

# OREGON GOVERNMENT ETHICS COMMISSION

## INVESTIGATION

**CASE NO:** 15-114EDG

**DATE:** September 28, 2017

**RESPONDENT:** ROSS, Theodore "Ted", former Fire Chief, and former Executive Administrative Officer, Lakeside Rural Fire Protection District

**COMPLAINANT:** ROE, Michelle

**RECOMMENDED ACTION:** Make a Preliminary Finding of 2 Violations of ORS 244.040(1) and 1 violation of ORS 244.120(1)(c)

1 **SYNOPSIS:** Theodore "Ted" Ross was the Fire Chief or the Executive Administrative  
2 Officer (EAO) of the Lakeside Rural Fire Protection District (District) when the events  
3 relevant to this case occurred. The focus of this investigation was to determine if there was  
4 a preponderance of evidence to indicate that Mr. Ross 1) used or attempted to use his  
5 official position to obtain a prohibited financial benefit for himself or a relative through the  
6 personal use of the District's resources and the misuse of his administrative authority; 2)  
7 had a conflict of interest that he failed to disclose; and 3) derived a personal financial  
8 benefit from a public contract that he had a significant role in executing.

9  
10 A preponderance of evidence available during investigation shows that Mr. Ross used his  
11 official position in a prohibited manner and failed to disclose a conflict of interest when  
12 purchasing a vehicle for his own personal use at an auction only open to government  
13 agencies and not to members of the public and when he used the Fire District's legal  
14 counsel at no personal cost to himself, to represent him in response to complaints filed  
15 against him as an individual.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
2 issues addressed herein: NOTE: Events in this case occurred over a time period when  
3 some statutes in ORS 244 were changed. The statutes below are those that were in effect  
4 in 2013. In 2015, some of the relevant statutory subsection numbers in ORS 244.020  
5 changed, but the minor substantive changes are not relevant in this case.

6  
7 244.020(1) "Actual conflict of interest' means any action or any decision or  
8 recommendation by a person acting in a capacity as a public official, the effect of  
9 which would be to the private pecuniary benefit or detriment of the person or the  
10 person's relative or any business with which the person or a relative of the person is  
11 associated unless the pecuniary benefit or detriment arises out of circumstances  
12 described in subsection (12) of this section."

13  
14 244.020(12) (2013) "Potential conflict of interest' means any action or any decision  
15 or recommendation by a person acting in a capacity as a public official, the effect of  
16 which could be to the private pecuniary benefit or detriment of the person or the  
17 person's relative, or a business with which the person or the person's relative is  
18 associated, unless the pecuniary benefit or detriment arises out of the following:"

19  
20 244.020(14) (2013) "Public official' means any person who, when an alleged  
21 violation of this chapter occurs, is serving the State of Oregon or any of its political  
22 subdivisions or any other public body as defined in ORS 174.109 as an elected  
23 official, appointed official, employee or agent, irrespective of whether the person is  
24 compensated for the services."

25  
26 244.020(15) (2013) "Relative' means:

27 (a) "The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or  
28 daughter-in-law of the public official or candidate;

29 ///

30 ///

31 ///

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

9       244.040(2) "Subsection (1) of this section does not apply to:

10           (a) Any part of an official compensation package as determined by the public  
11           body that the public official serves.

12           (b) The receipt by a public official or a relative or member of the household of  
13           the public official of an honorarium or any other item allowed under ORS  
14           244.042.

15           (c) Reimbursement of expenses."

16  
17       244.040(3) "A public official may not solicit or receive, either directly or indirectly,  
18       and a person may not offer or give to any public official any pledge or promise of  
19       future employment, based on any understanding that the vote, official action or  
20       judgment of the public official would be influenced by the pledge or promise."

21  
22       244.040(4) "A public official may not attempt to further or further the personal gain  
23       of the public official through the use of confidential information gained in the course  
24       of or by reason of holding position as a public official or activities of the public  
25       official."

26  
27       244.040(7) "The provisions of this section apply regardless of whether actual  
28       conflicts of interest or potential conflicts of interest are announced or disclosed  
29       under ORS 244.120."

30       ///

31       ///

1 **244.047 "Financial interest in public contract.** (1) As used in this section:

2 (a) "Public body" has the meaning given that term in ORS 174.109.

3 (b) "Public contract" has the meaning given that term in ORS 279A.010.

4 (2) Except as provided in subsection (4) of this section, a person who ceases to  
5 hold a position as a public official may not have a direct beneficial financial interest  
6 in a public contract described in subsection (3) of this section for two years after the  
7 date the contract was authorized.

8 (3) Subsection (2) of this section applies to a public contract that was authorized by:

9 (a) The person acting in the capacity of a public official; or

10 (b) A board, commission, council, bureau, committee or other governing  
11 body of a public body of which the person was a member when the contract  
12 was authorized.

13 (4) Subsection (2) of this section does not apply to a person who was a member of  
14 a board, commission, council, bureau, committee or other governing body of a  
15 public body when the contract was authorized, but who did not participate in the  
16 authorization of the contract."  
17

18 **244.120 "Methods of handling conflicts; Legislative Assembly; judges;  
19 appointed officials; other elected officials or members of boards.** (1) Except as  
20 provided in subsection (2) of this section, when met with an actual or potential  
21 conflict of interest, a public official shall:"  
22

23 244.120(1)(c) "If the public official is any other appointed official subject to this  
24 chapter, notify in writing the person who appointed the public official to office of the  
25 nature of the conflict, and request that the appointing authority dispose of the matter  
26 giving rise to the conflict. Upon receipt of the request, the appointing authority shall  
27 designate within a reasonable time an alternate to dispose of the matter, or shall  
28 direct the official to dispose of the matter in a manner specified by the appointing  
29 authority."

30 ///

31 ///

1 The following Oregon Administrative Rules are relevant to the issues addressed herein:  
2

3 **OAR 199-005-0035** (1) The purpose of this rule is to define certain terms and to  
4 clarify substantive provisions of ORS 244.020(6), 244.025, 244.040, 244.042 and  
5 244.047.  
6

7 199-005-0035(3) An "official compensation package" means the wages and other  
8 benefits provided to the public official. To be part of the public official's "official  
9 compensation package", the wages and benefits must have been specifically  
10 approved by the public body in a formal manner, such as through a union contract,  
11 an employment contract, or other adopted personnel policies that apply generally to  
12 employees or other public officials. "Official compensation package" also includes  
13 the direct payment of a public official's expenses by the public body, in accordance  
14 with the public body's policies.  
15

16 199-005-0035(4) "As used in ORS 244.040(2)(c), 'reimbursement of expenses'  
17 means the payment by a public body to a public official serving that public body, of  
18 expenses incurred in the conduct of official duties on behalf of the public body. Any  
19 such repayment must comply with any applicable laws and policies governing the  
20 eligibility of such repayment. Expenses paid by the public body to their own public  
21 officials need not be reported by the public official under ORS 244.100."  
22

23 199-005-0035(6) "As used in ORS 244.047, a public contract is "authorized by" a  
24 public official if the public official performed a significant role in the selection of a  
25 contractor or the execution of the contract. A significant role can include  
26 recommending approval or signing of the contract, including serving on the selection  
27 committee or team, or having the final authorizing authority for the contract."  
28

29 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated a  
30 preliminary review based on information in a signed complaint from Michelle Roe (#PR1).  
31 Ms. Roe alleged that Theodore "Ted" Ross, former Fire Chief and then Executive

1 Administrative Officer (EAO) of the Lakeside Rural Fire Protection District (District), may  
2 have violated Oregon Government Ethics law. The Commission found cause to investigate  
3 on 5/1/15 after considering the information developed in the preliminary review. The focus  
4 of the investigation was to determine if there is sufficient evidence to indicate that Ted  
5 Ross: 1) used or attempted to use his official position to obtain a prohibited financial  
6 benefit for himself or a relative through the personal use of the District's resources and the  
7 misuse of his administrative authority; 2) had a conflict of interest and failed to comply with  
8 the statutory disclosure and disposition requirements; and 3) derived a personal financial  
9 benefit from a public contract that he had a significant role in executing.

10  
11 Information was received after the investigation began that a criminal investigation was  
12 being conducted regarding the same circumstances that provided the basis for this  
13 investigation. As required by ORS 244.260(6)(c)(A) (2013), the investigation was  
14 suspended on 8/26/15 until information was received on 7/6/17 that the criminal matter was  
15 concluded. The Commission granted a 30 day extension of the investigation period at its  
16 meeting on 7/14/17, as allowed by ORS 244.260(6)(c)(B). Ted Ross and Michelle Roe  
17 have been notified that the investigation has resumed and invited to provide any  
18 information which would assist the Commission in conducting the investigation in this  
19 matter.

20  
21 Background on legal representation of Ted Ross

22 Following the completion of the preliminary review period in this case, a letter dated 5/8/15  
23 from David Tilton, attorney, was received by the Commission on 5/11/15. Mr. Tilton wrote,  
24 "...I am now officially representing Mr. Ross..." He enclosed one undated letter on  
25 Lakeside Fire District letterhead signed by Ted Ross as "Executive Officer", which stated,  
26 "I, Ted Ross, authorize David S. Tilton, Attorney at Law, to represent me in any Oregon  
27 Ethics Commission case." What appears to be Mr. Ross's signature has a handwritten  
28 date of 4/10/15 next to it. (#INV1)

29  
30 A second letter, received by the Commission on 6/11/15, and dated 6/8/15, from David  
31 Tilton, referenced several pending Commission cases against various Lakeside Fire District

1 public officials, including "Case No. 15-114EVT" [sic] against "Theodore Ross, Chief  
2 Executive Officer, Lakeside Fire District" This letter is excerpted below (emphasis added):

3  
4 "I am also enclosing a letter signed by Fred Clausen [sic], Lona Owens and Ted  
5 Ross authorizing me to represent them on all legal matters with the Ethics  
6 Commission as well as the Elections Divisions." (#INV1)

7  
8 There were two enclosed letters, both dated 5/29/15 and on Lakeside Fire District  
9 letterhead, the first pertaining to, and signed by, four Lakeside District Board members  
10 (including Mr. Clauson and Ms. Owens) authorizing Mr. Tilton to act as their legal  
11 representative concerning all matters before the Commission, but the one relevant to this  
12 case and referred to in the cover letter quoted above, is excerpted below:

13 "Dear Mr. Tilton,

14 "You are authorized to represent Executive Officer Ted Ross on all legal matters  
15 with the Oregon Ethics Commission and the Oregon Elections Division."

16  
17 This letter was signed by Ted Ross as Executive Officer, Fred Clauson as Board Chairman  
18 and Vilona Owens as Board Secretary. (#INV1)

19  
20 Note: It is unclear whether Mr. Tilton mistakenly characterized the enclosed letter  
21 described above as evidence of his representation of all three public officials before  
22 the Commission and the Elections Division, but the letter as written pertains only to  
23 his representation of Ted Ross. It is not clear whether the two Board members who  
24 also signed did so in their capacity as Board members authorizing District  
25 expenditures for the purpose of Mr. Ross's legal representation, rather than their  
26 own.

27  
28 These letters of legal representation were received after the Commission found cause to  
29 investigate on 5/1/15 and before 8/26/15 when the case was suspended pending the  
30 completion of a criminal investigation into the same circumstances. When the Commission  
31 staff was notified approximately two years later, on 7/6/17, that the Department of Justice

1 had completed its criminal investigation, both Mr. Ross and Mr. Tilton were advised of the  
2 resumption of this investigation. Mr. Tilton submitted a letter dated 7/10/17 to the  
3 Commission, stating that he no longer represented Mr. Ross, and had ceased legal  
4 representation of him approximately 1.5 years earlier. (#INV1f)

5  
6 On 9/27/17, the day prior to the completion of this report, attorney C. Robert Steringer, of  
7 Harrang Long Gary Rudnick, P.C., notified the Commission that he is representing Mr.  
8 Ross in this case. (#INV14)

9  
10 The Complaint

11 The complaint in this case included a copy of a letter, and associated documents, from  
12 Tishiea Johnson, president of the Lakeside Volunteer Fire Association, dated 1/20/15. The  
13 following are excerpts from Ms. Johnson's letter. NOTE: No changes in spelling or  
14 grammar have been made or noted below.

15  
16 "We are volunteers for the Lakeside Rural Fire Protection District #4 under  
17 the direction of Chief Executive Officer Theodore 'Ted' Ross. Ross  
18 resigned/was fired as Chief to assume the position, of Chief Executive  
19 Officer, a position that did not exist prior. With the contract he created he  
20 receives \$675. Per month for 20 hours of work per month. He has a  
21 severance/retirement package that includes \$50,000, \$25,000 if fired, a  
22 laptop computer that was purchased by the Wildland Firefighting fund, a  
23 white Dodge truck (command vehicle) and medical coverage thru his 62<sup>nd</sup>  
24 birthday...."

25  
26 "In addition he has used a fire department credit card, that is still in Board  
27 members Mattie Lane's name. She resigned over a year ago. Even though  
28 Interim Chief Jeremy Roberts name is on the one page statement we could  
29 obtain, the bank refuses to provide any information to him or remove his  
30 name without Lanes permission. In addition, on that page there are five  
31 purchases made in California (Ross's dad lives in Crescent City) and a



1 purchase for \$87.98 for dog food for his Great Dane 'Hugo'. 'Hugo' resides  
2 with Ross and is transported in fire department vehicles as Ross does not  
3 own a personal vehicle...."

4  
5 "This past summer, new volunteer Ralph Dotson, and long-time volunteer  
6 James Walker started requesting to view public records under the Freedom  
7 of Information Act. Since then multiple tries have been made to obtain  
8 inspection of record. Ending with CEO Ross signing a paper saying he was  
9 refusing access on January 12, 2015. Ross was advised his conversation  
10 was being recorded...."

11  
12 "On October 2, 2013 Ross writes a letter to 'step down' as chief, because the  
13 workload is to much. In the same letter he states what he wants as  
14 compensation. One item is a white Dodge truck. In this letter he states he  
15 used to own vehicles from 2004 thru 2009. (Ross did not join the department  
16 until 2006). He refers to a 'retirement fund' of \$50,000...."

17  
18 "Ross became Chief in 2007 even though he cannot hold required  
19 certifications or be bonded due to his past felony records...."

20  
21 "Then in the November 19, 2014 board meeting minutes, when asked, the  
22 board responded 'they fired him and rehired him as CEO' on December 31,  
23 2013. This newly created position by Ross gives him decision making  
24 powers above the board. He awards contracts, oversees, manages and  
25 approves all purchases...."

26  
27 "We believe this is a possible violation of ORS 244.040, #1 and 3...."

28  
29 "This 'retirement fund' of \$50,000 was previously a compensation if unjustly  
30 fired. Then somewhere it changes on paper to a 'retirement' fund. Then his  
31 new contract as CEO gives him an additional \$25,000 if unjustly fired. Since

1 he wrote both contracts we believe he has a conflict of interest and is in  
2 possible violation of ORS 244.047 #2 and #3 a and b....”

3  
4 “We do not feel this is proper use of the public's money and is a violation of  
5 the public's trust. The Board of Directors allows Ross to do what he wants  
6 with no accounting of his actions and responsibilities. Ross receives all bills  
7 from Interim Chief Roberts. Ross approves and initials them, then Roberts  
8 gives them to the board for payment. All checks are signed by Lona Owens  
9 and Fred Clausen. Because of the unreported resignations of Walker and  
10 Lane, Owens and Clausen are the only board members to authorized to sign  
11 checks. Ross alone holds and uses the credit card....”

12  
13 “Ross continually has rages at the public and co-workers that go  
14 unaddressed by the board. We believe the reason this has gone on so long  
15 is due to Ross's anger management issues. With his criminal history of  
16 threatening, menacing and other violations that led to a prison term, we have  
17 been afraid to approach the issue....”

18  
19 “Ross is currently driving one of two green SUV vehicles, license numbers  
20 E255808 and E260289 owned by the department. Both are parked at his  
21 home. He uses the vehicles for everything, including trips to see his dad in  
22 California as he doesn't own a personal vehicle. We believe this could be a  
23 violation of the department rules that 'company owned vehicles are not to be  
24 used for vacations'....”

25  
26 “Since we have not been allowed access in any way to inspect, review or  
27 read the public records, we believe the department is paying for gas in the  
28 vehicles driven by Ross. (These are records that have been requested  
29 multiple times but have been refused, so we cannot provide any  
30 documentation as a result.)”

31 ///

1 "It is reported volunteers personal vehicles follow the fire trucks for refueling  
2 and the gas pump is not turned off between vehicles resulting with inaccurate  
3 receipts and free gas for volunteers."  
4

5 "We believe other inappropriate credit card and other purchases have been  
6 improper, but due to the fact for at least four months they have refused to  
7 allow us access to public records, our documentation is limited."  
8

9 "It is reported that Ross purchased 1200 square foot of wood laminate  
10 flooring. Firefighter Pearson installed approximately 273 square feet in the  
11 station sleeper quarters. Ross then asked Pearson to go to California to help  
12 install flooring. Pearson declined. Ross then had volunteer Donalds help him  
13 install the rest at his dads in California...."  
14

15 "It is difficult to provide you with documentation of allegations in many  
16 instances because of the written denial for access to these records which  
17 would answer questions. The records we have provided so far have been  
18 stuff various members had for some reason or another...." (#PR1)  
19

20 This report will address the allegations that Ted Ross misused his administrative authority  
21 and access to District resources in three general areas: Ted Ross's employment  
22 agreements, purchases, and vehicles.  
23

#### 24 EMPLOYMENT AGREEMENTS

25 According to records available during this investigation, Theodore Ross was employed by  
26 the District as Fire Chief beginning in approximately 2007. Records indicate that as of  
27 12/31/13, Mr. Ross ceased his position as Fire Chief, and was rehired as the District's  
28 Executive Administrative Officer (EAO), effective 1/1/14. Before Mr. Ross transitioned from  
29 Fire Chief to EAO, he recommended, in his resignation letter dated 10/2/13, that Jeremy  
30 Roberts succeed him as Fire Chief, and that Mr. Ross would train him as part of his duties  
31 as EAO. Meeting records show the Board did appoint Jeremy Roberts as "Interim Fire

1 Chief", effective 1/1/14.

2

3 Records indicate that Mr. Ross ceased his employment as EAO in the summer of 2015.  
4 Minutes from the 8/19/15 District Board meeting show that the Board voted 4-1 to  
5 terminate Ted Ross; a partial letter from attorney Tilton to the Board, dated 8/10/15, refers  
6 to a resignation letter dated 7/22/15 from Mr. Ross. A recording from the Board's 10/21/15  
7 meeting shows a vote of 3-1 to accept Mr. Ross's severance agreement which included a  
8 \$25,000 payment. (#INV1e, #INV10, #INV11 and #INV11b)

9

10 **2012-2017 Agreement**

11 A 6 page document entitled "2012-2017 AGREEMENT BETWEEN LAKESIDE FIRE  
12 DISTRICT #4 ON BEHALF OF THE BOARD OF DIRECTORS AND THEODORE ROSS"  
13 was apparently signed on 5/21/12 by Theodore Ross, as Fire Chief/Employee and two  
14 District Board members (Calvin Walker as Chairman of the Board and Mattie Lane as  
15 Secretary of the Board). Sections of this contract, which was provided during the  
16 preliminary review period by the legal counsel of the District, are summarized or excerpted  
17 below. (#PR9)

18

- 19 • Theodore's Ross's specific duties as Fire Chief are not detailed in this agreement.
- 20 • The hours required to be worked are a minimum of 5 hours per every 7 day period.
- 21 • The compensation for Fire Chief is \$661 per month and either a vehicle would be  
22 provided by the District or the District would provide fuel and approved maintenance  
23 for the employee's vehicle.
- 24 • "In the event Chief Ross is terminated or demoted without just cause he shall be  
25 compensated as agreed in the attached termination agreement." (Article 9, sec 6)
- 26 • "This agreement shall be in effect from May 21, 2012 until December 31, 2017. The  
27 parties shall move to reopen this agreement annually for the purpose of successor  
28 negotiations." (Article 12, sec 2) (#PR9)

29

30 **Termination Agreement effective 5/21/12**

31 A 2 page document is attached to the 2012-2017 Agreement summarized above. This

1 appears to be the termination agreement referred to in the body of the Agreement. The  
2 document is entitled "Termination Agreement" and is "made effective on 5/21/2012  
3 between Ted Ross, Fire Chief (the Employee) and Lakeside Rural Fire District #4 (the  
4 Employer)..." This document shows the undated signatures of Theodore Ross and Calvin  
5 P. Walker, Board Chair. The agreement is excerpted below:

6  
7 "Whereas Employee is presently employed by Employer. Both Parties are interested in  
8 an amicable severance of their employer/employee relationship. We therefore make  
9 the following agreement."

