

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)
)
)

STIPULATED FINAL ORDER

Fred Messerle)
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)
)

CASE NO. 12-166EDT

1. **PURPOSE:** The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Fred Messerle.

2. **JURISDICTION:** At all material times, Mr. Messerle was chairman of the board of supervisors for the Beaver Slough Drainage District. Mr. Messerle was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. **STIPULATED FACTS:**

A. The Commission contends Mr. Messerle was met with a potential conflict of interest on select occasions between 2010 and 2012, while participating in district board actions to propose and develop a concept management plan for the China Camp Creek drainage basin.

B. The Commission believes, during the aforementioned period of time, Mr. Messerle participated in select official actions and may have failed to disclose the nature of a potential conflict of interest on each occasion using the methods set forth in ORS 244.120.

- C. ORS 244.120(2)(a) requires elected public officials to publicly announce, on each occasion, the nature of a potential conflict of interest prior to taking any action that could result in a financial impact on the public official, the public official's relative or any business with which either are associated.
- D. Mr. Messerle, who cooperated fully in this matter, indicated that participating in district board actions to propose and develop a concept management plan for the China Camp Creek drainage basin has been challenging. Mr. Messerle indicated any failure to conform such efforts to limits and restrictions identified in Oregon Government Ethics law were inadvertent. However, he chooses not to dispute the Commission's alleged violations in order to dispose of this matter.
- E. The Commission alleges the actions described in paragraph A and B above violated ORS 244.120(2)(a).
- F. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$5,000 as a result of a violation.
- G. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, could establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 244.120(2)(a).

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4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 12/7/12, the Commission acted to find cause to initiate an investigation in this matter. Mr. Messerle waived the statutory time limit for the investigation and indicated that it was his desire to conclude the matter by agreeing to the terms in this order without completing the investigative phase.
- B. Mr. Messerle will receive a letter of education in lieu of a civil penalty, as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Mr. Messerle within the scope of the above-referenced proceedings.
- D. Mr. Messerle will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Mr. Messerle agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Mr. Messerle agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.


Fred Messerle


Date

Daniel T. Golden, Chairperson
Oregon Government Ethics Commission

Date

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)
)
) **STIPULATED FINAL ORDER**
JOHN A. KITZHABER)
) **CASE NO. 14-190EDT**
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_____)

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Dr. John Kitzhaber.

2. JURISDICTION: At all material times, John Kitzhaber was the Governor of Oregon. Dr. Kitzhaber was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. STIPULATED FACTS:
 - A. John Kitzhaber was the Governor of Oregon from January 2011 to February 2015, when the events relevant to this case occurred.

 - B. Dr. Kitzhaber listed 3E Strategies, the company owned by his partner, Cylvia Hayes, as a source of income as required in ORS 244.060(3) on his annual verified Statements of Economic Interest filed on April 15 in 2012, 2013, and 2014, which required disclosure of his financial interests for 2011, 2012, and 2013.

- C. 3E Strategies was a business with which Dr. Kitzhaber, through Ms. Hayes, was associated, as defined in ORS 244.020(3).
- D. During the period 2011-2013, 3E Strategies received payment to advocate, write, and speak on issues of clean energy, ocean acidification, and a clean economy. The payments were received from the following sources: the Clean Economy Acceleration Fellowship through the Clean Economy Development Center (2011, 2012), the Energy Foundation (2013), Resource Media (2013), and Demos (2013).
- E. During calendar year 2011, Dr. Kitzhaber was met with potential conflicts of interest when making policy decisions and public appearances in his official capacity as Governor of Oregon where those policies and appearances overlapped with the issues for which 3E Strategies was receiving payment for its advocacy, writing, and speaking. Dr. Kitzhaber was met with potential conflicts of interest because his policy decisions and public appearances could have resulted in a financial benefit or detriment to 3E Strategies.
- F. Dr. Kitzhaber contends that he failed to perceive the potential conflicts of interest described in Paragraph E because he understood that Ms. Hayes's work, through 3E Strategies, for various non-profit organizations was not directed at trying to shape or influence state policy but, rather, to be an educator and storyteller in those areas to which she had committed her professional career. Dr. Kitzhaber also contends that he conferred with counsel to the Office of the Governor regarding Ms. Hayes's work, through 3E Strategies, for various non-profit organizations, and that he was not advised that any of his policy decisions or public appearances presented conflicts of interest arising from 3E Strategies' sources of income. Moreover, Dr. Kitzhaber contends that he referred matters regarding potential conflicts arising from Ms. Hayes's work to general counsel and believed Ms. Hayes would comply with general counsel's advice.

