 6...were treated in
30 the same manner. Councilor Elliott has been advised by the City Attorney that his
31 membership of a large group of property owners, who were affected in the same

1 manner by the proposed resolution, provided an exception from the requirement
2 that he declare a potential or actual conflict of interest before making the motion to
3 adopt Resolution No. 15-017.”
4

5 “...At the July 27th meeting, the City Council conducted a further discussion of the
6 proposed project for the resurfacing of Thompson Street. ...[N]o vote was taken at
7 this meeting. The Council indicated their consensus that the project should
8 proceed, provided that the Council be provided with a full report on the cost of the
9 project, including surfacing, utilities, labor, parts, and equipment, before the work on
10 the project was commenced.”
11

12 “At the September 28th City Council meeting, the Council received an updated
13 report on the costs of the proposed project....The Council voted to proceed with
14 construction of the storm water main and resurfacing project and Councilor Elliott
15 abstained from voting on the motion. Councilor Elliott has been advised by the City
16 Attorney that as a member of the class of property owners who owned property
17 along Thompson Street, who were affected equally by the Council's actions to
18 proceed with the project, that the ‘class exception’ noted previously applied and
19 there was no potential or actual conflict of interest which needed to be declared...”
20

21 “On October 6, 2015, Councilor Elliott wrote an email to Julie Krueger, the City
22 Manager, indicating that he was personally wanting to pay for the cost of paving on
23 East 15th Street as part of the Gravel Street Policy, and that...the Public Works
24 Director was seeking direction from the City Council. Councilor Elliott asked if the
25 item could be scheduled as a discussion item, and the City staff determined to place
26 the item as an action item on the Council's [October 26, 2015] agenda.”
27

28 “...[At the October 26, 2015 meeting]...[f]ollowing the presentation of the staff
29 report, Councilor Elliott announced that he would be abstaining from discussing or
30 voting upon the proposal due to his interest as a property owner of two of the
31 properties included in the proposed project....The Gravel Street Renovation Policy

1 includes an inventory of gravel street surfaces eligible for improvement under the
2 Policy, and the portion of East 15th Street West of Thompson Street is included in
3 the list of streets. Elk Horn Development paid the sum of \$5,498.48 for its share of
4 the costs of improvements for East 15th Street.”

5
6 **CONCLUSIONS:** Taner Elliott was a city councilor for the City of The Dalles when the
7 events pertinent to this investigation occurred. He was a public official as defined in ORS
8 244.020(15) and therefore subject to compliance with ORS Chapter 244.

9
10 A public official such as Tanner Elliott is met with either an actual or potential conflict of
11 interest when participating in his capacity as a City Councilor, in any action, decision, or
12 recommendation, if the effect would or could be to the private financial benefit or detriment
13 of himself, a relative, or any business with which he or a relative is associated. [ORS
14 244.020(1) and (13)]

15
16 In relevant part, an actual conflict of interest arises if Councilor Elliott takes any action or
17 makes any decision or recommendation in his official capacity, the effect of which would be
18 to the private financial benefit or detriment of him or his business. A potential conflict of
19 interest occurs if Councilor Elliott takes any action or makes any decision or
20 recommendation in his capacity as a city councilor, the effect of which could be to the
21 private financial benefit or detriment of him or his business.

22
23 An elected official such as Taner Elliott, when met with a conflict of interest, must on each
24 occasion, publicly announce the nature of his conflict. If the conflict is actual, he must also
25 refrain from any discussion, debate or vote on the issue giving rise to the conflict. If the
26 conflict is potential, he may participate in official actions following his public disclosure.
27 [ORS 244.120(2)]

28
29 It is not a conflict of interest if the financial benefit or detriment arises out of an official
30 action which would affect to the same degree a “class” to which the public official or his
31 business is a member. [ORS 244.020(1) and (13)(b)]

1 In relevant part, a "business with which the person is associated" includes any private
2 business or closely held corporation of which the person is a director, officer, owner or
3 employee, or agent. [ORS 244.020(2) and (3)]
4

5 As a public official, Taner Elliott is prohibited from using or attempting to use his official
6 position as City Councilor to obtain a private financial gain or avoid a financial detriment for
7 himself or a business with which he is associated, if the financial benefit would not
8 otherwise be available but for the holding of his official position. This prohibition applies
9 whether or not he complied with the conflict of interest provisions. [ORS 244.040(1),(7)]
10

11 A public official may accept any part of their official compensation package or
12 reimbursement of expenses incurred in the conduct of their official duties, and not be in
13 violation of ORS 244.040. However, in order to be considered reimbursed expenses, or
14 part of one's official compensation, they must comply with the applicable administrative
15 rules that define official compensation, official duties, and reimbursement of expenses.
16 [ORS 244.040(2) and OAR 199-005-0035].
17

18 Information indicates that Elk Horn Development, LLC, meets the definition of a business
19 with which Mr. Elliott is associated, as Mr. Elliott is a co-owner and member/manager of the
20 company.
21

22 CONFLICT OF INTEREST AND "CLASS EXCEPTION"

23 One of the issues in this investigation was to analyze whether Mr. Elliott or his business,
24 Elk Horn Development, LLC, was part of a "class" of property owners affected to the same
25 degree by actions he may have taken in his official capacity as city councilor, in which
26 case, he would not have been met with any conflict of interest as defined in ORS
27 244.020(1) and (13), concerning:
28

- 29 1) The development guidelines contained in Resolution 15-017 that, if adopted,
30 would apply to owners of undeveloped, single family, residential properties that were
31 not part of a subdivision, and were located on one of the designated 17 network

1 streets or street segments.

2
3 2) Removal of Delayed Improvement Agreements and Waivers of Remonstrance
4 which obligated residential property owners to financially contribute to public
5 improvements and were in force prior to the passage of new legislation and the
6 City's resulting 2015 revisions to the Land Use Development Ordinance (LUDO).

7
8 3) The Thompson Street Improvement project, which affected the 36 tax lots on the
9 blocks of Thompson Street, and provided street repaving, installation of a storm
10 water system, and utility upgrades at no cost to the property owners.

11
12 Creation and Adoption of Resolution 15-017

13 It appears from information available during investigation that Mr. Elliott by his official
14 actions participated in **creating** the class of property owners, who would be subject to
15 Resolution 15-017 during city council meetings held on 1/26/15 and 4/13/15. This class did
16 not exist prior to the adoption of Resolution 15-017 by the city council. After the list of
17 "network streets" was approved and development guidelines that would apply to "network
18 streets" were considered, discussed, and amended by councilors, including Mr. Elliott, the
19 class was created by adoption of Resolution 15-017 on 4/13/15. Mr. Elliott failed to
20 announce a conflict of interest during either of these meetings and he did not refrain from
21 participation in discussions or votes.

22
23 Because the development guidelines applied to undeveloped, single family, residential lots
24 that were not part of a subdivision and abut one of the 17 designated "network streets"
25 established by Resolution 15-017, they would have financially affected Elliott's
26 development business, which at the time owned multiple undeveloped single family lots on
27 Thompson, one of the network streets.

28
29 Resolution 15-017 would have required each of the owners of one these undeveloped lots
30 to install sidewalks if the City provided a curb line. The City would be responsible for
31 installing streets and storm water systems on these network streets.

1 After the guidelines were adopted, owners of such property, including Elk Horn
2 Development, LLC, would have been affected financially to the same proportionate degree
3 by Resolution 15-017. However, Mr. Elliott's official participation in **creating and adopting**
4 **the guidelines** that would establish the class is an actual conflict of interest. When met
5 with an actual conflict of interest, Mr. Elliott should have publicly announced the nature of
6 his conflict on 1/26/15 and 4/13/15, and refrained from discussion or vote on the issue.
7 [ORS 244.020(1) and 244.120(2)]

8

9 Removal of Existing Delayed Improvement Agreements and Waivers of Remonstrance

10 During the 1/26/15 City Council meeting, Mr. Elliott voted to direct staff to remove all 138
11 residential waivers of remonstrance and delayed improvement agreements previously filed
12 by the City and currently in force. This action applied to the removal of any such
13 encumbrance on residential properties in The Dalles. Elk Horn Development, LLC, had an
14 existing delayed improvement agreement filed in the county property records as an
15 encumbrance on its Thompson Street properties. It appears that although Mr. Elliott's
16 business financially benefitted from his vote on this issue, his business was a member of a
17 "class" of all residential property owners in The Dalles that also had their property
18 encumbrances released by the vote, and were therefore affected financially to the same
19 proportional degree as Elk Horn Development. Information indicates that the DIA had
20 been placed on Elk Horn Development's property in March of 2013, nearly two years
21 before Mr. Elliott became a public official. Therefore, unlike the prior analysis, Councilor
22 Elliott's official actions did not create this class; his business was a member of a class that
23 pre-dated any of his official actions that would have affected members of the class to the
24 same degree, and therefore, he was not met with a conflict of interest when taking this
25 vote.

26

27 Thompson Street Improvements

28 The Thompson Street Improvement project had been proposed before Mr. Elliott was
29 elected to the City Council. Apparently, this had been a long standing issue, and the
30 Mayor had been proposing this repaving for some time, most recently in the fall of 2014,
31 when the council directed the staff to begin the process. When the Thompson Street

1 Improvement project was discussed and eventually approved by the City Council in its
2 4/13/15, 7/27/15, and 9/28/17 meetings, Elk Horn Development, as the owner of
3 undeveloped property on Thompson Street, would have been financially impacted.

4
5 Councilor Elliott did not announce a conflict of interest when the project was discussed in
6 meetings on 4/13/15 and again on 7/27/15 when a "consensus" was reached to proceed.
7 When the project was approved by the council on 9/28/15, Councilor Elliott abstained from
8 the vote, although he did not announce any conflict of interest.

9
10 Thompson Street is 9 blocks long and contains 36 tax lots. In order to be considered a
11 "class" for purposes of exception to the conflict of interest requirements, each member of
12 the class must be affected to the same degree by the official's action. The question is,
13 whether each Thompson Street property owner would be affected to the same
14 proportionate degree by the resurfacing, storm water installation, and utility upgrades
15 authorized by the City Council and undertaken at the City's expense.

16
17 Although Elk Horn Development was the only owner of undeveloped lots on Thompson
18 Street at that time, the class of "property owners on Thompson Street" is a finite group to
19 which Elk Horn was a member prior to Mr. Elliott's tenure as a city councilor. And, unlike
20 participating in crafting the contours of the "class" of properties subject to Resolution 15-
21 017 discussed earlier, Mr. Elliott did not participate in "creating" this class. It could be
22 argued that Mr. Elliott's business, as the owner of at least four vacant lots on Thompson
23 would benefit financially to a disproportionately greater degree than other property owners
24 by the Thompson Street improvements (which is perhaps why Mr. Elliott abstained from the
25 vote approving the project on 9/28/15). On the other hand, it does not appear that enough
26 information is available to determine that the property owners would *not* all be affected to
27 the same proportionate degree by the project.

28
29 The Dalles City attorney apparently advised Mr. Elliott in 2015, stated in a letter to the City
30 Council in 2015, and argued again on behalf of Mr. Elliott in this case, that the class
31 exception to the conflict of interest provisions of ORS Chapter 244 applied to the adoption

1 of Resolution 15-017 and the Thompson Street Improvements.

2
3 It seems that attorney Parker's opinion that a "class exception" to the conflict of interest
4 provisions applied to Councilor Elliott's official actions concerning the Thompson Street
5 Improvements aligns with this report's analysis, but his opinion that a "class exception"
6 existed concerning the adoption of Resolution 15-017 differs from the conclusion of this
7 report. It should be emphasized that only the Commission has the authority to determine
8 the minimum size of, or otherwise establish criteria for, or identify the smaller classes that
9 qualify under the class exception from the definition of a conflict of interest in ORS Chapter
10 244.

11
12 PROHIBITED USE OF OFFICE

13 Another issue in this investigation was whether Mr. Elliott may have violated ORS
14 244.040(1) by using or attempting to use his official position as city councilor to obtain a
15 financial gain or avoid a financial detriment for himself or a business with which he is
16 associated (Elk Horn Development), that would not have been available but for his holding
17 of the official position, concerning the following circumstances:

- 18
19 1) Access to, and directions to City staff concerning the application of the Gravel
20 Street Renovation and Corner Lot Relief Policies to property owned by Elk Horn
21 Development, LLC, a business with which Mr. Elliott is associated.
22 2) Access to, and personal legal assistance from, the City Attorney.

23
24 The City, in an 8/27/15 letter to Mr. Elliott, from the City engineer, explained that the City
25 declined his request to construct improvements to East 15th Street because the recently
26 adopted Resolution 15-017 explicitly stated that if the lot where a new dwelling is
27 constructed does not abut a network street, no street or sidewalk improvements are
28 required [by either the City or the developer]. Further, he was reminded that the City had a
29 moratorium on constructing new streets.

30
31 Following receipt of this letter, Mr. Elliott apparently got in touch with the Public Works

1 Director to discuss the application of the Gravel Street Renovation and Corner Lot Relief
2 policies to construct a street on his property's frontage on East 15th, even though no gravel
3 street or roadway existed. A short time later, Mr. Elliott asked the Interim City Manager to
4 place his proposal to make improvements to East 15th Street on the city council's agenda,
5 a matter directly affecting his company's property, because the Public Works Director
6 needed approval from the City Council before making these decisions.

7
8 When the expansion of the gravel street policy and the application of corner lot relief to Elk
9 Horn Development's property frontage on East 15th Street was considered and approved
10 by the City Council in the 10/26/15 City Council meeting, Mr. Elliott announced a conflict of
11 interest and refrained from participating in the discussion and vote. Yet, the actions that
12 Mr. Elliott took in getting the proposal to the City Council for approval appear to be a
13 prohibited use of his official position. His access and directions to the Public Works
14 Director and the Interim City Manager appear to be due to his position on the City Council.
15 Although the City Council Rules indicate that a City Councilor may ask that an item be
16 placed on the agenda by contacting the City Manager, in this case, the agenda item
17 directly affected Mr. Elliott's own personal financial interests. It is difficult to believe that,
18 but for holding his position as City Councilor, Mr. Elliott would have been able to avoid the
19 financial detriment of constructing East 15th Street solely at his own expense.

20
21 Mr. Elliott owns a property development company, and was actively developing property at
22 the time that he became a city councilor in January of 2015. Mr. Anderson, the Public
23 Works Director, confirmed that Mr. Elliott communicated with him and other City staff on
24 matters affecting the development of his property, both before and after he became a city
25 councilor. The complaint included many examples of emails to and from Mr. Elliott and
26 various City staff members dating back to 2012. Mr. Anderson stated that residents often
27 contact him and other staff members directly concerning their property issues, or other
28 business they have with the City.

29
30 Finally, the fact that Mr. Elliott relied on the services of the City's attorney in response to
31 the complaint in this matter raises some questions. The attorney relates that he had no

1 formal representation agreement with Mr. Elliott, but that when Mr. Elliott was notified of the
2 complaint filed against him in this case, he asked the City attorney to respond on his
3 behalf. This use of the City attorney's services avoided the financial detriment to Mr. Elliott
4 or his business of retaining private legal counsel. It is unlikely that a citizen of The Dalles
5 who is not a member of the City Council, could have received personal, legal services from
6 the City attorney at no cost.

7
8 No representation has been made that Mr. Elliott's receipt of the City attorney's legal
9 services were part of his official compensation package or a reimbursed expense and
10 therefore allowed under ORS 244.040.

11
12 When one becomes an elected public official, such as a city councilor, it is not required that
13 one cease accessing the services offered by the City to all citizens and business owners.
14 However, Mr. Elliott and other city councilors must be careful not to use special access or
15 influence on City staff, or avail themselves of City services or resources that are not
16 available to other residents who are not members of the governing body of the City.

17
18 There appears to be a preponderance of evidence to recommend preliminary findings of
19 violation of ORS 244.120(2) by Mr. Elliott for failing to disclose the nature of his actual
20 conflict of interest and refrain from participating in discussions or votes during city council
21 meetings on 1/26/15 and 4/13/15 when property development guidelines were considered,
22 amended, and adopted by the city council.

23
24 There appears to be a preponderance of evidence to recommend preliminary findings of
25 violation of ORS 244.040(1) by Mr. Elliott for using his official position as city councilor to
26 avoid financial detriments by using the City's staff and resources to provide personal
27 services, a benefit that would not be available but for holding his official position.

28
29 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
30 preliminary finding that Taner Elliott violated the conflict of interest and use of office
31 provisions of Oregon Government Ethics law, resulting in two violations of ORS 244.120(2)

1 and two violations of ORS 244.040(1). [Motion 10]

2

3 **ASSOCIATED DOCUMENTS:**

4 #PR1 Complaint and other material received from John Wood on 10/11/16.

5 #PR2 Wasco County general election results for 11/4/14.

6 #PR3 Wasco County "Filed Candidates" for 11/8/16 general election.

7 #PR4 Pages concerning City Council from The Dalles website, printed 11/10/16.

8 #PR5 Correspondence and other material provided in response to the complaint by
9 Gene Parker, attorney for Taner Elliott, received 10/20/16.

10 #PR6 Copies of 2015 and 2016 Annual Verified Statements of Economic Interest
11 submitted by Taner Elliott.

12 #PR7 Copies of business registry records for Elk Horn Development, LLC,
13 downloaded from Secretary of State's website on 10/25/16.

14 #INV1 Meeting minutes and staff report pertaining to The Dalles City Council
15 meeting held 1/26/15.

16 #INV2 Meeting minutes and staff report pertaining to The Dalles City Council
17 meeting held 4/13/15.

18 #INV3 Meeting minutes and staff report pertaining to The Dalles City Council
19 meeting held 7/27/15.

20 #INV4 Meeting minutes and staff report pertaining to The Dalles City Council
21 meeting held 9/28/15.

22 #INV5 Meeting minutes and staff report pertaining to The Dalles City Council
23 meeting held 10/26/15.

24 #INV6 Investigator's memo summarizing audio recordings of City Council meetings
25 and other meeting records from The Dalles.

26 #INV7 Investigator's memo summarizing contact with attorney Gene Parker.

27 #INV8 Email from Taner Elliott's attorney, Gene Parker, with attached summary of
28 events in this matter, received 5/2/17.

29 #INV9 Letter to the Commission from Dave Anderson, The Dalles Public Works
30 Director, upon request from Taner Elliott, received 4/3/17.

31 ///

- 1 #INV10 Investigator's memo summarizing contact with Dave Anderson, The Dalles
2 Public Works Director.
3 #INV11 Email and documents provided by Dave Anderson, The Dalles Public Works
4 Director and Gene Parker, attorney for the City of The Dalles and also
5 representing Taner Elliott.
6 #INV12 City of the Dalles Council Rules, downloaded from City's website.
7 #INV13 Email from Dave Anderson, The Dalles Public Works Director, received
8 5/19/17.

PREPARED BY Diane Gould 5/25/17
Diane Gould Date
Investigator

APPROVED BY RAM 5/25/17
Ronald A. Bersin Date
Executive Director

REVIEWED BY Amy E. Alpaugh 5/25/17
Amy E. Alpaugh Date
Assistant Attorney General

GOULD Diane * OGEC

From: Gene Parker <gparker@ci.the-dalles.or.us>
Sent: Tuesday, May 02, 2017 10:23 AM
To: GOULD Diane * OGEC
Cc: Taner Elliott
Subject: Additional information for Case No. 16-147EDG
Attachments: Summary to be provided to The Dalles Chronicle revised 012617.docx

Ms. Gould: Councilor Elliott requested that the enclosed summary, which was provided in response to an editorial published in The Dalles Chronicle, be provided to the Ethics Commission in relation to the above-referenced case.