10  
11 "1. In consideration of Employee signing this agreement and an attached letter of  
12 resignation, His employment will voluntarily end effective DATE \_\_\_\_\_.  
13 Employer agrees to pay \$50,000 and continue his insurance coverage for one year  
14 to Employee on signing this agreement and the letter of resignation and delivering  
15 those funds to Employee by DATE AND TIME \_\_\_\_\_. (Effective Date and Time  
16 to be negotiated between Employer and Employee)...."

17  
18 NOTE: The dates of "10-21-13" and "12-31-2014" are handwritten in the respective  
19 blank spots. (#PR10)

20  
21 Interview with Board member

22 During investigation, Calvin Walker was contacted. He was first elected to the District  
23 Board in 2009, and re-elected on 5/21/13. For some of that period, Mr. Walker was the  
24 District Board Chair. When asked about the employment contracts with Ted Ross, Mr.  
25 Walker said that he wrote the 2012-2017 contract between Ross and the District, which  
26 was executed on 5/21/12. Article 9, section 6 of that contract stated, "In the event Chief  
27 Ross is terminated or demoted without just cause he shall be compensated as agreed in  
28 the attached termination agreement."

29  
30 When asked about how the "termination agreement" came about, he explained that  
31 Lakeside was notorious for recalls and turmoil concerning governing bodies and the Board

1 wanted to protect the position of Fire Chief in case Board members were recalled and a  
2 new Board dismissed the Fire Chief without cause. He said that Ted Ross had been  
3 working so hard and achieved good things for the District, and the Board wanted to protect  
4 the Chief.

5  
6 Mr. Walker said that the Board believed a new Board would hesitate before firing the Chief  
7 without just cause, if the District would have to pay \$50,000 in severance. He stressed that  
8 the termination agreement was only to be applicable if the Chief was fired without just  
9 cause, which he explained as acting outside the normal scope of his duties as Chief.  
10 Therefore, the language in the contract was specific and deliberate: The attached  
11 termination agreement, signed by Calvin Walker as Board Chair, designated that Ted Ross  
12 would receive \$50,000 and 1 year of continued insurance upon termination. Mr. Walker  
13 said that the agreement he authored referred only to wrongful termination. When I read  
14 him the clause in the actual contract which referred to termination "without just cause" he  
15 said yes, that is right, that is what he remembers.

16  
17 Mr. Walker explained that he was in transition from Lakeside to Arizona in 2013 and was  
18 not present at some of the board meetings when Board decisions occurred concerning Ted  
19 Ross's resignation, and the creation of his new position. When asked what he knew about  
20 the \$50,000 payment to Ross, he told me that he had heard from Lakeside residents that,  
21 because the \$50,000 was originally only to be paid out if he was terminated without cause,  
22 apparently, the board "fired" Mr. Ross so he could receive the \$50,000.

23  
24 He said that once he fully moved to Arizona in late 2013, he tried to attend the Board  
25 meetings by phone or skype, but the connections were not always working. He said that in  
26 early 2014, he was for all practical purposes kicked off the board. Board meeting minutes  
27 appear to confirm his account as to Board meeting attendance. (#INV7, #INV11 and  
28 #INV13)

29  
30 **2013 Agreement**

31 A 5 page document entitled "2013 SEPARATION AND RETIREMENT AGREEMENT

1 DECEMBER 16, 2013 BETWEEN LAKESIDE FIRE DISTRICT #4 ON BEHALF OF THE  
2 BOARD OF DIRECTORS AND THEODORE ROSS" was received from attorney Tilton,  
3 who was at the time apparently representing the District, and individually representing Ted  
4 Ross. The document includes a signature page which shows the signature of Theodore  
5 Ross, Fire Chief dated "December 16, 2013" and the undated signatures of Fred Clauson,  
6 Board President and Vilona Owen [sic] "Seceretary Treasurer" [sic].  
7

8 NOTE: Portions of the agreement are excerpted below, as they appear in the original,  
9 without change or notation of errors. (#INV1e)  
10

11 • "Section 3 – Severance of the Fire Chiefs agreement – This separation and  
12 retirement agreement is made and entered into mutually, by and between Lakeside  
13 Fire District #4 (Employer) and Theodore Ross (Employee), both of whom agree to  
14 terminate the Fire Chief Contract in an amicable manor."  
15

16 • "Section 4 – Retirement of Fire Chief: The employment of the employee will  
17 voluntarily end on December 31, 2013.  
18

19 The employer agrees to pay to the employee retirement compensation in the  
20 amount of Fifty Thousand Dollars in a lump sum payment. Those funds are to be  
21 delivered on or before December 31, 2014 Retirement payments in this section will  
22 be subject to normal withholding for applicable State and Federal taxes."  
23

24 • "Section 5- Insurance: The employer agrees that the employee has provided  
25 primary medical insurance, and the employer currently is paying secondary medical  
26 insurance through Mutual of Omaha Insurance. The employer agrees to continue to  
27 pay secondary insurance through Mutual of Omaha Insurance for one year from  
28 December 31, 2013 through December 31, 2014"  
29

30 • "Section 6 – Vehicle Compensation:..."The employer agrees to deliver and release  
31 to the employee a vehicle. The Employer agrees that in consideration for the  
32 substantial work completed for the employer, the employee will receive the 2006

1 Dodge Ram 2500 Diesel. Vin number 1D 3KS 28C 76J 186904”

- 2
- 3 • “Section 7 - Computer Compensation:...”The employee purchased a computer and
- 4 printer in 2006 that were exclusively used for district business and that computer
- 5 and printer have remained with the employer. The employer agrees to replace the
- 6 computer for the employee.”
- 7
- 8 • “Section 8 – Confidentiality: Employee and the employer agree to maintain in
- 9 confidence and not to disclose the terms of this agreement, including but not limited
- 10 to the amount, conditions or terms of this agreement. It shall not be considered a
- 11 breach of the obligation of the confidentiality for the employer to disclose the terms
- 12 of this agreement as part of normal external disclosure for financial information to
- 13 auditor or as required for tax purposes.”

14

15 **2014-2017 Agreement**

16 An 8 page document entitled “2014-2017 AGREEMENT BETWEEN LAKESIDE FIRE

17 DISTRICT #4 ON BEHALF OF THE BOARD OF DIRECTORS AND THEODORE ROSS”

18 was apparently signed on **1/15/14** by Theodore Ross, as “Executive Administrator Officer”

19 (EAO) and three District Board members (Fred Clauson, Vilona Owens, and Doris Rhyner)

20 designated as “Employer”. Sections of this contract, which was provided during the

21 preliminary review period by the legal counsel of the District, are summarized or excerpted

22 below.

- 23 • Theodore Ross’s duties as Executive Administrative Officer included the following:
- 24 approval, oversight, and administration of all policies, budgets, equipment
- 25 purchases, contracts, real estate purchases, leases, grants and bonds. Another
- 26 duty was to train the Interim Fire Chief and the creation of all contracts. (Article 4,
- 27 sec 2)
- 28 • Required to work a minimum of twenty (20) hours per month. (Article 4, sec 1)
- 29 • Compensation package for EAO is \$575 per month plus an incentive of \$100 per
- 30 month, a vehicle provided by the Employer or fuel, maintenance or mileage
- 31 reimbursement at government rate for personal vehicle, and Employer paid
- 32 secondary medical insurance. (Article 5, secs 1 and 2)



- 1 • "In the event EAO Ross is terminated or demoted without just cause he shall be  
2 compensated as agreed in the attached termination agreement." (Article 9, sec 5)
- 3 • Agreement in effect from February 1, 2014 until February 28, 2017. (Article 12, sec  
4 2) (#PR9)

5  
6 A 2 page document entitled "Memorandum of Understanding Employment Agreement  
7 Addendum **January 15, 2014**". This document was provided to the Commission by the  
8 District's legal counsel in a separate, later mailing to the Commission and not as part of the  
9 mailing of the original 2014-2017 Employment Agreement. This document was apparently  
10 signed on the same day as the original contract, 1/15/14, by the same individuals (Ted  
11 Ross as employee and Clauson, Owens, and Rhyner as Board members/employers). The  
12 text is quoted as actually written, with no corrections or notations. (#PR 10)

- 13  
14 • "This memorandum references the employment agreement entered into and dated  
15 January 15, 2014 between Lakeside Rural Fire Protection District #4 and Theodore  
16 Ross."  
17
- 18 • The addendum reiterates some of the same compensation information as in the  
19 actual agreement: \$675 per month, a vehicle, 20 hours of work each month, and  
20 employer provided secondary medical insurance. However, there are modifications  
21 and additional terms.

22 "The employee is entitled to a Benefits Package.

23 Vehicle. It is agreed a Vehicle will be provided by the employer. The vehicle  
24 will be available for the employee to use for business and personal use  
25 during the entire duration of the employment agreement. The employer will  
26 pay for insurance, maintenance, repairs, and all other expenses including  
27 fuel. If the employee chooses to use a personal vehicle for any reason  
28 during the employment agreement to conduct business for the employer, the  
29 employer agrees to provide fuel, maintenance, repairs and mileage  
30 compensation at the current government rate for the employee's vehicle."

31 ///

1 "Vacation Compensation: The employee is entitled to One (1) Month of paid  
2 vacation leave for every Six (6) months of consecutive work. One (1) of work  
3 is based on Twenty (20) hours worked in any Thirty (30) day period."  
4

5 "Office Expenses: The employer agrees that the employees position  
6 requires work to be conducted at times and places outside of the district  
7 property and buildings. The employer agrees to provide to the employee a  
8 phone for business and personal use, maintenance of communication  
9 equipment, computers, printers, office supplies, and any other items the  
10 employee considers necessary to conduct business for the employer. The  
11 employer provides office expenses and support to the employee in any  
12 location in the United States or any country outside of the United States by  
13 any method, not limited to but including any mobile or stationary method  
14 considered to be normal for business communication."  
15

16 "Use of Station Equipment. The employer agrees that the employee has  
17 donated and allows the use of personal property and real property for  
18 storage to the Lakeside Fire District at no cost. The employer agrees that  
19 the employee has the right to use station equipment for personal use  
20 including station trash service. Equipment that would normally be used to  
21 maintain property, including but not limited to lawn mowers, chainsaws,  
22 brooms, hand tools, and other equipment the employee finds necessary and  
23 reasonable."  
24

25 "K9 Compensation: The employer received a K9 known as Hugo in August  
26 of 2012. The firefighters agreed to provide for the K9's upkeep and  
27 maintenance. In 2013 the firefighters abandoned the K9. The employer  
28 asked the employee to become the K9's handler. The employee agrees to  
29 accept responsibility for the K9. The employee is the handler and is  
30 responsible for the care and maintenance of the K9. The employer agrees  
31 that the K9 will remain with the (employee) handler for the duration of the life

1 of the K9. The employer agrees to pay for all medical and veterinary  
2 expenses for the duration of the life of the K9. The employee agrees to pay  
3 for food for the K9. This agreement will remain in effect even if the employee  
4 employer relationship is concluded. In the event that the (employee) handler  
5 is no longer working for the employer, the handler will submit bills for medical  
6 and veterinary services to the Board of Directors for reimbursement."  
7 (#PR10)  
8

9 **Termination Agreement effective 2/1/14**

10 A 3 page document entitled "TERMINATION AGREEMENT", made "effective on February  
11 1, 2014" has the same language as that found in the Termination Agreement effective  
12 5/21/12 described above, with one difference: this agreement offers Mr. Ross \$25,000  
13 plus one year of continued insurance coverage, "because "both parties are interested in an  
14 amicable severance of their employer/employee relationship."  
15

16 "1. In consideration of Employee signing this agreement and an attached letter of  
17 resignation, His employment will voluntarily end effective DATE \_\_\_\_\_.  
18 Employer agrees to pay \$25,000 and continue his insurance coverage for one year  
19 to Employee on signing this agreement and the letter of resignation and delivering  
20 those funds to Employee by DATE AND TIME \_\_\_\_\_. (Effective Date and Time  
21 to be negotiated between Employer and Employee)...."  
22

23 NOTE: The copy of this agreement obtained during investigation does not have  
24 dates filled in the blank spots.  
25

26 The third page of this agreement shows the signatures of Fred Clauson, Vilona Owens,  
27 and Doris Rhyner as Board members and Ted Ross as Executive Administrative Officer.  
28 (#INV10)  
29

30 **Interviews with relevant Board members**

31 Fred Clauson and Vilona Owens, as Board members, signed the Ross 2013 SEPARATION

1 AND RETIREMENT AGREEMENT, the Ross 2014-2017 AGREEMENT and ADDENDUM  
2 that created his new position as EAO, and the TERMINATION AGREEMENT EFFECTIVE  
3 2/1/14. Ms. Owens died during the pendency of this case.

4  
5 Fred Clauson was elected to the District Board on 5/17/11 and at some point he became  
6 the Board Chair. He was contacted during this investigation and when asked about the  
7 circumstances of Ted Ross's employment with the District, he explained that the transition  
8 of Ted from Chief to EAO was necessary because Ted could not be both at the same time,  
9 that this would be a "conflict of interest." He said that they needed an EAO because  
10 Jeremy Roberts, the new Fire Chief, was not attending Board meetings, and they needed  
11 someone to keep the Board informed.

12  
13 As to the severance packages, Mr. Clauson said that the first one, the \$50,000, had been  
14 authorized by a prior Board of which he was not a member. He said the board did not do  
15 anything unless it was approved by the attorney. He said that the attorney had negotiated  
16 with Ross and written up the contracts. When I asked him if the attorney told him that the  
17 contract and separation agreements were approved by him, he said he doesn't remember  
18 the attorney personally telling him that, but that Trista Green, who was the District  
19 administrative person had apparently called the attorney and she told Mr. Clauson that it  
20 was OK for him to sign it. He said that this was all so long ago, that he can't really  
21 remember all the details. (#INV8 and #INV13)

22  
23 Doris Rhyner, in addition to Mr. Clauson (and Ms. Owens) was the third Board member  
24 who signed the Ross 2014-2017 AGREEMENT and ADDENDUM on 1/15/14 and the  
25 TERMINATION AGREEMENT EFFECTIVE 2/1/14. Ms. Rhyner was contacted during the  
26 investigation.

27  
28 Ms. Rhyner was apparently appointed to the Board to fill a vacancy left by Mattie Lane,  
29 who had become ill. Ms. Rhyner said she was contacted by Lona Owens, who was then a  
30 current Board member and asked to serve. She agreed to fill in on the Board, but only  
31 attended meetings for a year or less.

1 When asked what her understanding was of the transition of Ted Ross from Fire Chief to  
2 EAO, she said "what I understood was that this was to help Jeremy [Roberts]." She said  
3 that Ted stayed to help Jeremy and that they had worked so well together at one time.

4  
5 She said that she was unsure of exactly what was going on because she was new to  
6 everything. At one point she said that "the other guy was let go" apparently referring to  
7 Jeremy Roberts, and since Ted could not be both Fire Chief and EAO, they had to  
8 terminate him from being Fire Chief. I asked if she remembered signing two different  
9 documents on the same day, one a contract for Ted Ross and one an addendum to that  
10 contract. She said that she did not remember, it was so long ago. (#INV9)

#### 11 12 Other Records

13 **Ted Ross** submitted information and records during the investigation, including:

- 14 • A letter dated October 16, 2015, addressed "To whom it may concern"  
15 signed by Trista Green, District Secretary, which is excerpted below:

16 "This payment of \$25,000 is a onetime payment for Severance Contract for  
17 being terminated before the end of his Employment Agreement. Also, all  
18 checks dated before this date were held until the Severance Package was  
19 completed. They are a part of the final Termination Agreement for Theodore  
20 Ross."

- 21 • A letter dated 10/15/15 and signed by Don Gilkey, as Representative for the  
22 District, authorized Ted Ross to receive all interest the District had in the cell  
23 phone number and iPhone 4 assigned to Ted Ross.

- 24 • A letter dated 10/15/15, signed by Don Gilkey, as Seller for Lakeside Fire  
25 District and Theodore Ross as Buyer, granting, as part of the District's  
26 separation agreement "voted on August 19, 2015" to sell three bicycles and a  
27 grinder on a stand to Ted Ross for \$70.00.

- 28 • An undated and unsigned document titled "**Severance Contract**", which is  
29 excerpted and summarized below:

30 "With regard to the termination of employment as the Executive  
31 Administrative Officer, effective August 22, 2015, Theodore Ross for

1 consideration as stated below, agrees to release Lakeside Fire District #4  
2 from any and all potential claims. The consideration is as follows:"

3  
4 The sum of \$25,000; Continuing Medicare Supplemental Insurance coverage  
5 for one year; reimbursement for the veterinary care of Hugo; Ross may  
6 purchase a grinder and three bicycles owned by the district for \$70; Ross  
7 may purchase from the District a 2005 Chevrolet Tahoe, VIN No.  
8 1GNEK132189377 for a fair market value; Ross may keep his cell phone and  
9 telephone number and agrees to purchase a service contract with AT&T and  
10 transfer the service on the date this release is signed. (#INV3a)

11  
12 District records that are part of other Commission matters are relevant to this case. Case  
13 No. 14-257XDT includes written minutes of a District Board meeting and executive session  
14 held on 8/19/15 at which the termination process of Theodore Ross as EAO was  
15 discussed, attorney Tilton was directed by the Board to negotiate a settlement with Mr.  
16 Ross, and a vote was taken to terminate him. Case No.14-283EDG contains an audio  
17 recording of the District Board meeting held on 10/21/15 in which the Board voted 3-1 to  
18 approve EAO Ted Ross's severance package. (#INV11b)

19  
20 **David Tilton** submitted a letter to the Commission dated 6/17/15 which is excerpted below:

21  
22 "This letter acknowledges receipt of the latest complaint against me by Michelle  
23 Roe. It indicates that I have done something wrong with regard to Mr. Ross'  
24 contract and/or contract addendum in Case No 15-114EDT."

25  
26 "I had absolutely nothing to do with Mr. Ross' employment contract nor did I have  
27 anything to do with the addendum. The District only calls me when they need my  
28 advice. In fact, the entire time I have represented the District I never even attended  
29 a monthly meeting until this past February." (#INV1d)

30  
31 **Records received from DOJ included what appears to be the first page of a multi-**

1 page letter on the stationery of David S. Tilton, Attorney at Law, and addressed to the  
2 Lakeside Board of Directors, dated 8/10/15. This partial letter appears to be referring to  
3 Mr. Ross's employment and resignation from the position of Executive Administrative  
4 Officer, the agreement for 2014-2017 and assorted addenda. The document is excerpted  
5 below:

6  
7 "CEO Theodore Ross has resigned his position. I am enclosing with this letter his  
8 July 22, 2015 letter of resignation along with an email to Board President Gilkey  
9 setting forth what he believes that his severance package should consist of."

10  
11 Apparently, Mr. Tilton also enclosed, "the contract between the District and Mr.  
12 Ross, memorandum of understanding on the same date that the contract was  
13 entered into and some form of a termination agreement which was apparently  
14 entered into two weeks later."

15  
16 "The agreement appears to have been entered into by three out of the five Board  
17 members. The addendum appears to be entered into by three out of the five Board  
18 members and the termination also appears to be entered into by three of the five  
19 Board members."

20  
21 "I would like for the Board to review the minutes of the meetings where this contract  
22 and these addendums were discussed. To be frankly honest, I find them to be quite  
23 confusing. I was never appraised of any of these until the recent disputes arose."