- G. When met with a potential conflict of interest, ORS 244.120(2) requires an elected public official to make a public announcement of the nature of the potential conflict of interest prior to taking any official action on the matter.
- H. When Dr. Kitzhaber was met with the potential conflicts of interest described in paragraph E, he did not make public announcements of the nature of his potential conflicts of interest as required by ORS 244.120(2) prior to taking action in his official capacity as Governor on the matters.
- I. Dr. Kitzhaber's failure to make public announcements—through press releases, for instance—of the nature of his potential conflicts of interest related to 3E Strategies during 2011 constituted a violation of ORS 244.120(2).
- J. During calendar year 2012, Dr. Kitzhaber was met with potential conflicts of interest when making policy decisions and public appearances in his official capacity as Governor of Oregon where those policies and appearances overlapped with the issues for which 3E Strategies was receiving payment for its advocacy, writing, and speaking. Dr. Kitzhaber was met with potential conflicts of interest because his policy decisions and public appearances could have resulted in a financial benefit or detriment to 3E Strategies.
- K. Dr. Kitzhaber contends that he failed to perceive the potential conflicts of interest described in Paragraph J because he understood that Ms. Hayes's work, through 3E Strategies, for various non-profit organizations was not directed at trying to shape or influence state policy but, rather, to be an educator and storyteller in those areas to which she had committed her professional career. Dr. Kitzhaber also contends that he conferred with counsel to the Office of the Governor regarding Ms. Hayes's work, through 3E Strategies, for various non-profit organizations, and that he was not

advised that any of his policy decisions or public appearances presented conflicts of interest arising from 3E Strategies' sources of income. Moreover, Dr. Kitzhaber contends that he referred matters regarding potential conflicts arising from Ms. Hayes's work to general counsel and believed Ms. Hayes would comply with general counsel's advice.

- L. When Dr. Kitzhaber was met with the potential conflicts of interest described in paragraph J, he did not make public announcements of the nature of his potential conflicts of interest as required by ORS 244.120(2) prior to taking action in his official capacity as Governor on the matters.
- M. Dr. Kitzhaber's failure to make public announcements of the nature of his potential conflicts of interest related to 3E Strategies during 2012 constituted a violation of ORS 244.120(2).
- N. During calendar year 2013, Dr. Kitzhaber was met with potential conflicts of interest when making policy decisions and public appearances in his official capacity as Governor of Oregon where those policies and appearances overlapped with the issues for which 3E Strategies was receiving payment for its advocacy, writing, and speaking. Dr. Kitzhaber was met with potential conflicts of interest because his policy decisions and public appearances could have resulted in a financial benefit or detriment to 3E Strategies.
- O. Dr. Kitzhaber contends that he failed to perceive the potential conflicts of interest described in Paragraph N because he understood that Ms. Hayes's work, through 3E Strategies, for various non-profit organizations was not directed at trying to shape or influence state policy but, rather, to be an educator and storyteller in those areas to which she had committed her professional career. Dr. Kitzhaber also contends that he conferred with counsel to the Office of the Governor regarding Ms. Hayes's work, through 3E Strategies, for various non-profit organizations, and that he was not

advised that any of his policy decisions or public appearances presented conflicts of interest arising from 3E Strategies' sources of income. Moreover, Dr. Kitzhaber contends that he referred matters regarding potential conflicts arising from Ms. Hayes's work to general counsel and believed Ms. Hayes would comply with general counsel's advice.

- P. When Dr. Kitzhaber was met with the potential conflicts of interest described in paragraph N, he did not make public announcements of the nature of his potential conflicts of interest as required by ORS 244.120(2) prior to taking action in his official capacity as Governor on the matters.
- Q. Dr. Kitzhaber's failure to make public announcements of the nature of his potential conflicts of interest related to 3E Strategies during 2013 constituted a violation of ORS 244.120(2).
- R. During the period January 2011-February 2015, Dr. Kitzhaber was credited frequent flier miles on one known occasion when he traveled representing state government. This settlement resolves any and all claims that Dr. Kitzhaber may have received frequent flier miles when representing state government.
- S. ORS 244.040(1) prohibits any public official from using their official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses. Pursuant to ORS 292.230(2), the use of travel awards obtained while conducting state business for personal travel constitutes personal gain from state employment and violates ORS 244.040.
- T. Dr. Kitzhaber's acceptance of frequent flier miles earned while representing state government constituted a violation of ORS 244.040(1).

U. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$20,000 as a result of these four (4) violations.

V. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 244.040(1) and ORS 244.120(2).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

A. On 7/14/17, the Commission considered information in the preliminary review phase and found cause to initiate an investigation of these matters. Dr. Kitzhaber, through his attorney, indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.

B. John Kitzhaber will pay a civil penalty, as authorized by ORS 244.350, in the amount of \$1000 in order to settle and compromise this matter.

C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against John Kitzhaber within the scope of the above-referenced proceedings.

D. John Kitzhaber will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into

by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

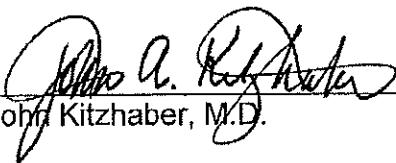
6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, John Kitzhaber agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, John Kitzhaber agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.



John Kitzhaber, M.D.

7 November 2011

Date

Daniel T. Golden, Chair
Oregon Government Ethics Commission

Date

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BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)

Fred Clauson)

) STIPULATED FINAL ORDER

) CASE NO. 15-115EDG

- _____)
1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Fred Clauson.
 2. JURISDICTION: At all material times, Fred Clauson was a Director of the Board of Lakeside Rural Fire Protection District (District). Fred Clauson was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.
 3. STIPULATED FACTS:
 - A. On or about 2/1/14, Mr. Clauson and a household member moved residences.
 - B. Some volunteer firefighters, accompanied by the Executive Administrative Officer of the District, helped Mr. Clauson and his household member move their belongings. Mr. Clauson accepted this help at no personal cost to himself.
 - C. ORS 244.040(1) prohibits any public official from using their official position or office to obtain financial gain for the public official, other than official salary, honoraria or reimbursement of expenses.
 - D. The action described in paragraph B constituted a violation of ORS 244.040(1).

- E. ORS 244.350 authorizes the Commission to assess civil penalties of up to \$5,000 as a result of this violation.
- F. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find a violation of ORS 244.040(1).

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 10/6/17, the Commission acted to find violation, bring the investigative phase to a close and move to a negotiated settlement or a contested case hearing. The 10/6/17 action was a preliminary finding of violations of Oregon Government Ethics law, as a prelude to a stipulated settlement or a contested case hearing, and not a final conclusion regarding a violation of Oregon Government Ethics law by Fred Clauson.
- B. Fred Clauson will pay a civil penalty, as authorized by ORS 244.350, in the amount of \$100 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Fred Clauson within the scope of the above-referenced proceedings.
- D. Fred Clauson will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Fred Clauson agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Fred Clauson agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

Fred Clauson
Fred Clauson

10-19-2017
Date

Daniel T. Golden, Chairperson
Oregon Government Ethics Commission

Date

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)

FRED MESSERLE)

) **STIPULATED FINAL ORDER**

) **CASE NO. 16-136EMT**

- _____)
1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Fred Messerle.
 2. JURISDICTION: At all material times, Mr. Messerle was the chair of the Board of Supervisors (BOS) for the Beaver Slough Drainage District. As the governing body, the members of the Board are subject to Government Ethics law under ORS Chapter 244.
 3. STIPULATED FACTS:
 - A. On 3/25/2016, after seeking advice from counsel for the BOS, Mr. Messerle sent an email to the BOS about the potential reorganization of the administrative and management structure of the BOS and compliance with Oregon's Ethics laws. Pursuant to that advice, on 3/31/2016, Mr. Messerle proposed to tender his resignation as chair and negotiate a management services contract with the BOS. The service contract would be between the BOS and Fred Messerle & Sons, Inc., a construction company owned by Mr. Messerle.