Gene E. Parker
City Attorney
City of The Dalles
313 Court Street
The Dalles, OR 97058
gparker@ci.the-dalles.or.us
telephone – 541 296-5481 ext. 1123
fax – 541 296-6906

Summary to be provided to The Dalles Chronicle

In a commentary published in The Dalles Chronicle on October 30, 2015, Chip Wood raised allegations of conflict of interest related to actions taken by Councilor Taner Elliott in connection with public improvements for Thompson Street and the development of a parcel of property adjacent to Thompson Street, which was developed by Mr. Elliott and a partner under an entity known as Elk Horn Development, LLC. Mr. Woods wrote that Mr. Elliott built one house, and then stopped "because street development costs would cut into his profit". Mr. Woods also claimed that the development "stalled", according to City records and a cost analysis provided by Mr. Elliott's engineer and contractor, which indicated the "cost to cut the storm sewer line deeper in the street so his lower lot runoff could drain would have been over \$80,000".

Elkhorn Development LLC submitted an application for development of a five lot subdivision on the property located at 1611 Thompson Street, on September 7, 2012. On March 6, 2013, Elk Horn Development LLC signed a Delayed Improvement Agreement and Agreement for Costs of Storm Water Improvements with the City. Pursuant to this Agreement, Elk Horn Development was to be responsible for payment of the entire costs for the equipment, labor and material to install the storm water line in Thompson Street. The City agreed to pay for a share of the costs of the improvements based upon a formula which included calculating the costs necessary to install the storm water line to a sufficient depth in the portion of Thompson Street between East 14th and East 15th Street to allow the storm water line in East 15th Street to be connected to the storm water line to be installed in Thompson Street.

On August 6, 2013, the City Engineer sent a letter to Mr. Elliott indicating that after review of the estimate of March 2013 submitted by Elk Horn's engineer, the City would be responsible for payment of the costs for the construction equivalent to that of 5 standard manholes, the costs for the installation of the 18 inch diameter storm sewer line (less the amount for the added depth between manholes #4 and #5) and the costs for the installation of the 24 inch diameter storm sewer line. The City also agreed to be responsible for payment of a prorated portion of the costs for traffic control for the project. According to notes prepared by the City Engineer, the cost of construction for the five manholes was \$15,900.00; the cost of installation of the 18 inch diameter storm sewer line was \$43,761.00 (which would be reduced by the cost for installing the storm water line to a lower depth between manholes #4 and #5); and the cost of installing the 24 inch storm sewer line was \$3,399.00. The City's cost for the prorated share of the traffic control costs was not documented. The total costs associated with having to install the storm water line to a lower depth of approximately 4 feet in the portion of Thompson Street were not ultimately determined.

Citizen concerns over being given the option to either install required public improvements associated with residential development, or pay a designated amount into the fund, prompted the City Council to conduct a series of public workshops associated with these issues, beginning in October, 2012. Following these workshops, the City Planning Commission conducted a series of public meetings focusing upon issues associated with residential infill policies and procedures. Citizen concerns with proposed residential infill policies and procedures being proposed by City staff resulted in passage of House Bill 3479 by the State Legislature on June 6, 2013. Under this bill, the City could no longer require applicants filing a request for a minor partition, to sign a waiver of remonstrance or pay a designated amount into a fund held by the City. The City Council adopted General Ordinance No. 13-1332 on November 25, 2013 to implement the provisions of House Bill 3479.

Elk Horn Development submitted an application of February 21, 2014 to develop their property as a minor partition. Following an appeal filed by Elk Horn Development concerning the inclusion of a condition of approval requiring execution of a delayed improvement agreement for improvements for East 15th and East 16th Street, the City Council adopted Resolution No. 14-033, granting the appeal and deleting the condition of approval requiring the applicant to sign a delayed improvement agreement and a waiver of remonstrance for improvements associated with the property which contained a new dwelling.

All of the decisions and actions described above occurred before Mr. Elliott took office as a City Councilor in January, 2015.

In his October 30, 2016 commentary, Mr. Wood wrote, referring to a "work session" held by the City Council in January, 2015, Thompson Street "got labeled as a network street (a main artery serving the neighborhoods) and thus needed a significant amount of safety upgrades, i.e., sidewalks, curbs, parking and bike paths." On January 26, 2015, the City Council conducted a public hearing to consider the Planning Commission's recommendations concerning residential infill requirements. The minutes of that meeting show there was no decision by the City Council at this meeting that determined that Thompson Street "needed a significant amount of safety upgrades, i.e., sidewalks, curbs, parking and bike paths."

On April 15, 2015, the City Council adopted Resolution No. 15-017, which replaced the public improvement guidelines set forth in Resolution No. 10-007. Resolution No. 15-017 did designate Thompson Street as part of a "network" of streets throughout the City, designed to provide enhanced accessibility for vehicular, pedestrian, and bicycle access. Paragraph 6 of the residential street public improvement guidelines included a provision that for single family dwellings that abut a network street and which were placed upon an individual lot which was not part of a subdivision, the property owner would be required to install a sidewalk if the City has established a curb line. Councilor Elliott did make the motion to recommend adoption of Resolution No. 15-017. As a member of Elk Horn Development, he was a member of a large group of property owners throughout the City who owned single family dwellings which abutted a network street and which were placed upon a lot which was not part of a subdivision. All of these property owners affected by paragraph 6 of Resolution No. 15-017 were treated in the same manner. Councilor Elliott has been advised by the City Attorney that his membership of a large group of property owners, who were affected in the same manner by the proposed resolution, provided an exception from the requirement that he declare a potential or actual conflict of interest before making the motion to adopt Resolution No. 15-017.

Mr. Wood also wrote in his commentary that "At a July City Council meeting, the Council votes to pave Thompson at a cost of \$200,000" and Councilor Elliot abstained from taking any action on this decision. On April 13, 2015, at the request of the Mayor, the Public Works Director presented a staff report for a potential project to resurface Thompson Street. The Mayor requested that a plan be presented to the Council, due to the long standing controversy over whether property owners adjacent to Thompson Street should have to pay for improvements to the street, and to address one of the City Council's goals which was to consider developing and implementing a plan to improve the surface of Thompson Street. The Public Works Director's staff report indicated the estimated cost of materials for the project was \$86,540. Funding for the proposed project was proposed to come from savings from the Scenic Drive Stabilization Project.

At the July 27th meeting, the City Council conducted a further discussion of the proposed project for the resurfacing of Thompson Street. Contrary to Mr. Wood's assertion, no vote was taken at this

meeting. The Council indicated their consensus that the project should proceed, provided that the Council be provided with a full report on the cost of the project, including surfacing, utilities, labor, parts, and equipment, before the work on the project was commenced. At the September 28th City Council meeting, the Council received an updated report on the costs of the proposed project. The Council was informed that the costs of installing the storm water main had significantly increased since the time of the original design of the storm water main in 2011. The Council voted to proceed with construction of the storm water main and resurfacing project, and Councilor Elliott abstained from voting on the motion. Councilor Elliott has been advised by the City Attorney that as a member of the class of property owners who owned property along Thompson Street, who were affected equally by the Council's actions to proceed with the project, that the "class exception" noted previously applied and there was no potential or actual conflict of interest which needed to be declared prior to the Council's adoption of the motion to proceed with the project.

In his October 30, 2016 commentary, Mr. Wood wrote that Councilor Elliott "asked Dave Anderson to use the Gravel Street Policy to pave 15th Street in front of his development. Dave asked for guidance from the City Council as this was not how the Gravel Street Improvement Policy was generally used. At an October City Council meeting, they voted to make a one time exception and use the Gravel Street Improvement Policy to pave East 15th Street". Mr. Wood also wrote that Councilor Elliott abstained and that he "saved \$12,000".

On October 6, 2015, Councilor Elliott wrote an email to Julie Krueger, the City Manager, indicating that he was personally wanting to pay for the cost of paving on East 15th Street as part of the Gravel Street Policy, and that Dave Anderson, the Public Works Director, was seeking direction from the City Council. Councilor Elliott asked if the item could be scheduled as a discussion item, and City staff determined to place the item as an action item on the Council's agenda.

As a result of recent amendments to the City's LUDO, and decisions related to the minor partition of Elk Horn Development's property, Elk Horn Development was not required to construct improvements for the East 15th Street frontage adjacent to their property. The staff report noted that there was no requirement that the City construct the improvements to East 15th Street.

The staff report also noted that the request from Councilor Elliott on behalf of Elk Horn Development would represent an expansion of the Gravel Street Renovation Policy. Following the presentation of the staff report, Councilor Elliott announced that he would be abstaining from discussing or voting upon the proposal due to his interest as a property owner of two of the properties included in the proposed project. Consistent with the criteria for determining whether a project would be eligible for improvement under the Gravel Street Renovation Policy, the City determined the length and width of the area to be improved; determined a partial curb existed on East 15th Street; required that new underground utilities be installed before the new surface was constructed; required Elk Horn to complete the excavation of native materials needed to construct the base and paved surface from the planned finished grade elevations, a depth of 12 inches; and determined a methodology for property owners to pay for the entire improvement including multi-frontage corner lot relief. The Gravel Street Renovation Policy includes an inventory of gravel street surfaces eligible for improvement under the Policy, and the portion of East 15th Street West of Thompson Street is included in the list of streets. Elk Horn Development paid the sum of \$5,498.48 for its share of the costs of improvements for East 15th Street.



CITY ATTORNEY'S OFFICE
CITY OF THE DALLES
313 COURT STREETS
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1122
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October 20, 2016

Ms. Diane Gould
Investigator
Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544

Re: Taner Elliott
Case No. 16-147EDG

Sent via email and USPS

Dear Ms. Gould:

On behalf of Mr. Elliott, I am submitting the following information and material which I believe will be of assistance to the Ethics Commission in making its determination of whether or not there is cause to conduct an investigation of the complaint filed by Mr. Wood.

Mr. Wood alleges that Mr. Elliott used his position on the City Council of the City of The Dalles to "change land use laws and save himself \$80,000, then modified the gravel street policy and saved himself \$12,000." In the material submitted by Mr. Wood, he acknowledged that Mr. Elliott did not begin to serve as a City Council member until January, 2015. For your information I am enclosing a copy of the minutes of the January 12, 2015 Council meeting when Councilor Elliott was sworn into office.

Much of the material submitted in support of the complaint, concerning the issue of improvements for the subdivision application submitted by Elkhorn Development LLC, of which Mr. Elliott was the manager, which application was subsequently converted to an application for a minor partition, concern actions or decisions made by Mr. Elliott as a private citizen, prior to the time he officially took office. The decision to change the application for the development of the property owned by Elkhorn Development LLC from a subdivision to a minor partition, was prompted in large part by the City Council's adoption of General Ordinance No. 13-1332, which required the City to amend its Land Use and Development Ordinance to comply with changes mandated by House Bill 3479, concerning the requirement of waivers of remonstrance or the prepayment of development costs for minor partitions of residential property. A copy of General Ordinance No. 13-1332 is enclosed. The change in the land use laws referenced in Mr. Wood's complaint was adopted by the City Council when Mr. Elliott was not a member of the City Council.

For your information, I am also enclosing a copy of Resolution No. 14-033 adopted by the City Council on October 27, 2014. The Resolution granted an appeal filed by Mr. Elliott in his capacity as a private developer, deleting a condition of approval which would have required the developer to execute a delayed improvement agreement concerning public improvements. Mr. Elliott was not a member of the Council which adopted Resolution No. 14-033.

The allegations described in Mr. Wood's complaint were presented to the City Council during the audience participation portion of the Council's agenda for the meeting of November 9, 2016. I prepared a memorandum dated November 16, 2015, which analyzed the conflict of interest allegations raised by Mr. Wood. A copy of that memorandum is enclosed. The memorandum was provided to the City Council at the Council's meeting on November 23, 2015. A copy of the minutes from the Council meeting of November 23, 2015 are enclosed for your information. The summary of my analysis was that I could not establish a basis for referring Mr. Wood's allegations to the Ethics Commission for further investigation.

In his presentation before the City Council, Mr. Wood asserted that adoption of Resolution No. 15-017 (a copy of which is enclosed) relieved Councilor Elliott from all obligations for street development along Thompson Street, which abuts the property owned by Elkhorn Development LLC. In my November 16, 2016 memorandum, I expressed the opinion that Councilor Elliott did not have a potential conflict of interest in voting on Resolution No. 15-017, under the "class exception" set forth in ORS 244.020(12)(b). I expressed the opinion that Mr. Elliott was part of a smaller class of property owners along Thompson Street who seek to place a single family dwelling upon property which abutted Thompson Street, which had been designated a network street under Resolution No. 15-017. It should be noted that Resolution No. 15-017 designates a large class of streets as "network streets". In effect, Councilor Elliott was a member of a large class of property owners who were subject to equal treatment under Resolution No. 15-017, in terms of having to install public improvements associated with a single family dwelling which abutted a network street, and which was placed upon a lot which was not part of a subdivision.

Concerning allegations of a potential conflict of interest regarding improvements to Thompson Street, including the possible resurfacing of the street, the City Council held a discussion item concerning proposed improvements for Thompson Street on July 27, 2015. A copy of the minutes from the meeting, which are enclosed, clearly show that a final decision had not been made as to whether the improvements would actually be constructed. The minutes reflect that the Council determined they wanted a full report on the cost, including surfacing, utilities, labor, parts, and equipment.

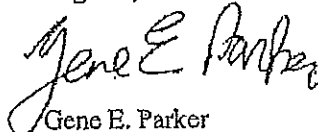
The Council resumed discussion regarding improvements for Thompson Street on September 28, 2015. A copy of the minutes for that meeting show that Councilor Elliott abstained from voting on the project to construct a storm water main and complete the maintenance paving project on Thompson Street. In my memorandum of November 16, 2015, I expressed an opinion that Councilor Elliott would not have had a potential conflict of interest concerning this matter under the class exception of ORS 244.020(12)(b), since he was a member of the class of all property owners adjacent to Thompson Street, who were equally affected by the City Council's action.

Concerning the allegations that Councilor Elliott modified the Gravel Street Policy to save himself the cost of \$12,000, I have enclosed a copy of the Agenda Staff Report prepared by Dave Anderson, the Public Works Director, which was presented to the City Council at its meeting on October 26, 2015. The staff report noted that the City had received a request from Elkhorn Development LLC, to make improvements to East 15th Street under the City's Gravel Street Renovation Policy. The staff report also noted that the request would represent an expansion of the Gravel Street Policy. In order to provide consistency with the City's Gravel Street Policy, staff recommended that the project would require Elkhorn Development LLC to complete all excavation of native soils necessary to provide the finished grade of the proposed street. The City would then perform the excavation of native materials needed to construct the base and paved surface from the planned finished grade elevations, a depth of 12 inches (7" base rock, 2" finish rock, and 3" asphalt). The property owners, including Elk Horn Development LLC, would

purchase the rock and asphalt for the project, and the City would place the rock to build the road base and pave the street.

The minutes of the October 26, 2015 indicate that Councilor Elliott removed himself from discussion of the item due to his position with Elkhorn Development. He did not participate in the vote to direct staff to proceed with constructing improvements on East 15th Street under the Gravel Street Renovation Policy, contingent upon the consent of contributing property owners. In my memorandum of November 16, 2015, I expressed an opinion that the class exception provided for in ORS 244.020(12(b) would apply in this situation, as the property owned by Elkhorn Development LLC received the same benefits of corner lot relief as implemented under the City's Gravel Street Renovation Policy, which would be available for the other owners of property which was adjacent to East 15th Street.

Regards,


Gene E. Parker
City Attorney

GP/ct

Enclosures

cc: Taner Elliott

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 16-148EMT

DATE: May 23, 2017

RESPONDENT: SEBAN, Sophia, City of Springfield, Property Management Specialist

COMPLAINANT: GRIMALDI, Gino, Springfield City Manager
SPICKARD, Anette, Development and Public Works Director

RECOMMENDED ACTION: Make a Preliminary Finding of 6 Willful Violations of ORS 244.040 and 6 Violations ORS 244.120(1)(c)

1 **SYNOPSIS:** Sophia Seban was the Property Management Specialist for the City of
2 Springfield (City) when the events relevant to this case occurred. The focus of this
3 investigation was to determine if there was a preponderance of evidence to indicate that
4 Ms. Seban committed violations of the use of office and conflict of interest provisions of
5 ORS Chapter 244. In addition, if her actions were a willful violation of the use of office
6 provisions under ORS 244.040, she would be subject to the increased civil penalty of
7 \$10,000 under ORS 244.350(1)(c).

8

9 There appears to be a preponderance of evidence to indicate that Ms. Seban, in her
10 official capacity, rented a City property to her son and his spouse for little or no
11 compensation in violation of ORS 244.040(1). This failure to charge fair market value of
12 rent and/or collect rent allowed Ms. Seban's son and his daughter-in-law [hereafter
13 spouse] to obtain financial gain, and was only available to them because of the official
14 position Ms. Seban held as a Springfield Property Management Specialist. Because Ms.
15 Seban, in her official capacity, approved the leasing of the City property to her son and
16 his spouse, which constitutes a conflict of interest, she was required to notify in writing

1 the person who appointed to the office, disclosing the of the nature of the conflict, and
2 request that the appointing authority dispose of the matter giving rise to the conflict.
3 There appears to be a preponderance of evidence that Ms. Seban failed to comply with
4 the disclosure and disposition requirements of ORS 244.120(1)(c) on these occasions.

5
6 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
7 issues addressed herein:

8
9 **244.020 "Definitions.** As used in this chapter, unless the context requires
10 otherwise:

11
12 244.020(1) 'Actual conflict of interest' means any action or any decision or
13 recommendation by a person acting in a capacity as a public official, the effect of
14 which would be to the private pecuniary benefit or detriment of the person or the
15 person's relative or any business with which the person or a relative of the person
16 is associated unless the pecuniary benefit or detriment arises out of circumstances
17 described in subsection (12) of this section."

18
19 244.020(13) "'Potential conflict of interest' means any action or any decision or
20 recommendation by a person acting in a capacity as a public official, the effect of
21 which could be to the private pecuniary benefit or detriment of the person or the
22 person's relative, or a business with which the person or the person's relative is
23 associated."

24
25 244.020 (15) "'Public official' means the First Spouse and any person who, when
26 an alleged violation of this chapter occurs, is serving the State of Oregon or any of
27 its political subdivisions or any other public body as defined in ORS 174.109 as an
28 elected official, appointed official, employee or agent, irrespective of whether the
29 person is compensated for the services."

30 ///

31 ///

1 244.020(16)(a) "Relative" means the spouse, parent, stepparent, child, sibling,
2 stepsibling, son-in-law or daughter-in-law of the public official or candidate;
3

4 **244.040 "Prohibited use of official position or office; exceptions; other**
5 **prohibited actions.** (1) Except as provided in subsection (2) of this section, a
6 public official may not use or attempt to use official position or office to obtain
7 financial gain or avoidance of financial detriment for the public official, a relative or
8 member of the household of the public official, or any business with which the
9 public official or a relative or member of the household of the public official is
10 associated, if the financial gain or avoidance of financial detriment would not
11 otherwise be available but for the public official's holding of the official position or
12 office."
13

14 244.040(7) "The provisions of this section apply regardless of whether actual
15 conflicts of interest or potential conflicts of interest are announced or disclosed
16 under ORS 244.120."
17

18 **244.120 "Methods of handling conflicts; Legislative Assembly; judges;**
19 **appointed officials; other elected officials or members of boards.**
20

21 (1) Except as provided in subsection (2) of this section, when met with an actual
22 or potential conflict of interest, a public official shall:"
23

24 (a) "If the public official is a member of the Legislative Assembly, announce
25 publicly, pursuant to the rules of the house of which the public official is a
26 member, the nature of the conflict before taking any official action thereon
27 in the capacity of a public official."
28

29 (b) "If the public official is a judge, remove the judge from the case giving
30 rise to the conflict or advise the parties of the nature of the conflict."
31

///

1 (c) "If the public official is any other appointed official subject to this chapter,
2 notify in writing the person who appointed the public official to office of the
3 nature of the conflict, and request that the appointing authority dispose of
4 the matter giving rise to the conflict.

5
6 Upon receipt of the request, the appointing authority shall designate within
7 a reasonable time an alternate to dispose of the matter, or shall direct the
8 official to dispose of the matter in a manner specified by the appointing
9 authority."