24  
25 He goes on to say, "the termination agreement only appears to be applicable if Ross  
26 is terminated or demoted without just cause. However, that event has not occurred.  
27 CEO Ross has resigned. Therefore, it is my opinion that the termination agreement  
28 has no legal effect. However, I also believe that some form of severance package  
29 should be given to CEO Ross if the parties can mutually agree." (#INV10)

30 ///

31 ///

1 Ted Ross was interviewed during investigation as to the terms and conditions of his  
2 employment agreements and pertinent portions are summarized below.

- 3 • Mr. Ross said that Calvin Walker, President of the Board of Directors wrote the first  
4 contract and termination agreement [2012-2017].
- 5 • Mr. Ross said that he, himself, wrote the subsequent agreements pertaining to his  
6 tenure as Executive Administrative Officer.
- 7 • Mr. Ross said that every agreement was approved by the Board of Directors. He  
8 requested certain benefits in these agreements and negotiated the terms with the  
9 Board.
- 10 • Mr. Ross said that he had worked many more hours than were reflected in his  
11 contracts and that he took his responsibilities very seriously. He turned the Fire  
12 District around, brought in large grants and outside contracts, boosted morale, and  
13 provided leadership and community service to residents. Toward the end of his  
14 employment, he was feeling attacked and unappreciated. (#INV3)

15  
16 District Board Meeting Records

17 Available District Board Meeting minutes obtained during this case as well as other relevant  
18 Commission cases noted earlier, were reviewed for the board meetings at which these  
19 employment agreements were discussed and voted on. It appears that the various  
20 agreements were approved by the board members then serving. (#INV1e, #INV10,  
21 #INV11 through #INV11b)

22  
23 Time Line and Summary of Employment Agreements.

Date of Apparent Execution	Document Title, selected terms	Signatures of Parties; Date at which agreements were adopted by Board
5/21/12	2012-2017 Agreement for employment of Ted Ross as Fire Chief; references an attached termination agreement if terminated	Ted Ross as Fire Chief/Employee Calvin Walker, Board Chair Mattie Lane, Board Sec/Treasurer (5/21/12); Board formally adopted



	"without just cause".	employment agreement on 5/21/12 per meeting minutes.
5/21/12	Termination Agreement Effective 5/21/12; handwritten date Ted Ross's employment "voluntarily ends" as 10/21/13 and handwritten date \$50,000 delivered to Ross as 12/31/14.	Undated signature of Ted Ross as Employee and Calvin Walker as Board Chair
12/16/13	2013 Separation and Retirement Agreement; Retirement of Ted Ross as Chief "voluntarily" as of 12/31/13; retirement compensation on or before 12/31/14 (\$50,000) plus 1 year health insurance, 2006 Dodge 2500 vehicle and computer	Signature of Ted Ross dated 12/16/13 and undated signatures of Fred Clauson, Board President, Vilona Owens, Sec/Treasurer; 12/16/13 Board meeting minutes show board voted to "accept termination" of Ross as Fire Chief effective 12/31/13; Board meeting minutes for 1/15/14 show Board revised their 12/16/13 meeting minutes to read "fire (without cause)" instead of "accept termination" of Ross as Fire Chief
1/15/14	2014-2017 Agreement; contract with Ted Ross as Executive Administrative Officer; references an attached termination agreement if Ross terminated "without just cause".	Signature of Ted Ross as EAO and Fred Clauson, Vilona Owens, and Doris Rhyner as Board members (1/15/14); Board meeting minutes for 12/16/13 show Board voted to appoint Ross as EAO effective 1/1/14. Meeting minutes for 1/15/14 show Board voted to adopt contract with Ross as EAO.
1/15/14	Memorandum of Understanding	Signature of Ted Ross as EAO and

	Employment Agreement <u>Addendum</u> <u>January 15, 2014</u> ; Vehicle provided to Ross for business and personal use; vacation compensation; office expenses; use of station equipment; expenses of dog.	Fred Clauson, Vilona Owens, and Doris Rhyner as Board members (1/15/14)
2/1/14	Termination Agreement made effective 2/1/14 for Ted Ross as EAO; provides \$25,000 and 1 year insurance. Dates of termination and receipt of benefits are blank in this 3 page document.	Undated Signatures of Ted Ross as EAO and Fred Clauson, Vilona Owens, and Doris Rhyner as Board members.
N/A	Severance Contract regarding termination of EAO Ross, effective August 22, 2015. Provides \$25,000; 1 year insurance; reimbursed medical expenses for dog up to \$500 per year; cellphone; and Ross may purchase from District a grinder, three bicycles (for \$70), and a 2005 Chevrolet Tahoe (for \$2,500).	Unsigned, undated; this document was provided by Mr. Ross during investigation. Meeting records for 8/19/15 show Board terminated Ross as EAO and discussed severance and directed attorney to negotiate with Ross. Meeting records for 10/21/15 show Board voted to adopt severance contract w/EAO Ross as described in this table.

1

2 Payment records

3 W-2 wage statements issued to Ted Ross by the Lakeside Fire District were provided  
4 during investigation by the District's accountant. Gross wages were as follows: \$19,277  
5 (2011); \$35,308 (2012); \$24,692 (2013); \$70,554 (2014); and \$32,412 (2015).

6

7 Records show that Ted Ross received the \$50,000 payment on 12/31/14, and the \$25,000  
8 payment on 10/28/15. Mr. Ross actually received net payments of \$35,964 and

1 \$14,007.50 respectively, because these payments were disbursed as wages, subject to  
2 withholding, and included on his W-2. (#INV10 through #INV12)

#### 3 4 USE OF DISTRICT RESOURCES FOR PERSONAL FINANCIAL GAIN

5 Allegations in this case included that Mr. Ross may have used his position as Fire Chief  
6 and later as District EAO to make purchases using the District credit card, fuel card, and  
7 other District resources for his own personal benefit or that of his father.

#### 8 9 Flooring

10 A specific allegation was that Ted Ross purchased flooring using District funds, and that  
11 most of the flooring ended up being installed by District personnel in Ted Ross's father's  
12 house. Records indicate that flooring was purchased to replace flooring in the firefighter  
13 sleeping quarters. On 4/8/14, Ted Ross purchased 400 sq. ft. of laminated flooring from  
14 Lumber Liquidators for \$413.01. At the same time, on a separate invoice, Mr. Ross also  
15 purchased 1006 sq. ft. of identical flooring for a project of his own, for \$936.32. The  
16 invoices and payment information show that the District credit card was used to pay for the  
17 first purchase and Ted Ross's personal Visa debit card was used to purchase the 1006 sq.  
18 ft. (#INV10)

19  
20 A letter from Richard Ross (father of Ted Ross) dated 1/30/15 and directed to the Lakeside  
21 Board of Directors, stated that "I have flooring purchased by my son in April of 2014 for a  
22 rental property in my shop at this time." Referring to the allegation that a Lakeside  
23 firefighter installed flooring at his house, Mr. Ross states "This has never happened and I  
24 am not going to allow Lakeside Fire District or the firefighters from Lakeside Fire District to  
25 implement [sic] myself of [sic] my son in your disputes." (#INV10)

#### 26 27 Other alleged purchases by Mr. Ross using District credit card or fuel card

28 Another allegation in the complaint concerned Ted Ross's use of the District credit card for  
29 personal purchases. The documents provided by Ms. Roe appear to include copies of  
30 partial statements for credit card purchase and payment transactions for the Lakeside Fire  
31 District for various periods of time between 2013 and 2015. A copy of this information was

1 provided to Mr. Ross during the preliminary review period. (#PR5)

2  
3 Mr. Ross submitted a letter in response to these allegations during the preliminary review  
4 period. The letter is dated 2/18/15, and was received on 2/23/15, and excerpts are below:  
5 (#PR7):

6  
7 "I am authorized to purchase items for the fire district and do so at times and places  
8 that provide the most cost effective use of district funds. I have made purchases in  
9 other states and at places that the district receives the greatest cost savings.

10  
11 I have made purchases at Home Depot, Harbor Freight, Walmart, and other  
12 businesses (sic) Oregon, California and many other states depending on what type  
13 of operations the district is engaged in.

14  
15 The invoices you are referring to recently at Harbor Freight were to purchase air  
16 chucks and air fittings fir [sic] the preventative services performed at the station. Tire  
17 air checks, refilling tires and other air needs of the district.

18  
19 The purchases from Home Depot were for small tool bags that the district uses for  
20 medical jump bags for ems (sic) calls. They are cheaper than purchasing medical  
21 bags from a medical supply company and the construction is better, providing  
22 longer service when in use.

23  
24 The purchase from Pet Smart was for a divider for the SUV the station dog is  
25 transported in. The District liability provider thought it would be prudent to have a  
26 divider between the driver's area and the K9. In the case of an accident there would  
27 be separation between the K9 and the driver."

28  
29 Concerning allegations that Mr. Ross was misusing the District credit card and fuel card  
30 without authorization and for personal purchases, attorney Tilton provided statements from  
31 Mattie Lane, former Board member and Bob Hood, District Division Chief, as well as Ted

1 Ross during the investigation period. (#INV1a through 1c)

2  
3 In a signed letter dated 5/29/15, Mattie Lane identifies herself as the District's former  
4 Secretary and Treasurer and states:

5 "I am the person who the Lakeside Fire District credit card was issued to. Ted Ross  
6 was authorized by the Lakeside Fire Board to make purchases with the credit card  
7 for the Fire District."  
8

9 "District Vehicle: Ted Ross was authorized to use a District vehicle with the Board's  
10 approval." (#INV1a)  
11

12 In a signed letter dated 6/12/15, Bob Hood identifies himself as the District's Division Chief  
13 and states:

14 "During the time Roberts was the interim chief he also worked a full time job and  
15 was not available on a regular daily basis. Preventative maintenance servicing and  
16 fueling plan were not be followed or completed as often as they should have been."  
17

18 "The department has a fueling plan that any time any vehicle, boat or equipment is  
19 at one half of full capacity, that vehicles is refueled...Interim Chief Roberts had  
20 control of all of the district fuel cards except the card issued to Ross. I have seen  
21 Ross fueling vehicles, boats and equipment. I have also witnessed Ross provide  
22 his fuel card to firefighters and the preventive maintenance service firefighter  
23 numerous times because the vehicle, boat or equipment that they were operating  
24 was at or below the fueling level plan." (#INV1c)  
25

26 A 6/10/15 text message from Ted Ross was provided by attorney Tilton during investigation  
27 and contains information similar to Mr. Hood's statement above. Mr. Ross states that the  
28 District currently has 13 vehicles in use and insured, and that during fire season, the  
29 District uses three thousand dollars or more of fuel. In addition to those vehicles, Mr. Ross  
30 states that the District has several generators and other equipment that also use fuel. He  
31 points out that the complainant's assumption that all of the vehicles use separate fuel cards

1 is not accurate. Mr. Ross said that "most of all of the fueling was done off one card and  
2 only three cards were being used." (#INV1b)

3

4 Mr. Ross was questioned about his use of District resources for personal purchases during  
5 this investigation and his response was that everything he purchased with District funds  
6 was for the district and within his authority as granted by the Board of Directors. He said  
7 that he submitted receipts for all his purchases. (#INV3)

8

9 Mr. Clauson, former Board Chair, was interviewed during this investigation and said that  
10 the board did monitor Ted's spending, especially after questions arose concerning his  
11 spending District money on personal items. For instance, Mr. Clauson said that they  
12 confirmed that Ted Ross used his personal debit card for fuel purchases when he went out  
13 of town with the District vehicle to visit his father in California. He said that Ted was  
14 authorized by the board to use a District vehicle for personal use because of the nature of  
15 the business (fire chiefs are always "on call" and may need to travel to a fire at any time).  
16 (#INV8)

17

18 During this investigation, fuel records and District credit card records for the relevant period  
19 were requested from the District, but the District was unable to provide such records.  
20 (#INV11)

21

22 VEHICLES

23 Allegations in this case included the use of District vehicles by Mr. Ross for his own  
24 personal use and that of his father. Specific allegations concerning two vehicles, a Toyota  
25 4 Runner currently titled to Ted Ross, and a Dodge pickup currently titled to Ted Ross's  
26 father, were subjects of a different Commission case (15-283EDG), and will not be  
27 considered in this report. Only the circumstances surrounding three current or former Fire  
28 District vehicles will be addressed: 1) 2007 Dodge Ram 1500 Pickup; 2) 2006 Dodge Ram  
29 2500 Diesel; and 3) 2005 Chevrolet Tahoe.

30 ///

31 ///

1 2007 Dodge Ram 1500 Pickup, VIN 1D7HU18277S102581

- 2 • 10/08/07 Original title transaction – publicly owned by Lane County Sheriff's Office.
- 3 • 9/29/12 Lane County Fleet Auction records show the vehicle was purchased by
- 4 Lakeside Fire District for \$750, as well as other items including tires, toolboxes, and
- 5 a hitch, and paid for with a cashier's check, for \$1020 per Lane County records.
- 6 • 4/10/13 Title transferred to Jeremy Roberts, change of class from "publicly owned"
- 7 to a standard Oregon tree license plate. (DMV)
- 8 • 9/13/13 date of check #4709, drawn on Lakeside Fire District's Umpqua account
- 9 clears on 9/16/13; payable to Jeremy Roberts for \$11,000. Notation on check
- 10 reads: "2007 Dodge Ram." Check is signed by Calvin Walker and Vilona Owens,
- 11 two former District Board members.
- 12 • 9/16/13 District Board Meeting minutes show that bills to be paid totaled
- 13 \$22,999.66, and the list of bills included the \$11,000 check to Jeremy Roberts. The
- 14 Board approved the payment of these bills as a group.
- 15 • 9/27/13 Title transferred to Lakeside Rural Fire District (tree plates kept on vehicle)
- 16 (DMV)
- 17 • 11/26/13 Lakeside Fire District's insurance records show the vehicle insured for the
- 18 policy year 1/1/14 – 1/1/15 at a value of \$12,500.
- 19 • 4/13/15 Change of class to "publicly owned" plates – Lakeside Rural Fire District
- 20 transferred E-plate E251113 from a different vehicle owned by their agency to the
- 21 2007 Dodge. (DMV)
- 22 • Information obtained from the Department of Justice's criminal investigation shows
- 23 that the vehicle was in the possession of the District at the time of the DOJ inquiry,
- 24 and DOJ requested that the truck, which apparently was inoperable, be held as
- 25 evidence by the District until the DOJ investigation was completed. (#INV2, #INV6,
- 26 INV#10 through #INV12).

27  
28 Mr. Ross was asked about this vehicle in two different interviews.

29  
30 In a phone call on 8/11/17, Mr. Ross was asked about several vehicles, including  
31 the silver 2007 Dodge Pickup. In that interview, Mr. Ross said he purchased this

1 vehicle with his own money at Lane County Fleet auction for \$750. He said it was  
2 not running and Jeremy Roberts worked on it and later sold it to the District for  
3 \$11,000. He claims he never got any of that money. He said that he purchased  
4 this vehicle with a personal cashier's check at the Lane County Auction; the  
5 purchase was made in his personal capacity and was not purchased with District  
6 funds. (#INV3)

7  
8 In a phone call on 9/15/17, Mr. Ross was asked a second time about the  
9 circumstances surrounding this vehicle and he said "I think I paid for that truck and  
10 Jeremy said he could fix it." He mentioned that Jeremy was good with cars and  
11 wanted to fix it up because it was in poor shape. When I asked him how it got sold  
12 to the District, he said that, "I stayed out of that discussion entirely" and "I was at the  
13 Board meeting and Jeremy presented the vehicle." And, "[the purchase] was a  
14 board decision and they bought it from Jeremy. I didn't have anything to do with it".  
15 "When the Board asked me, I told them, 'I'm not having anything to do with it.'"  
16 (#INV3)

17  
18 Lane County Fleet Auction

19 Information relevant from another case with the Oregon Government Ethics Commission  
20 concerns the operations of Lane County Fleet Auction, at which the District purchased  
21 many vehicles. One staff member explained that there are actually two auctions, one open  
22 only to government agencies and the other open to private citizens. The Lane County  
23 Fleet Auction provides "cities, school districts, and some other local government agencies  
24 a pre-emptive right to make offers for surplus vehicles and equipment prior to the public  
25 auction." Government agencies get first choice to make bids and purchase vehicles for  
26 their agencies and then whatever stock remains is open to the public later for bids and  
27 purchase. Records relevant to this case and a prior case indicate that Ted Ross was listed  
28 in the Auction's records as the "contact person" for Lakeside Fire District. Mr. Ross has  
29 claimed that he purchased some vehicles from the auction with his own funds, but the  
30 Auction records erroneously recorded the purchaser as "Lakeside Fire District" on all its  
31 records, regardless of whether the purchases were made in his personal capacity or on



1 behalf of the District. (#INV2, #INV10, #INV11, and #INV14)  
2

3 During the investigation, Mr. Ross submitted evidence that Lane County Fleet Auction is  
4 still sending him information concerning their upcoming auction to be held in September  
5 2017. He offered this as proof that as far as the Auction is concerned, there is no  
6 distinction between Lakeside Fire District and him as an individual. (#INV3b)  
7

#### 8 Other interviews

9 Michelle Roe, complainant in this case and current District board member, was asked  
10 about the circumstances surrounding this vehicle. She said that her understanding of  
11 events, from Jeremy Roberts, is that Ted Ross purchased the vehicle with his own money  
12 from surplus for \$750 on the Fire Department's account, that Ross then had Jeremy bill the  
13 District for \$11,000 for the vehicle. Once Roberts had the check, he was instructed by  
14 Ross to cash it and give Ross the money, which Jeremy told her he did. (#INV5)  
15

16 Jeremy Roberts, formerly terminated employee of the District, and currently Fire Chief, was  
17 first contacted and asked the whereabouts of the 2007 Dodge pickup. Jeremy said that the  
18 vehicle is currently in the District's possession, in the parking lot. When I asked him in a  
19 later call about the \$11,000 check payable to him for the vehicle, the phone call was  
20 dropped. I tried calling him back and left voice messages for him, but at the time of this  
21 report, no return call had been received. (#INV5)  
22

23 Joel Christiansen, former attorney for Jeremy Roberts, was contacted during this  
24 investigation and asked if he knew anything about the circumstances of this vehicle. He  
25 said he did not. He explained that after Jeremy Roberts was suspended and then  
26 terminated by the District Board in 2015, Mr. Christiansen represented him in a Bureau of  
27 Labor and Industries (BOLI) case. Mr. Christiansen stated that BOLI found substantial  
28 evidence of whistleblower retaliation against Jeremy. Christiansen then filed a case in  
29 Coos County against Lakeside Fire District on 10/17/16 on behalf of Jeremy. The District  
30 settled within a few months. Mr. Christiansen said that his representation of Jeremy  
31 Roberts ended after the wrongful termination case was settled, but he would contact

1 Jeremy and ask him to contact me, but he couldn't promise anything. (#INV4)

2  
3 Calvin Walker, former District Board Chair, and co-signer of the \$11,000 check to Jeremy  
4 Roberts was contacted during this investigation and asked about the circumstances  
5 surrounding this matter. He said that he could not remember signing this particular check,  
6 which was not unusual because they signed several checks at each meeting. He did not  
7 remember any Board discussion about it, but he does remember that Jeremy had a vehicle  
8 he originally bought at auction and after fixing it up, he sold it to the District. When asked if  
9 this was unusual, Mr. Walker said that the District often bought vehicles at auction and he  
10 did not question it. Mr. Walker volunteered that he has known Jeremy Roberts since he  
11 was a teenager and began working with the Fire District, and in the 20 years since, he "has  
12 never caught Jeremy in a lie or even a half-truth." He said that Jeremy was "as honest as  
13 the day is long." (#INV7)

14  
15 2006 Dodge Ram 2500 Diesel. Vin number 1D3KS28C76J186904

- 16 • 9/3/10 Vehicle registered to Lakeside Rural Fire District pursuant to transfer of title  
17 from the USDI Bureau of Land Management.
- 18 • 11/22/10 - Lakeside Fire District's insurance records show the vehicle insured at a  
19 value of \$25,000 for the calendar year 2011. Subsequent insurance records show  
20 the vehicle insured for calendar years 2012, 2013, 2014, and 2015.
- 21 • 4/10/15 Vehicle bill of sale from Lakeside Fire District (signed by Fred Clauson) to  
22 Theodore D. Ross.
- 23 • 4/23/15 Oregon DMV Vehicle title issued to Theodore D. Ross.