- B. During the BOS meeting on 3/31/2016, it was determined that Mr. Messerle would remain chair of the BOS and tender his resignation at the time of the implementation of the service contract.
- C. On 4/26/2016, after consulting with BOS counsel, Mr. Messerle, as chair, sent the BOS a copy of the Professional Services Agreement, along with a Resolution Amending Public Contracting Rules and Procedures.
- D. On 4/27/2016, at the BOS meeting, Mr. Messerle, as chair, tendered his resignation from the BOS. The service contract was subsequently adopted after amending public contract rules.
- E. ORS 244.040 prohibits a public official from using his or her official position or office to obtain financial gain or avoidance of financial detriment for the public official or any business with which the public official or is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.
- F. As chair of the BOS, Mr. Messerle negotiated a contract between the BOS and his company, Fred Messerle & Sons, Inc. But for Mr. Messerle's position as chair of the BOS, this opportunity would not have been available to him.
- G. ORS 244.047 prohibits a public official from having a financial interest in public contract after that person ceases to hold a position as a public official. The former public official may not have a direct beneficial financial interest in a public contract for two years after the date the contract was authorized.
- H. As chair of the BOS, Mr. Messerle was a public official. Mr. Messerle was involved in the authorization process by originating and drafting the service contract.

- I. ORS 244.350(1)(a) authorizes the Commission to assess civil penalties of up to \$5,000 for each of the aforementioned violations of ORS 244, Government Ethics law.
- J. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, could establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 244.040 and ORS 244.047.

DISPUTED FACTS:

- K. The Commission contends that each of the actions described in paragraphs (A) through (H) above constituted distinct violations of ORS 244.040(1) and ORS 244.047.

Mr. Messerle contends that the actions described in paragraphs (A) through (H) above did not constitute violations of ORS 244.040(1) and ORS 244.047.

- L. The Commission contends that the results of its investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 244.040(1) and ORS 244.047.

Mr. Messerle contends that the results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing would not establish a preponderance of evidence in support of a post-hearing notice to find any violations of ORS 244.040(1) and ORS 244.047.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 8/12/2016, the Commission moved to open an investigation after considering the information developed in the preliminary review phase.
- B. Mr. Messerle, cooperating through his attorney, indicated that he wishes to conclude this matter with the Commission by agreeing to the terms and conditions in this order without completing the investigative phase.
- C. Mr. Messerle will pay a fine of \$100.00, as authorized by ORS 244.350, to settle and compromise this matter.
- D. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Fred Messerle within the scope of the above-referenced proceedings.
- E. Fred Messerle will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Fred Messerle agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Fred Messerle agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.

Fred R. Messerle
Fred Messerle

November 1, 2017
Date

Daniel T. Golden, Chair
Oregon Government Ethics Commission

Date

BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of)
)
MIKE DOLAN) **STIPULATED FINAL ORDER**
) **CASE NO. 17-047MT**
)
_____)

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Mike Dolan.

2. JURISDICTION: At all material times, Mike Dolan was a City Councilor for the City of St. Paul (City). Mike Dolan was a public official subject to the jurisdiction of the Commission pursuant to ORS Chapter 244.

3. STIPULATED FACTS:
 - A. Mike Dolan was elected to the City Council in November of 2016. Mr. Dolan assumed the office in January of 2017.

 - B. Mr. Dolan is a minority shareholder with Ernst Irrigation (Ernst) and receives a monthly salary from Ernst.

 - C. Ernst does business with the City, and each month invoices from Ernst are presented to the City Council for their approval.

- D. Mr. Dolan, in his capacity as a City Councilor, voted to approve payment of the invoices submitted by Ernst, a business with which he is associated, during the period 1/1/2017 to 8/24/2017.
- E. ORS 244.040(1), prohibits a public official from using or attempting to use their official position or office to obtain financial gain or avoidance of financial detriment for themselves or any business with which they are associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.
- F. ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. A public official is met with either an actual or potential conflict of interest when participating in an official capacity, in any action, decision or recommendation if the effect would or could be to the private pecuniary benefit or detriment of the public official, or a business with which they are associated.
- G. ORS 244.120(2) states that an elected public official must announce publicly the nature of their potential conflict before taking any action, and when met with an actual conflict of interest, they must announce publicly the nature of the actual conflict and refrain from any participation as a public official in any discussion, debate, or vote on the issue.
- H. On 8/24/2017, in response to advice from the Commission, Kim Wallis, Mayor for the City of St. Paul, directed City staff to remove any Ernst invoices from the consent agenda in all future meetings. Invoices from Ernst would be calendared as separate items, with Mr. Dolan abstaining from voting on their approval for payment.