10
11 **244.350 Civil penalties; letter of reprimand or explanation.** (1) The Oregon
12 Government Ethics Commission may impose civil penalties not to exceed:

13
14 (a) Except as provided in paragraphs (b) and (c) of this subsection, \$5,000
15 for violation of any provision of this chapter or any resolution adopted under
16 ORS 244.160.

17
18 (b) \$25,000 for violation of ORS 244.045.

19
20 (c) \$10,000 for willfully violating ORS 244.040.

21
22 **244.360 Additional civil penalty equal to twice amount of financial benefit.** In
23 addition to civil penalties imposed under ORS 244.350, if a public official has
24 financially benefited the public official or any other person by violating any
25 provision of this chapter, the Oregon Government Ethics Commission may impose
26 upon the public official a civil penalty in an amount equal to twice the amount the
27 public official or other person realized as a result of the violation.

28
29 244.260(10) "The Oregon Government Ethics Commission may not inquire into or
30 investigate any conduct that occurred more than four years before a complaint is
31 filed or a motion is approved under subsection (1) of this section."

1 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
2 a preliminary review based on information in a signed complaint from Gino Grimaldi and
3 Anette Spickard on 10/17/16 (#PR1). Mr. Grimaldi and Ms. Spickard alleged that Ms.
4 Seban may have violated provisions of Oregon Government Ethics law by renting
5 property owned by the City to her son and his spouse. The Commission found cause to
6 investigate on 12/16/16 after considering the information developed in the preliminary
7 review. The focus of the investigation was to determine if there is sufficient evidence to
8 indicate that Ms. Seban may have violated the prohibited use of office and conflict of
9 interest provisions of Oregon Government Ethics law, and if the violations of the
10 prohibited use of office provisions constituted willful violations.

11
12 Ms. Seban, along with Mr. Grimaldi and Ms. Spickard, have been notified of the
13 Commission actions in this matter. They have been invited to provide any information
14 which would assist the Commission in conducting this investigation.

15

16 The matters being investigated in this case concern the following three issues:

17

18 1) Whether Ms. Seban, by failing to charge her relative(s) fair market value in rent,
19 offsetting the rent and paying utilities associated with the property, used her
20 office for the financial gain of her relatives;

21 2) Whether Ms. Seban, by her actions in question 1, "willfully" violate ORS
22 244.040 thereby triggering ORS 244.350(1)(c) and the enhanced penalty of
23 \$10,000.00.
24

25 3) Whether Ms. Seban properly followed the conflict on interest procedures when
26 she took the actions above.
27

28

29

BACKGROUND

30

31 Ms. Seban began work for the City of Springfield in 2007 when she was hired for a clerical
32 role. As the years progressed, she was repeatedly promoted and given more

1 responsibilities, specifically work in the property management program. In March of 2013,
2 Ms. Seban was reclassified to Property Management Support Specialist. In her position
3 as Property Management Specialist for the City of Springfield, Ms. Seban was responsible
4 for finding and interacting with tenants for properties owned by the City, coordinating
5 lease negotiations with the City Manager and the City Attorney's office, ensuring rents
6 were collected and that the various properties were maintained. As part of her assigned
7 duties as a Property Management Specialist, Ms. Seban was responsible for 725 S 57th
8 Street in Springfield (57th Street), a residential home. The City purchased the property
9 because of its location and planned eventually to build a fire department at that site. #INV4

10
11 During an accounting for the fiscal year 2016, Nathan Bell, a manager with the City, was
12 trying to match a cost associated with 57th Street; he was unable to locate a revenue
13 stream for the property. He was told by Ms. Seban that the tenants were new and rents
14 were being offset for work the tenants were doing on the property. The lease had been
15 signed by Ms. Seban and indicated the tenants had lived there since 1/2015. In reality,
16 they had been living there since 2012 according to the rental spreadsheet associated with
17 57th Street that listed a security deposit from Stephanie Rook, in the amount of \$400.00
18 on 2/8/2012. Stephanie Rook was Ms. Seban's daughter-in-law, according to a marriage
19 certificate that was located as part of the investigation. A check of the rental records
20 revealed that virtually no rent had been received and the last payment that had been
21 recorded was from 4/2014. The only security deposit associated with the property was
22 from 2/8/2012; additionally, no lease was located for 2/8/2012 when Ms. Seban's son and
23 his spouse became tenants. #INV4, #INV6

24
25 For the above mentioned reasons, the City opened an investigation into Ms. Seban. On
26 8/12/2016, the City directed Candace Steffen (Steffen), Human Resource Analyst for the
27 City, to investigate Ms. Seban and the financial transactions related to 57th Street since
28 there were allegations of misconduct regarding transactions associated with this property.
29 The findings and all records, leases, spreadsheets and invoices associated with 57th
30 Street and Ms. Seban were provided to the Commission for purposes of this investigation.
31 #INV4

1 In response to the Commission's request during this investigation, the City provided a
2 final breakdown of the financial loss associated with 57th Street and the actions of Ms.
3 Seban. The total loss for the City is \$61,501.92. This final figure includes lost rents, city
4 paid utilities, verified charge card purchases and unauthorized rent credits. #INV4

5
6 **USE OF OFFICE**
7

8 Ms. Seban appears to have used her office for the financial gain of her relatives on
9 several different occasions: the leasing of the property itself, tenant favorable terms of
10 the lease including the provision that "landlord shall offset rent on any improvements
11 made by tenant with landlord's consent," offset of rent for mold and mice damage, and
12 purchase of items for 57th Street are all examples of her using her office for the financial
13 gain of her relatives.

14
15 **Lack of Rent / No lease in place in 2012**
16

17 The Commission, by statute, can only go back four (4) years from the date of the initial
18 complaint. The Commission's jurisdiction starts on 10/17/2012, four years before the
19 complaint to the Commission. Based upon the information submitted by the City, there
20 was no lease in place in 2012 and the City has not been able to find a copy of this lease.
21 It appears that the tenancy, that is the focus of this investigation, began on 2/8/2012.
22 There in an entry on the spreadsheet for 57th Street that states a security deposit of
23 \$400.00 was paid by Stephanie Rook on 2/8/2012. From 11/1/2012 to 9/1/2013, the rent
24 of \$625.00 a month was not paid for 12 months. (#INV4) The evidence available to the
25 Commission suggests rent simply was not collected for 12 months and was not the result
26 of rent offset granted by Ms. Seban. #INV4

27
28 From 10/1/2013 to 12/1/2014, rent was paid only four out of the 15 months. Rent of
29 \$625.00 was paid on 10/1/2013, 11/12/2013, 1/14/2014 and 4/8/2014. From 1/5/2015 to
30 to 8/12/2016, a total of 19 months, the only rent received was on 8/12/2016 in the amount
31 of \$439.00. #INV4

1 The tenants, Ms. Seban's son, his spouse, and their children, were able to live rent free,
2 in City owned property, for a total of 41 months because of her position as a Property
3 Manager for the City.

4
5 **2015 Lease / Tenant Favorable Terms**

6
7 In reviewing the rental history of 57th Street, a 2010 lease, with different tenants, signed
8 by a City Manager, had the rent at \$900.00 a month and a security deposit of \$500.00,
9 with the tenants responsible for water, sewer, garbage, gas and electricity. In reviewing
10 the 2015 lease, which is signed and approved by Ms. Seban, no rental amount is listed
11 on page one (1) of the agreement; it is blank and the lease is for a three year period from
12 1/5/2015 to 1/5/2018. Unlike the 2010 lease, which went through normal channels and
13 was approved by a City Manager, the 2015 lease specifies that the landlord is responsible
14 for water, sewer, gas and electrical. (During the City's investigation; it was determined
15 that the City had been paying for garbage service, as well.) According to #INV3, #INV4,
16 #INV5 and #INV6, the City had been paying various utilities associated with the property
17 since 11/1/2012, for a total cost of \$8488.47. Under the "additional provisions" section
18 on page two of the lease, Ms. Seban had written, "Landlord shall off-set rent on any
19 improvements made by tenant with landlords consent. Tenant can cancel agreement with
20 a 30 day written notice to landlord." #INV4

21
22 The amount of rent for the 2015 lease is specified in a separate page entitled, "Landlord's
23 Schedule of Rent, Deposits and Fees." The rent had been lowered from the previous
24 2010 rent of \$900.00 to \$600.00, and the security deposit from \$500.00 to \$360.00. On
25 the few occasions that her relatives did pay rent, it was at a very reduced rate. (#INV4)
26 The property, according to an email from Steffen to the Commission dated 5/24/2017, is
27 now renting for \$1,200 a month, with an additional \$50.00 each month for pet rent.

28 ///

29 ///

30 ///

31 ///

1 Because of Ms. Seban's position as a public official, she was able to draft and execute a
2 lease that was favorable to her son and his spouse. Not only had she decreased the
3 monthly rent from the 2010 lease, she obligated the City to pay for most of the utilities.
4 According to the City's accounting, the City paid \$8488.47 in utilities associated with 57th
5 Street. #INV3

6
7 **Rent Offsets on 57th Street**
8

9 While Ms. Seban managed 57th Street, she repeatedly offset rents based on
10 "improvements or repairs" she claimed the tenants were making. (The offsets began on
11 1/1/2014 and would continue under the lease that was signed on 1/5/2015.) Additionally,
12 her son and his spouse also received rent credit for personal property that was damaged,
13 on more than one occasion, due to mice and mold. Ms. Seban was the one who would
14 ultimately determine if the bills she received from her son and his spouse could be
15 approved or passed onto another. She, on multiple occasions, was the one who inspected
16 the property to determine the rent offsets; she did not ask for another City employee to
17 conduct the inspection. #INV4

18
19 **Rent Offset: Mold**
20

21 In February of 2014, Ms. Seban's son, using the name John Rook instead of his real
22 name, Jonathon Fragoso, provided her with a bill for damaged property due to mold
23 issues at 57th Street. The total amount was for \$5,249 and the details are as follows:
24

25 **February 2014 "Mold Damage"**

26 T.V. LG 65" LA9650-2013	\$3,000
27 Xbox One 550GB	\$399
28 Samsung Sound Bar – 2012	\$300
29 Microfiber Sofa	\$1,200
30 Mold Inspection by MI & T – Eric R.	\$350

31 ///

1 Ms. Seban inspected the damage, even suggesting they include additional items, and
2 approved the list and sent them a confirmation letter approving the \$4,724.00 in rent
3 credits. #INV4

4

5 **Rent Reduction**

6

7 On 8/25/2014, with no lease or rental agreement in place, Ms. Seban lowered the rent on
8 57th Street by \$25.00, stating this was because people were dumping trash in the field
9 next to the property, and Ms. Seban felt the \$25.00 rent reduction should help with the
10 tenants cost of upkeep for the field. The large field next to the property was also for the
11 tenant's use according to the 2015 lease.

12

13 **Rent Offset: Mice**

14

15 On 6/8/2015, John Rook submitted a list of items that were damaged by mice nesting,
16 droppings and urine. That list is as follows:

17

18 **June 8, 2015 Items damaged by mice nesting/droppings/urine**

19	Dewalt impact driver & drill	\$275
20	Milwaukie saws x 3	\$565
21	Craftsman hammer/socket set/wrench	\$120
22	Dremel accessory kit	\$60
23	Ryobi jigsaw	\$75
24	Coleman 2 man tent	\$150
25	4 collapsible lawn chairs	\$80
26	Demarini baseball bag	\$50
27	Rawlings baseball glove	\$80
28	Nike batting gloves	\$25
29	Mizuno baseball glove	\$60
30	Craftsman pressure washer hose	\$50
31	Riding mower repair	\$325

1	Craftsman mulcher bag	\$55
2	Craftsman 4 drawer tool chest	\$315
3	12 gallon shop vac	\$110
4	Dryer vent	\$30
5	Washing machine cord	\$25
6	Kitchen Aid mixer	\$200
7	Air compressor	\$175
8	Christmas lights in storage bin	\$150
9	Winter jackets in storage bin	\$210
10	Christmas decorations	\$130

11
12 There is nothing to suggest Ms. Seban verified any of this alleged damage. She approved
13 the list that was submitted, and a rent credit of \$3,052.00 was issued. #INV4

14

15 **Rent Offset: Repairs**

16

17 Pursuant to the 2015 lease prepared and approved by Ms. Seban, rent would be offset
18 for any improvements made by the tenant that were approved by the landlord. There are
19 few copies of receipts or any documentation regarding these repairs; however, Ms. Seban
20 would notate the spreadsheet when any credit was issued due to the tenant doing repairs.
21 The repairs and amounts credit to Ms. Seban's son and his spouse, according to the
22 spreadsheet, are as follows: (#INV4)

23

24	1/1/2014	Leaking pipe in bathroom	\$355.00
25	4/1/2014	Sliding door repair	\$325.00
26	5/1/2014	Door repair due to break in	\$445.00
27	7/1/2014	Repair of deck	\$425.00
28	10/1/2014	Cleaned air ducts	\$650.00
29	2/1/2015	Toilet replacement	\$785.00
30	3/1/2015	Installation of outlets	\$500.00
31	5/1/2015	Drain repair	\$335.00

1 6/1/2015 Baseboard repair \$275.00
2 4/1/2016 Gravel shoveled \$1,400.00

3
4 2/1/2016 is one of the only "improvements" that appears to have an invoice totaling
5 \$1,990.00.

6
7 February 2016

8 Replace water spigot \$225
9 Replaced garbage disposal \$235
10 Replaced rotting shower drain pipe \$245
11 Sub pump filter replacement \$155
12 Dishwasher lower rack replaced \$85
13 Kitchen screen door replacement \$230
14 Roof repair / 4x4 section \$815

15 #INV4

16
17 Because Ms. Seban was acting as the landlord, she approved all the improvements made
18 by the tenants.

19
20 Purchase Card / Charges associated with 57th Street

21
22 The City, during this investigation, provided the Commission with a spreadsheet that
23 chronicles the expenses associated with 57th Street. Aside from the uncollected rent of
24 \$33,150.00, there were additional expenses as well. Ms. Seban was issued a City
25 Procurement Card with a monthly credit limit up to \$5000.00. The verified amount of
26 charges to this account in connection with 57th Street was \$23,152.45. Below are
27 examples of actual expenditures that Ms. Seban approved for a property the City had no
28 desire to keep long term. #INV3

29 ///

30 ///

31 ///

1	3/21/2013	New deck and fence / lattice privacy panels	\$4,025.00
2	8/23/2013	Sears – new oven	\$1,176.75
3	11/7/2013	Lawn service	\$160.05
4	11/9/2013	Home Depot – miter saw	\$300.38
5	11/9/2013	Home Depot – various tools	\$492.57
6	2/24/2014	Lawn service	\$51.00
7	4/5/2014	Target – air purifier	\$557.94
8	4/5/2014	Target – replacement filters	\$283.97
9	5/24/2014	Lawn service	\$58.05
10	7/15/2014	Lawn service	\$58.05
11	8/28/2014	Lawn service	\$58.05
12	9/17/2014	Walmart – gas weed trimmer	\$185.00
13	2/15/2015	Dremel set and tools	\$162.92

14

15 Contained in (#INV4) is a lengthy list of purchases associated with 57th Street. In many
 16 instances there are tools purchased for the property, but when Ms. Steffen contacted Mr.
 17 Rook, he said that no tools were purchased for the property except a square and another
 18 small item. The list of purchases also contains bills for professional services regarding
 19 the property that go beyond normal maintenance and could be considered improvement
 20 to a property that was only purchased by the City because of its location. #INV4

21

22

WILLFUL VIOLATION OF ORS 244.040

23

24 Ms. Seban's actions suggest a willful pattern of behavior regarding her handling of 57th
 25 Street that had her son and his spouse as tenants and had them living there at virtually
 26 no cost. Ms. Seban in her initial response to the Commission, along with her follow up
 27 response, (#PR2 & #INV1) maintains that she acted inadvertently and not intentionally
 28 regarding her handling of 57th Street. She maintains that she did nothing wrong and that
 29 her actions were the result of her not having adequate training in order for her to do her
 30 job properly.

31

///

1 She asserts that she did not know how to manage the 57th Street property because it
2 was residential and not commercial. However, as Steffen wrote in relation to the
3 Commission's request for more information on this matter,

4
5 "She was competent and diligent in her duties with other properties. She was able
6 to maintain tenancy, collect rents, and negotiate trades for work needed on site.
7 She worked with the City Attorney's Office to complete hold harmless agreements
8 and the lease process. Everybody (City Attorney, management, co-workers, etc.)
9 indicated she was dependable and detailed and didn't have concerns about how
10 she worked with the tenants or handled issues on those properties. I think her
11 continued movement upward in classification supported this. She wouldn't have
12 been reclassified to higher grades if she weren't performing." #INV2

13
14 The City undertook a thorough investigation of Ms. Seban and her handling of 57th Street.
15 In the final report, Steffen wrote:

16
17 "It is my determination that Ms. Seban's lack of documentation and failure to
18 accurately track receipts for this property indicate that she has violated policies or
19 work rules related to her management of the residential property at 725 S. 57th
20 Street, Springfield. More specifically, she did not perform her duties with an
21 adequate standard of conduct and engage in improper employee conduct by being
22 insubordinate, negligent and careless in the execution of her duties and willfully
23 violated City policy. She provided rent credits to the tenants without proper
24 reasoning, authorization or documentation and obligated the City to pay for items
25 that should have been the tenant's responsibility." #INV4

26
27 Ms. Seban, as an example of her willful behavior, tried to keep secret that her son,
28 Jonathon Fragoso, was a tenant at the property. He used the name "John Rook" when
29 he communicated with Ms. Seban regarding the property, but used his real name when
30 he communicated with her as her son. The City furnished to the Commission copies of
31 email exchanges, on Ms. Seban's City email account, between Ms. Seban and her son

1 where it is obvious they have a mother and son relationship. (#INV4) During this
2 investigation she was asked why he used the name John Rook and not his real name
3 when communicating to her about the property, Ms. Seban said that she instructed him
4 to use that name since Stephanie Rook had signed the lease and it would be easier for
5 her to keep track of invoices and records for the property if he used that name. However,
6 it is possible, that if Ms. Rook and Mr. Fragoso were married, then Ms. Seban had Ms.
7 Rook sign the lease under her maiden name. #INV1

8
9 Ms. Seban, in her interview with Ms. Steffen during the City's investigation, was elusive
10 regarding whether or not the tenants at 57th Street were her relatives. Ms. Steffan asked
11 Ms. Seban if she recognized the name Jonathon Fragoso who was living at the property.
12 Ms. Seban said, "I think it's someone who stays with them sometimes visiting." When Ms.
13 Steffen asked again how she knew this person, Seban said, "...yah I do know this person.
14 What was he doing there...that's my son. What was he doing there? How come he didn't
15 tell me?...He must have been visiting." Ms. Seban indicated to Ms. Steffen that her son
16 was not a resident of the property. However, Ms. Seban would later admit that the tenants
17 were her relatives. In an email to Ms. Steffan following their interview, Ms. Seban writes,
18 "I found it more difficult to give you a complete answer because I was more
19 embarrassed...Yes, I wanted to walk in and say in the beginning of the meeting, yes, I
20 did lease to family..." (#INV4)

21
22 As part of the City's investigation, it was discovered that Ms. Seban had ties to the
23 property that were unexplainable, according to a report from the Oregon Department of
24 Motor Vehicles, on 8/1/2016, Ms. Seban's address was listed as 725 S 57th Street,
25 Springfield, OR 97478, the 57th Street property where her son lived. A check of Lane
26 County Voter Registration records showed Ms. Seban as being an active voter and
27 residing at the same address. #INV6

28 ///

29 ///

30 ///

31 ///

1 Finally, Ms. Seban indicated during the City's investigation of her that there was a special
2 file she had at her desk for the 57th Street property. This file would contain all the missing
3 documentation for 57th Street and the transactions associated with it. The City was unable
4 to locate the file during their investigation when they searched Ms. Seban's work station.
5 #INV4

6

7 Keeping a "special file" with the "missing documents" on 57th Street property transactions
8 strongly suggests that Ms. Seban knew and understood that her actions with respect to
9 the 57th Street property were improper and would not have been approved by the City.
10 The fact that the City has been unable to locate the file – which contained public records
11 – is even more troubling.