24  
25 Records indicate that this vehicle was explicitly identified as compensation for Ted Ross in  
26 the 2013 SEPARATION AND RETIREMENT AGREEMENT DECEMBER 16, 2013  
27 BETWEEN LAKESIDE FIRE DISTRICT #4 ON BEHALF OF THE BOARD OF  
28 DIRECTORS AND THEODORE ROSS". (#INV2, #INV6, #INV11)

29  
30 2005 Chevrolet Tahoe Vin number 1GNEK13Z15J189377

- 31 • 9/26/14 Lane County Fleet Auction records show the vehicle was purchased by

1 Lakeside Fire District for \$6,000, purchased with a Fire District check.

- 2 • 10/9/14 vehicle registered to Lakeside Rural Fire District pursuant to title transfer
- 3 from the Lane County Sheriff's Office.
- 4 • 12/2/14 Lakeside Fire District's insurance records show the vehicle insured at a
- 5 value of \$6,000 for the calendar year 2015.
- 6 • 10/27/15 Vehicle bill of sale from Lakeside Fire District (signed by Donald Gilkey as
- 7 Board President) to Ted Ross.
- 8 • 11/16/15 Oregon DMV Vehicle title issued to Theodore D. Ross. (#INV2, #INV6,
- 9 #INV11)

10  
11 Records indicate that Ted Ross requested, when he resigned in 2015 that he be allowed to  
12 purchase this vehicle "for a fair market value" from the District and that the Board  
13 consented and fixed a price. Board meeting records for 10/21/15 show a discussion of the  
14 rationale for the price of \$2,500 by the Board prior to their acceptance of the severance  
15 agreement. Information from the District's accounting firm shows that he paid \$2500 for  
16 this vehicle on 11/20/15. (#INV3a, #INV11b)

17  
18 **CONCLUSIONS:** Ted Ross was Fire Chief or Executive Administrative Officer (EAO) of  
19 the Lakeside Rural Fire Protection District (District) when the events relevant to this  
20 investigation occurred. He was a public official as defined in ORS 244.020 and subject to  
21 compliance with the provisions of ORS Chapter 244.

22  
23 ORS 244.040(1) prohibited Mr. Ross, as a public official, from using or attempting to use  
24 his official position to obtain financial gain or to avoid financial detriment, if the opportunity  
25 for financial gain or avoidance of financial detriment would not otherwise be available but  
26 for him holding any official position with the district. ORS 244.040(1) also prohibited Mr.  
27 Ross from using or attempting to use his official position to obtain a financial gain or avoid  
28 a financial detriment for a relative.

29  
30 There are some exceptions to financial benefits prohibited by ORS 244.040(1). A public  
31 official may accept any element of the public official's compensation package and a public

1 official may accept the reimbursement of expenses incurred by the public official in the  
2 conduct of official duties [ORS 244.040(2)(a) and (c)].

3  
4 ORS 244.040(3) prohibited Mr. Ross from soliciting or receiving, directly or indirectly, future  
5 employment based on any understanding that his vote, official action or judgment as a  
6 public official would be influenced by the pledge or promise. Further, ORS 244.040(4)  
7 prohibited Mr. Ross from furthering or attempting to further his personal gain through the  
8 use of confidential information gained in the course of or by reason of holding a position as  
9 a public official or the activities as a public official.

10  
11 ORS 244.047 prohibits an individual who ceases to hold a position as a public official from  
12 having a direct beneficial financial interest in a public contract for two years following the  
13 date the contract was authorized, if the contract was "authorized by" the individual while  
14 acting in the capacity previously held as a public official. As used in ORS 244.047, a public  
15 contract is "authorized by" a public official if the public official performed a significant role in  
16 the selection of a contractor or the execution of the contract. A significant role can include  
17 recommending approval or signing of the contract, including serving on a selection  
18 committee or team, or having the final authorizing authority for the contract. [OAR 199-005-  
19 0035(6)]

20  
21 A statutory conflict of interest is any action, decision, or recommendation made by a  
22 person in their official capacity as a public official, the effect of which would or could be to  
23 the financial benefit or detriment of themselves, a relative, or a business with which they or  
24 a relative are associated. Public officials such as Theodore Ross, when met with a conflict  
25 of interest in the course of their official duties, must provide their appointing authority with  
26 written notice of the nature of their conflict and request that the appointing authority  
27 dispose of the issue giving rise to the conflict. [ORS 244.020(1) and (12), ORS  
28 244.120(1)(c)]

29 ///  
30 ///  
31 ///

1 EMPLOYMENT AGREEMENTS

2 It is understandable that the circumstances of Mr. Ross's employment contracts and  
3 separation agreements raised concerns and may have prompted the complaint in this  
4 case.

5  
6 For instance, it seems unusual and noteworthy that an extensive addendum to the  
7 employment agreement between Lakeside Fire District and Mr. Ross as Executive  
8 Administrative Officer was apparently signed on 1/15/14, the same date the agreement  
9 itself was signed. Further, the copy of the original signed employment agreement  
10 submitted to the Commission by David S. Tilton, Attorney at Law, does not specifically  
11 identify the existence of an addendum. Also notable is the addendum appears to explicitly  
12 identify several, but not all, financial benefits contested in the complaint in this case, which  
13 was received by the Commission on 1/27/15.

14  
15 It appears that attorney Tilton, who represented both the District and Mr. Ross personally  
16 at that time, expressed his ignorance of the existence of many of these agreements and  
17 appears to have questioned the legality of fulfilling the more recent of the separation  
18 agreements in its then current form. Mr. Tilton also stated that he had never attended a  
19 Board meeting until February of 2015. Mr. Clauson, one of the three Board members who  
20 approved the 2014-2017 employment agreement, addendum, and separation agreement  
21 for Ted Ross, said during the investigation that the Board did nothing without the approval  
22 of their attorney, Mr. Tilton, but acknowledged that he received direction from Mr. Tilton  
23 indirectly, through other District personnel.

24  
25 ORS 244.040 has carved out an explicit exception when it comes to a public official's  
26 official compensation. Public officials are allowed to accept any part of their official  
27 compensation, which also includes the direct payment of a public official's expenses.

28  
29 An "official compensation package" means the wages and other benefits provided to the  
30 public official. To be part of the public official's "official compensation package", the wages  
31 and benefits must have been specifically approved by the public body in a formal manner,

1 such as through a union contract, an employment contract, or other adopted personnel  
2 policies that apply generally to employees or other public officials. "Official compensation  
3 package" also includes the direct payment of a public official's expenses by the public  
4 body, in accordance with the public body's policies. [OAR199-005-0035(3)]

5  
6 It is outside the Commission's jurisdiction to decide whether a public body that formally  
7 approved a contract providing for a public official's compensation had legal authority to  
8 agree to the terms or whether the contract is valid and enforceable.

9  
10 Further, nothing in ORS Chapter 244 prohibits a public official from seeking certain  
11 employment benefits, including retirement or severance benefits. A public official is also  
12 not prohibited from negotiating on their own behalf for a new position with the government  
13 agency they serve, or for any other feature of an employment contract.

14  
15 In this case, it appears that the District Board members, at whose pleasure Ted Ross  
16 served and to whom Ted Ross reported, saw fit to execute certain employment  
17 agreements with Mr. Ross between 2012 and 2015. While some may raise an eyebrow at  
18 the terms contained in these contracts, there is insufficient evidence to indicate that Mr.  
19 Ross violated ORS 244.040(1), 244.040(3), or 244.040(4) when accepting the benefits of  
20 these contracts.

21  
22 Nor does evidence appear to support a finding that Mr. Ross violated ORS 244.047, which  
23 prohibits a *former* public official from benefitting from a public contract that he had a  
24 significant role in executing for two years after leaving public employment. Mr. Ross was  
25 an employee moving from one position with the District immediately to another position,  
26 and he advocated for his employment contracts, which were approved by the governing  
27 body of the District. He never ceased being a public official. The Commission has never  
28 considered a public official who moves from one government agency to another, or who  
29 moves from one position to another position within the same government agency and who  
30 negotiates an individual employment contract in the process, to be in violation of ORS  
31 244.047.

1 USE OF DISTRICT RESOURCES FOR PERSONAL FINANCIAL GAIN

2 The complaint alleged that Mr. Ross used the District credit card and fuel card for his own  
3 personal purchases. Information available refutes that Mr. Ross purchased flooring for his  
4 own or his father's personal benefit using the District credit card and instead shows that on  
5 the same day Mr. Ross purchased flooring for the District with the District credit card, he  
6 purchased a much larger amount using his personal Visa debit card.

7  
8 The complaint alleged that other purchases with the District credit card were made by Ted  
9 Ross to benefit him personally. Mr. Ross refuted the specific allegations, and explained  
10 the purchases he made were District purchases and there is no evidence to the contrary.

11  
12 According to his 2014-2017 employment agreement and the confirmation of Board  
13 members, Mr. Ross had authority to 1) use a District vehicle for personal and business use  
14 and the District would pay the attendant expenses 2) receive reimbursements for  
15 expenditures made for Hugo, the dog 3) receive reimbursements for any supplies needed  
16 to conduct District business and 4) personal use of all District equipment. As stated above,  
17 a public official is able to accept any element of their official compensation package without  
18 violating ORS 244.040.

19  
20 Given such an encompassing employment agreement and the paucity of credit card and  
21 fuel records available, there is insufficient evidence to ascertain whether Mr. Ross may  
22 have violated Oregon Government Ethics law concerning his use of the District credit or  
23 fuel cards.

24  
25 VEHICLES

26 Information indicates that Mr. Ross obtained two vehicles from the District as part of his  
27 employment contracts.

28  
29 2006 Dodge Ram 2500 Diesel, Vin number 1D3KS28C76J186904

30 This vehicle was transferred from the District to Mr. Ross as part of the 2013  
31 Separation and Retirement Agreement between Mr. Ross and the District.

1           2005 Chevrolet Tahoe, Vin number 1GNEK13Z15J189377

2           Mr. Ross purchased this vehicle from the District for \$2,500 as part of the severance  
3           package executed between him and the District in 2015.

4  
5           Again, as stated above, ORS 244.040(1) does not prohibit a public official from accepting  
6           any element of their official compensation package.

7  
8           2007 Dodge Ram 1500 Pickup, VIN 1D7HU18277S102581

9           Mr. Ross claims that this vehicle was purchased by him personally at the Lane  
10          County Auction in September of 2012 for \$750 with a personal cashier's check.  
11          According to his statement, the vehicle was at some point given to Jeremy Roberts  
12          for repairs, and in September of 2013, it was sold to the District for \$11,000, which  
13          was paid to the titled owner, Jeremy Roberts.

14  
15          The complainant in this case claims that Jeremy Roberts told her that he was  
16          instructed by Ted Ross to sell the vehicle to the District and give him, Ted Ross, the  
17          \$11,000, which he did.

18  
19          To date, Jeremy Roberts has not discussed his version of events with Commission staff,  
20          whereas Ted Ross has denied taking any part in this and he claims he never received any  
21          part of the \$11,000 paid to Jeremy Roberts. There are several plausible scenarios as to  
22          what could have transpired concerning this vehicle, but Mr. Ross never explained why he  
23          would personally pay \$750 for the vehicle and not even at least recoup his purchase price  
24          after its refurbishment and resale to the District. Even though the course of events is highly  
25          suspect, there is insufficient evidence to show that Ross received any part of the \$11,000  
26          paid to Jeremy Roberts.

27  
28          Although the Auction records show that "Lakeside Fire District" was the purchaser of this  
29          vehicle, if we take Mr. Ross's version of events as true, Ted Ross procured the vehicle by  
30          using his position as District Fire Chief to bid as a representative of a government agency,  
31          rather than as an individual party. The Fleet Auction is designed to give government



1 agency purchasers a preferred bidding position over members of the public. The bid  
2 submitted was on behalf of the District and made by Ted Ross in his capacity as Fire Chief.  
3 But for his position with the District, he would not have been able to get the selection and  
4 bid preference allotted to municipalities and government agencies.

5  
6 Mr. Ross also failed to make written notification to the District Board members, his  
7 appointing authority, that he was met with a conflict of interest when taking actions in his  
8 official capacity which could or would have the effect of a financial benefit for himself in the  
9 price and selection of vehicles available at the Fleet auction.

#### 10 11 USE OF ATTORNEY SERVICES

12 In other Commission cases, District Board members Clauson and Rhyner (Cases 15-  
13 278EDT and 15-281EDT), were found to have violated the conflict of interest and use of  
14 office provisions of ORS Chapter 244 when they authorized the free legal representation of  
15 the District's counsel, attorney David Tilton, for their personal cases with the Commission.  
16 This benefit would not have been available to them but for holding their official positions.  
17 The Commission staff has opined that when authorizing for themselves a specific financial  
18 benefit, members of the governing body of a public body would be met with a conflict of  
19 interest and a prohibited use of their office. [Commission Staff Opinions 14-S001 and 14S-  
20 002]

21  
22 Mr. Ross also availed himself of the legal services of Mr. Tilton, attorney for the District, at  
23 no personal cost to himself, for a portion of the investigation period in this case. The  
24 attorney sent to the Commission a letter dated 5/8/15 stating that he represented Mr. Ross  
25 and attached a letter signed by Mr. Ross authorizing Mr. Tilton to represent him "in any  
26 Oregon Ethics Commission cases." Attached to a letter dated 6/8/15 from Mr. Tilton, was  
27 Mr. Ross's second agreement with Mr. Tilton, which authorized Mr. Tilton to provide legal  
28 representation for Theodore Ross in all matters before the Ethics Commission and the  
29 Elections Division. This second Ross agreement was counter-signed by two Board  
30 members, as members of the governing body who were Mr. Ross's employers. Given all  
31 the detailed terms of Mr. Ross's prior employment contracts with the District, no evidence

1 exists that this benefit was ever formally adopted by a quorum of the governing body as  
2 part of Mr. Ross's official compensation.

3  
4 It appears that Mr. Ross availed himself of the free legal services of the District's attorney,  
5 thereby avoiding a personal cost to himself of hiring his own private attorney in cases he  
6 was defending before the Commission and the Elections Division.

7  
8 It appears that there is a preponderance of evidence to indicate that Theodore Ross  
9 committed violations of the conflict of interest and use of office provisions of Oregon  
10 Government Ethics law.

11  
12 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a  
13 preliminary finding that Theodore Ross committed 1 violation of ORS 244.120(1)(c) and 2  
14 violations of ORS 244.040(1).

15  
16 **ASSOCIATED DOCUMENTS:**

17 #PR1 Michelle Roe, signed complaint, and associated documents, received  
18 1/27/15.

19 #PR2 Oregon Government Ethics Commission complaint form signed by Michelle  
20 Roe and dated 2/1/14, and associated document, received on 2/5/15.

21 #PR3 Ted Ross, letter dated 2/7/15, and associated documents, to Ronald Bersin  
22 received on 2/11/15.

23 #PR4 Ted Ross, letter dated 2/9/15, and associated document, to Ronald Bersin  
24 received on 2/11/15.

25 #PR5 Michelle Roe, signed letter dated 2/17/15, and associated documents,  
26 received on 2/23/15.

27 #PR6 Ted Ross, letter dated 2/12/15, and associated documents, to Ronald Bersin  
28 received on 2/23/15.

29 #PR7 Ted Ross, letter dated 2/18/15, and copies of three photographs, to Ronald  
30 Bersin received on 2/23/15.

31 #PR8 Copy of Incident Report S201500633, and associated documents, from the

1 Coos County Sheriff's Office, with various dates, received on 2/27/15.  
2 #PR9 David S. Tilton, Attorney at Law, letter dated 3/3/15, and associated  
3 document, to the Government Ethics Commission received on 3/6/15.  
4 #PR10 David S. Tilton, Attorney at Law, letter dated 3/4/15, and associated  
5 document, to the Government Ethics Commission received on 3/9/15.  
6 #INV1 Two letters from David S. Tilton, Attorney, first dated 5/8/15, received  
7 5/11/15 by Commission, and second dated 6/8/15, received 6/11/15,  
8 verifying his legal representation of Ted Ross, with attached documents.  
9 #INV1a Letter from attorney David S. Tilton, received 6/11/15 (fax) and 6/15/15  
10 (USPS) with attached statement from Mattie Lane, former Board member.  
11 #INV1b Letter from attorney David S. Tilton, received 6/12/15 (fax) and 6/15/15  
12 (USPS) with attached documents concerning fuel cards and District vehicles.  
13 #INV1c Letter from attorney David S. Tilton, received 6/19/15 with attached  
14 statement from Bob Hood, District Division Chief.  
15 #INV1d Letter from attorney David S. Tilton, received 6/22/15, addressing complaints  
16 about him filed by Ms. Roe with various agencies.  
17 #INV1e Letter from attorney David S. Tilton, received 7/2/15 with attached  
18 documents concerning Mr. Ross's retirement and employment agreements.  
19 #INV1f Letter from attorney David S. Tilton, received 7/13/17, notifying Commission  
20 that he no longer represents Mr. Ross.  
21 #INV2 Records obtained from Lane County pertaining to their annual Fleet Auctions  
22 for 2011-2014, payment receipts, email from Lane County Counsel, and  
23 summary of interviews with Auction staff.  
24 #INV3 Investigator's memo summarizing contacts with Ted Ross on 8/11/17 and  
25 9/15/17.  
26 #INV3a 8/15/17 emails and other material received from Ted Ross.  
27 #INV3b 9/15/17 and 9/18/17 emails, faxes, and other documents received from Ted  
28 Ross.  
29 #INV4 Investigator's 9/15/17 memo re contact with Joel Christiansen, attorney.  
30 #INV5 Investigator's 9/15/17 memo re contact with Michelle Roe (complainant) and  
31 Jeremy Roberts, current Fire Chief, Lakeside Fire District.

- 1 #INV6 Vehicle history records and email correspondence to and from Oregon DMV
- 2 personnel.
- 3 #INV7 Investigator's 9/21/17 memo re contact with Calvin Walker, former Chair of
- 4 the District Board of Directors.
- 5 #INV8 Investigator's 9/18/17 memo re contact with Fred Clauson, former Chair of
- 6 the District Board of Directors.
- 7 #INV9 Investigator's 9/22/17 memo re contact with Doris Rhyner, former member of
- 8 the District Board of Directors.
- 9 #INV10 Records obtained from the Oregon Department of Justice.
- 10 #INV11 Records and correspondence to and from Lakeside Fire District in
- 11 response to Commission's record requests during investigation.
- 12 #INV11a Copy of newspaper story published by "The World" on 9/3/15 entitled
- 13 "Lakeside Fire District fires CEO":
- 14 #INV11b Investigator's 9/28/17 memo concerning records in Commission cases 15-
- 15 283EDG and 15-257XDT pertaining to this case.
- 16 #INV12 Records and correspondence to and from Wall and Wall, Lakeside Fire
- 17 District's accounting firm, in response to Commission's record requests.
- 18 #INV13 Records downloaded from Coos County Elections Division website.
- 19 #INV14 Copy of email and letter, both dated 9/27/17, notifying Commission's legal
- 20 counsel that Mr. Ross is represented by attorney C. Robert Steringer of
- 21 Harrang Long Gary Rudnick, P.C.

PREPARED BY *Diane Gould* 9/28/17  
 Diane Gould / Date  
 Investigator

APPROVED BY *RA Bersin* 9/28/17  
 Ronald A. Bersin / Date  
 Executive Director

REVIEWED BY *Amy E. Alpaugh* 9/28/17  
 Amy E. Alpaugh / Date  
 Assistant Attorney General

# OREGON GOVERNMENT ETHICS COMMISSION

## INVESTIGATION

**CASE NO:** 15-115EDG

**DATE:** September 28, 2017

**RESPONDENT:** CLAUSON, Fred, Chair of Board of Directors, Lakeside Fire District

**COMPLAINANT:** JOHNSON, Tishiea, President Lakeside Volunteer Fire Association

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 Violation of ORS 244.040(1) [Motion10]

1 **SYNOPSIS:** Fred Clauson was a member of the board of directors of Lakeside Fire  
2 District (District) during the period relevant to this case. The focus of this investigation was  
3 to determine if there was a preponderance of evidence to indicate that a violation of the  
4 use of office provisions of ORS Chapter 244 was committed by Mr. Clauson.