- I. The actions described in paragraphs A through D constitute violations of ORS 244.040(1) and ORS 244.120.
- J. ORS 244.350(1)(a) authorizes the Commission to assess civil penalties of up to \$5,000 for each violation of ORS 244.040 and ORS 244.120.
- K. The results of the Commission investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find violations of ORS 244.040 and ORS 244.120.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On 10/6/2017, the Commission moved to open an investigation after considering the information developed in the preliminary review phase.
- B. Mr. Dolan indicated that he wishes to conclude this matter with the Commission by agreeing to the terms and conditions in this order without completing the investigative phase.
- C. In lieu of a civil penalty, as authorized by ORS 244.350, Mr. Dolan will receive a letter of education to settle and compromise this matter.
- D. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Mr. Dolan within the scope of the above-referenced proceedings.
- E. Mr. Dolan will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

All of the parties hereto acknowledge that this agreement has been entered into by their own free will and with full understanding of the contents herein. Each of the parties further acknowledges that each has had the opportunity to seek the advice of counsel in comparing and reviewing this agreement.

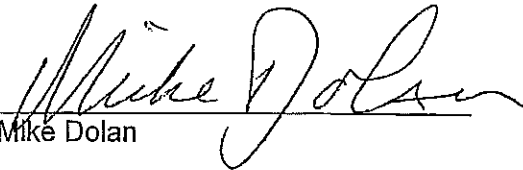
6. EFFECT:

This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

By signing this agreement, Mr. Dolan agrees to waive his right to a contested case hearing as provided in ORS Chapter 183 and ORS 244.370. This order shall be the final order and all information in the Commission files on this matter shall become part of the record.

By signing this agreement, Mike Dolan agrees to waive his right to obtain judicial review of this order as provided in ORS 183.482.

IN WITNESS WHEREOF, the parties have entered into and signed this stipulated final order on the dates set forth below.



Mike Dolan

11/2/17

Date

Daniel T. Golden, Chair
Oregon Government Ethics Commission

Date

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-140EDG

DATE: November 7, 2017

RESPONDENT: CHENEY, Brad, City Councilor, City of Jefferson

COMPLAINANT: VAUGHAN, Tracy

RECOMMENDED ACTION: Dismiss the Complaint

1 **SYNOPSIS:** Brad Cheney was a City Councilor for the City of Jefferson when the events
2 relevant to this investigation occurred. The focus of this investigation was to determine if
3 there was a preponderance of evidence to indicate that Brad Cheney committed violations
4 of the conflict of interest and use of office provisions of ORS Chapter 244.

5
6 Prior to his election to the City Council, Mr. Cheney was one of three named chief
7 petitioners of a political committee that initiated a lawsuit against the City of Jefferson to
8 force the City to refer a property annexation decision to the City voters for approval. This
9 lawsuit was still ongoing when he was elected. The complaint in this matter alleged that
10 Mr. Cheney took actions as a City councilor that involved the same issues as the lawsuit, in
11 violation of Oregon Government Ethics law.

12
13 Information available during the investigation is insufficient to indicate that Mr. Cheney
14 failed to comply with the disclosure and disposition requirements of the conflict of interest
15 provisions and the prohibited use of office provisions of Oregon Government Ethics law.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
2 issues addressed herein:

3
4 **244.020 “Definitions.** As used in this chapter, unless the context requires
5 otherwise:

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 (13) of this section.”

13
14 244.020(13) “Potential conflict of interest’ means any action or any decision or
15 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 (a) “An interest or membership in a particular business, industry, occupation
21 or other class required by law as a prerequisite to the holding by the person
22 of the office or position.

23
24 (b) Any action in the person’s official capacity which would affect to the same
25 degree a class consisting of all inhabitants of the state, or a smaller class
26 consisting of an industry, occupation or other group including one of which or
27 in which the person, or the person’s relative or business with which the
28 person or the person’s relative is associated, is a member or is engaged....”

29
30 244.020 (15) “Public official’ means the First Partner and any person who, when an
31 alleged violation of this chapter occurs, is serving the State of Oregon or any of its

1 political subdivisions or any other public body as defined in ORS 174.109 as an
2 elected official, appointed official, employee or agent, irrespective of whether the
3 person is compensated for the services.”
4

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

14 “(2) Subsection (1) of this section does not apply to:

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

17 (c) Reimbursement of expenses.”