12

13 Ms. Seban's initial denial that her son lived at the property, her subsequent denial of
14 knowledge that he lived there, her admission that she instructed her son to use a false
15 name when communicating about the property, and her keeping of a "special file" of
16 "missing documents" that cannot be found concerning the property all demonstrate that
17 Ms. Seban willfully violated ORS 244.040 in: failing to collect rent, signing of the lease,
18 obligating the City to pay utilities, reducing the rent, providing rent offsets for repairs, mold
19 damage and mice damage and making charge card purchases associated with the
20 property.

21

22

23

CONFLICT OF INTEREST

24

25 All of the above mentioned use of office violations are also conflicts of interest violations.
26 Whenever Ms. Seban made a decision associated with the property where the tenants
27 were her son and his spouse, she was required to follow the procedures in ORS
28 244.120(1)(c), notifying her superiors in writing, informing them, in each instance, the
29 nature of the conflict of interest and ask that they dispose of it for her. There is no record
30 of her ever having done so. In each instance mentioned above, when she was met with
31 a conflict of interest, she took action on her own.

1 The City, in their subsequent investigation, asked Ms. Seban if renting to family members
2 was allowed under the City rules. Ms. Seban replied, "No, I don't think so...if you do that's
3 something you really want to talk to your supervisor..." (#INV4) The City furnished to the
4 Commission, for purposes of this investigation, internal policies regarding an employee's
5 Conflict of Interest, see #4INV. The City, in its investigation, determined not only did Ms.
6 Seban have a Conflict of Interest, but she failed to report it and properly dispose of the
7 conflict. Recognizing that the Commission also has jurisdiction regarding the matter, the
8 City made this part of their original complaint to the Commission. #INV4

9
10 **CONCLUSIONS:** Sophia Seban, former City of Springfield Property Management
11 Specialist, was a public official as defined in ORS 244.020(15), subject to Oregon
12 Government Ethics law, during the period relevant to this investigation. Her son was a
13 relative as defined in ORS 244.020(16), and if his spouse was his wife during this period,
14 she was also a relative for purposes of the same statute.

15
16 ORS 244.040(1) prohibits a public official from using or attempting to use their official
17 position to obtain a financial benefit or avoid a financial detriment for themselves, a
18 relative or household member, or a business with which they or a relative or household
19 member are associated, if the financial benefit would not otherwise be available to them
20 but for holding their official position.

21
22 Ms. Seban used her position as a public official to approve a one-sided lease with
23 unusually favorable terms for her son and his spouse. Not only was rent reduced, it was
24 seldom collected. Her son frequently submitted invoices for either improvements, repair
25 work or damage to personal property, rather than paying rent due, and Ms. Seban
26 authorized these rent offsets. Additionally, her son and his spouse did not have to pay for
27 utilities associated with the property. Since 10/2012 her son and his spouse have enjoyed
28 housing at virtually no cost. This financial benefit would not otherwise have been available
29 to Ms. Seban's son had she not been a Springfield Property Management Specialist.

30 ///

31 ///

1 ORS 244.350 authorizes a penalty of up to \$10,000 for each willful violation of ORS
2 244.040. In this case, Ms. Seban's actions appear to meet that threshold. Ms. Seban's
3 proper handling of other City properties displays she has a working knowledge of how to
4 properly manage and document transactions associated with real estate professionally
5 and with few errors. Her actions associated with 57th Street were inconsistent with the
6 manner in which she handled other City properties. She was uncooperative during the
7 City's investigation, tried to conceal negative information and repeatedly denied her son
8 was a tenant. Ms. Seban's actions indicate that she willfully violated ORS 244.040.

9

10 A statutory conflict of interest issue arises when a public official takes any action in their
11 official capacity, the effect of which would or could be to the private pecuniary benefit of
12 themselves, a relative, or a business with which they or a relative are associated. ORS
13 244.020(1),(13). When met with a statutory conflict of interest, a public official such as
14 Ms. Seban must notify her appointing authority in writing of the nature of her conflict and
15 request that they dispose of the matter giving rise to the conflict. ORS 244.120(1)(c)

16

17 There is no dispute that Ms. Seban not only leased City property to her son and his
18 spouse, but routinely approved the rent credits and submitted to the City losses claimed
19 by them. Ms. Seban repeatedly made decisions that were to the private pecuniary benefit
20 of her son and his spouse. When met with these statutory conflicts of interest, Ms. Seban
21 did not make written disclosures to the City of these recurring conflicts of interest as
22 required by ORS 244.120(1)(c).

23 ///

24 ///

25 ///

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27 ///

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29 ///

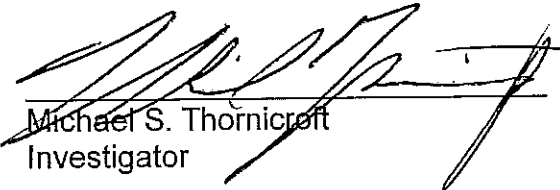
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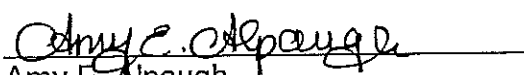
RECOMMENDATIONS: The Oregon Government Ethics Commission should make a preliminary finding that Sophia Seban committed (6) violations of ORS 244.120(1)(c) and (6) violations of ORS 244.040(1) and that her actions, pursuant to ORS 244.350(1)(c), were willful violations of ORS 244.040. [Motion 10]

ASSOCIATED DOCUMENTS:

- #PR1 Complaint signed by Gino Grimaldi and Anette Spickard, 10/17/2016.
- #PR2 Response from Sophia Seban, 11/4/16
- #INV1 Investigator's memo re contact with Sophia Seban
- #INV2 Investigator's memo re contact with Candace Steffen
- #INV3 Financial loss breakdown for the City of Springfield
- #INV4 Final Report and Exhibits, City of Springfield
- #INV5 NW Natural Gas invoices for City of Springfield
- #INV6 Additional documentation from the City of Springfield

PREPARED BY  5/25/17
Michael S. Thornicroft Date
Investigator

APPROVED BY  5/25/17
Ronald A. Bersin Date
Executive Director

REVIEWED BY  5/25/17
Amy E. Alpaugh Date
Assistant Attorney General

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(

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Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302

RE: Case No. 16-148 EMT

Mr. Michael Thornicorft,

On Oct 22, 2016, I received your letter with a complaint filed by the City of Springfield. I would like to clarify how I was handling the property in question. The property was purchased with a tenant already in place. There were two couples living in the home and one couple remained. I do not recollect the exact fee, but I believe it was probably \$900. The rental did not include the maintenance of the adjacent vacant acre lot. Tenant assumed the other couples rent, so we assumed their agreement in payment as well, in which the purchase of the land was handled by John Tamulonous, Economic development manager. John came to Dave and I to manage the property with no details on the property.

At that time, Dave Puent was the Supervisor, so he managed the lease. The lease was issued for a year at tenants request. Tenant was having trouble keeping up with the rent. Later, Tenant gave notice and left at the end of their term. Jackie Murdoch then became my supervisor when Dave retired. Jackie went to the site with me to look at the property soon after it was vacated. The property was advertised and vacant for about 6 or 7 months. I had discussed with Jackie that we were not getting any responses on our ads with the original price we advertised, so we kept trying to lower it until we received some feedback. During that time, we advertised for \$1100, \$800, \$750 and then \$700. Properties in better condition than the one being rented at that time were going for \$800 in Springfield with no maintenance required by the tenant. There were no requests for site visits during that time.

Jackie noticed that the stove was in bad condition, so we decided to change it when it was necessary. We knew the appliances were old, but would wait until they needed replacement due to the budget. Jackie also noticed there were small black spiders on the walkway that were jumping on her pants. We knew we would have to spray the area to eliminate them, but there was a lot of bushes and overgrown grasses that we figured they would go away when they were cut back. Jackie let me handle the property management program and the business licensing program pretty much on my own, since she was not as familiar with property management as much as she was with business licensing. Jackie was aware that I was doing my best to manage all the work I was doing and had asked staff to help with the front coverage so that I can keep up with my work. At that time building was slow with work, so she felt comfortable asking them. During that time I had asked the inspectors to check some of the facilities at Booth Kelly Complex and the Carter Building Complex so that I can see what facility maintenance were of immediate attention and familiarize myself with what we had. During the inspections, we discovered, tenants were installing paint booths, fire code violations, opened walls to vacant spaces, that were being occupying without our knowledge, and a lot of hand shake deals, etc. That became a priority to address. Later Jackie's classification was changed and I had no supervisor for months. I handled all the work pretty much on my own until Len notified me he was my supervisor.

In the interim, the property continued to have overgrown blackberries, bushes, grass, trash in the field, infestation of spiders on the lawn, moss on the roof, walkways, porch, deck, etc. The property is located near a huge mobile park and next to a busy main street. The property being leased was for a house. There is a vacant lot/field of about one acre that is adjacent to the house. Leasing the vacant lot



was not in our original plans for leasing. During the advertising months, we were not able to get city staff to cut the grass, but once, before it was occupied. I had hired someone once to cut the blackberries back on one side of the field when we received a call from a neighbor about the blackberries growing into their yard when the previous tenants were there. Maintenance staff was busy with other properties, so relying on a regular maintenance from them was not an option.

The property has a lot of bushes, several huge oak trees, pine trees, maple trees and fruit trees as well as other types of trees I am not familiar with. There is also a long semi circle gravel road that leads from both sides of the street across the house. There is a light (street light), on the property that the previous home owner had installed by the street to light up the driveway to the house. I found out from the Springfield Utility Board (SUB), that the utility use for the light is charged on the property. The power to the house was off for a few months, so I was only able to get an estimate on the street light use for several months. When I contacted SUB on the invoice I received for a vacant house, they said there was a utility charge for the street light that averaged about \$45 - \$65 a month. The house has solar panels on the roof of the house, which averages a monthly utility cost of \$95. The house is on a well, so there is no water bill or sewer charges. However, the property should be connected to the sewer as it is required in that area for all residents. I was told by our economic development manager, John Tamulonous that since, we are going to be building a fire station in that property, we would connect the sewer at that time and connecting now would be a big expense.

When I received a call from Stephanie, the current tenant, that she saw our website and that we were advertising the house for \$700, she asked if she could rent it, because they wanted to come move up to Oregon. I was shocked because they said they would never move up here. I have a huge house and had asked them to move in with me before, but to no avail. I explained that the house needs some cleaning and I am not aware how much it really does, because it had been a while since I had been there. They were willing to give it a try and said she had family up here that owned a restaurant where she could work.

The house had been vacant for a while now, needed cleaning inside and out. Given all the trash and overgrown field, I felt I could ask them if they were willing to take over the regular maintenance of the field for an offset to the rent, if they agreed. The house was not well insulated upon rental, so heating the house is difficult. Half of one side of the house shows a foundation shift, which makes it difficult to seal without a major construction expense. (This is also the cause for excessive rodents and mold as we found out later). Putting money into a house which could be torn down for a fire station is not a practical expense. However, it is not fair to the tenant to pay for heating in a place that is not well insulated, so I made a deal to pay for gas and electricity and offset some rent if they would maintain the field, pick up the broken tree limbs, rake the leaves, trim the fruit trees, cut the grass, maintain the blackberries around the house, pick up the trash, and we would call someone to trim the blackberries that they could not reach by the neighbors property line in the field.

I felt it was better to have them take care of the field along with maintaining the house property and the field on a regular basis, saving the city money and city staff time. Our maintenance department was and is still scare in personnel staff, that I am not always able to get someone to make any repairs or improvements without having someone call for an outside service repair company to do the work. This problem still exists today. I lease most of the commercial warehouses with the tenants by negotiating required repairs the city needs to address for an offset in rent. Since the budget for the program is small, it was the best scenario in bringing the building up to code and satisfying the tenant. Only the Booth Kelly complex has special guidelines that were set for its use, so I followed them. Only

two years or so are allowed for offsetting rent. The Carter Building complex , the Depot Building nor the residential rental have any of those guideline restrictions. With the economy at a low, negotiating repairs was the most economical choice.

There is a concrete foundation in the field that could be a liability since there is no fence surrounding the property and is easily accessible from the street. The overgrown grass did not make the foundation visible to people taking shortcuts through the field to get from one street to the other, so injuries could occur. That too, became a problem with peeping toms, looking in the windows of the house, so a fence was later placed around the side and back yard of the house, after discussing the problem with Len Goodwin. Len said it would be cheaper to put a fence around the house instead of the entire property, I agreed as well. Nancy Machado who was my soft reporting Supervisor at the time remembers that Len and I were talking about a fence and that we had also talked about mold and rodent issues at the house. A \$4,000 expense for the fence requires an explanation and discussion of the expense before either Len or Nancy could approve the payment on the installation or any other purchases I would make.

Although, the tenant acquired the rental in March, the family stood at her families house until around October or November that year until the house was cleaned up, fix the heating, painted the rooms, cleaned the garage, and window coverings were installed, etc. A small portable heater was purchased so that the tenant can do work until the furnace was either fixed or replaced at that time. They had small children where the condition at the house was not in suitable conditions yet. The tenant knew I would not be able to stop what I was doing and concentrate on preparing the house, since I had other commercial properties, business licensing and building department duties to manage. The tenant was willing to do the work at the house, if I could supply them with some of the materials that were needed to sand the floors, clean the restrooms, kitchen, paint most of the rooms except for a couple of rooms the city staff did. City staff just covered the patches with a different shade color and gloss. In the interim, a new gas furnace had to be installed for heat, a new floor in the restroom needed to be replaced because it had rotted, I purchased a regular pressure washer for the tenant to use in removing the moss on the garage driveway, front walkway, porch, back stairs and deck area and some of the sides of the house that were visible from the overgrown blackberries and weeds. The tenant later purchased a riding mower to cut the field, but had to weed wack the grass first before cutting. The city purchased a push mower and weedwacker for the tenant to handle the gully areas and the small tight spaces around the property as well.

In the merge with Public Works and Development Services I was relocated near the department director. However, in the move all the files I was handling for the three programs were in different locations. During the move all the files were gathered from at least three locations to my new desk area. In that move several of my files to a several tenants were missing, but I did not noticed them missing, until later when I needed them. One of the administrative assistants was able to help me out with with the filing and organizing, so the file could be somewhere in the office or they placed it in the storage files. So I cannot locate any records for the first two years or the original lease on this tenant and I am missing some of the invoices, but a few the tenant submitted with their purchases. So exact details are hard to recollect after this time.

All work or improvements done by the tenant were done after I researched a comparison fee or online price with several vendors. I was doing that with all the other tenants as well.

There are several homes that are next to the vacant field where the blackberries are located. However,

one of the tenants complained that the blackberries were growing onto his property. That neighbor did not have a fence, so they were easily growing in his space. I asked the tenant if he could remove that huge section of the field along the neighbors property with no fence, so that the neighbor would not complain. Since expending money from the budget is not ideal, we had to address the problem with the neighbor. I reached out to our city surveyor about the property line and problem I was trying to handle, so he provided me with with a diagram of the property. The tenant was willing to do the work of removing a huge section, about 40 x 100 ft or so. So I offset a years worth of Sanipac service (trash) for his work and including removal of the blackberries. That was a lot of work and probably more to the cities benefit. Although, the work done in October 2015, I did not transfer the account until December 2015. The tenant just called this October 2016 to transfer the trash service to their name since the year is almost up and found out that the city has not paid for the last three months of trash service since I left work. So the tenant transferred the account to his name and ended up paying for the last three months of service, so that they wouldn't stop the pick up service at the house. I had told Candace that the sanipac service was just for a year to offset the work from removing the blackberries. The tenant has not received any information on who to contact at the city, if any service or rodent supplies are needed. The tenant had also told the interviewer that the rodent problem still exists and gets worst in winter. He also told them that the mold issue is there again. They have not heard a thing as of yet. He was last told to contact Candace Steffen in HR if they needed anything.

During the time the property was being a advertised, I was not able to make regular visits to the property. We had several people that had left the department and I had been given some of their assignments to assume. Our Department Assistant had retired and her work was split up between me and another person; the Property Manager, who had a real estate license, had also retired and I had assumed her work as well; then my Supervisor, Building Manager/Building Official, Dave Puent had retired and Jackie Murdoch became my Supervisor until her classification was changed.

I was then left with no direct supervision until the merge with Public Works and then Len Goodwin became my supervisor. I had assumed the facility management for the properties and responsibilities for business licensing when Dave Puent left. Our department was in the process of merging with another department, which left me handling all the assignments to the best of my abilities and knowledge in handling all the job assignments I was given. I was an Administrative Specialist and also handling the Secretary job assignment that I was hired to do at that time for the Building and Code Enforcement section. Those positions were never refilled. The city was struggling financially due to the economy, so positions were either not filled and/or were eliminated. Any knowledge I acquired on my assignments was by reaching out to staff for information on how it was handled. However, there was very little information if any on how to do it. Given that the property had been vacant for a while gave me concern that it could be vandalized or additional trash could be dumped on the property. The tenant has had to remove sofas, old chairs, washing machine, etc at their expense.

I had been busy leasing other commercial properties the city owned, which required a lot more detail information for me to pay attention to. I had about 12 leases I was handling at the time I took over the program. (I ended managing 34 leases when I left the city). When I leased the property to family, I was not aware that I couldn't do that. There was no way for me to know. However, I was glad in a way, that I could have someone in there to finally overlook the place, since it had been vacant for a while now. I rented the property to them with the intention of treating them like I did all the tenants. I did not know the house had and still has some problems. Therefore, I would not disregard the problems because the tenants are family. If anything, they endured my lack of full attention in addressing them. I was really busy with all the assignments and addressing other tenants in our commercial leases first.

When I had leased the space to them, I had been signing hold harmless agreements, which consisted of two or three pages, compared to our Commercial leases of 16 pages. So when I did the tenants residential lease, which consisted of three pages, and which was given to me by the economic development Manger, John Tamulonous to use at that time, I did not think it went through the same process as the commercial leases. I was not able to see the first tenants lease to compare since my files were being moved around to a new location and were in boxes. I figured if they wanted me to handle the residential lease like the commercial lease, someone would have told me to handle it like the commercial lease instead. I handled like I did the hold harmless agreements. I was told to handle the program, and with no information, training, or guidance provided. I did the best I could given all the responsibilities I was handed. Much later when I met with Len Goodwin about my job assignments, he had said to continue doing what I'm doing. I had asked if I could take a course in property management so that I can see what I should be doing or what I might be missing, and he said it would not be necessary. Remember I was not provided with any training on property management or business licensing, so it was frustrating to me, since I wanted to do a good job with the program. I was told by Candace Steffen from HR that I should have known the rules on the Oregon Government Ethics since they classified me as a Property management specialist. My reclassification was reviewed by Greta Utech, HR Director and Len Goodwin, Development and Public Works Director. However, they could not decide what classification to place me in so they hired a consultant. At that time I was handling the capital projects, facility management, property management and business licensing besides other duties. I was never asked about any knowledge on policies or regulations, nor did they mentioned I should researched into it. They based it on the work I had done. In the interview was the first time I heard of violating the Oregon Government Ethics regulation. They also said that the purchaser form they made me sign did not allow me to sign contracts. However, that form is for the use of the city credit card, which I had not violated. All purchases were scrutinized by Supervisor, Nancy Machado, who questioned the expenditures. She was in the process of learning the program, since she was not familiar with the program. Len had asked that I teach her my job and what I present to him as far as providing the information for him to authorize expenses. When I confirmed the conversation in an email, he recanted the training and said he would train her instead.

Not until recently this year, when I was handed another residential lease to handle by the economic development manager, Courtney Griesel, (John Tamulonous retired this year) who said that the city attorneys office recommended we use the 16 page lease we use on commercial properties, but modified for residential, instead of the three page lease I had used on the last residential property lease I signed. Courtney was not aware on how a residential lease was handled, but because she wanted a special clause on the residential lease for a future sale, she reached out to the city attorney. The three page lease would not work for what she wanted. Courtney had seen and received received a copy of the residential lease I signed a year ago when she had the property appraised. Evidently, she nor I were aware that I was not supposed to be signing residential leases.