5  
6 Mr. Clauson and his household member were moving residences in 2014 and allegations  
7 were made that Mr. Clauson may have used his position as board director to obtain the use  
8 of District vehicles and personnel to help him with his personal move. Individuals were  
9 interviewed during the course of this case and accounts vary. However, from the  
10 information available, it appears that there is a preponderance of evidence to show that Mr.  
11 Clauson availed himself of his position as board chair to avoid a personal financial  
12 detriment when moving residences. Therefore, it is recommended that the Commission  
13 make a preliminary finding of a violation of ORS 244.040(1) by Mr. Clauson.

14  
15 **NOTE:** The complaint, preliminary review report, and various Fire District records show the  
16 respondent's name spelled "Clausen", while other records show his name as "Clauson";  
17 Mr. Clauson confirmed that the latter spelling is correct and it is used in this report.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the  
2 issues addressed herein: NOTE: The statutes cited below were in effect when the events  
3 pertinent to this case occurred. Some statutes have been altered and renumbered since  
4 that time.

5  
6 244.020(10) (2013) "'Member of the household' means any person who resides with  
7 the public official or candidate."

8  
9 244.020(14) (2013) "'Public official' means any person who, when an alleged  
10 violation of this chapter occurs, is serving the State of Oregon or any of its political  
11 subdivisions or any other public body as defined in ORS 174.109 as an elected  
12 official, appointed official, employee or agent, irrespective of whether the person is  
13 compensated for the services."

14  
15 **244.040 "Prohibited use of official position or office; exceptions; other**  
16 **prohibited actions.** (1) Except as provided in subsection (2) of this section, a public  
17 official may not use or attempt to use official position or office to obtain financial  
18 gain or avoidance of financial detriment for the public official, a relative or member  
19 of the household of the public official, or any business with which the public official  
20 or a relative or member of the household of the public official is associated, if the  
21 financial gain or avoidance of financial detriment would not otherwise be available  
22 but for the public official's holding of the official position or office."

23  
24 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated a  
25 preliminary review based on information in a signed complaint from Tishiea Johnson  
26 (#PR1). Ms. Johnson alleged that Fred Clauson, member of the Board of Directors of  
27 Lakeside Fire District (District), may have violated Oregon Government Ethics law. The  
28 Commission found cause to investigate on 5/1/15 after considering the information  
29 developed in the preliminary review. The focus of the investigation was to determine if  
30 there is sufficient evidence to indicate that Fred Clauson used or attempted to use District  
31 resources (vehicles and labor) when he and a household member moved from one home

1 to another.

2  
3 Information was received after the investigation began that a criminal investigation was  
4 being conducted regarding the same circumstances that provided the basis for this  
5 investigation. As required by ORS 244.260(6)(c)(A)(2013), the investigation was  
6 suspended on 8/26/15 until information was received on 7/6/17 that the criminal matter was  
7 concluded. The Commission granted a 30 day extension of the investigation period at its  
8 meeting on 7/14/17, pursuant to ORS 244.260(6)(c)(B). Fred Clauson and Tishiea  
9 Johnson have been notified that the investigation has resumed and were invited to provide  
10 any information which would assist the Commission in conducting the investigation in this  
11 matter.

12  
13 In addition to the information that was provided by Tishiea Johnson, information was  
14 obtained from others including Fred Clauson; Linda Johnson (Mr. Clauson's household  
15 member); Ralph Dotson, a volunteer firefighter with the district; and Ken McMillen, a former  
16 neighbor, which is summarized as follows:

17  
18 Tishiea Johnson stated in her complaint, "In the summer, new volunteer Ralph  
19 Dotson, along with other volunteers were called to the station to move Board Chair  
20 Fred Clauson, and his live in partner Linda Johnson from their home on Tiara Street  
21 to Lakeland Estates using vehicles, gas and man power belonging to the fire  
22 department. We believe this would be public officials receiving something for free,  
23 not available to the general public against ethics rules" (#PR1).

24  
25 Tishiea Johnson enclosed with her complaint a copy of a 12/31/14 statement  
26 apparently signed by Ralph Dotson, which stated, "In the late spring, Apr or May I  
27 think, I was told by Ted Ross, that I needed to help the chairman of the fire board  
28 move into his new house. I was told that I would be called when they were ready to  
29 move. When I got the call I went to the station and followed 8681 up to Tiara St.  
30 The firemen moved the house hold furniture to his new house. This process uses  
31 undue influence on subordinates and is an abuse of authority" (#PR1).

1 Mr. Dotson confirmed that he is a volunteer firefighter with Lakeside Fire District and  
2 submitted the aforementioned signed statement to Michelle Roe, a citizen  
3 concerned with the operations of the district. Mr. Dotson indicated that he had  
4 expressed his concerns about the move previously to Ted Ross, the district's  
5 executive officer, but felt his concerns had been ignored (#PR3).

6  
7 Mr. Dotson explained that Mr. Ross told him that he had to assist Mr. Clauson and  
8 Linda Johnson move from one personal residence to another. Mr. Dotson indicated  
9 that he was new to the department at that time and felt that he did not have a choice  
10 other than to participate. Mr. Dotson could not recall a specific date but believes the  
11 events occurred approximately one year ago (#PR3).

12  
13 Mr. Dotson indicated that he was uncertain whether Linda Johnson and Fred  
14 Clauson shared a household prior to the move. However, he explained that the  
15 move involved an entire household of personal possessions including furniture,  
16 women's clothing and other effects (#PR3).

17  
18 Mr. Dotson explained that Mr. Ross had stopped in during the move and said that  
19 while he had not realized the extent of items to be moved that the firefighters  
20 needed to stay until they were done. Mr. Dotson explained that he was not aware of  
21 any payments offered or received related to the district personnel or vehicles utilized  
22 (#PR3).

23  
24 On 2/5/15, the Commission received a signed submission from Michelle Roe  
25 regarding Fred Clauson that provided a telephone number for Ken McMillen, a  
26 "neighbor who witnessed the fire department moving him." A copy of this  
27 information was provided to Mr. Clauson (#PR2).

28  
29 Mr. McMillen indicated that he is a former neighbor of Mr. Clauson. He said that he  
30 lives across the street from Mr. Clauson's former residence on Tiara Street. Mr.  
31 McMillen said that he and his wife observed fire department personnel moving Mr.



1 Clauson about a year prior. Mr. McMillen could not recall a specific date (#PR4).

2  
3 Mr. McMillen indicated that he and his wife found it both odd and upsetting when  
4 they observed fire department personnel moving Mr. Clauson. Mr. McMillen  
5 believed most of the department personnel were involved in the move in addition to  
6 several department vehicles (#PR4).

7  
8 Mr. McMillen explained that it especially bothered him and his wife because there  
9 were quite a few department vehicles at Mr. Clauson's residence. Mr. McMillen said  
10 that he felt this was a waste of the district's tax dollars and felt possibly having one  
11 district vehicle available for official department use in case of an emergency would  
12 have been appropriate, but not for the move itself (#PR4).

13  
14 Mr. McMillen indicated that they had previously reported activities at Mr. Clauson's  
15 residence to the fire district, including illegal burns, although no action was taken  
16 (#PR4).

17  
18 Linda Johnson indicated that she and Fred Clauson moved residences during the  
19 first week of February 2014. Ms. Johnson confirmed that district personnel assisted  
20 her and Mr. Clauson in their personal move. Ms. Johnson said, "It is true, the  
21 fellows helped us move, but there was no intent to defraud" (#PR5).

22  
23 Linda Johnson advised that she was not a fire district board member during the time  
24 of the move or currently. She explained that Mr. Clauson has been a long-time  
25 supporter of the fire district and that all of the fire district people are friendly and  
26 have social relationships (#PR5).

27  
28 Linda Johnson indicated that when Mr. Clauson told Ted Ross, the district's  
29 executive officer, that they were moving Mr. Ross indicated that he thought he could  
30 get some of the guys to help. Ms. Johnson indicated that there were a group of  
31 guys that arrived in a pick-up truck owned by the fire department (#PR5).

1 Linda Johnson indicated that Mr. Clauson brought a pick-up truck and another man  
2 provided his truck and trailer. She explained that a group of guys arrived in a pick-  
3 up truck owned by the district, but indicated that it was not used to move items, just  
4 people (#PR5).

5  
6 Linda Johnson indicated that Mr. Clauson had no intention of defrauding anyone.  
7 She explained that Mr. Clauson had offered to pay for the help, but a couple of  
8 guys, including Ted Ross, turned down Mr. Clauson's offer. Linda Johnson also  
9 indicated that the district helps a lot of people by providing community service within  
10 the district, but, when asked, indicated she was not aware of moving services being  
11 provided previously (#PR5).

12  
13 Linda Johnson indicated for about the last nine months Ralph Dotson and others  
14 had been filing complaints against district board members and that the issues had  
15 become exaggerated (#PR5).

16  
17 Fred Clauson indicated he and Linda Johnson moved from his residence to another,  
18 about a mile away on or about 2/1/14 (#PR6).

19  
20 Mr. Clauson explained that he had asked a couple of people from the fire board if  
21 they would help them move. When asked, Mr. Clauson indicated that no one on the  
22 fire board ended up helping with the move, but other district volunteers assisted.  
23 Mr. Clauson indicated that he believed Ted Ross, may have heard him ask for help  
24 and may have asked other district volunteers to help with the move (#PR6).

25  
26 Mr. Clauson indicated that the vehicles used to move their belongings were his own  
27 pick-up truck and his friend's truck and flatbed trailer. He explained that one district  
28 vehicle was driven from the department to his residence, about a mile away, to bring  
29 people to help with the move (#PR6).

30  
31 Mr. Clauson indicated that he had offered to pay for the help, but his offers were

1 refused. Mr. Clauson indicated that he even offered to put money into the "fireman  
2 fund," but was advised it was not necessary (#PR6).

3  
4 Mr. Clauson indicated that rumors, innuendos, and lies had circulated regarding  
5 these circumstances. He indicated that people said he used district vehicles and  
6 had many different dates on which the move purportedly occurred. Mr. Clauson  
7 explained that he did not use his position on the board of directors for the purposes  
8 of his personal move (#PR6).

9  
10 On 6/11/15, following the completion of the preliminary review period in this case, a letter  
11 dated 6/8/15 from David Tilton, attorney, was received by the Commission with enclosed  
12 letters. There were two letters enclosed on Lakeside Fire District letterhead, both dated  
13 5/29/15. The letter pertinent to this case authorized attorney Tilton to represent "Fred  
14 Clauson" and four other named District Board members "on all legal matters with the  
15 Oregon Ethics Commission", and was signed by Fred Clauson as "Board Chairman" and  
16 three of the named Board members. (INV2)

17  
18 This information was received after the Commission found cause to investigate on 5/1/15  
19 and before 8/26/15 when the case was suspended pending the completion of a criminal  
20 investigation into the same circumstances. When the Commission staff was notified on  
21 7/6/17 that the Department of Justice had completed its criminal investigation, both Mr.  
22 Clauson and Mr. Tilton were advised of the resumption of this investigation. Mr. Tilton  
23 submitted a letter dated 7/10/17 and received by the Commission on 7/13/17 that he no  
24 longer represented Mr. Clauson, and had ceased legal representation of him approximately  
25 1.5 years earlier. (#INV2a)

26  
27 A previous Commission staff member conducted the interviews that occurred during  
28 preliminary review and prepared the preliminary review report in this case. A different  
29 investigator took over the case recently. During the investigation period, Mr. Clauson was  
30 contacted by the current investigator, to conduct an interview concerning this matter as well  
31 as the circumstances in another case currently pending before the Commission. The

1 information pertinent to this case is summarized below. (INV#1)

2  
3 Mr. Clauson was surprised to hear that this case was still in investigation. I checked  
4 to make sure he was getting mail from the Commission and he confirmed his  
5 address.

6  
7 As to the circumstances surrounding moving his household goods from one  
8 residence to another, he said that some firefighters came to help him move, but  
9 they did not use District vehicles, they only used Mr. Clauson's vehicles. They  
10 arrived in a first response District vehicle, which they parked by the house because  
11 they needed to keep it nearby in case they received a fire call. And, in fact, they did  
12 receive a call and left for about 1 hour and then returned. They only moved the  
13 heavy pieces, like appliances, beds, large furniture. He said that these firefighters  
14 were his friends and that he offered to pay them, but they refused and Ted Ross,  
15 who apparently was there, also refused to accept pay. Mr. Clauson said he was not  
16 using his position as a Board member, because everyone in this small community  
17 helps each other, they all have social relationships.

18  
19 He was surprised to see Mr. Dotson's statements in the previous Commission  
20 (preliminary review) report, because Mr. Clauson said that Mr. Dotson has never  
21 been inside his house and he would never allow Mr. Dotson inside his house. Mr.  
22 Clauson said that Mr. Dotson's entire statement to the Commission was false.

23  
24 Mr. Clauson said that he would never do anything that was unethical or improper.  
25 He believes that this was just friends and neighbors helping out. (#INV1)

26  
27 **CONCLUSIONS:** Fred Clauson was the chair of the board of directors for the Lakeside  
28 Fire District when events relevant to this case occurred. He was a public official as defined  
29 in ORS 244.020(14). Linda Johnson was a member of Mr. Clauson's household as  
30 defined in ORS 244.020(10).

31 ///

1 ORS 244.040(1) prohibited Mr. Clauson from using or attempting to use his official position  
2 or office to obtain financial gain or to avoid financial detriment for himself or a member of  
3 his household, the opportunity for which would not otherwise be available but for his  
4 holding a position as chair of the District's board of directors.

5  
6 The information available indicates differences in recollections and explanations  
7 concerning the circumstances related to Mr. Clauson's personal move in 2014. Mr.  
8 Clauson says that he asked his fellow board members for help, and none of them  
9 responded, but some firefighters did arrive to help.

10  
11 There is no information to indicate that Mr. Clauson directly requested the District's  
12 personnel and vehicles be used to move him. However, it appears that Theodore Ross,  
13 who was at that time the Executive Administrative Officer of the District, arranged to have  
14 some of the volunteer firefighters aid Mr. Clauson in his move. Although not explicit in his  
15 accounts, Mr. Clauson must have informed Mr. Ross of the date, time, and place of the  
16 move at some point. Mr. Clauson says that he offered to pay for the help and his offer was  
17 declined.

18  
19 It is undisputed that the volunteer firefighters did arrive at Mr. Clauson's home on the day  
20 of the move and did move Mr. Clauson's and Ms. Johnson's personal belongings. It  
21 therefore appears that Mr. Clauson accepted Mr. Ross's offer and arranged, apparently  
22 with Ross, to have the firefighters help him move. What is disputed is whether the  
23 volunteer firefighters were helping Mr. Clauson because he was the board chair.

24  
25 As to the use of District vehicles, there is no information that Mr. Clauson asked for or  
26 understood that the volunteer firefighters would arrive at his house in a district vehicle. Nor  
27 is it clear whether any district vehicles were used to move Mr. Clauson's and Ms.  
28 Johnson's belongings. Mr. Clauson and Ms. Johnson both state that no district vehicles  
29 were used to transport their belongings, but their neighbor's recollections seem different.

30 ///

31 ///

1 In the Oregon Supreme Court case, *Davidson v. Oregon Government Ethics Comm.*, 300  
2 Or 415, 422 (1985), the court found that a prohibited “use” of one’s official position occurs  
3 when a public official “avails himself of” the opportunities afforded him through his public  
4 position. The court distinguished between an active “use” of one’s official position and a  
5 more passive “use” of official position through one’s “access to the assets and other  
6 attributes of government.” There is no indication that Mr. Clauson, merely as a private  
7 resident of Lakeside, would have been able to arrange, through the District’s Executive  
8 Administrative Officer, for the volunteer firefighters to assist in his personal move. The fact  
9 that Mr. Clauson was chair of the District board at the time, was more likely than not a  
10 factor in him obtaining these services.

11

12 It should be noted that Mr. Clauson had legal representation during the early part of this  
13 investigation, provided by attorney David Tilton, who also represented several other District  
14 officials who had cases pending before the Commission. He also represented the Fire  
15 District itself at the time. The issue of Mr. Clauson being personally represented at no  
16 financial cost to himself by the District’s legal counsel, was the subject of Commission  
17 Case No. 15-278EDT. That case concluded with a stipulated final order, following the  
18 Commission’s finding that Mr. Clauson committed violations of the use of office and conflict  
19 of interest provisions of Oregon Government Ethics law when, as a Board member, he  
20 avoided a financial detriment by availing himself of the resources of the District to provide  
21 personal legal services. Therefore, that issue is not addressed in this case.

22

23 It appears from the information available, that there is sufficient evidence to find that Mr.  
24 Clauson used or attempted to use his official position as a board director to avail himself of  
25 the District’s resources when moving residences, thereby avoiding a personal financial  
26 detriment.

27

28 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a  
29 preliminary finding of one (1) violation of ORS 244.040(1) by Fred Clauson. [Motion 10]

30 ///

31 ///

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Tishiea Johnson, signed complaint and documents received 2/26/15.  
3 #PR2 Oregon Government Ethics Commission complaint form signed by Michelle  
4 Roe received on 2/5/15.  
5 #PR3 Draft memorandum of information received from Ralph Dotson, Volunteer  
6 Firefighter, Lakeside Fire District received on 4/16/15 with additions,  
7 clarifications or corrections on 4/20/15 and 4/21/15.  
8 #PR4 Draft memorandum of information received from Ken McMillen, former  
9 neighbor received on 4/16/15.  
10 #PR5 Draft memorandum of information received from Linda Johnson, relative or  
11 household member of Fred Clauson, former member of the Board of  
12 Directors of the Lakeside Fire District received on 4/15/15.  
13 #PR6 Draft memorandum of information received from Fred Clauson, Board of  
14 Directors, Lakeside Fire District received on 4/16/15.  
15 #INV1 9/18/17 draft memorandum summarizing contact with Fred Clauson.  
16 #INV2 Letter from David S. Tilton, Attorney at Law, dated 6/8/15, received by the  
17 Commission on 6/11/15, with attached enclosures.  
18 #INV2a Letter from David S. Tilton, Attorney at Law, dated 7/10/17, received by the  
19 Commission on 7/13/17.  
20 Reference: Commission Case No. 15-278EDT

PREPARED BY Diane Gould 9/28/17  
Diane Gould Date  
Investigator

APPROVED BY Ronald A. Bersin 9/28/17  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY Amy E. Alpaugh 9/28/17  
Amy E. Alpaugh Date  
Assistant Attorney General

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# Oregon

Kate Brown, Governor

17-0511

## 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](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

August 29, 2017

Honorable Greg Smith  
State Representative  
PO Box 219  
Heppner, OR 97836

Dear Representative Smith:

This letter of advice is provided in response to your request, received August 25, 2017, which presented a question regarding the application of Oregon Government Ethics law to your participation in a private income producing opportunity. The analysis and advice that follows is 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 presented.

According to the information provided, you are the principle member of Gregory Smith & Company, LLC, (Tidewater) a for-profit economic development firm that was recently retained as a contractor by Tidewater Barge Lines, a domestic business corporation. The contract was awarded the following a publicly advertised competitive process. It requires that the awarded contractor (Gregory Smith & Company, LLC): provide services per the instruction of Tidewater as it relates to infrastructure development in the State of Oregon and in the State of Washington, specifically potential tribal impacts to development of marine dock facilities at the Willow Creek site (in Arlington, OR) and at the Roosevelt, WA site; serve as a consultant and/or liaison between the Yakima Nation, the Confederated Tribes of Warm Springs, the Confederated Tribes of Umatilla Indian Reservation and the Nez Perce Tribe; and advise Tidewater with respect to Confederated Tribes level of interest for involvement in infrastructure development, potential negative impacts of development, and oppositions to development by one or more tribes.