There was no training or manuals provide on any of these duties I assumed, but some of them were easy enough to figure out. I did learn some facility management, budgeting and commercial leasing information from existing leases from my Supervisor, Building Manager as I saw a lot of information that came through my desk as his Secretary. He always welcomed all my questions on things I asked. When I was assisting the Property Manager during her absence to family sick leave, I noticed there were no spreadsheets to any accounts for any information. When I finally reached out to the property manager, she said she had that information in her head and was not comfortable using Excel or Word to track information. The files contained notes, with numbers, dates or words that only made sense to her. When I mentioned that to Dave Puent at that time he was shocked. He figured since she had a real

estate license that she would be knowledgeable. I had to review all the existing files and leases and make sense of them and try to create a system. Upon her retirement her duties were naturally handed over to me, since I had been working with them for a few months. Given the workload, I went through the files as time permitted. I was also heavily recruiting tenants for all the vacant warehouses and offices on all the properties I was handling. I was able to double the budget revenue in the property management program and triple the budget in the business licensing program during a low economy. All the spaces to the properties I was handling had been filled except for a couple of offices.

I reached out to Len Goodwin and asked if I could take a course on property management to see if I am following all the regulations and rules that should be done with property management. I told him I wanted to do a good job with the program. He said "it would not be necessary." Not until recently (after Len retired), that I asked Nancy, my last supervisor if I could take the course for the same reason. She actually said yes. So I told her that after business licensing season is over I will sign up for the course. Business licensing heaviest season starts from March through August. I am so busy during that time, it makes it difficult to address any other property management details without trying to expedite procedures. I usually have to work overtime to keep up with business licensing, which leaves me with backlog work on property management. Supervisor was aware but insisted I just do what I could, in spite that I told her I needed to address important issues at Booth Kelly on writing contracts.

The previous property manager also handled the Business Licensing program with the Supervisor as approver on some Special Events. I also was given this program to manage. This program included, Liquor Licenses, Special Events, Transient Merchant Licenses Food Carts, Medical Marijuana Dispensaries and Recreational Marijuana, Garage Sales, Food Trucks, Secondhand Dealers, etc. I researched, purchased and programmed a business license software system to easily track information and data as well as purchased an online software system to easily allow patrons to pay online at their convenience. This consisted of other departments to access the information simultaneously and expedite the approval process with other departments in Springfield and Eugene. I also provided the training and access to staff employees involved in the program approval. Our IT department only provided occasional server support to our vendor, while Finance only handled the online payments directed to their bank for processing on their end. Reports were provided to Finance on all online payments.

I had also covered the front counter on many occasions when staff was short, which required I stop what I was doing and cover at the front counter. The front counter was my supervisors, Nancy Machado's responsibility to assure it is coverage. I had mentioned to Nancy several times that I was inundated with work and was already behind on writing up several leases and keeping up with the rest of the work. She said just do what you can do.

The work on the property that was done by the tenant were items that were addressed by our city inspectors and some other items that city should have taken care of before leasing, that did not require permits. The floors needed to be sanded and finished, window coverings had to be installed, light fixtures were dangling or not working due to their age, only one burner on the stove worked, part of the kitchen counter was taped down, but later came apart and was redone by the tenant. Kitchen cabinets would fall off when they were opened, so tenant fixed those. One of the kitchen cabinets fell with the dishes, but was also fixed by the tenant.

I had purchased a pole saw, to trim the existing fruit trees and other trees, pressure washer, to remove the moss off the roof and the front and back walkways, porch at the house, deck and fence, which is

required at least once a year. Other tools were only purchased if it was cheaper for the tenant to do the work, (as long as they agreed to do it), than hiring someone at a higher price. It was important to maintain the property on a consistent basis. Asking maintenance to do some of the work would have been great, but they were not always able to do the work at our commercial properties or do any pressure washing either.

During several rain and snow storms, trees fell and damaged part of the existing railing, trellis, and gutter. I called SUB to remove one of the fruit trees that fell on the power line next to the house. They placed it on the floor and the tenant chopped it up and disposed of the tree. The tenant also chopped up and removed other broken branches that fell in the back deck area and field numerous times. Items like the railing and trellis, that the tenant rebuilt did not require a permit. I had always checked with our building inspector to see if replacing an existing railing that was half destroyed needed a permit. He said not if he is replacing an existing rail. Replacing, GFCI outlets, light fixtures, or faucets, etc did not require permits as well. I had also checked with our electrical inspector. Since I had worked with building, I was comfortable asking them any questions I had and they were glad to do an inspection if it were required.

In January 2014 the tenant immediately notified me that he discovered mold all over the wall, floor blinds and windows. The tenant was concerned because one of his children had been sick and wondered if that had anything to do with it. The tenants moved with family while the issue was addressed. In the interim the tenant had someone take a look at the mold to determine if this was an issue. This was the room their children usually played in. While the tenant was cleaning the outer section of the sofa he discovered mold had penetrated inside the cushion area underneath the sofa causing a moldy smell that did not go away. They were not about to keep the piece of furniture with the mold inside. I was immediately concerned and researched information. The tenant was told that the mold was caused by a gap in the sliding door area. The house isn't level in that area that the gap allows moisture to create mold. I immediately sent the tenant information on how to prevent mold. The tenant had sent pictures of the mold damages and I had shown those to Len. A copy of those pictures should be in my drive file at work. He also discovered that all his equipment located on the tv console by the window compromised the components and were ruined. The tenants were totally upset and understandable. Unfortunately this was not something that we could have foreseen happening. I explained the situation to Len and he suggested we attain a list of the damaged items. He suggested we provide the necessary materials to prevent moisture and see if the gap could be fixed without having to level the house. After the mold was cleaned up and aired out with the dehumidifiers the mold was cleared. Len was notified of the items that were damaged and said that we could offset the rent, but would rather not issue any payments. I agreed since we were watching our expenditures on the budget. The tenant was notified of the resolution. They were also notified to avoid any items near the sliding window in fear that this could happen again and we would not be able to accommodate any offsets after being notified. However, I did ask if it happened again to notify us in order to address it further.

On occasions, a plumber was hired since certain repairs required a professional. But they usually ended being hired as an emergency repair. The plumber said that the plumbing in the house should be replaced, but it would be a big expense. He said we could just repair parts as needed if we were not thinking of investing a good fortune in replacing the plumbing. I told him that we were not planning on keeping the house, so replacing the entire plumbing would not be a wise expense. Tenant has replaced parts in the house that did not require permits and that can be easily done by the tenant. Tenant would ask if a permit was required, if not, and if it was something he could fix, I would call a plumber and ask

for quotes. I would go check the broken part first before authorizing the repair. The plumber had said by fixing one part of the plumbing does not guarantee that another section of the pipes won't break later due to their condition. Just recently, the tenant contacted HR, since that was the only contact number they were given, that the water pressure was low and that there was a puddle forming outside the side of the house. Maintenance called a plumber and they both showed up to see what the problem could be. It was a broken pipe that connected to the well.

The tenant notified me that they have been discovering mice droppings in the house around March 2013. The tenants wife and children moved out for about two months. The young boy developed a rash that concerned them. I then immediately called several places to get an estimate on a rodent problem the tenant was having. The least expensive quote said we would have to fix the foundation before they could guarantee their work and would also require a yearly contract. After discussing the email from the pest control company sent and the cost of fixing the foundation, which Len Goodwin, (who said he doesn't remember anything about the property), said it would be expensive to fix the foundation on a section of the house that we are planning to tear down for a fire station. We figured if we provide the tenant with the supplies to eliminate the rodents and have them seal up as much as they could, based where the Pest Control person said they could be entering, would be an alternative solution. The tenant agreed to place traps and dispose of the rodents, disinfect the house and seal what he could. City provided traps and cleaning supplies. The tenant had removed over a hundred rodents or so. At that time the tenant figured they had solved the problem. During that time frame there had been peeping toms looking in their bathroom windows. Len was notified and said we were obligated as landlords to address the problem. He suggested a fence around the house and not the entire property due to the cost. Evidently, an expense like this would require an explanation before allowing the expense and approved by either Nancy or Len.

Later in June 2015 the mice problem returned damaging the tenants items. The tenant was really upset, because besides the mice damaging their things, they damaged their personal items that can't be replaced. They had just experienced the mold problem over a year ago at that time and they were now dealing with the mice again. They moved out again for several months to throw out the damage food, equipment and personal items, clothes, clean and disinfect the entire house, seal up every area that the mice could enter. The pungent smell was stronger as they uncovered more nests. Understandable why they moved out in the interim. I told the tenants that I could not give them the actual cost on all the items that were destroyed or compensate them for accommodations. I had to treat them like I would anyone else in this case. Since Len had said during the mold issue that we should do the right thing and reimburse them for the damages not due to their fault, I did that by offsetting the rent. I told the tenant that the mice issue will continue to be a problem due to the foundation. However, I recommended they obtain metal containers to store as much as they could in order not to have any other items destroyed. I offered a month of no rent for their inconvenience of enduring with the mice problem, disposing of the rodents, covering all exposed cracks known, cleaning and disinfecting the house, cleaning out the attic. Fixing the foundation at that time was not any option. I also didn't have the time to address the matter as well. I had been busy at that time with business licensing and other tenant problems. I reassured the tenant that we would supply them with mice traps to keep them under control as much as possible.

The tenant continued making necessary improvements to the house, to avoid any unnecessary problems. Items that should have been addressed prior to any tenant moving in should had been done. So I was pleased when the tenant was willing to do the work. I was aware of his skill in addressing the items the tenant repaired.

Candace Steffen placed a letter from Len Goodwin in the package that should have never been placed in my file without my knowledge. It was the letter that said something to the effect of conduct unbecoming or so. That letter was dated in May was sent by email in October. When I received the email from Len I contacted my union rep because it did not provide me the time to request an investigation to his accusation. He knew I had witnesses to confirm his accusation and delayed the letter to discredit anyone I would present to verify my request for the additional time off. My supervisor Nancy Machado, who was my soft reporting Supervisor at that time, (in April), was told that I might need another day off if I don't have sufficient time to prepare for an event at my house. Nancy knew I had been working on Business licensing since it was my busy time and said if I need the extra day to let her know. I usually try not to take time off during business licensing, since the work would just pile even more for me. Nancy was not around to tell her. She has a habit of not being in the office or in a cubicle talking with her friend. I checked her friends cubicle and she wasn't around. Nancy sits near me, so we usually talk over the cubicle partition. She wasn't at her desk either so I started to write an email but was called to the front counter. That is when I overheard the conversation that was part of the investigation. I went back to my desk contacted the union rep to see if she could calm the person that was upset. I then sent my email with the request to take the additional day off that Nancy was aware I would probably take. Len never asked Nancy nor did he give me the opportunity to provide any witnesses that knew Nancy was not around, since I had asked if they had seen her. I addressed the back dated letter with Len and said he would change the date so that I could have the opportunity to provide my witness. He did not respond and the letter was placed in my package without my knowledge. The letter is only supposed to stay in the file for two years. The letter was never removed, nor was I given the opportunity to present evidence. The union rep said there is nothing written that indicates a time frame for submitting a letter in a specific time. I therefore, joined the union committee and had requested that a the time frame for responses be placed. Now does this mean that Candace violated the union contract by not removing the letter in a timely manner and with no signature from me acknowledging that it was being placed in my package and that the letter was back dated?

I believe I did not do any misconduct in handling the property in question. I did repairs based on a cheaper way of doing it. I probably relied on the tenant to do more than I would anyone else, because I knew I could rely on them extending their services beyond what was needed. They landscaped some of property, pulled dead bushes, removed all bushes away from the house to cut down on rodents and spiders. Scott Lawn services were hired to help with the spider situation. They suggested that the lawn section were the spiders were concentrated and be improved and then they could continue with their bug spraying around the perimeter of the house. They said the could not spray the grass, but they could around the outside of the house 3ft perimeter. This process has helped with the spiders in the grass area and has also cut down on spiders in the house which were prolific at one time.

Please let me know if additional information is needed.

Thank you
Sophia Seban



Oregon

Kate Brown, Governor

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June 2, 2017

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Dear Mr. Zilbert and Mr. Haglund:

At its June 2, 2017 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion in response to the request set forth in your letter to the Commission dated March 15, 2017. At its April 21, 2017 meeting the Commission extended the response period by 60 days, as allowed by ORS 244.280(2).

OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 17-003A

SYNOPSIS OF FACTS AS PRESENTED TO THE COMMISSION:

The following factual information is derived from a letter to the Commission from attorneys Kevin Davis and Michael Haglund and subsequent information each of them provided. Mr. Davis represented Captains Olson and Wales, two of the three maritime pilot members of the Oregon Board of Maritime Pilots (OBMP). After the opinion request was submitted, Mr. Davis retired and these two pilots are now represented by Todd Zilbert. Mr. Haglund represents Captain Farrell, the third pilot member.

The Oregon Board of Maritime Pilots (OBMP) is a nine member board established within the Public Utility Commission by ORS Chapter 776. The Governor appoints all nine board members from three different groups, as required by statute.

- three must be members of the general public unconnected to maritime commerce;



- three must be members who represent or operate oceangoing vessels, or are employees or commissioners of a port; and
- three must be current maritime pilot licensees, one representing each of Oregon's three pilotage grounds, as follows:

One must be a Columbia River/Willamette River licensee (currently Capt. Olson)

One must be a Coos Bay or Yaquina Bay licensee (currently Capt. Wales)

One must be a Columbia River Bar licensee (currently Capt. Farrell)

Maritime Pilots

Maritime pilots travel from a port out to sea and board ocean-going vessels in order to pilot these vessels to port. After the vessel is safely in port, the maritime pilot disembarks the vessel. When an ocean-going vessel leaves port and goes out to sea, the maritime pilot boards the ship in port and pilots it into the open ocean, and then disembarks the vessel and returns to port. There are also river pilots who navigate ships within rivers rather than to and from the open sea. Some maritime pilots serve territories (pilotage grounds) that include a bar. Navigating a large vessel over an ocean bar requires more training and special licensing. Oregon currently has 62 state-licensed maritime pilots (18 bar pilots and 44 river pilots) who are licensed and regulated by the Oregon Board of Maritime Pilots.

Rate Setting

In addition to its licensing and regulatory duties, the OBMP fixes rates and fees that maritime pilots are allowed to charge for their services. Statute requires that when the OBMP fixes pilotage fees, a quorum consists of seven members, necessitating at least one pilot's participation.

The rate-setting process takes place in a contested case format, overseen by a hearings officer provided by the Public Utilities Commission. Pilotage rates are set separately for each pilotage ground and are applicable only for the pilotage grounds for which they are set. Not only are rates established for the fair compensation of pilots themselves, but rates are also established to reimburse the various costs of providing pilot services (rent, insurance, transportation, administration, professional services, etc.). At the conclusion of the rate setting process, the OBMP issues a final order for each applicable pilotage ground.

There are means in the ratemaking process to test the reasonableness of the costs of providing a maritime pilot's transportation to and from the ships they pilot (referred to as "pilot boat services") as well as other costs. This is not a market driven process. Tariffs (or rates) are adjusted quarterly according to a complex formula meant to arrive at rates that are "reasonable and just" per statute.

Pilot Organizations

Pilot organizations are statutorily defined as “any legal entity or association to which licensees belong as members, or with which licensees are associated, that is formed for the cooperative performance of functions including, but not limited to, the dispatching of licensees and trainees, collection of pilotage fees, ownership and operation of pilot boats, distribution of earnings of licensees and trainees, and education and training so as to facilitate the rendition of pilotage services by individual licensees and trainees.” [ORS 776.015(3)]

Pilots, trainees, and pilot organizations are legally protected from liability for claims arising from the acts or omissions of a pilot licensee or trainee relating to pilotage of a vessel. [ORS 776.530]

Each of the 62 state-licensed maritime pilots in Oregon belongs to one of three organizations of pilots, depending on which of the three pilotage grounds they serve.

- Capt. Wales is one of 2 members of the Coos Bay/Yaquina Bay Pilots Association (an unincorporated association).
- Capt. Olson is one of 44 members of the Columbia River Pilots Association (an unincorporated association).
- Capt. Farrell is one of the 16 members of the Columbia River Bar Pilots, LLC (a limited liability corporation).

The three Oregon pilot associations are ‘pass through’ entities that arrange for goods and services used by pilots in performing their duties, collect pilotage fees from vessels using the pilotage services, pay common expenses from those revenues, and distribute the balance in the form of pilot compensation. Distribution of pilot compensation is made at the same rate to each member of the three pilot associations. All the maritime pilots in Oregon are self-employed individuals who file their own personal tax returns. The three pilot organizations themselves have no equity value.

Columbia River Bar Pilots, LLC, is an association of bar pilots and operates the same as the unincorporated pilot associations that have existed for over a century. The association changed to an LLC in 2000, to provide an additional layer of limited liability protection. The LLC functions as a partnership for tax purposes and is strictly a “pass through” entity, as are the unincorporated pilot associations. The LLC files a partnership tax return to record its distribution of income to each pilot member, but it owes no taxes itself.

Pilot Boats

All maritime pilots are responsible for providing the transportation to and from the vessels they board and pilot. Although this transportation may be by helicopter or boat, the term "pilot boats" refers generally to the maritime pilot's transportation method of boarding and disembarking ships they pilot, a large cost of doing business.

Two of the three Oregon pilotage grounds are bar pilotage grounds (Columbia River Bar and Coos/Yaquina Bays). In order to obtain an Oregon bar pilot's license, an applicant must demonstrate that they have the means to board and disembark the vessels which they are licensed to pilot. There is no specification in the law as to how the pilots provide themselves with the means to board and disembark the ocean vessels (personal ownership, lease, ownership through a business entity, e.g.). However, the pilots prefer to own the means of providing their own transport for safety reasons, as ocean bar piloting is a dangerous business. Being able to control the means of ocean transport to and from the vessels they pilot 365 days per year, regardless of weather, ensures their best chance at safety. Also, the operation of pilot boats is not afforded the same level of liability protections as are licensed pilots and pilot organizations. Therefore, pilot boats are usually not owned by pilot organizations. [ORS 776.325(3) and 776.540].

Capt. Wales and the other member of the Coos Bay/Yaquina Bay Pilots Association, to satisfy this statutory requirement, are equal shareholders in Coos Bay Pilot Boat Company, Inc., which provides pilot boat services to the Association members under a monthly charter that reimburses the company for its costs. The charter payments are common expenses of the pilots and are made from the pilotage fees collected by the Association. The Coos Bay Pilot Boat Company pays no dividends and makes no distribution of income to its shareholders. There are no competing pilot boat companies in the Coos Bay/Yaquina Bay area, and the Coos Bay Pilot Boat Company has no other regular clients, and is not in the ship assist business. There was an emergency need for their services last year by a ship in distress, but that was a small percentage of the company's revenue and is a rare occurrence.

Capt. Farrell, and all 16 members of the Columbia River Bar Pilots, LLC, provide their required transportation for boarding and disembarking vessels by being shareholders in Saddle Mountain, Inc., which owns the helicopter/pilot boat system they use. Saddle Mountain, Inc. provides transportation services equally to the members of the Columbia River Bar Pilots, LLC, and is reimbursed for its services from the pilotage fees collected by the LLC as a common expense of the pilots. Saddle Mountain, Inc. provides some pilot boat services to the Gray's Harbor pilots when weather is dangerous, and the company has responded to emergency or rescue situations on occasion. Saddle Mountain, Inc. makes a small annual distribution to its shareholder pilots, estimated at approximately \$10,000 or less.

The 44 licensees for the Columbia and Willamette River pilotage ground, including Capt. Olson, do not have the same statutory requirement to demonstrate they have the means of boarding and disembarking as do those licensed as bar pilots. The Columbia River Pilots Association contracts with third party launch services to transport their members to and from vessels they pilot. Capt. Olson has no financial interest in any third party launch service.

LEGAL BACKGROUND

Under Oregon Government Ethics law, appointed members of boards and commissions are public officials and must comply with the provisions of ORS Chapter 244. See the definition of public official in ORS 244.020(15).

Conflict of Interest

A conflict of interest is defined as any action, decision, or recommendation that a public official makes in their official capacity, the effect of which would or could be to the private financial benefit or detriment of the public official, their relative, or a business with which they or a relative are associated. An actual conflict of interest occurs when the effect of the official action, decision, or recommendation would have a certain private financial impact. A potential conflict occurs when the effect of the official action, decision, or recommendation could have a private financial impact. [ORS 244.020(1) and (13)]

A public official does not have a conflict of interest if the financial benefit or detriment arises out of an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position. [ORS 244.020(13)(a)]

Also, a "class exception" to the conflict of interest provision applies if the financial benefit arises out of 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 in which the person or the business with which the person is associated, is a member or is engaged. [ORS 244.020(13)(b)].

Methods of Handling Conflicts

When an appointed member of a board or commission is met with either an actual or potential conflict of interest, they must publicly announce the nature of their conflict once on each occasion that the issue giving rise to the conflict occurs. If met with a potential conflict, following their public announcement, they may continue to participate in their official capacity in any discussion, debate, or vote on the issue. If met with an actual conflict, following their public announcement, they must refrain from discussion, debate, or vote on the issue. However, the public official is eligible to vote on the matter if the

public official's vote is necessary to meet a requirement of a minimum number of votes necessary to take official action, but the public official must not participate in their capacity as a public official in any discussion or debate on the issue out of which the actual conflict arises. [ORS 244.120(2)(a) and (b)]

Knutson Towboat v. Board of Maritime Pilots, (1994) 131 Or. App. 364, 376.

This Oregon Court of Appeals case is relevant in its discussion of the application of Oregon Government Ethics law to the pilot conflicts of interest.¹ Although not the holding of the case, the following excerpts are helpful:

"The statutorily-mandated composition of the Board inherently creates situations where public roles and private interests come into conflict. The interests of ship owners and pilots are unlikely to be the same. Assuming self-interested behavior on the part of each, the pilots would hope to have fees set as high as possible without actually discouraging shipping traffic, while the ship owners would hope to have them set as low as possible without disrupting the availability of services. Indeed, those competing interests undoubtedly dictated the legislature's chosen make-up of the Board, with ship owners and pilots having equal power and the public members able to cast the deciding votes. By setting a quorum of seven, the legislature has required that at least one member of each of the affected interest groups participate in all rate proceedings."

"The legislature has recognized that when commissions and boards are made up of members who represent competing interests, inherent conflicts exist. Accordingly, it has excluded from the definition of a potential conflict of interest any potential conflict that

'[arises out of] an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.' ORS 244.020(7)(a)

"We conclude that any interest that the shipping industry members and pilot members had in the outcome...was merely incidental to their membership in the shipping industry or maritime pilot profession, which are prerequisites to their membership on the Board. Accordingly, we conclude that those interests are not 'potential conflicts' that require disclosure."

¹ Due to a statutory drafting error, at the time the events in Knutson transpired, the definition of "actual conflict of interest" did not exempt from the definition a conflict that arose out of membership in a class or occupation that was a prerequisite to holding the official position. That exemption was only included in the definition of a "potential conflict of interest". Therefore, the court found that one board member did not have a potential conflict, but did have an actual conflict.

QUESTION: Do any of the three maritime pilot members of the OBMP have an actual or potential conflict of interest when the OBMP is engaged in ratemaking for any of the three pilotage grounds, including the pilotage ground for which they are licensed?

ANSWER: No. The Governor appointed each maritime pilot to serve on the OBMP in fulfillment of the statutory requirement that the OBMP include a licensed pilot from the Coos Bay/Yaquina Bay, Columbia River, and Columbia and Willamette River pilotage grounds. Pilots that work on the Coos Bay/Yaquina Bay and Columbia River pilotage grounds are required to be licensed bar pilots.

To fulfill the ratemaking duties placed upon members of the OBMP, the pilots are to participate in setting fees and rates for the three pilotage grounds. These are determined in separate processes and apply equally to pilots licensed in each pilotage ground. The rates set by the OBMP include those for costs associated with providing the pilot services on each pilotage ground.

Capt. Wales, Capt. Farrell, and other licensed bar pilots, are required by law to demonstrate they possess the means to board and disembark the vessels they pilot. To satisfy that requirement, Capt. Wales and Capt. Farrell each have an ownership interest in the company that provides their respective means of transportation. Capt. Olson is not a bar pilot and has no such legal requirement, so his pilot's association hires third party launch services.

All 62 licensed maritime pilots in Oregon, including the three pilot members of the OBMP, are members of one of three pilot associations specific to the pilotage grounds they are licensed to serve. These associations function as "pass through" entities afforded liability protections under the law and are statutorily authorized to collect fees, pay costs, and distribute pilot fees.

In these circumstances, any private financial benefit or detriment that the pilot, or a business with which he is associated, may experience as a result of his membership on the OBMP and participation in ratemaking, would arise out of the fact that he is a maritime pilot, licensed for a specific pilotage ground, a legal prerequisite to holding the official position. Therefore, the maritime pilot members of the OBMP do not have a statutory conflict of interest when participating in their official capacity in ratemaking for the three Oregon pilotage grounds. [ORS 244.020(1) and (13)(a)]

It should be noted that this is a very unique situation and this opinion is applicable only to the specific circumstances addressed.

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE COMMISSION MAY ALSO APPLY.

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 2nd day of June, 2017.

Daniel T. Golden, Chairperson
Oregon Government Ethics Commission

Amy E. Alpaugh, Assistant Attorney General

17-003A/dg

ADDENDUM

RELEVANT STATUTES: The following relevant portions of Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

244.020 Definitions. As used in this chapter, unless the context requires otherwise:

(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 (13) of this section.

(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 or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) "Business with which the person is associated" means:

(a) Any private 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;

(b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;

(c) Any publicly held corporation of which the person or the person's relative is a director or officer; or

(d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060(3).

(13) "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:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(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.

(15) "Public official" means the First Partner and 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 as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

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March 15, 2017

Oregon Government Ethics Commission
3218 Pringle Road S.E., Suite 220
Salem, Oregon 97302-1544

RECEIVED

MAR 17 2017

OREGON GOVERNMENT
ETHICS COMMISSION

Re: Request for Commission Advisory Opinion

Dear Ethics Commission:

On behalf of the three maritime pilot members of the 9-member Oregon Board of Maritime Pilots (OBMP), my colleague Mike Haglund and I are writing to request an Ethics Commission Advisory Opinion as provided in ORS 244.280. I represent two of the three maritime pilot members of the OBMP, Capt. Elroy Olson and Capt. George Wales; specific representations herein regarding Capt. Olson and Capt. Wales are offered by me. Mr. Haglund represents the third maritime pilot serving on the OBMP, Capt. Chris Farrell; specific representations regarding Capt. Farrell are offered by Mr. Haglund. Otherwise the information in this letter is offered jointly on behalf of our respective clients.

In addition to being a member of the OBMP, Capt. Olson is a licensee of the OBMP and is authorized to provide services on the Columbia and Willamette river pilotage ground (geographically defined by ORS 776.025(2)). Capt. Wales, in addition to being a member of the OBMP, is a licensee of the OBMP and is authorized to provide services on the Coos Bay bar pilotage ground (geographically defined by ORS 776.025(3)). Capt. Farrell, in addition to being a member of the OBMP, is a licensee of the OBMP and is authorized to provide services on the Columbia River Bar pilotage ground (geographically defined by ORS 776.025(1)).

The purpose of the request is to clarify the permissibility of their participation when the OBMP is engaged in setting the rates and fees that may be charged for providing pilotage services: (1) on their respective pilotage grounds, and (2) when the OBMP is engaged in setting rates applicable to a pilotage ground other than their own. Facts and circumstances believed to be relevant to the inquiry are as follows:

A. Oregon Board of Maritime Pilots

1. Makeup of the OBMP.

The OBMP is a nine-member body appointed by the Governor as provided in ORS 776.105. Three of the members are required by ORS 776.105(3) to be licensed maritime pilots; one from the Coos Bay or Yaquina Bay bar, one from the Columbia River bar, and one from the Columbia and Willamette river pilotage grounds. In addition to the three pilots, three members of the

OBMP are required to be operators or representatives of commercial oceangoing vessels, or are past or present employees or commissioners of a port. ORS 776.105 (4) and (5). The remaining three members of the OBMP are "public members" who are forbidden from having recent ties to either the pilots or the shipping industry. ORS 776.105(2).

As the Oregon Court of Appeals has recognized, it is not accidental that the maritime pilot and industry members of the OBMP have competing interests. Rather, the Legislature intentionally mandated that competing interests serve on the OBMP:

"The statutorily-mandated composition of the Board inherently creates situations where public roles and private interests come into conflict. The interests of ship owners and pilots are unlikely to be the same. . . . Indeed, those competing interests undoubtedly dictated the legislature's chosen make-up of the Board, with ship owners and pilots having equal power and the public members able to cast the deciding votes. By setting a quorum of seven [for purposes of setting pilotage fees, as discussed further below], the legislature has required that at least one member of each of the affected interest groups participate in all rate proceedings."

Knutson Towboat Co. v. Oregon Bd. of Maritime Pilots, 131 Or. App. 364, 376 (1994). The "adversarial" makeup of the OBMP provides equal representation to pilots, on the one hand, and to the "ratepayers" (operators and representatives of oceangoing vessels and their natural allies the ports) on the other. The OBMP has operated with this construct for many decades. This letter seeks an advisory opinion only in connection with the pilot members of the OBMP.

2. Ratesetting by the OBMP.

Among other things, the OBMP is charged with licensing the number of maritime pilots and regulating the practice of piloting ships. ORS 776.115. Because of the unique characteristics of each pilotage ground, the OBMP regulations carrying out these obligations are different for each. See OAR 856, Div. 10. The OBMP is also required to establish the rates and fees that pilots are allowed to charge for their services on their respective pilotage grounds. See ORS 776.115(5) and OAR 856, Div. 30.

Pilotage rates are set by the OBMP for a single pilotage ground at a time and are applicable only for the pilotage grounds for which they are set. Rates are established in a manner to reimburse the various costs of providing service (rent, insurance, transportation, administration, professional services, etc.) and to provide fair compensation for pilots. See OAR 856-030-0000. In determining fair compensation for pilots on a particular pilotage ground, the OBMP examines a variety of factors, including the compensation being paid to pilots on other pilotage grounds in Oregon, as well as in California, Washington and other states. See *id.* Thus, for example, when the OBMP sets rates for the Columbia and Willamette river pilotage ground, it will consider current compensation being paid to pilots on the Columbia River bar pilotage ground, as well as the compensation of pilots in Puget Sound, San Francisco, and elsewhere.

The rate setting process is a contested case format overseen by a hearings officer provided by the Public Utilities Commission. See ORS 776.129(1) and OAR 856, Div. 30. Although the

ratemaking process is quasi-judicial, rate setting is ultimately a legislative function. See Knutson Towboat, 131 Or. App. at 378 n. 1, citing American Can v. Lobdell, 55 Or. App. 451, 461, rev den 293 Or 190 (1982). The quorum requirement in setting rates is seven members of the OBMP, which of necessity requires participation by at least one pilot member. ORS 776.105(6)(b). At the conclusion of a rate setting process, the OBMP issues a final order applicable to each subject pilotage ground. See, e.g., http://www.puc.state.or.us/BMP/Pages/Board_Orders.aspx. The rates authorized by the OBMP orders and that may be charged on each of the pilotage grounds are published by the OBMP in a tariff. See <http://www.puc.state.or.us/BMP/docs/Tariff%201-15-17.pdf>.

No licensee on a pilotage ground is allowed to charge rates that are different from those set by the OBMP for that licensee's pilotage ground. ORS 776.415. In other words, when Capt. Olson is providing pilotage services, he must charge the same rates that every other pilot on the Columbia and Willamette river pilotage ground is allowed to charge. Similarly, when Capt. Wales is providing pilotage services, he must charge the same rates that every other pilot on the Coos Bay bar pilotage ground is allowed to charge. And when Capt. Farrell is providing pilotage services, he must charge the same rates that every other Columbia River Bar pilot is allowed to charge.

B. Organizations of Pilots.

1. Organizations Generally.

There are a total of 62 State-licensed maritime pilots in Oregon. Each of them belongs to one of three organizations of pilots, with membership determined by the pilotage ground for which he or she is licensed. Capt. Wales is a member of the Coos Bay/Yaquina Bay Pilots Association (an unincorporated association with 2 members), and Capt. Olson is a member of the Columbia River Pilots (also an unincorporated association, but with 44 members). These two Oregon pilots' organizations use the same organizational model that is most frequently used by pilots in other states, and have been in existence since before Oregon was a state. From before Oregon became a state up until 2000, the Columbia River Bar pilots also used an unincorporated association organizational model, i.e., the Columbia River Bar Pilots Association. But starting in late 2000, the association transitioned to a limited liability company, i.e., the Columbia River Bar Pilots LLC. Columbia River Bar Pilots like Capt. Farrell now are all members of the Columbia River Bar Pilots LLC (with 16 members), which remains an organization of pilot members acting independently but for the mutual interest of providing pilotage services on the Columbia River Bar pilotage ground.

Unlike licensure as a maritime pilot, membership in an organization of pilots is not specifically identified as a condition of serving as a pilot member on the OBMP. ORS ch 776 nevertheless assumes the reality that every pilot will be a member of an organization of pilots.

An "organization of pilots" is defined by statute as: "[A]ny legal entity or association to which licensees belong as members, or with which licensees are associated, that is formed for the cooperative performance of functions including, but not limited to, the dispatching of licensees and trainees, collection of pilotage fees, ownership and operation of pilot boats, distribution of

earnings of licensees and trainees, and education and training so as to facilitate the rendition of pilotage services by individual licensees and trainees." ORS 776.015(3). As indicated by the statutory definition, the pilot organizations play a central role in the provision of pilotage service and maintenance of the pilotage system. The law elaborates further on some functions of the pilot organizations. For example, the OBMP is required to license organizations to provide training. ORS 776.115(4) and .311. Pilot organizations are referred to repeatedly in OBMP regulations and have numerous obligations under those regulations. Among other references, OAR 856-010-0050 requires filing of organizational bylaws, OAR 856-010-0029 requires fatigue mitigation and reporting by organizations, and OAR 856-030-0000 and 0001 refer to the role of pilot organizations in ratemaking and capital improvement planning.

The importance of pilot organizations to the pilotage system is specifically recognized by the legislature in ORS 776.510, which states that "The stimulation and preservation of maritime commerce on the bar and river pilotage grounds of this state are declared to be affected with the public interest and the limitation and regulation of liability of licensees, trainees and organizations of pilots are necessary to such stimulation and preservation of maritime commerce and are deemed to be in the public interest." Every vessel and its owners and operators using a pilot are deemed by law to have agreed to defend and indemnify the organization to which that pilot belongs, in case of a casualty. ORS 776.510(2)(a) and .520. Moreover, Oregon law specifically forbids imposition of liability on organizations of pilots: "An organization of pilots shall not be liable for any claims arising from acts or omissions of a licensee, trainee or organization of pilots which relate, directly or indirectly, to pilotage of a vessel." ORS 776.530

2. Organizations and Pilot Boats.

The law requires that "[a]n applicant for a license on bar pilotage grounds shall satisfy the board that the applicant has means available for boarding and leaving vessels which the applicant may be called upon to pilot." ORS 776.325(3). Pilots are not required to demonstrate those means exist via any particular arrangement (e.g., ownership, lease, organization ownership, etc.). To satisfy the statutory requirement, the two members of the Coos Bay/Yaquina Bay Pilots Association (one of them being Capt. Wales) are equal shareholders in Coos Bay Pilot Boat Company Inc. (an Oregon corporation). Pilot boats are customarily owned outside of an organization of pilots because the operation of pilot boats is not afforded the same level of liability protections as are licensees and organizations of pilots. See ORS 776.540(1) and (c). Bar pilotage is a dangerous business, and holding critical infrastructure assets such as pilot boats in a separately incorporated entity helps isolate potential liabilities.

Coos Bay Pilot Boat Company Inc. provides pilot boat services equally to the members of the Coos Bay/Yaquina Bay Pilots Association under a monthly charter that reimburses the Pilot Boat Company for its costs. The charter payments to Coos Bay Pilot Company are a common expense of the pilots and are made from the pilotage fees collected by the Association. The Coos Bay Pilot Boat Company pays no dividends and makes no distributions of income to its shareholders.

In a similar vein, the 16 Columbia River Bar Pilots satisfy the statutory requirement in ORS 776.325(3) regarding having the transportation means for boarding and disembarking vessels by

being shareholders in Saddle Mountain, Inc. Saddle Mountain, Inc. is an Oregon corporation that owns the combination helicopter/pilot boat transportation system utilized by the Columbia River Bar Pilots to provide pilotage services on the Columbia River Bar pilotage ground. Saddle Mountain, Inc. provides transportation services equally to the members of the Columbia River Bar Pilots LLC and is reimbursed for its services from the pilotage fees collected by the Columbia River Bar Pilots LLC as a common expense of the pilots.

ORS 776.325(3) applies only to bar pilots. Licensees on the Columbia and Willamette river pilotage ground, including Capt. Olson, are not bar pilots. The Columbia River Pilots as an organization contracts with third parties for launch services for its members to use as transportation to and from vessels underway or at anchor on the Columbia and Willamette river pilotage ground. Captain Olson has no financial interest in any third party launch service provider.

3. Organizations of Pilots as Financial Conduits.

As suggested by the definition in ORS 776.015(3), the Coos Bay/Yaquina Bay Pilots Association, the Columbia River Pilots, and the Columbia River Bar Pilots LLC are "pass through" entities that arrange for goods and services used by pilots in performing their duties, collect pilotage fees from vessels using the pilotage services, pay common expenses from those revenues, and distribute the balance in the form of pilot compensation. Distributions of compensation by the Coos Bay/Yaquina Bay Pilots Association are at the same rate to each of its members, and distributions of pilot compensation by the Columbia River Pilots are also made at the same rate to each of its members. Likewise, each Columbia River Bar Pilot is compensated at an equal rate. The three pilot organizations themselves have no equity value and deliver no financial benefits to their members other than the services they provide in common to the members and the distribution of pilot compensation to the members.

C. Questions Presented.

- (1) Does Capt. Wales have an actual or potential conflict of interest when the OBMP is engaged in ratemaking and the rates under consideration are not applicable to the Coos Bay bar pilotage ground?
- (2) Does Capt. Olson have an actual or potential conflict of interest when the OBMP is engaged in ratemaking and the rates under consideration are not applicable to the Columbia and Willamette river pilotage ground?
- (3) Does Capt. Farrell have an actual or potential conflict of interest when the OBMP is engaged in ratemaking and the rates under consideration are not applicable to the Columbia River Bar pilotage ground?
- (4) Does Capt. Wales have an actual or potential conflict of interest when the OBMP is engaged in ratemaking and the rates under consideration are are applicable to the Coos Bay bar pilotage ground?

(5) Does Capt. Olson have an actual or potential conflict of interest when the OBMP is engaged in ratemaking and the rates under consideration are applicable to the Columbia and Willamette river pilotage ground?

(6) Does Capt. Farrell have an actual or potential conflict of interest when the OBMP is engaged in ratemaking and the rates under consideration are applicable to the Columbia River Bar pilotage ground?

D. Discussion.

1. Statutory Exemptions.

We are aware of exemptions from definitions of actual and potential conflicts of interest under ORS 244.020(13)(a), when a public official's membership in a particular industry, occupation or other class is a statutory prerequisite to holding the position, and under ORS 244.020(13)(b), when the action would affect the public official to the same degree as a class consisting of an industry, occupation or other group including one in which the person, or the person or business with which the person is associated, is a member or is engaged.

Regarding the exemption under ORS 244.020(13)(a), maritime pilot members of the OBMP are statutorily required to be licensed maritime pilots from their respective pilotage grounds under ORS 776.115. Pilot members of the OBMP are not specifically required by ORS 776.115 to belong to a pilot organization as a condition of appointment to the OBMP, but such organization membership is uniform throughout the United States, predates statehood in Oregon, is assumed by the fabric of ORS ch. 776 and OAR 856, and in practical terms the organizations are necessary to carry out many of the day to day functions, including pilot dispatch, essential to delivery of pilots' services.