As an elected member of the Oregon House of Representatives for District 57, you are considered a public official subject to Oregon's Government Ethics laws. As such, you are seeking advice regarding the appropriateness of this professional relationship.

Public officials are not prohibited from undertaking private business endeavors, as long as they comply with the limitations and restrictions under Oregon Government Ethics laws.

As you know, ORS 244.040(1) prohibits a public official from using or attempting to use an official position to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the public official, relative or



household member of the public official are associated, if the opportunity would not otherwise be available but for the public official's holding the official position. It should also be understood that ORS 244.040(3) prohibits a public official from directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment.

Nevertheless, ORS 244.040 is not interpreted to prohibit public officials from pursuing personal interests during their personal time, including private income producing opportunities, as long as the public official is acting within the limitations and restrictions set forth in ORS Chapter 244. To this end, the Oregon Government Ethics Commission has established a set of guidelines to assist public officials who may wish to engage in such income producing activities so as to avoid violating Oregon Government Ethics law:

#### **GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interests using the appropriate method prescribed in ORS 244.120.

The primary principle underscored in the guidelines is that a public official, who also engages in private income producing activities, must maintain a clear distinction between the use of official time and resources of the government body and personal time and resources of the official.

On review of the information provided, nothing appears to indicate that you were awarded this opportunity as a result of being a member of the Oregon Legislative Assembly, nor does it appear that you used or attempted to use your public position. However, keep in mind that as a member of the Legislative Assembly you must take particular care to ensure that the office is not used in any manner related to private income producing activities.

Furthermore, although the fact of your holding public office as State Representative does not itself create a statutory conflict of interest regarding your private business interests,

Representative Greg Smith

August 29, 2017

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you must be diligently mindful of future conflicts that may arise as a result of your association with Tidewater or your LLC.

Oregon Government Ethics law defines "actual" or "potential" conflicts of interest as arising anytime a public official makes in any official action, decision or recommendation, the effect of which "would" (an "actual" conflict) or "could" (a "potential" conflict) be to the private pecuniary benefit or detriment of the public official, the public official's relative or any business with which the public official or a relative is associated (ORS 244.020(1), (13)). The difference between "actual" and "potential" conflicts is determined by the words "would" and "could." An actual conflict occurs when a public official participates in an official action that would have a direct and specific financial impact, whereas a potential conflict exists when the action could possibly have financial impact. As you know, when Members of the Legislative Assembly are faced with conflicts of interest, they must "announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official" (ORS 244.120(1)(a)).

If you have any additional questions or concerns regarding the application of Oregon Government Ethics law in this matter now or in the future, please feel free to contact me directly.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/hw

\*\*\*\*\*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.

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## The Honorable Greg Smith

Oregon House of Representatives  
District 57

August 24, 2017

Ron Bersin, Executive Director  
Government Ethics Commission  
State of Oregon  
3218 Pringle Rd. SE, Ste. 220  
Salem, OR 97302

Subject: Opinion Request

Director Bersin:

As you know, I serve as an elected member of the Oregon House of Representatives for the citizens of District 57, which includes Umatilla, Morrow, Gilliam, Sherman, and Wasco Counties. I am also a principal member of a for-profit economic development firm called Gregory Smith & Company, LLC.

Gregory Smith & Company, LLC was recently retained by Tidewater Barge Lines to complete the following Scope of Work:

*CONTRACTOR shall provide services per the instruction of TIDEWATER as it relates to infrastructure development in the State of Oregon and the State of Washington; specifically, the potential tribal impacts to development of a marine dock facility at the Willow Creek site (Arlington, OR) and the Roosevelt, WA site. CONTRACTOR shall serve as a consultant and/or liaison between the Confederated Tribes and Bands of the Yakima Nation, the Confederated Tribes of Warm Springs, the Confederated Tribes of the Umatilla Indian Reservation and the Nez Perce Tribe. CONTRACTOR will advise TIDEWATER with respect to; Confederated Tribes level of interest for involvement in infrastructure development, potential negative impacts of development, likelihood of prolonged opposition to development by one or more Confederated Tribes.*

Gregory Smith & Company, LLC strives to conduct its business openly and transparently. As such, Gregory Smith & Company, LLC is soliciting the opinion of the Oregon Government Ethics Commission to determine the appropriateness of this professional relationship. Attached for your assessment is the Scope of Work.

For your convenience, please use the following address for correspondence.

Representative Greg Smith  
P.O. Box 219  
Heppner, OR 97836

Thank you for your assistance in this request. If you have any questions or require additional information, please do not hesitate to contact me directly.

Best Regards,

Representative Greg Smith  
House District 57

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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](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

August 29, 2017

Honorable Greg Smith  
State Representative  
PO Box 219  
Heppner, OR 97836

Dear Representative Smith:

This letter of advice is provided in response to your request, received August 25, 2017, which presented a question regarding the application of Oregon Government Ethics law to your participation in a private income producing opportunity. The analysis and advice that follows is 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 presented.

According to the information provided, you are the principle member of Gregory Smith & Company, LLC, a for-profit economic development firm that was recently contracted to provide Economic Development Director services for Harney County. The LLC was awarded the contract following submission of a Request for Proposal to Harney County. The RFP was publicly advertised in a competitive process and multiple entities were interviewed for the position.

As an elected member of the Oregon House of Representatives for District 57 (including Umatilla, Morrow, Gilliam, Sherman, and Wasco Counties), you are considered a public official subject to Oregon's Government Ethics laws. As such, you are seeking advice regarding the appropriateness of this professional relationship.

In short, there is nothing under Oregon Government Ethics law that prohibits such a professional relationship. You may accept the proposed income producing opportunity with the understanding of and compliance with the limitations and restrictions described herein.

As you know, ORS 244.040(1) prohibits a public official from using or attempting to use an official position to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the public official, relative or household member of the public official are associated, if the opportunity would not otherwise be available but for the public official's holding the official position. It should also be understood that ORS 244.040(3) prohibits a public official from directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment.



Nevertheless, ORS 244.040 is not interpreted to prohibit public officials from pursuing personal interests during their personal time, including private income producing opportunities, as long as the public official is acting within the limitations and restrictions set forth in ORS Chapter 244. To this end, the Oregon Government Ethics Commission has established a set of guidelines to assist public officials who may wish to engage in such income producing activities so as to avoid violating Oregon Government Ethics law:

#### **GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interests using the appropriate method prescribed in ORS 244.120.

The primary principle underscored in the guidelines is that a public official, who also engages in private income producing activities, must maintain a clear distinction between the use of official time and resources of the government body and personal time and resources of the official. A member of the Legislative Assembly must take particular care to ensure that the member's official position is not used in any manner related to private income producing activities.

On review of the information provided, it does not appear to indicate that you were awarded this opportunity as a result of your position as a member of the Oregon Legislative Assembly, nor does it appear that you used or attempted to use the position. You should, however, be aware that you are also considered a public official subject to Government Ethics laws while serving in your role as an agent of Harney County.

Furthermore, the existence of a particular situation or set of circumstances—such as holding public office as State Representative and serving as Economic Development Director for Harney County—does not itself create a statutory conflict of interest. Oregon Government Ethics law defines "actual" or "potential" conflicts of interest as arising anytime a public official makes in any official action, decision or recommendation, the effect of which "would" (an "actual" conflict) or "could" (a "potential" conflict) be to the private



Representative Greg Smith

August 29, 2017

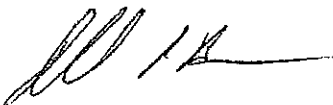
Page 3

pecuniary benefit or detriment of the public official, the public official's relative or any business with which the public official or a relative is associated (ORS 244.020(1), (13)). The difference between "actual" and "potential" conflicts is determined by the words "would" and "could." An actual conflict occurs when a public official participates in an official action that would have a direct and specific financial impact, whereas a potential conflict exists when the action could possibly have financial impact.

There may be occasions in which you are faced with an actual conflict of interest or potential conflict of interest in the scope of your public duties. Because you serve as a public official in two different capacities, the method to dispose of conflicts will vary depending on which role is faced with the conflict. Members of the Legislative Assembly, when faced with conflicts, must "announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official" (ORS 244.120(1)(a)). Conversely, in your role as Harney County's Economic Development Director, you are subject to a different method of conflict disposal—ORS 244.120(1)(c) directs you to "notify in writing the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict." In the event that you declare a conflict as Economic Development Director of Harney County, ORS 244.130 dictates that your appointing authority must respond by either designating an alternate to dispose of the matter or directing you to dispose of it in a specified manner.

If you have any additional questions or concerns regarding the application of Oregon Government Ethics law in this matter now or in the future, please feel free to contact me directly.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/hw

\*\*\*\*\*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.





**The Honorable Greg Smith**  
Oregon House of Representatives  
District 57

August 25, 2017

Ron Bersin, Executive Director  
Government Ethics Commission  
State of Oregon  
3218 Pringle Rd. SE, Ste. 220  
Salem, OR 97302

Subject: Opinion Request

Director Bersin:

As you know, I serve as an elected member of the Oregon House of Representatives for the citizens of District 57, which includes Umatilla, Morrow, Gilliam, Sherman, and Wasco Counties. I am also a principal member of a for-profit economic development firm called Gregory Smith & Company, LLC.

Gregory Smith & Company, LLC recently submitted a Request for Proposal to Harney County regarding the vacancy of their economic development director. The RFP was publicly advertised in a competitive process. Multiple entities were interviewed for the position. Gregory Smith & Company, LLC has been awarded the contract.

Gregory Smith & Company, LLC strives to conduct its business openly and transparently. As such, Gregory Smith & Company, LLC is soliciting the opinion of the Oregon Government Ethics Commission to determine the appropriateness of this professional relationship. Attached for your assessment is the job description and scope of work.

For your convenience, please use the following address for correspondence.

Representative Greg Smith  
P.O. Box 219  
Heppner, OR 97836

Thank you for your assistance in this request. If you have any questions or require additional information, please do not hesitate to contact me directly.

Best Regards,

Representative Greg Smith  
House District 57

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# Oregon

Kate Brown, Governor

17-0631

## 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](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

September 15, 2017

Oregon Business & Industry  
c/o Betsy Earls  
1149 Court St NE  
Salem, OR 97301-4030

Dear Ms. Earls:

This letter of advice is provided in response to your request, received August 31, 2017, which presented a question regarding whether Oregon Government Ethics law permits public officials to accept your invitation to attend Oregon Business & Industry's (OBI) annual Statesman dinner at no cost. The analysis and advice that follows is 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 presented.

According to the information provided, OBI will be holding its annual "Statesman" dinner in October. Individual seats for the dinner are sold for approximately \$125 although the actual cost for each meal is approximately \$40 - \$50—the remaining cost is a contribution to OBI, which is tax-exempt under section 501(c)(6) of the Internal Revenue Code. The dinner is open to anyone who wishes to pay \$125 to participate, but the organization would like to invite various public officials, including members of the Oregon Legislative Assembly, to attend the dinner, in their official capacities, at no cost. You wish to ensure that these public officials can accept without violating Oregon Government Ethics law.

In short, yes. ORS 244.020(7)(b)(E) permits public officials, their staff and household members, to accept admission, food and beverages at no cost at such an event.

In most circumstances when a public official, or a relative or household member of the public official, is offered something of economic value at no cost, such as admission, food or beverage, it would be a gift as defined in ORS 244.020(7)(a). Moreover, if the offeror of the gift might reasonably have an economic interest in the votes or decisions of the public official, the public official may not accept more than \$50 in gift value from that offeror in a single calendar year (ORS 244.025; ORS 244.020(10)). Clearly an organization such as OBI, that registers one or more lobbyists to represent its interests, has such an interest in members of the Oregon Legislative Assembly and likely also other public officials that may be invited to attend.

While ORS 244.025 typically restricts this kind of gifting to \$50 per calendar year, there are several exceptions listed under ORS 244.020(7)(b) that permit a public official to accept such gifts without regard to the \$50 limit. In this case, the exception listed at ORS



244.020(7)(b)(E) should apply to permit any public official in who's decision-making OBI might reasonably have an economic interest in to attend:

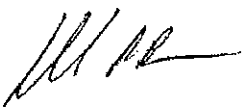
*Admission provided to or the cost of food or beverage consumed by a public official, or a member of the household or staff of the public official when accompanying the public official, at a reception, meal or meeting held by an organization when the public official represents state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.*

On a related note, please also keep in mind that this activity appears to fall within the definition of "lobbying", which includes "attempting to obtain the goodwill of legislative officials" (ORS 171.725(8); see OAR 199-010-0005(3)). As ORS 171.750 requires lobbyist's clients/employers to report the total amount of all money expended for the purpose of lobbying in their Quarterly Expenditure Reports filed with this agency, the costs associated with this event must be identified on Part A Line 1 (as part of the "Total Expended") of OBI's Quarter 4 Expenditure Report. Any sponsored funds utilized for the event should be included in this amount.

Furthermore, if the amount expended "for the benefit" of any individual legislative or executive official at this event exceeds \$50, the information must be itemized in Part B ("Itemized Expenses") of OBI's Quarter 4 Expenditure Report. Expenditures for relatives and household members of the public official are considered "for the benefit" of that official, so any expenses on a relative or household member count towards the \$50 threshold requiring itemization (OAR 199-010-0075(2)).

If you have any additional questions or concerns regarding the application of Oregon Government Ethics law in this matter, please feel free to contact me directly.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/hw

\*\*\*\*\*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.

**WEEDN Hayley \* OGEC**

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**From:** Betsy Earls <betsyearls@oregonbusinessindustry.com>  
**Sent:** Thursday, September 07, 2017 12:14 PM  
**To:** Joel Fischer  
**Cc:** WEEDN Hayley \* OGEC  
**Subject:** Re: Ethics question

Hi Hayley--  
Can I call you late this afternoon or tomorrow to follow up on this?  
Betsy

Sent from my iPhone

On Sep 7, 2017, at 11:50 AM, Joel Fischer <[joelfischer@oregonbusinessindustry.com](mailto:joelfischer@oregonbusinessindustry.com)> wrote:

Looping in Betsy for clarification...

AOI and OBA have merged to form Oregon Business & Industry. Please save my new email address.

Joel Fischer | Senior Policy Analyst  
Oregon Business & Industry  
P: 503.706.4652 |  
E: [joelfischer@oregonbusinessindustry.com](mailto:joelfischer@oregonbusinessindustry.com)  
200 SW Market St, Portland OR 97201 | [www.oregonbusinessindustry.com](http://www.oregonbusinessindustry.com)

On Sep 7, 2017 08:00, WEEDN Hayley \* OGEC <[Hayley.WEEDN@oregon.gov](mailto:Hayley.WEEDN@oregon.gov)> wrote:

Sure, but I want to be sure to give you what you're asking for.... The original email analysis I provided you does reference the new numbering, ORS 244.020(7)(b)(E)....

When you ask for a "new letter" to OBI: Do you want me to write you another email analysis with a more decisive tone and/or omitting reference to OBA? Or are you asking for a paper letter on official agency letterhead written under the Director's signature? Happy to do either one. Just let me know.

—

Hayley D. Weedn

Program Analyst/Trainer

Government Ethics Commission

3218 Pringle Rd SE, Ste. 220

Salem, OR 97302-1544

[hayley.weedn@oregon.gov](mailto:hayley.weedn@oregon.gov)

ph: 503.378.8066

fx: 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:** Joel Fischer [<mailto:joelfischer@oregonbusinessindustry.com>]  
**Sent:** Tuesday, September 05, 2017 3:29 PM  
**To:** WEEDN Hayley \* OGEC <[Hayley.WEEDN@oregon.gov](mailto:Hayley.WEEDN@oregon.gov)>; Betsy Earls <[betsyearls@oregonbusinessindustry.com](mailto:betsyearls@oregonbusinessindustry.com)>; Patti Winter <[pattiwinter@oregonbusinessindustry.com](mailto:pattiwinter@oregonbusinessindustry.com)>  
**Subject:** RE: Ethics question

Hayley,

Can you issue a new letter to Oregon Business and Industry? No information on our end has changed expect our name, the cost of tickets from \$125 to \$150. Meal cost is still \$50. Also, the exceptions to the definition of "gift" have been renumbered, and the number of the statute we are relying on is no longer ORS 244.020(6)(b)(E). The new number is ORS 244.020(7)(b)(E).

*AOI and OBA have merged to form Oregon Business & Industry. Please save my new email address.*



Joel Fischer | Senior Policy Analyst  
Oregon Business & Industry  
P: 503.706.4652 | E: [joelfischer@oregonbusinessindustry.com](mailto:joelfischer@oregonbusinessindustry.com)  
200 SW Market St, Portland OR 97201 | [www.oregonbusinessindustry.com](http://www.oregonbusinessindustry.com)

**From:** WEEDN Hayley \* OGEC [<mailto:Hayley.WEEDN@oregon.gov>]  
**Sent:** Friday, September 01, 2017 9:07 AM  
**To:** Joel Fischer <[joelfischer@oregonbusinessindustry.com](mailto:joelfischer@oregonbusinessindustry.com)>  
**Subject:** FW: Ethics question

Mr. Fischer,

I did a little more looking this morning and found 2 pieces of email correspondence that appear to be related to your current request, dated 2011 and 2012, that I'm also attaching to this email.

According to our records, during a telephone conversation on 9/12/11, Elizabeth Howe of the Oregon Business Association explained that OBA (which I understand to now be Oregon Business & Industry) holds an annual "Statesman" dinner for the purpose of raising funds. Individual seats for the dinner are sold for approximately \$125 although the actual cost for each meal is approximately \$50—the remaining \$75 is a contribution to OBA (now Oregon Business & Industry), which is tax-exempt under section 501(c)(6) of the Internal Revenue Code. The dinner is open to anyone who wishes to pay \$125 to participate, but the organization typically invites various public officials, including members of the Oregon Legislative Assembly, to attend the dinner, in their official capacity, at no cost.

As you know, in most circumstances when a public official, or a relative or household member of the public official, is offered something of economic value, such as admission, food or beverage, at no cost, it would be a gift as defined in ORS 244.020(7)(a). If the offeror of the gift might reasonably have an economic interest in the votes or decisions of the public official, the public official may not accept more than \$50 in gift value from that offeror in a single calendar year (ORS 244.025; ORS 244.020(10)). Clearly an organization such as OBI, that registers one or more lobbyists to represent them, has such an interest in members of the Oregon Legislative Assembly and likely also other public officials that may be invited to attend the dinner at no cost.

Although ORS 244.025 typically restricts this kind of gifting value to \$50, there are several exceptions listed at ORS 244.020(7)(b) that permit a public official to accept a gift without regard to the \$50 limit. In this case—and in the past—this agency has advised that the exception listed at ORS 244.020(7)(b)(E) should apply to permit any public official who's decision-making OBI might reasonably have an economic interest in to attend:

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 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

As your organization has been informed and instructed in the past, ORS 171.750 requires lobbyist client/employers to report the total amount of all moneys expended for the purpose of lobbying on their Quarterly Expenditure Reports, so the costs associated with this event must be identified on Part A Line 1 of OBI's Quarter 4 Expenditure Report filed with this agency. Furthermore, if the amount expended per attending legislative or executive official exceeds \$50, the information must be itemized in Part B of OBI's Quarter 4 Expenditure Report. Please note that expenditures for relatives or members of the household of the public official are considered "for the benefit" of the public official, so any expenses on a relative or household member count towards the \$50 threshold requiring itemization.

Please be aware that the answer provided here is solely based on the information provided in your email request from yesterday (8/31/17) and the information provided to this agency by OBA in the attached emails references above from 2011 and 2012. Thus, this response would not provide an accurate analysis in the event that any of the factual information has changed.

Feel free to get back in touch if you have any further questions, concerns, or new information requiring clarification.

Best,

—

Hayley D. Weedn

Program Analyst/Trainer

Government Ethics Commission

3218 Pringle Rd SE, Ste. 220

Salem, OR 97302-1544

[hayley.weedn@oregon.gov](mailto:hayley.weedn@oregon.gov)

ph: 503.378.8066

fx: 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.