Regarding the exemption under ORS 244.020(13)(b), we ask that the Commission keep the following in mind: (1) Ratemaking for a particular pilotage ground equally affects all pilots for that pilotage ground, including the pilot member of the OBMP from that ground. (2) Ratemaking for any pilotage ground can sometimes have an impact on all pilots in Oregon licensed by the OBMP, in that the compensation authorized in a rate case for one pilotage ground might be taken into consideration by the OBMP in a later rate case or cases for the other pilotage grounds. The latter, natural consequence of the ratemaking process did not preclude the Legislature from establishing a quorum requirement of seven OBMP members in setting rates, which again requires the participation of at least one pilot member. ORS 776.105(6)(b).

2. Knutson Towboat v. Board of Maritime Pilots, 131 Or. App. 364 (1994).

The Knutson Towboat case is relevant, but a statutory drafting error (subsequently corrected) led the Court of Appeals to an odd result with respect to pilot conflicts of interest, or the lack thereof. This case was decided more than 22 years ago, and both the law and the facts have changed substantially and materially since then. Although the case was not a proceeding to enforce the government ethics laws, the opinion nevertheless interprets the ethics laws when it addresses allegations of potential and actual conflicts of interest by various members of the

OBMP in the context of rate setting.

The Court held that the OBMP member from Coos Bay had no "potential conflicts" of interest, since the interest of that member (and the industry members of the Board) in the outcome of ratemaking were "merely incidental to their membership in the shipping industry or maritime piloting profession, which are prerequisites to their membership on the Board." 131 Or. App. at 376. The Court nevertheless concluded the pilot member from Coos Bay did have an "actual" conflict of interest in setting rates for the Coos Bay pilotage ground, applying the statute defining "actual" conflicts of interest at that time. 131 Or. App. at 376-377. The ethics statute at that time exempted from the definition of "potential" conflict of interest a conflict that arose out of membership in a particular class or occupation that was a prerequisite for holding the public office or position, but unlike now the law did not then contain a similar exemption from the definition of "actual" conflict of interest. See 131 Or. App. 374-375. As a result, the case produced the anomalous result that the pilot member of the OBMP from Coos Bay had no potential conflict but did have an actual conflict.

The explanation for the strange result in the Knutson case is error in drafting the statute, which error has since been corrected. Prior to 1993, the term "actual conflict of interest" was not defined in ORS 244.020. When the definition of "actual conflict" was added by the 67th Legislative Assembly in August 1993, it included the phrase "unless the pecuniary benefit or detriment arises out of circumstances described in subsection (8)(a) to (c) of this section." See Ex. 1 attached at page 2. Although subsection (8)(a) to (c) previously referred to the definition of "potential conflict of interest", simultaneous changes to the statute by the 67th Legislative Assembly moved the definition of "potential conflict of interest" to subsection (7) rather than in (8) where it resided before. See Ex. 1 at page 3. Hence, the reference to subsection (8)(a) to (c) mistakenly referred to the definition of "gifts." See Ex. 1 at 3-4. This was the law at the time the Knutson case was decided. In 1997, the 69th Legislative Assembly adopted a correction bill that changed the reference in the definition of "actual conflict of interest" to subsection (7), thereby properly incorporating the exclusionary language into the definition of "actual conflict of interest." Ex. 2 at page 2.

In addition to the foregoing critical change in the law, the facts have changed. Among other changes is a change in the provider of pilot boat service in Coos Bay. In 1994, the pilot boat provider was Coos Bay Towboat Company, which is not the same entity as Coos Bay Pilot Boat Company Inc., the current provider of pilot boat service. Unlike Coos Bay Towboat Company in 1994, the current provider of pilot boat service, Coos Bay Pilot Boat Company Inc., is not engaged in the ship assist business (pushing and pulling on ships to aide the process of berthing or unberthing). Coos Bay Towboat Company, the entity described in the Knutson case, still exists and is still in the ship assist business, but Capt. Wales has no financial or other interest in it. Although these changes are not determinative of any issue the Commission is asked to address, it is important that your opinion be based on the facts as they currently exist.

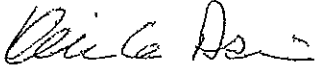
E. Request for A Commission Opinion.

Capt. Wales, Capt. Olson, and Capt. Farrell request that you issue a formal opinion clarifying their right to participate as members of the OBMP in the setting of pilotage rates by the OBMP.

While there are no rate processes currently underway, one or more could be initiated at any time.

Thank you very much for your prompt attention and consideration.

Very truly yours,



Kevin Q. Davis
On behalf of Capt. Wales
and Capt. Olson

Very truly yours,



Michael E. Haglund
On behalf of Capt. Farrell

By [Signature]

cc: Eric Burnette, Executive Director, Oregon Board of Maritime Pilots
Katharine M. Lozano, Sr. Assistant Attorney General

1993 Oregon Laws Ch. 743 (S.B. 159)

OREGON 1993 SESSION LAW SERVICE
REGULAR SESSION OF THE 67TH LEGISLATIVE ASSEMBLY

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

Ch. 743
S.B. No. 159
GOVERNMENT ETHICS—GENERALLY

AN ACT relating to the Oregon Government Ethics Commission; creating new provisions; and amending ORS 171.745, 171.756, 171.776, 244.020, 244.040, 244.045, 244.050, 244.060, 244.120, 244.130, 244.250, 244.260, 244.280, 244.290, 244.350, 244.400, 260.232 and 351.067.

Be It Enacted by the People of the State of Oregon:

SECTION 1. <<+Sections 2 and 6 of this Act are added to and made a part of ORS 171.725 to 171.785.+>>

SECTION 2. <<+(1) Upon its own instigation or signed complaint of any person, the Oregon Government Standards and Practices Commission may undertake action in the Preliminary Review Phase with respect to any alleged violation of ORS 171.725 to 171.785. The person who is the subject of a complaint or of the commission's own action shall be notified immediately upon receipt of the complaint or upon adoption of a motion by the commission to undertake any action concerning the person. The notice shall be given by telephone if the person can be reached and a notice shall also be mailed to the person. The notice shall include the nature of the complaint or motion and a copy of all materials submitted along with the complaint or materials which give rise to the commission's instigation of action on its own motion. However, the person must also be notified in advance if an issue that may give rise to a motion to undertake action on the commission's own instigation is to be discussed at a commission meeting. Before investigating any complaint or undertaking an investigation on its own instigation, the commission shall make a finding that there is cause to undertake an investigation, notify the person who is the subject of the investigation, identify the issues to be examined and shall confine its investigation to those issues. If the commission finds reason to expand its investigation, it shall move to do so and shall record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant and the

Government <<-Ethics->> <<+Standards and Practices+>> Commission may<<-:->>

<<-(1)->> make <<+inquiries or+>> investigations <<+in the manner prescribed in section 2 of this 1993 Act+>> with respect to registrations, statements and reports filed under ORS 171.725 to 171.785, and with respect to any alleged failure to register or to file any statements or reports required under ORS 171.725 to 171.785, and upon signed complaint by any individual <<+ or on its own instigation+>>, with respect to apparent violation of any part of ORS 171.725 to 171.785. <<-In making any such investigation, the investigating authority has the power to take and hear evidence, administer oaths, and compel by subpoena the attendance of witnesses and the production of books, papers and documents;->>

<<-(2) Issue, upon request, and publish advisory opinions on the requirements of ORS 171.725 to 171.785, based on a real or hypothetical set of circumstances; and->>

<<-(3) Adopt rules to carry out ORS 171.725 to 171.785 pursuant to the provisions of ORS 183.310 to 183.550.->>

<<+(2) Upon written request of any lobbyist, lobbyist employer or any person, or upon its own motion, the commission, under signature of the chairperson, may issue and publish opinions on the requirements of ORS 171.725 to 171.785, based on actual or hypothetical circumstances.+>>

<<+(3) If any lobbyist or lobbyist employer associated with the lobbyist is in doubt whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785, the lobbyist or lobbyist employer may request in writing a determination from the commission. The requester shall supply such information as the commission requests to enable it to issue the interpretation.+>>

<<+(4) A lobbyist or lobbyist employer associated with the lobbyist shall not be liable under ORS 171.725 to 171.785 for any action or transaction carried out in accordance with an advisory interpretation issued under subsection (3) of this section. Such an advisory interpretation shall be considered a formal opinion having precedential effect and shall be subject to review by legal counsel to the commission before the interpretation is sent to the requester.+>>

SECTION 8. ORS 244.020 is amended to read:

<< OR ST § 244.020 >>

244.020. As used in this chapter, unless the context requires otherwise:

<<+(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 (8)(a) to (c) of this section.+>>

<<-(1)(2)+>> "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain ->> including<<- but excluding any+>> income-producing not-for-profit ->> corporations<<- 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.+>>->>

<<-(2)->><<+(3)+>> "Business with which the person is associated" means any business of which the person or <<-a member of the person's household->> <<+the person's relative+>> is a director, officer, owner or employee, or agent or any corporation in which the person or <<-a member of the person's household->> <<+the person's relative+>> owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.

<<-(3)->><<+(4)+>> "Commission" means the Oregon Government <<- Ethics->> <<+Standards and Practices+>> Commission.

<<-(4)->> "Contribution" has the meaning given that term in ORS 260.005.->>

(5) "Development commission" means any entity which has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.

(6) "Expenditure" has the meaning given that term in ORS 260.005.

<<-(7)->> "Political committee" has the meaning given that term in ORS 260.005.->>

<<-(8)->><<+(7)+>> "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 <<-would->> <<+could+>> be to the private pecuniary benefit or detriment of the person or <<-a member of the person's household->> <<+the person's relative+>>, or a business with which the person or <<-a member of the person's household->> <<+the person's relative+>> is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(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 <<-a member of the person's household->> <<+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 classes that qualify under this exception.

(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.

<<-(9)->><<+(8)+>> "Gift" means something of economic value given to a public official or <<-member of the official's household->> <<+the public official's relative+>> without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials <<+or the relatives of public officials+>> on the same terms and conditions; and something of economic value given to a public official or <<-member of the official's household->> <<+the public official's relative+>> for valuable consideration less than that required from others who are not public officials. However, "gift" does not mean:

(a) Campaign contributions, as described in ORS chapter 260.

(b) Gifts from <<-relatives->> <<+family members.+>>

(c) The giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity,

subject to the reporting requirement of ORS 244.060(6).

<<+(d) The giving or receiving of food or beverage if the food or beverage is consumed by the public official or the public official's relatives in the presence of the purchaser or provider thereof.+>>

<<+(e) The giving or receiving of entertainment if the entertainment is experienced by the public official or the public official's relatives in the presence of the purchaser or provider thereof and the value of the entertainment does not exceed \$100 per person on a single occasion and is not greater than \$250 in any one calendar year.+>>

<<-(10)->><<+(9)+>> "Honoraria" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event at which the public official appears in an official capacity.

<<-(11)->><<+(10)+>> "Income" means income of any nature derived from any source, including, but not limited to, any salary, wage, advance, payment, dividend, interest, rent, honoraria, return of capital, forgiveness of indebtedness, or anything of economic value.

<<-(12)->><<+(11)+>> "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

<<-(13)->><<+(12)+>> "Legislative official" means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch and any staff person, assistant or employee thereof.

<<-(14)->><<+(13)+>> "Member of household" means <<-the spouse of the public official and any children of either who reside->> <<+any relative who resides+>> with the public official.

<<-(15)->><<+(14)+>> "Planning commission" means a county planning commission created under ORS chapter 215 or a city planning commission created under ORS chapter 227.

<<-(16)->><<+(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.

<<+(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.+>>

(17) "Statewide official" means the Secretary of State or Secretary of State-elect, State Treasurer or State Treasurer-elect, Superintendent of Public Instruction or Superintendent of Public Instruction-elect, Attorney General or Attorney General-elect and the Commissioner of the Bureau of Labor and Industries or the <<-Commissioner of the Bureau of Labor and Industries-elect->> <<+Commissioner-elect of the Bureau of Labor and Industries+>>.

(18) "Zoning commission" means an entity to which is delegated at least some of the discretionary authority of a planning commission or governing body relating to zoning and land use matters.

SECTION 9. ORS 244.040 is amended to read:

1997 Oregon Laws Ch. 249 (H.B. 2509)

OREGON 1997 SESSION LAWS
REGULAR SESSION OF THE 69TH LEGISLATIVE ASSEMBLY

Additions are indicated by <<+ Text +>>; deletions by <<- Text ->>. Changes in tables are made but not highlighted.

Ch. 249
H.B. No. 2509
CORRECTION BILL

AN ACT relating to the correction of erroneous material in Oregon law; creating new provisions; amending ORS 3.425, 8.415, 8.420, 9.005, 9.010, 9.529, 14.040, 20.190, 21.410, 25.085, 29.225, 29.415, 30.950, 40.210, 44.320, 59.025, 60.201, 60.434, 65.957, 68.020, 68.620, 87.501, 90.260, 90.310, 90.320, 90.770, 97.740, 107.106, 109.015, 109.675, 124.020, 124.100, 131.005, 132.320, 132.440, 133.310, 147.275, 162.135, 162.185, 163.165, 166.165, 166.725, 174.535, 179.473, 181.610, 183.534, 188.015, 197.455, 205.242, 215.213, 215.317, 215.452, 223.208, 238.005, 238.015, 238.300, 238.350, 238.375, 238.700, 239.002, 243.325, 243.335, 244.020, 254.555, 260.005, 271.715, 271.725, 271.755, 271.765, 271.795, 283.010, 285.613, 291.216, 291.990, 292.990, 294.035, 307.203, 307.541, 326.550, 329.675, 336.010, 336.580, 336.790, 339.147, 339.505, 339.520, 341.039, 341.102, 342.865, 343.980, 344.257, 344.760, 348.890, 353.250, 358.920, 358.945, 366.530, 371.655, 374.310, 377.750, 377.767, 377.836, 390.114, 391.130, 391.165, 409.185, 411.892, 414.023, 417.735, 418.005, 418.658, 419A.262, 419B.521, 420.019, 423.010, 423.560, 426.300, 441.020, 441.289, 443.880, 448.115, 448.119, 448.123, 448.127, 448.150, 448.255, 450.897, 453.510, 454.280, 454.805, 458.505, 458.510, 458.515, 458.525, 461.250, 465.520, 466.605, 468A.595, 468A.992, 469.232, 469.421, 469.720, 469.805, 471.038, 471.285, 471.290, 471.392, 471.478, 471.675, 472.060, 473.030, 496.090, 497.162, 527.755, 530.110, 542.750, 545.199, 568.210, 568.900, 576.765, 608.310, 619.095, 621.072, 622.250, 624.165, 633.340, 633.460, 634.126, 634.226, 645.020, 646.551, 646.605, 654.090, 654.305, 656.254, 657.176, 657.665, 671.045, 675.063, 675.090, 675.715, 682.025, 694.085, 697.031, 700.100, 700.220, 700.260, 708.430, 723.122, 731.466, 733.230, 733.658, 756.305, 756.543, 774.070, 777.535, 783.990, 809.440, 810.180, 811.175, 811.180, 811.182, 811.455, 811.470, 811.550, 813.604, 821.060, 823.023, 823.027, 823.085, 823.087, 823.101, 823.103, 823.991, 824.018, 824.112, 824.114, 824.206, 824.212, 824.214, 824.218, 824.220, 824.224, 824.254, 824.300, 824.302, 825.024, 825.206, 825.230, 825.232, 825.330, 825.400 and 826.031 and section 9, chapter 717, Oregon Laws 1973, section 4, chapter 514, Oregon Laws 1987, section 7, chapter 381, Oregon Laws 1989, section 16, chapter 739, Oregon Laws 1993, section 2, chapter 764, Oregon Laws 1993, and section 6,

SECTION 75. ORS 244.020 is amended to read:

<< OR ST § 244.020 >>

244.020. As used in this chapter, unless the context requires otherwise:

- (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 <<-(8)(a) to (c)->> <<+(7)+>> of this section.
- (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.
- (3) "Business with which the person is associated" means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1,000 or more at any point in the preceding calendar year.
- (4) "Commission" means the Oregon Government Standards and Practices Commission.
- (5) "Development commission" means any entity which has the authority to purchase, develop, improve or lease land or the authority to operate or direct the use of land. This authority must be more than ministerial.
- (6) "Expenditure" has the meaning given that term in ORS 260.005.
- (7) "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:
 - (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
 - (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 classes that qualify under this exception.
 - (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.
- (8) "Gift" means something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including the full or partial

GOULD Diane * OGEC

From: GOULD Diane * OGEC
Sent: Monday, May 15, 2017 4:25 PM
To: 'haglund@hk-law.com'
Subject: FW: follow up and question re opinion request

From: GOULD Diane * OGEC
Sent: Monday, May 15, 2017 4:24 PM
To: GOULD Diane * OGEC <Diane.GOULD@oregon.gov>
Subject: RE: follow up and question re opinion request

Dear Mr. Haglund,
Thank you for your phone call today and your review of my summary. I understand that Saddle Mountain, Inc., provides a small annual distribution to its shareholder pilots, estimated at approximately \$10k or less. Saddle Mountain, Inc. provides some pilot boat services to the Gray's Harbor pilots when weather is dangerous, and the company has responded to emergency or rescue situations on occasion. You also explained that the rate setting methods used in Oregon, where the rates are set by a board that includes equal numbers from each stakeholder group (pilots, ship owners/port officials, and the general public), is the typical model among the 20 maritime state boards. Thank you very much for providing this information.

Sincerely,

Diane Gould
Investigator
Oregon Government Ethics Commission
3218 Pringle Rd SE, Suite 220
Salem, OR 97302
Phone: 503-378-5105
Fax: 503-373-1456

From: GOULD Diane * OGEC
Sent: Thursday, May 04, 2017 11:07 AM
To: 'haglund@hk-law.com' <haglund@hk-law.com>
Subject: FW: follow up and question re opinion request

Dear Mr. Haglund,
I am re-sending you the email I sent after our phone conversation on April 25th. Unfortunately, I am on a deadline and have not heard back from you. If I do not get a response from you as to the accuracy of my summary of our conversation and an answer to the question below, I will have to proceed with drafting the opinion with the information you and Mr. Davis originally provided. Thank you very much for any help you can provide.

Sincerely,

Diane Gould
Investigator
Oregon Government Ethics Commission
3218 Pringle Rd SE, Suite 220
Salem, OR 97302
Phone: 503-378-5105
Fax: 503-373-1456

****Disclaimer****

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

From: GOULD Diane * OGEC
Sent: Thursday, April 27, 2017 9:24 AM
To: 'haglund@hk-law.com' <haglund@hk-law.com>
Subject: follow up and question re opinion request

Dear Mr. Haglund,

Thank you very much for speaking with me on 4/25/17 to clarify some issues in your request for a Commission opinion. I hope that you can **confirm or correct the following information from our discussion, and answer the question at the end.**

1. Columbia River Bar Pilots, LLC is an association of bar pilots and operates the same as the unincorporated pilot associations that have existed for over a century. The association changed to an LLC in 2000, as other pilot associations were doing around the country, to provide an additional layer of limited liability protection. The LLC functions as a partnership for tax purposes and it is strictly a "pass through" entity. Every month revenue comes in from the services provided by the bar pilots, expenses are paid, and the remaining amount is distributed equally to the 16 Columbia River Bar pilots who constitute the LLC. The LLC files a partnership tax return (form 1065) to record its distribution of income to each pilot member, but it owes no taxes itself. Pilots are self-employed individuals who file their own individual tax returns.
2. Saddle Mountain, Inc. is an Oregon company that owns the helicopter and pilot boats to transport the bar pilots to and from the incoming and outgoing ocean vessels that are attempting to cross the Columbia Bar. The 16 Columbia River Bar pilots are the shareholders of this company. You described this as a "pass through" entity that has its own employees such as pilot boat operators and crew, and has written agreements with the Columbia River Bar Pilots, LLC, to provide transportation services to members of the LLC. There are no competing pilot boat entities that provide services to the Columbia River Bar Pilots
3. This industry is highly regulated, like a utility. Thus, the rates are set by the OBMP under the Public Utility Commission's oversight. Tariffs (rates) are adjusted quarterly according to a complex formula meant to arrive at rates that are "reasonable and just" per statute. The factors considered in rate setting include, among many others, the target gross income, FTE, and traffic volume.

Q: The opinion request received from Kevin Davis and yourself states that, "The Coos Bay Pilot Boat Company pays no dividends and makes no distributions of income to its shareholders." There is no corresponding statement concerning Saddle Mountain, Inc. Does Saddle Mountain, Inc., distribute income or dividends to its pilot shareholders?

Thank you very much for your time.

Sincerely,

Diane Gould, Investigator
Government Ethics Commission
3218 Pringle Rd SE, Suite 220
Salem, OR 97302
PH: 503-378-5105
FAX: 503-373-1456

GOULD Diane * OGEC

From: GOULD Diane * OGEC
Sent: Monday, April 24, 2017 8:40 AM
To: 'Kevin Davis'
Subject: RE: Pilots

Thank you.

Diane Gould
Investigator
Oregon Government Ethics Commission
3218 Pringle Rd SE, Suite 220
Salem, OR 97302
Phone: 503-378-5105
Fax: 503-373-1456

From: Kevin Davis [mailto:kqjd1@gmail.com]
Sent: Monday, April 24, 2017 7:55 AM
To: GOULD Diane * OGEC <Diane.GOULD@oregon.gov>
Subject: Re: Pilots

Ms. Gould--Your summary was 99% correct; I changed a few words and pasted the amended body of it below. Please let me know if you have any other questions or would like me to elaborate on any points of interest.

My questions concerned Coos Bay Pilot Boat Co. and what role the pilot on the OBMP would have in setting the rates that the company could charge. You explained that there are means in the ratemaking process to test the reasonableness of the costs of pilot boat services (and presumably other services), but it is not a market driven process. You confirmed that there are no competing pilot boat companies in the Coos Bay/Yaquina Bay area, and that the Coos Bay Pilot Boat Co. only serves the two bar pilots who equally own the company, it has no other regular clients and is not in the ship assist business. (You did mention that there was an emergency need for their services last year by a ship in distress, but that was a small percentage of the Company's revenue and is a rare occurrence.)

You also reiterated that, although the bar pilots must demonstrate to the OBMP they have the means to board and disembark the oceangoing vessels they pilot, in order to receive their license, there is no specification in the law as to how those means are supplied (personal ownership, lease, ownership through a business entity). However, the reason the bar pilots choose to own the means of their transport to and from the vessels they pilot is for safety reasons. Ocean bar piloting is a dangerous profession and being able to control the means of ocean transport to and from the vessels 365 days per year, regardless of weather, ensures their best chance at safety.

You also said that unincorporated associations of pilots like the Coos Bay Pilots and the Columbia River Pilots function for tax purposes as partnerships.

On Fri, Apr 21, 2017 at 4:33 PM, GOULD Diane * OGEC <Diane.GOULD@oregon.gov> wrote:

Dear Mr. Davis,

Thank you for taking the time to speak with me today and for your follow up email. I enjoyed our discussion and I just want to confirm in writing some of the information I learned from you today. Please correct any misunderstandings or errors in my summary.

My questions concerned Coos Bay Pilot Boat Co. and what role the pilot on the OBMP would have in setting the rates that the company could charge. You explained that there are means in the ratemaking process to test the reasonableness of the costs of pilot boat services (and presumably other services), but it is not a market driven process. You confirmed that there are no competing pilot boat companies in the Coos Bay/Yaquina Bay area, and that the Coos Bay Pilot Boat Co. only serves the two bar pilots who equally own the company, it has no other clients. (You did mention that there was an emergency need for their services last year by another ship, but that was a minimal amount of money and a very rare occurrence.)

You also reiterated that, although the bar pilots must demonstrate to the OBMP they have the means to board and disembark the oceangoing vessels they pilot, in order to receiving their license, there is no specification in the law as to how those means are supplied (personal ownership, lease, ownership through a business entity). However, the reason the bar pilots choose to own the means of their transport to and from the vessels they pilot is for safety reasons. Ocean bar piloting is a dangerous profession and being able to control the means of ocean transport to and from the vessels 365 days per year, regardless of weather, ensures their best chance at safety.

You also said that pilot organizations or associations also function for tax purposes as partnerships.

Thank you for checking this summary.

Diane Gould

Investigator

Oregon Government Ethics Commission

3218 Pringle Rd SE, Suite 220

Salem, OR 97302

Phone: 503-378-5105

Fax: 503-373-1456

****Disclaimer****

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

From: Kevin Davis [mailto:kgd1@gmail.com]
Sent: Friday, April 21, 2017 3:06 PM
To: GOULD Diane * OGEC <Diane.GOULD@oregon.gov>
Subject: Pilots

Ms. Gould---

Nice talking to you this afternoon, I appreciate the care you are taking to dissect the issues. If you would like me to address in writing the State's ratemaking mechanism for determining the reasonableness of the amount charged for pilot boat service, I would be happy to do that. Ratemaking is done in a contested case format overseen by a hearings officer from the PUC, so such costs are periodically subject to very close examination. With Coos Bay Pilot Boat Company, there is no incentive for the pilots to "overpay" for pilot boat service, since they receive no financial benefits from Coos Bay Pilot Boat Company. In fact, the opposite is true---the better they hold down the operating costs of the Pilot Boat Company, the less the Pilots organization has to pay for pilot boat service, and the more that is available for distribution as net income by the Pilot's organization.

Please let me know if you need a more complete discussion. Have a good weekend.

Kevin Davis

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Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

E-mail: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

May 8, 2017

Oregon Coastal Caucus
C/o Senator Arnie Roblan.
900 Court St NE, S-417
Salem, Oregon 97301

Dear Senator Roblan:

This letter of advice is provided in response to your request, which presented a question regarding the application of Oregon Government Ethics law may apply to the participation of public officials in a fact-finding mission, during which food and beverage will be provided at the 2017 Annual Oregon Coast Economic Summit.

This analysis and advice is being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

I understand that the Oregon Coastal Caucus is holding a two day event scheduled for August 26 & 27, 2017. The theme of the 2017 Oregon Coastal Caucus Economic Summit, "Economic Development: A Rural-Urban Collaborative Approach," to discuss economic, environmental and quality-of-life issues that affect the residents of the region. During this event at the Marriot Downtown Waterfront, the Pacific North West Economic Region (PNWER) will provide and pay for meals. In the request you have asked what restrictions or requirements Oregon Government Ethics law may impose on public officials who may wish to participate in this event.

Invited participants will include legislators as well as a variety of others that represent economic development from various state and local jurisdictions. The purpose of this event is to educate and inform state and local government officials as well as regional stakeholders regarding matters affecting the current economic conditions facing Oregon's rural and coastal communities. Those who participate will be provided food and beverage expenses.



Senator Roblan
May 8, 2017
Page 2

Under most circumstances when a public official is offered food and lodging expenses at no cost to the public official it would be a gift as defined in ORS 244.020(7)(a).

ORS 244.020(7)(b) however, identifies occasions wherein public officials may accept paid expenses for food and beverage. The exception relevant to your inquiry is described in ORS 244.020(7)(b)(E) which allows the acceptance of payment of admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 171.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 171.117.

Based on the information provided, ORS 244.020(7)(b)(E) would allow public officials, members of their household or staff of the public official when accompanying the public official, to accept the payment of food and beverage from the Pacific North West Economic Region (PNWER).

If you have any additional questions regarding the application of Oregon Government Ethics law please feel free to contact me directly.

Sincerely,



Ronald A. Bersin
Executive Director

RAB/th

*****DISCLAIMER*****

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

HEDRICK Tammy R * OGEC

From: Sen Roblan <sen.arnieroblan@state.or.us>
Sent: Sunday, April 23, 2017 3:37 PM
To: HEDRICK Tammy R * OGEC
Subject: RE: Ethics Application for the 2017 Oregon Coastal Caucus Economic Summit

Hi Tammy, not sure I responded to this email. I was out of the office for family emergency last week.

The same as in prior economic summits is being offered. However, lunch and breakfast is being offered through PNWER.

Rosie.

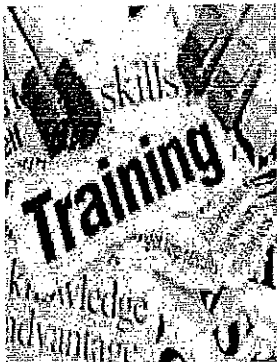
From: HEDRICK Tammy R * OGEC [mailto:Tammy.R.HEDRICK@oregon.gov]
Sent: Monday, April 17, 2017 9:02 AM
To: SEN Roblan <Sen.ArnieRoblan@state.or.us>
Subject: RE: Ethics Application for the 2017 Oregon Coastal Caucus Economic Summit
Importance: High

Good morning Senator Roblan,

In review of the request to provide guidance regarding the upcoming Oregon Coastal Caucus Economic Summit (OCCES) it appears that I will need some additional information. I am looking for what is being offered. In the past it was the cost of food and beverage.

I also need to know who the source of the payment is and what they are paying for regarding this event.

Thank you in advance for your assistance.



Tammy R. Hedrick Program Analyst/Trainer
Oregon Government Ethics Commission
(503) 378-6802 ogec.training@oregon.gov

Disclaimer

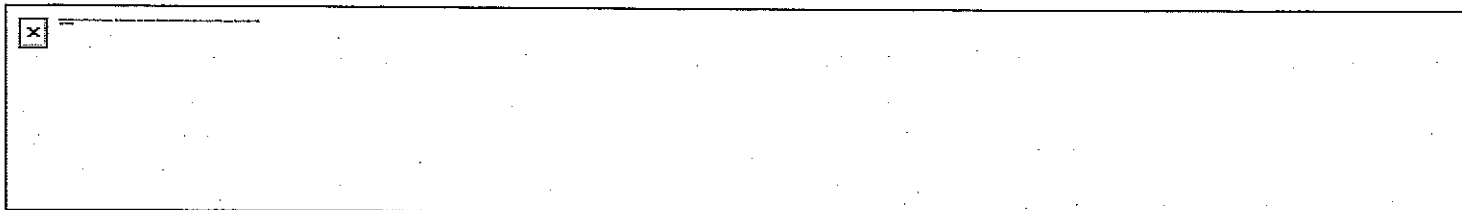
This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

From: Sen Roblan [mailto:sen.arnieroblan@state.or.us]
Sent: Sunday, March 19, 2017 1:28 PM
To: HEDRICK Tammy R * OGEC <Tammy.R.HEDRICK@oregon.gov>
Subject: Ethics Application for the 2017 Oregon Coastal Caucus Economic Summit

Hi Tammy, the Oregon Coastal Caucus Economic Summit (OCCES) is partnering with the Pacific NorthWest Economic Region (PNWER), and Senator Arnie Roblan, who is the incoming President of PNWER, to hold OCCES Summit.

OCCES is scheduled for July 26th within PNWER, and will once again send an invitation to our more than 600 local legislators, business leaders, academics and local government representatives with the ongoing goal to produce collaborative solutions to key issues in the economy and environment of the region.

Please see the sample invitation letter and save the date information. Thank you for your consideration.



Dear Congressman Peter DeFazio,

The Oregon Legislative Coastal Caucus and the Pacific NorthWest Economic Region (PNWER) are pleased to extend this invitation to the 2017 Oregon Coastal Caucus Economic Summit (OCCES). This year, the Coastal Caucus members are partnering with the Pacific NorthWest Economic Region to host OCCES at the PNWER Annual Summit which will be held **July 23-27 at the Marriot Downtown Waterfront in Portland, Oregon.**

Because of your intimate familiarity with the economic development challenges faced by Oregonians, it is our hope that you will share with those assembled in Portland the economic development challenges faced by rural Oregonians. We would be honored to host you as our featured keynote speaker on July 26th at this collaborative event and hope you will favor us with an affirmative reply.

PNWER, a statutory public/private non-profit created in 1991 by the states of Alaska, Idaho, Oregon, Montana, Washington, the Canadian provinces of British Columbia, Alberta, Saskatchewan and the Yukon and Northwest Territories, brings together business and government leaders to discuss economic, environmental and quality-of-life issues that affect the residents of the region. Needless to say, our Caucus is very pleased that PNWER has chosen to hold its Annual Summit in Oregon this year as this presents numerous opportunities for dialogue and sharing with over 500 rural and urban Oregonians.

The theme of the 2017 Oregon Coastal Caucus Economic Summit, "**Economic Development: A Rural-Urban Collaborative Approach**," will examine factors that contribute to Oregon's rural-urban divide and how these factors influence state and federal policies that impact local communities. Our goal -- explore and cultivate new approaches to greater regional collaboration and rural economic growth.

The joint OCCES/PNWER Summits will feature over 20 sessions highlighting emerging issues and innovative practices. Coastal Caucus members will share information about legislative activities and outcomes from the 2017 session and lead panel discussions on issues of critical importance to our coastal region. These discussions will build on the successful efforts of previous Coastal Caucus summits to find collaborative solutions in areas of common interest.



Oregon

Kate Brown, Governor

Government Ethics Commission

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Web Site: www.oregon.gov/ogec

May 19, 2017

Representative Julie Parrish
900 Court St. NE, H-371
Salem, OR 97301

Dear Representative Parrish:

With regards to your recent floor speech about the Oregon Government Ethics Commission (Commission) Advisory Opinion concerning former Representative Buckley, I am concerned with assertions that the opinion "gutted" Oregon lobbying law and that this Commission is intimidated by gubernatorial power over its activities.

First, the prohibition on former legislators receiving consideration for lobbying during the regular session after they left service as legislators was passed by the Legislative Assembly as Senate Bill 10 in 2007. In March 2009, the Commission issued an Advisory Opinion that was the same as the recent opinion about Mr. Buckley. That opinion, which is attached, related to legislators who were elected to positions heading state agencies. Those positions involved lobbying on behalf of the agencies they were elected to lead. The Commission found that the prohibition on receiving consideration for lobbying did not apply to public officials lobbying in their official capacity. The law has remained unchanged since that opinion.

Legislative Counsel's opinion on the Buckley matter appears to have missed the Commission's 2009 Advisory Opinion. To craft an Advisory Opinion on the Buckley matter, we went to the legislative history for the 2007 session. The Commission's opinion is supported by the record of Senate Rules Committee hearings on Senate Bill 10. Each Commission Advisory Opinion is reviewed by legal counsel from the Department of Justice. Our Opinion upholds the present standards of Oregon law.

Second, this Republican from Klamath Falls finds your assertion that the Commission is intimidated by gubernatorial power without merit. The Commission is a balanced group of highly competent professional volunteers with the integrity to apply present law in a reasoned manner. You are invited to see for yourself at any of our upcoming meetings.

Thank you,

Daniel T. Golden
Chair



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Trainers' Report June 2, 2017

This report covers the time period of April 21, 2017, through June 1, 2017.

Completion of training:

- Oregon Dealer Advisory Committee – ORS 244 (Salem)
- Oregon Youth Authority – ORS 244 (Salem)
- Oregon State Fiscal Association – ORS 244 (Salem)
- Oregon Health Authority, New Employee Orientation – ORS 244 (Salem)

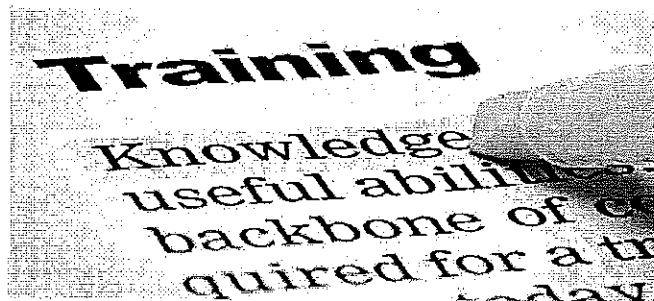
Upcoming Trainings:

<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
6/07/2017	8:30 – 10:00 AM	DAS Foundational Training (ORS 244)	Chemeketa Center for Business & Industry (CCBI) 626 High St. N.E. Salem, OR 97301
6/13/2017	3:00 – 4:00 PM	Oregon Health Authority (OHA), New Employee Orientation (ORS 244)	Portland State Office Building 800 N.E. Oregon St. Room 1 C Portland, OR 97232
6/14/2017	2:30 – 3:45 PM	DAS New to Public Management	Department of Administrative Services 155 Cottage St. N.E. Conference Room A Salem, OR 97301
6/15/2017	10:00 – 12:00 AM	Employment Relations Board (ORS 244)	Garfield School 528 Cottage St. N.E. Suite 400 Salem, OR 97301
7/11/2017	8:00 – 10:00 AM	Oregon State Police Academy (ORS 244)	Department of Public Safety Standards & Training (DPSST) 4190 Aumsville Hwy SE Salem, OR 97317

Upcoming Conferences

7/26/2017	3:45 – 5:00 PM	Oregon Association of School Business Officials (OASBA) (ORS 244)	Riverhouse on the Deschutes Convention Center Center Highway 97 & Mt. Washington Drive Bend, OR 97703
9/11/2017	10:00 – 11:30 AM	Association of County Treasurers & Finance Officers (ORS 244)	5500 Running Y Road Klamath Falls, OR 97601
10/19/2017	TBD	Oregon Institute of Technology (ORS 244)	Oregon Institute of Technology 3201 Campus Drive College Union Building Mt. Mazama Room Klamath Falls, OR 97601-8801

Training Staff: Tammy Hedrick 503-378-6802 tammy.r.hedrick@oregon.gov



June 2017

Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
			1 New Employees: you're a public official, now what! 10:00 – 11:00 AM	2 COMMISSION MEETING
5 Use of Position/Office 10:30 – 11:30 AM	6 Email ogec.training@oregon.gov to register for a webinar.	7 Conflicts of Interest 10:30 – 11:30 AM	8	9
12	13	14 Lobby law 9:30 – 10:30 AM	15	16
19	20 Gifts 2:00 – 3:00 PM	21	22 Executive Session 10:00 – 11:00 AM	23
26	27	28	29	30

July 2017

Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
3	4 HOLIDAY OFFICE CLOSED	5 New Employees: you're a public official, now what! 2:00 – 3:00 PM	6	7
10	11 Use of Position/Office 11:30 – 12:30 PM	12	13	14 COMMISSION MEETING
17	18 Lobby law 9:30 – 10:30 AM	19	20 Gifts 10:00 – 11:00 AM	21
24	25 Executive Session 2:00 – 3:00 PM	26	27 Conflicts of Interest 10:30 – 11:30 AM	28
31				

Email ogec.training@oregon.gov
to register for a webinar.

Executive Director's Report

June 2, 2017

- Reporting System
 - SEI filing season going smoothly
 - Several people late asking for mitigation

- Budget
 - 2015-17 biennial budget
 - Agency completed audit for 2017-19 budget
 - Fund 4150, General Fund
 - Spending average of \$78,646.20 with \$167,568.35 to spend per month. A difference of \$88,922.15.
 - Fund 4160 Electronic Reporting System
 - Moneys in this fund have been spent in accordance with financial plan. The agency will not spend any other moneys in this fund.
 - Fund 4170 Case Management System
 - Spending an average of \$7,583.79 with \$39,116.26 to spend per month. A difference of \$31,532.47.
 - Fund 4180 Case Management System, Professional Services
 - \$310.75 surplus projected through 6/30/17.
 - 2017-19 biennial budget
 - Passed through both House and Senate.
 - Budget signed by Governor 5/18

- Legislation
 - HB 2298 signed by Governor
 - SB 44 referred to House Rules
 - SB 43 referred to House Rules
 - HB 2299, meeting with Rep. McLane on 4/26.

- Case Management System
 - Phase 2 deployed.
 - Planning Phase 3 while we still have services of project manager.

- Other
 - New Commission members before Senate Rules May 24th.
 - Computer and monitor installed and working.
 - Virginia attended the Statewide Employee Recognition Award at the Governor's mansion.
 - Website redesign project begun.

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