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**From:** HUNTER David \* OGEC On Behalf Of OGEC Mail \* OGEC  
**Sent:** Thursday, August 31, 2017 4:24 PM  
**To:** Joel Fischer <[joelfischer@oregonbusinessindustry.com](mailto:joelfischer@oregonbusinessindustry.com)>  
**Cc:** WEEDN Hayley \* OGEC <[Hayley.WEEDN@oregon.gov](mailto:Hayley.WEEDN@oregon.gov)>  
**Subject:** RE: Ethics question

I have forwarded your inquiry to Hayley Weedn, Trainer. She will be happy to assist you.

Best Regards...

David R Hunter

Oregon Government Ethics Commission

3218 Pringle Rd SE STE 220

Salem OR 97302-1544

Direct 503-378-5105

Fax 503-373-1456

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**From:** Joel Fischer [<mailto:joelfischer@oregonbusinessindustry.com>]  
**Sent:** Thursday, August 31, 2017 3:32 PM  
**To:** OGEC Mail \* OGEC <[OGEC.Mail@oregon.gov](mailto:OGEC.Mail@oregon.gov)>  
**Subject:** Ethics question

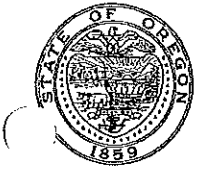
Hello,

On October 10<sup>th</sup> we will host our annual Statesman Dinner with many members of Oregon's business community. Every state legislator in the state and all statewide elected leaders will be invited. Can you confirm that we may provide these elected leaders with a comped meal and that the \$50 rule does not apply for this dinner?

Thank you!

*AOI and OBA have merged to form Oregon Business & Industry. Please save my new email address.*

**Joel Fischer** | Senior Policy Analyst  
**Oregon Business & Industry**  
P: 503.706.4652 | E: [joelfischer@oregonbusinessindustry.com](mailto:joelfischer@oregonbusinessindustry.com)  
200 SW Market St, Portland OR 97201 | [www.oregonbusinessindustry.com](http://www.oregonbusinessindustry.com)



# Oregon

Kate Brown, Governor

17-064I

## 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](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

September 15, 2017

Honorable Greg Smith  
State Representative  
PO Box 219  
Heppner, OR 97836

Dear Representative Smith:

This letter of advice is provided in response to your request, received September 08, 2017, which presented a question regarding the application of Oregon Government Ethics law to your participation in a private income producing opportunity. The analysis and advice that follows is 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 presented.

According to the information provided, you are the principle member of Gregory Smith & Company, LLC, a for-profit economic development firm that was recently awarded a contract to serve as the Reload Facility Project Manager for Albany-Millersburg Economic Development Corp (AMEDC). The LLC was awarded the contract following submission of a Request for Proposal in a publicly advertised and competitive bidding process.

AMEDC is a non-profit economic development organization with a 24-member board of directors focused on strengthening the communities of Albany and Millersburg. The general purpose of the position of Reload Facility Project Manager is to serve as the principal coordinator for the development of the Mid-Willamette Valley Reload Facility, which was funded by the Oregon State Legislature through HB 2017 (2017). Responsibilities include: assisting with development and management of the overall project proposal and plan; making presentations to the Oregon Transportation Commission; assisting AMEDC in developing a formal site selection process; guiding land procurement and development of an industrial park and reload facility; assisting with related informational meetings and inquiries; securing budget resources for the development; and managing subcontractors.

As an elected member of the Oregon House of Representatives for District 57 (including Umatilla, Morrow, Gilliam, Sherman, and Wasco Counties), you are considered a public official subject to Oregon's Government Ethics laws. As such, you are seeking advice regarding the appropriateness of this professional relationship.



As you know, Public officials are not prohibited from undertaking private business endeavors, as long as they comply with the limitations and restrictions under Oregon Government Ethics laws.

ORS 244.040(1) prohibits a public official from using or attempting to use an official position to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the public official, relative or household member of the public official are associated, if the opportunity would not otherwise be available but for the public official's holding the official position. It should also be understood that ORS 244.040(3) prohibits a public official from directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment.

Nevertheless, ORS 244.040 is not interpreted to prohibit public officials from pursuing personal interests during their personal time, including private income producing opportunities, as long as the public official is acting within the limitations and restrictions set forth in ORS Chapter 244. To this end, the Oregon Government Ethics Commission has established a set of guidelines for public officials who may wish to engage in such income producing activities so as to assist with avoiding violation of Oregon Government Ethics laws:

#### **GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interests using the appropriate method prescribed in ORS 244.120.

The primary principle underscored in the guidelines is that a public official, who also engages in private income producing activities, must maintain a clear distinction between the use of official time and resources of the government body and personal time and resources of the official.

Representative Greg Smith  
September 15, 2017  
Page 3


On review of the information provided, nothing appears to indicate that you were awarded this opportunity as a result of being a member of the Oregon Legislative Assembly, nor does it appear that you used or attempted to use your public position. However, keep in mind that as a member of the Legislative Assembly you must take particular care to ensure that the office is not used in any manner related to private income producing activities.

Furthermore, although the fact of your holding public office as State Representative does not itself create a statutory conflict of interest regarding your private business interests, you must be diligently mindful of future conflicts that may arise as a result of your association with the Albany-Millersburg Economic Development Corp and the Reload Facility Project.

Oregon Government Ethics law defines "actual" or "potential" conflicts of interest as arising anytime a public official makes in any official action, decision or recommendation, the effect of which "would" (an "actual" conflict) or "could" (a "potential" conflict) be to the private pecuniary benefit or detriment of the public official, the public official's relative or any business with which the public official or a relative is associated (ORS 244.020(1), (13)). The difference between "actual" and "potential" conflicts is determined by the words "would" and "could." An actual conflict occurs when a public official participates in an official action that would have a direct and specific financial impact, whereas a potential conflict exists when the action could possibly have financial impact. As you know, when Members of the Legislative Assembly are faced with conflicts of interest, they must "announce publicly, pursuant to rules of the house of which the public official is a member, the nature of the conflict before taking any action thereon in the capacity of a public official" (ORS 244.120(1)(a)).

If you have any additional questions or concerns regarding the application of Oregon Government Ethics law in this matter, please feel free to contact me directly.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/hw

\*\*\*\*\*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.



**The Honorable Greg Smith**  
Oregon House of Representatives  
District 57

September 8, 2017

Ron Bersin, Executive Director  
Government Ethics Commission  
State of Oregon  
3218 Pringle Rd. SE, Ste. 220  
Salem, OR 97302

Subject: Opinion Request

Director Bersin:

As you know, I serve as an elected member of the Oregon House of Representatives for the citizens of District 57, which includes Umatilla, Morrow, Gilliam, Sherman, and Wasco Counties. I am also a principal member of a for-profit economic development firm called Gregory Smith & Company, LLC.

Gregory Smith & Company, LLC recently submitted a request for proposal to the Albany-Millersburg Economic Development Corp. regarding the creation of a position for a Project Manager. The RFP was publically advertised in a competitive bid process. Gregory Smith & Company, LLC has been awarded the contract.

Gregory Smith & Company, LLC strives to conduct its business openly and transparently. As such, Gregory Smith & Company, LLC is soliciting the opinion of the Oregon Government Ethics Commission to determine the appropriateness of this professional relationship. Attached for your assessment is the Scope of Work.

For your convenience, please use the following address for correspondence.

Representative Greg Smith  
P.O. Box 219  
Heppner, OR 97836

Thank you for your assistance in this request. If you have any questions or require additional information, please do not hesitate to contact me directly.

Best Regards,

Representative Greg Smith  
House District 57



# Albany-Millersburg

## ECONOMIC DEVELOPMENT CORP

The Willamette Valley's Business Hub: Where Land, Labor, and Livability Abound!

### REQUEST FOR PROPOSAL (RFP) RELOAD FACILITY PROJECT MANAGER

#### About AMEDC

The Albany-Millersburg Economic Development Corporation (AMEDC) is a non-profit economic development organization incorporated in 1982. AMEDC has a 24-member board of directors who represent our diversified public/private sector with the goal to strengthen the communities of Albany and Millersburg.

#### General Statement:

The Reload Facility Project Manager will serve the AMEDC (dba Linn Economic Development Group) and local community as the principal coordinator for the development of the Mid-Willamette Valley Reload Facility, funded by the 2017 Oregon State Legislature through House Bill 2017.

#### GENERAL INFORMATION

- A. SCOPE OF WORK – The Scope of Work describes the work and expectation to be addressed in the proposal.
- B. CONTRACTING AUTHORITY AND OVERVIEW – The AMEDC (dba Linn Economic Development Group) will be the contracting authority. The initial term of this contract shall begin September 11, 2017. Full project development is expected to take three to four years.

AMEDC reserves the right to select parts of proposals for funding without any obligation to fund or support other parts of the proposal. AMEDC (dba Linn Economic Development Group) reserves the right to renegotiate contracts beyond the contract period of this RFP.

- C. PROVIDER ELIGIBILITY – Any public or private organization or individual that demonstrates qualifications is eligible for consideration. Formal education, relevant job training, and other criteria, as deemed acceptable by AMEDC (dba Linn Economic Development Group), may determine provided qualifications.
- D. GENERAL CONTRACT REQUIREMENTS - The applicant must be willing to enter into a contract with AMEDC (dba Linn Economic Development Group). Accepted proposals and any negotiated modifications will become part of the contract.

Successful applicants will be required to:

- Enter into a contract with AMEDC (dba Linn Economic Development Group).
- Submit monthly progress reports and updates to AMEDC (dba Linn Economic Development Group).

- Be paid on a monthly billing reimbursement schedule.
- E. OTHER ISSUES – AMEDC (dba Linn Economic Development Group) will not pay for any costs incurred by applicants or providers in the preparation, submission, or presentation of the applicant’s proposal.

**GENERAL INSTRUCTIONS**

1. Proposals must be typed legibly. Each topic must be addressed in the order given. The entire proposal must be limited to 10 pages, including the cover page and all attachments. Each proposal should address the following in a complete and clear way:
  - a. Introduction/Overview
  - b. Personal Qualifications and Resumes for each individual involved.
  - c. Reporting and Accountability – Include a recommendation of what and how to report the work accomplished, effectiveness, outcomes, and data.
  - d. Budget – Submit a complete proposed annual budget to accomplish the work.
  - e. Services – How work will be delivered to accomplish all elements of the Scope of Work.
  - f. References from previous or current employers or clients.
2. Five (5) original proposals with all attachments included, must be submitted. Email submittals will not be accepted.
3. Project Proposals must be received by 5:00 pm on September 6, 2017 to be eligible for consideration. There will be no exceptions, time is of the essence.
4. Completed original proposal must be submitted at the follow address:

John Pascone, President  
Albany-Millersburg Economic Development Corporation (AMEDC)  
435 W. First Ave.  
P.O. Box 548  
Albany, OR 97321  
[pasconj@peak.org](mailto:pasconj@peak.org)

5. AMEDC (dba Linn Economic Development Group) reserves the right to reject any and all proposals upon finding that it is in the corporation’s best interest to do so. Any proposal found to be out of compliance with the instructions in this packet will be deemed non-responsive and rejected.
6. AMEDC (dba Linn Economic Development Group) reserves the right to exercise its options or negotiations with proposers in the development of final award(s) and contract(s), and to waive any irregularities or informalities.

## REQUIRED MINIMUM QUALIFICATIONS

The successful submission should be provided by a self-motivated, conscientious individual/team who can communicate effectively with planners, engineers, contractors, lawyers, policy makers, and the general-public. Specific qualifications include the following:

1. Master's Degree in public or business administration, economics, finance, urban planning, or another related field.
2. Minimum of 10-years of experience working with port authorities in addition to federal, state, tribal, and local governments. Can demonstrate good working relationships.
3. Minimum of 10-years of experience in project management, or related experience.
4. Minimum of 10-years in directing and supervising the work of others.
5. Minimum of 10-years working in economic and business development.
6. Demonstrated expertise in the promotion of agricultural and other commodities, both domestic and international.
7. Extensive knowledge and experience in packaging commercial and industrial financing projects.
8. Extensive knowledge and experience in industrial park development which include the following:
  - a. Oregon water and wastewater application process.
  - b. Oregon land use rules and laws.
  - c. Oregon enterprise zone laws.
  - d. Oregon funding programs and business development programs within the Department of Transportation, Business Development Department (dba Business Oregon), Department of Land Conservation and Development, Department of State Lands, Department of Environmental Quality, and other related agencies.
9. Extensive knowledge of transportation systems and good working relationships with Oregon's transportation system partners.
10. Possess excellent verbal and written English communication skills with a demonstrated competency at presenting complex issues in readily understandable terms for review and decision making by non-specialists.

## SCOPE OF WORK

Contracted Services: AMEDC (dba Linn Economic Development Group) Reload Facility Project Manager

### **Essential Job Functions:**

- Act as Project Manager for the AMEDC (dba Linn Economic Development Group) reload facility project. As such, be responsible for assisting with development and management of the overall project proposal and plan. This should include project budget, timeline, expenditures, objectives and performance indicators.
- Make an oral and written presentation to Oregon Transportation Commission on a preliminary proposal /plan for the Mid-Willamette Valley Reload Facility funded under HB 2017. The proposal and plan shall include a project timeline.

- Assist AMEDC (dba Linn Economic Development Group) in developing a formal site selection process for the Mid-Willamette Valley Reload Facility, inclusive of public input.
- Guide AMEDC (dba Linn Economic Development Group) through procuring land and development of an industrial park and reload facility at the selected site.
- Assist in the hosting of informational meetings/manage inquiries related to the AMEDC (dba Linn Economic Development Group) industrial park and reload facility project. This shall include coordinating local and regional participation in the activities of the project. Participate, make presentations to, or provide support for committees, task forces, community meetings, or other public agency meetings as necessary. Receive requests, inquiries, and comments from the public, and see that replies to inquiries are made and followed through with appropriate action. Positive community relations are critical to the success of the project.
- Responsible for assisting and securing budget resources available through the state and federal government, or grants for the development of industrial parks and/or reload facilities.
- Manage subcontractors to ensure that all project deliverables are provided on-time and within budget.
- Monitor any environmental cleanup efforts and keep AMEDC (dba Linn Economic Development Group) informed of progress. Alert AMEDC (dba Linn Economic Development Group) of any issues that may impact development.
- Prepare scopes of work and manage selection and contracting process for professional and consultant services to assist with community participation, planning efforts, business planning, and other project related matters.
- Provide professional analysis and advice to the AMEDC (dba Linn Economic Development Group) on issues related to the industrial park and reload facility, included by not limited to potential tenants, lease rates, and other related work.
- Initiate or conduct special studies as assigned and prepare reports with recommendations for appropriate action. Develop short and long-range proposals, with alternatives, to enable the AMEDC (dba Linn Economic Development Group) to determine policy for achieving objectives within available financial resources.
- Set clear work goals, and establish and communicate any changes in priorities.
- Build credibility, trust, and communicate often with potential tenants, and anticipate their needs and implement changes accordingly.
- Assist with the development of policies and procedures; direct and review the preparation of informational materials; review established procedures, systems, and standards, and make recommendations on problems of organization, staffing, and related management activities.
- Other duties as assigned by the AMEDC (dba Linn Economic Development Group).



# Oregon

Kate Brown, Governor

17-065I

## 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](mailto:ogec.mail@oregon.gov)

Website: [www.oregon.gov/ogec](http://www.oregon.gov/ogec)

September 21, 2017

Ruben Cleaveland  
305 Cascade Street  
P.O. Box 325  
Hood River, Oregon 97031

Dear Mr. Ruben:

This letter of advice is provided in response to your request received on August 14, 2017, which presented a question regarding the application of Oregon Government Ethics laws where an elected member of a governing body wishes to undertake and receive compensation for serving as its bookkeeper. The analysis and advice that follows is 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 presented.

According to the information provided in your request for advice, Dumbeck Lane Domestic Water Supply District ("District") is seeking to employ a new account/bookkeeper. The District is a special district formed in 2004 under ORS 198.835 and Chapter 264. It supplies drinking water to residents of Benton County and is governed by 5 commissioners elected to serve in those positions. Under the District's bylaws, the commissioners are volunteers, but they may receive per diem and reimbursement for expenses incurred pursuant to their duties.

Currently, the District already has a bookkeeping service, but feels the service being provided is inadequate to meet its needs. However, one of the District's own commissioners has accounting and bookkeeping skills that he is willing to provide in return for personal compensation. The District believes that employing the commissioner due to his skill level and intimate understanding of the District's operations will translate to improving adequacy of the services needed for a cost lower than employing a similarly skilled professional who is not a commissioner.

As any person holding a position as a District commissioner is considered a "public official" (per ORS 244.020(15)), you are asking whether the District commissioner would violate Government Ethics law if he agreed to provide accounting and bookkeeping services to the District in return for personal compensation.



In short, no part of Oregon Government Ethics law outright prohibits such professional relationships. However, public officials are prohibited from using their positions in order to pursue or obtain any opportunities for personal income, and even where such opportunities are permissible, they must take care to comply with conflict of interest laws.

As you may know, ORS 244.040(1) prohibits a public official from using or attempting to use an official position to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the public official, relative or household member of the public official are associated, if the opportunity would not otherwise be available but for the public official's holding the official position. This means that in general, the commissioner is prohibited from attempting to obtain any form of financial benefit from the District (*i.e.*, a job) that a similarly situated member of the public does not have the same opportunity to access or obtain.

More directly to the question of employment, the Oregon Government Ethics Commission has also established a set of guidelines to assist public officials who may wish to engage in personal income producing activities so as to avoid violating ORS 244.040 and other Oregon Government Ethics laws:

#### **GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interests using the appropriate method prescribed in ORS 244.120.

Although in this case, the proposed arrangement would result in the commissioner representing the District as a "public official" in two capacities (rather than obtaining "outside" or private employment), the tenets of these "Guidelines" are still relevant.

More specifically, ORS 244.040(1) and the "Guidelines" are interpreted to prohibit the commissioner from accepting employment and/or personal compensation as the District bookkeeper/accountant, if members of the public do not have the same opportunity with regard to applying for and obtaining the job. To that end, this Commission generally requires the awarding of such a job opportunity be the result of an open and competitive process, and that the job was reasonably advertised to members of the general public who might apply. Moreover, if the commissioner is awarded the bookkeeping job, it must be because he is the best candidate by some independent measure (*i.e.*, his skills and experience)—not as a result of his position or influence as a commissioner. To ensure (and to document) compliance in the hiring process, Commission staff recommend creating a list of standard criteria by which the qualifications of each candidate is measured, and selecting the highest ranking candidate for the job.

For the commissioner to even request or recommend that he be compensated to replace the District's current bookkeeper may be considered a violation of Oregon Government Ethics law. As discussed above, such a request or recommendation might be considered an attempt to obtain a personal financial benefit in violation of ORS 244.040(1), if a member of the general public would not have the same opportunity to make such a request or for it to be earnestly contemplated by the District. Such a request or recommendation might additionally (or alternatively) be considered a conflict of interest if made by the commissioner while acting in his official capacity, which, if not properly handled, would also violate Oregon Government Ethics law.

When it comes to conflicts of interest, it's important to understand that the existence of a particular situation—such as holding or wishing to apply for multiple positions with a governing body of which you are a member—is not itself a statutory conflict of interest. Rather, Oregon Government Ethics law defines "actual" or "potential" conflicts of interest as arising anytime a public official makes in any official *action, decision or recommendation*, the effect of which "would" (an "actual" conflict) or "could" (a "potential" conflict) be to the private pecuniary benefit or detriment of the public official, the public official's relative or any business with which the public official or a relative is associated (ORS 244.020(1), (13)). The difference between "actual" and "potential" conflicts is determined by the words "would" and "could." An actual conflict occurs when a public official participates in an official action that would have a direct and specific financial impact, whereas a potential conflict exists when the action could possibly have financial impact.

As suggested above, acting as a commissioner to recommend one's self for a compensated position with the District is an example of a "potential" conflict of interest. In fact, once the commissioner knows he might apply, and certainly if he does apply, he will have a conflict of interest anytime he acts in his official capacity to determine or deliberate on things like: whether or how to open the hiring process;

Ruben Cleaveland  
September 21, 2017  
Page 4

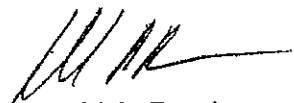
what the parameters of the qualifications or job posting will be; or virtually any other aspect related to the position. If the commissioner does apply for the job, he will have an "actual" conflict of interest with regard to actions related to deciding who will be hired for the job, as long as he is still in the running.

When faced with any conflict of interest, elected members of governing bodies (such as District commissioners) must publicly announce what the conflict is, prior to being permitted to participate in an official capacity (ORS 244.120(2)). When faced with an "actual" conflict, District commissioners must go one step further after making the public announcement, and also refrain from participating in an official capacity (ORS 244.120(2)). Please note that as long as the commissioner is physically present, he must follow these instructions for handling his conflicts. Remaining silent is not sufficient to avoid or dispose of a conflict.

Though the basis of this inquiry was to determine whether the commissioner can accept a compensated position with the District, please be mindful that if awarded the position, he will be a "public official" twice over. In such case, he must be twice as diligent to ensure compliance with Oregon Government Ethics laws while serving in *both* positions. Issues concerning ORS 244.040 and conflicts of interest are probably most likely to arise in relation to personnel matters such as compensation or benefits. For example: acting as a commissioner to recommend or approve his own wages or benefits as bookkeeper; acting as a commissioner to deliberate on his continued employment as bookkeeper; or acting as bookkeeper to review or approve his own reimbursements or commissioner per diem. Although ORS 244.040 applies the same way regardless, the method to dispose of conflicts varies depending on what position a public official holds. While ORS 244.120(2) (discussed above) dictates disposal of conflicts for commissioners, ORS 244.120(1)(c) would apply to conflicts arising while acting as bookkeeper.

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/hw

\*\*\*\*\*DISCLAIMER\*\*\*\*\*

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



# ANNALA, CAREY, THOMPSON, VANKOTEN, & CLEAVELAND, P.C.

Wayne C. Annala  
Wilford K. Carey  
Michael J. Thompson\*  
Victor W. VanKoten\*  
Ruben D. Cleaveland\*

Attorneys at Law  
305 Cascade Street  
P.O. Box 325  
Hood River, Oregon 97031

Telephone 541-386-1811  
Facsimile 541-386-6242

Donald W. Hull  
OF COUNSEL

\*Also Admitted to  
Practice in Washington

RECEIVED

AUG 14 2017

OREGON GOV  
ETHICS COMMISSION

August 9, 2017

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

**RE: Request for Commission Advisory Opinion – Dumbeck Lane Domestic Water Supply District**

Dear Ethics Commission:

I provide legal representation to the Dumbeck Lane Domestic Water Supply District (“District”). The have asked me to request an Ethics Commission Advisory Opinion to clarify whether a volunteer District commissioner can provide professional services to the District and receive compensation for those services.

The District is a Special District formed in February 2004 under the authority of ORS 198.835 and ORS Chapter 264. It currently supplies drinking water to approximately 90 residential customers in Benton County, Oregon. The District is governed by a five member panel of volunteer commissioners who are elected to their respective positions. The District is governed by bylaws that state:

Officers and Commissioners shall serve without compensation, however an expense per diem may be allowed for days or fractions of days devoted to the duties of the respective offices. Such per diem rate shall be published with the annual Water Rates and Fee Schedules and shall be adequately documented and subject to final review. Commissioners shall receive no compensation for their services except as expense reimbursement herein detailed.

While this bylaws provision seems problematic at the outset, the services the commissioner would be performing are outside the regular scope of commissioner duties.

The services the commissioner would like to provide are accounting and bookkeeping related. The District currently has a bookkeeping service but the services they are providing are not adequate. The District has identified tasks that they would like to have performed in addition to the current services and this commissioner has the skills to provide such services at a rate that is reasonable. In addition, this commissioner has a particularized understanding of District operations such that

he would likely be able to provide the services with greater skill and less cost than an unaffiliated professional brought in just for the specific tasks to be performed.

Since the proposed work is outside the scope of the regular duties of the commissioners and compensation would not be based on the commissioner's service as a commissioner, it seems that the bylaws would not be violated. For those same reasons, it seems that ORS 198.190, which sets a cap of \$50 per day for compensation paid to members of a governing body of a district, may not be an issue. ORS 198.190 sets the limit of \$50 per day for "services performed as a member of the governing body." These services are clearly outside the scope of regular District commissioner services; however, your opinion may differ.

The main concern is whether compensation for the services would violate ORS Chapter 244. I note that ORS 244.040(1) "prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official." This includes a prohibition on "the use or attempted use of the public official position to obtain financial benefits for a business with which the public official...is associated." (Public Official Guide, pg. 9).

Thus, we have a situation where the District would benefit by having these services but it could be construed to be an ethical violation. The commissioner is aware that he would need to follow the procedure for an actual conflict of interest when deliberating and/or deciding whether the District should hire him for the services. A Commission Advisory Opinion as to this matter would be greatly appreciated. Thank you.

Sincerely,



Ruben Cleaveland  
Attorney for District

## Trainers' Report October 6<sup>th</sup>, 2017

This report covers the time period of August 28<sup>th</sup>, 2017, through October 6<sup>th</sup>, 2017.

### Completion of training:

- Portland Housing Bureau – ORS 244 (Portland)
- Oregon Health Authority, Fiscal & Operations Division – ORS 244 (Salem)
- Association of County Treasurers & Finance Officers – ORS 244 (Klamath Falls)
- Oregon Society of Financial Examiners (SOFE) – ORS 244 (Salem)
- Oregon Health Authority “New Employee Orientation” – ORS 244 (Portland)
- Early Learning Council – ORS 244 (Salem)
- Department of Administrative Services Foundational Management Program – ORS 244 (Portland)
- Lincoln County School District – ORS 244 (Newport)
- Greater Oregon Society of Government Meeting Professionals (GOSGMP) – ORS 244 (Lebanon)

### Upcoming Trainings:

<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
10/11/2017	2:30 – 3:45 PM	DAS Foundational Program (ORS 244)	Department of Administrative Services 155 Cottage St. N.E. Conference Room A Salem, OR 97301
10/11/2017	1:30 – 3:00 PM	Oregon Commission for the Blind (ORS 244 & 192)	Portland State Office Building 800 NE Oregon Street Room 1B-80 Portland, OR 97232
10/16/2017	10:30 – 12:30 PM	Oregon Housing and Community Services (ORS 244)	TBD

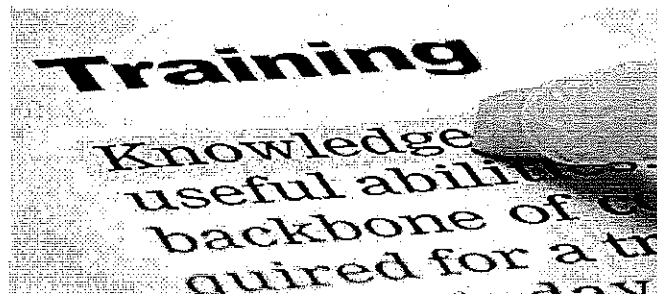
10/17/2017	9:00 – 11:00 AM	Linn Benton Lincoln ESD (ORS 244)	905 4 <sup>th</sup> Street SE Albany, OR 97321
10/19/2017	1:00 – 3:00 PM	Oregon Institute of Technology (ORS 244)	OIT 3201 Campus Drive College Union Building Mt. Mazama Room Klamath Falls, OR 97601
10/25/2017	8:30 – 10:00 AM	DAS Foundational Program (ORS 244)	Chemeketa Center for Business & Industry (CCBI) 626 High St. N.E. Room 203 Salem, OR 97301
10/26/2017	1:30 – 3:00 PM	Oregon Housing and Community Services (ORS 244)	TBD
10/27/2017	10:00 – 12:00 PM	Oregon Fire Directors Association (ORS 244)	Ashland Hills Hotel & Suites 2525 Ashland St Ashland, OR 97520
11/2017	TBD	Oregon Department of Energy (ORS 244)	550 Capitol Street Salem, OR 97301

Training Staff:

Tammy Hedrick  
Hayley Weedn

503-378-6802  
503-378-8066

[tammy.r.hedrick@oregon.gov](mailto:tammy.r.hedrick@oregon.gov)  
[hayley.weedn@oregon.gov](mailto:hayley.weedn@oregon.gov)



# October 2017

## Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
2 New Employees: you're a public official, now what! 10:00 – 11:00 AM	3	4 Executive Session 2:30 – 3:30 PM	5	6
9	10	11	12 Gifts 10:30 – 11:30 AM	13
16	17 Lobby law 10:00 – 11:00 AM	18	19 Use of Position/Office 10:00 – 11:00 AM	20
23	24	25 Conflicts of Interest 2:30 – 3:30 PM	26	27
30	31		<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     Email <a href="mailto:grec.training@oregon.gov">grec.training@oregon.gov</a> to register for a webinar.                 </div>	

# November 2017

## Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">                     Email <a href="mailto:ogec.training@oregon.gov">ogec.training@oregon.gov</a>                      to register for a webinar.                 </div>				
		1	2	3 New Employees: you're a public official, now what! 1:00 – 12:00 PM
6	7 Gifts 2:30 – 3:30 PM	8	9 Use of Position/Office 10:00 – 11:00 AM	10
13	14	15 Lobby law 10:00 – 11:00 AM	16	17 OGEC MEETING
20	21 Conflicts of Interest 9:30 – 10:30 AM	22	23 Holiday- Office Closed	24 Holiday- Office Closed
27	28 Executive Session 10:00 – 11:00 AM	29	30	

**2017 Best Practices Survey  
Response Compilation**

Q#	DESCRIPTION	Yes	No	Total
1	Executive Director's performance expectations are current.	5	1	6
2	Executive Director's performance has been evaluated in the last year.	5	1	6
3	Agency's mission and high-level goals are current and applicable.	5	1	6
4	Commission reviews the Annual Performance Progress Report.	5	1	6
5	Commission is appropriately involved in review of Agency's key communications.	5	1	6
6	Commission is appropriately involved in policy-making activities.	5	1	6
7	Agency's policy option packages are aligned with its mission and goals.	5	1	6
8	Commission members review all proposed budgets.	5	1	6
9	Commission periodically reviews key financial information and audit findings.	6	0	6
10	Agency is appropriately accounting for resources.	6	0	6
11	Agency adheres to accounting rules and other relevant financial controls.	6	0	6
12	Commission members act in accordance with their roles as public representatives.	6	0	6
13	Agency coordinates with others where responsibilities and interests overlap.	6	0	6
14	Commission members identify and attend appropriate training sessions.	6	0	6
15	Agency reviews its management practices to ensure best practices are utilized.	5	1	6
Totals:		81	9	90

% Met: 90%

**S1: How are we doing?**

- The OEC staff are dedicated public servants committed to ensuring that the Commission's statutory mandates are met. That said, I feel that there is an over-emphasis in terms of staff time and Commission attention to late filing/reporting fees, and not enough (if any) on policy. I believe the Commission would benefit from a more robust discussion among ourselves and with the ED and staff relating to Ethics Act questions that are in the public eye, and that we could be more proactive rather than reactive. Perhaps a Commission retreat would be beneficial.
- In the process of learning our role.
- Doing well. The OGE has adapted to new tech developments that increased contact with filers, working through inevitable system glitches and new requirements. Staff has done a good job helping filers to understand the new system.
- From my position on a newcomer to the Commission, I have been impressed with the competence and responsive of staff. This includes both the general administrative staff, as well as the investigators.
- It is my opinion that staff does excellent work with high professionalism and that the board of commissioners perform very well in keeping the organization on mission in a non-partisan way.

**S2: How do we compare to others and/or to our target?**

- I suggest a Commission retreat to discuss broader policy and statutory goals. I also propose much less Commission time spent on reviewing and voting on individual late filing/reporting fees. Also, having served on the Commission for about a year now, I do not feel like I know what the ED's performance goals are or what they should be.
- Have no basis in which to make this judgement.





- Given that the State of Oregon has struggled with new electronic system implementation, the OGEC changes have compared very well. The new system works and is effective. Our target of providing on-line service to filers has been achieved. It is a credit to staff that the new system has been developed and the commission's "clients" have been well-served.
- Keep up the good work.

**S3** **What factors are affecting our results?**

- Don't know at this point.
- There is a learning curve anytime changes are introduced. The executive director and staff have done a terrific job bringing about reporting system changes and educating the users of the new system. Staff has done a wonderful job informing commissioners as well.
- The usual ones -- political comments from those affected by our work and, on occasion, heightened interest on the part of the media when we deal with high-profile issues.

**S4** **What needs to be done to improve future performance?**

- Don't know at this point.
- If the Oregon Legislature expands the reporting requirements (very close last session) then staff will have additional work in order to bring in those changes. Hopefully, any legislative change will add staff to facilitate any new requirements.

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## Executive Director's Report

October 6, 2017

- Budget
  - 2017-19 biennial budget
    - Completed biennial financial plan (see biennial projections)
    - Currently projected with a \$27,652.22 surplus
    - Starting in September, DAS reports will include financial plan
- Case Management System
  - UAT testing on Phase 3 has begun
  - Development and launch date are on time.
  - Created an "Order of Dismissal" to be included in CMS system for final closure
  - Working with DAS CIO office to ensure success of launch of final phase
- Other
  - New Commissioner confirmed by Senate, Welcome Kamala Shugar
  - All fiscal year end reports completed and filed including Annual Performance Measure Report.
  - Only 5 2017 SEI filers are outstanding.
  - Only 2 Lobbyists and 1 Client not filed for second quarter 2017
  - Website redesign project continues.



**OREGON GOVERNMENT ETHICS COMMISSION  
Fund 0050 AGENCY REVENUE TO GENERAL FUND  
For the Month of AUGUST 2017**



**REVENUES**

<u>Agv Obj</u>	<u>Agv Obj Title</u>	<u>Monthly Activity</u>	<u>Biennium to Date Activity</u>	<u>Financial Plan</u>	<u>Unobligated Plan</u>	<u>Monthly Avg to Date</u>	<u>Monthly Avg to Date spend</u>
1810	PENALTY GENERAL FUND REVENUE - GF	2,025.00	5,330.75	0.00	-5,330.75	2,665.38	-242.31
		<b>2,025.00</b>	<b>5,330.75</b>	<b>0.00</b>	<b>-5,330.75</b>	<b>2,665.38</b>	<b>-242.31</b>

**SUMMARY TOTALS**

REVENUES	<u>Month Activity</u>	<u>Biennium Activity</u>
REVENUE	2,025.00	5,330.75
Total	2,025.00	5,330.75

**OREGON GOVERNMENT ETHICS COMMISSION**  
**Fund 4150 OF LIMIT - ADMIN**  
**For the Month of AUGUST 2017**



**REVENUES**

Agv. Obj.	Agv. Obj. Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg. to Date	Monthly Avg. to spend
0401	LOCAL GOVT ASSESSMENT CHARGES	237.66	237.66	0.00	-237.66	118.83	-10.80
		237.66	237.66	0.00	-237.66	118.83	-10.80

**PERSONAL SERVICES**

Agv. Obj.	Agv. Obj. Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg. to Date	Monthly Avg. to spend
3111	REGULAR EMPLOYEES	44,882.00	89,746.76	0.00	-89,746.76	44,873.38	-4,079.40
3120	BOARD MEMBER STIPENDS	210.00	420.00	0.00	-420.00	210.00	-19.09
3210	PUBLIC EMPLOYEES' RETIREMENT	6,181.80	12,361.87	0.00	-12,361.87	6,180.94	-561.90
3212	PENSION BOND ASSESSMENT	2,706.84	5,412.65	0.00	-5,412.65	2,706.33	-246.03
3215	PERS CONTRIBUTION - RHIA	211.03	421.99	0.00	-421.99	211.00	-19.18
3216	PERS CONTRIBUTION - RHIPA	198.61	397.16	0.00	-397.16	198.58	-18.05
3217	PERS CONTRIBUTION - PICK-UP	2,706.84	5,412.65	0.00	-5,412.65	2,706.33	-246.03
3221	SOCIAL SECURITY TAXES	3,439.61	6,877.93	0.00	-6,877.93	3,438.97	-312.63
3241	WORKERS' COMPENSATION	17.13	32.56	0.00	-32.56	16.28	-1.48
3262	SEBB HEALTHCARE CASH	232.05	464.10	0.00	-464.10	232.05	-21.10
3263	MEDICAL, DENTAL, LIFE INSURANCE	8,615.72	17,231.44	0.00	-17,231.44	8,615.72	-783.25
3281	MASS TRANSIT TAX	271.94	543.77	0.00	-543.77	271.89	-24.72
3291	EMPLOYMENT RELATIONS BOARD	17.12	32.48	0.00	-32.48	16.24	-1.48
		69,690.69	139,355.36	0.00	-139,355.36	69,677.68	-6,334.33

**SERVICES and SUPPLIES**

Agv. Obj.	Agv. Obj. Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg. to Date	Monthly Avg. to spend
4101	INSTATE MEALS WITH OVERNIGHT STAY	76.50	140.25	0.00	-140.25	70.13	-6.38
4106	INSTATE LODGING AND TAX	100.83	100.83	0.00	-100.83	50.42	-4.58
4108	INSTATE GROUND TRANSPORTATION	63.33	63.33	0.00	-63.33	31.67	-2.88
4113	INSTATE MILEAGE REIMBURSMNT-	586.37	1,072.69	0.00	-1,072.69	536.35	-48.76
4200	OFFICE SUPPLIES	1,236.22	1,236.22	0.00	-1,236.22	618.11	-56.19
4206	CATERING SERVICES	215.82	215.82	0.00	-215.82	107.91	-9.81
4251	POSTAGE	0.00	0.00	0.00	0.00	0.00	0.00
4252	MAIL SERVICES	215.00	215.00	0.00	-215.00	107.50	-9.77
4302	RENTAL OF OFFICE EQUIPMENT	0.00	0.00	0.00	0.00	0.00	0.00

Agv. Obj	Agv. Obj Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg. to Date	Monthly Avg. to Date	Monthly Avg. to Date	Monthly Avg. to Date
			Activity			Date	spend		
4375	COMPUTER TECHNOLOGY COMPUTER	0.00	0.00	0.00	0.00	0.00	0.00		
4406	PROF DEV IN STATE TUITION/	0.00	2,513.00	0.00	-2,513.00	1,256.50	-114.23		
4531	TELECOM/VOICE USAGE	91.52	279.15	0.00	-279.15	139.58	-12.69		
4535	TELECOM/NETWORK SERVICES	0.00	0.00	0.00	0.00	0.00	0.00		
4614	PROFESSIONAL SVS APPLICATION MODIFY	0.00	70.00	0.00	-70.00	35.00	-3.18		
4615	PROFESSIONAL SERVICES APPLICATION	4,433.00	72,366.00	0.00	-72,366.00	36,183.00	-3,289.36		
5003	EMPLOYEE ASSISTANCE PROGRAM	0.00	112.32	0.00	-112.32	56.16	-5.11		
5050	ATTORNEY GENERAL LEGAL FEES	22,909.50	22,909.50	0.00	-22,909.50	11,454.75	-1,041.34		
5107	STATE TREASURERS CHARGES	10.10	20.10	0.00	-20.10	10.05	-0.91		
5108	SECRETARY OF STATE CHARGES	175.88	175.88	0.00	-175.88	87.94	-7.99		
5200	OTHER SERVICES	0.00	15.00	0.00	-15.00	7.50	-0.68		
5234	DAS-EGS-SFS-SHARED ACCOUNTING	76,109.00	76,109.00	0.00	-76,109.00	38,054.50	-3,459.50		
5400	FACILITIES RENT	3,119.09	6,238.18	0.00	-6,238.18	3,119.09	-283.55		
		<b>109,342.16</b>	<b>183,852.27</b>	<b>0.00</b>	<b>-183,852.27</b>	<b>91,926.14</b>	<b>-8,356.92</b>		

### SUMMARY TOTALS

REVENUES	REVENUE	Month Activity	Biennium Activity
	Total	237.66	237.66
EXPENDITURES	PERSONAL SERVICES	69,690.69	139,355.36
	SERVICES AND SUPPLIES	109,342.16	183,852.27
	Total	179,032.85	323,207.63

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