18 244.040(4) “A public official may not attempt to further or further the personal gain
19 of the public official through the use of confidential information gained in the course
20 of or by reason of holding position as a public official or activities of the public
21 official.”

22 244.040(7) “The provisions of this section apply regardless of whether actual
23 conflicts of interest or potential conflicts of interest are announced or disclosed
24 under ORS 244.120.”
25

26 **244.120 “Methods of handling conflicts; Legislative Assembly; judges;**
27 **appointed officials; other elected officials or members of boards.** (1) Except as
28 provided in subsection (2) of this section, when met with an actual or potential
29 conflict of interest, a public official shall:”

1 244.120(2) "An elected public official, other than a member of the Legislative Assembly,
2 or an appointed public official serving on a board or commission, shall:

3 (a) When met with a potential conflict of interest, announce publicly the
4 nature of the potential conflict prior to taking any action thereon in the
5 capacity of a public official; or

6
7 (b) When met with an actual conflict of interest, announce publicly the nature
8 of the actual conflict and:

9 (A) Except as provided in subparagraph (B) of this paragraph, refrain
10 from participating as a public official in any discussion or debate on
11 the issue out of which the actual conflict arises or from voting on the
12 issue.

13 (B) If any public official's vote is necessary to meet a requirement of a
14 minimum number of votes to take official action, be eligible to vote,
15 but not to participate as a public official in any discussion or debate on
16 the issue out of which the actual conflict arises."

17
18 244.120(3) "Nothing in subsection (1) or (2) of this section requires any public
19 official to announce a conflict of interest more than once on the occasion which the
20 matter out of which the conflict arises is discussed or debated."
21

22 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated a
23 preliminary review based on information in a signed complaint from Tracy Vaughan on
24 3/22/17 concerning four newly elected councilors for the City of Jefferson. (#PR1). Ms.
25 Vaughan alleged that Brad Cheney (and three other Jefferson City councilors) may have
26 violated Oregon Government Ethics law. The Commission found cause to investigate on
27 6/2/17 after considering the information developed in the preliminary review. The focus of
28 the investigation was to determine if there is sufficient evidence to indicate that Brad
29 Cheney used his position to gain a prohibited financial benefit or failed to comply with the
30 disclosure and disposition requirements of the conflict of interest provisions of Oregon
31 Government Ethics law. Brad Cheney and Tracy Vaughan have been notified of the

1 Commission actions in this matter. Both have been invited to provide any information
2 which would assist the Commission in conducting this investigation.

3
4 Information indicates that on 11/8/16, Brad Cheney, Bob Burns, and Stan Neal were all
5 elected as Jefferson City Councilors and Cynthia Hightower was elected as Mayor. They
6 were sworn in and seated at their first city council meeting on 1/12/17. (#PR5)

7 8 **BACKGROUND**

9 10 SB 1573 AND ANNEXATION

11 Senate Bill 1573 (2016) became effective on 3/15/16 and affected cities such as Jefferson,
12 whose laws required that a petition proposing annexation of territory be sent to the voters
13 for approval. SB 1573 overrode any local requirement to refer annexation to voters if the
14 annexation petition met certain conditions. SB 1573 stated that in such a case, the
15 "legislative body of the city" shall declare such territory annexed through an ordinance. An
16 annexation petition was submitted to Jefferson by the Hamby family shortly after the
17 passage of SB 1573, and the city council approved the annexation through adoption of an
18 ordinance, rather than referring it to the voters of Jefferson. However, it appears that the
19 annexation has not yet occurred because citizens, apparently through a political action
20 committee (see below), appealed the decision to the Land Use Board of Appeals (LUBA),
21 and the annexation petition was returned to the city by LUBA due to its insufficiencies.
22 (#PR2)

23 24 COMMITTEES

25 Records indicate that on 7/06/16, citizens registered a political action committee with the
26 Secretary of State's office, Jeffersonians for Jefferson (J4J). J4J's stated purpose was to
27 "Promote Honesty & Fairness in Local Government". Cyndie Hightower was listed as
28 Treasurer, and Robert Burns, Brad Cheney, Nathan Hightower, and Stan Neal were listed
29 as Directors. On 12/13/16, J4J filed an amendment to their original filing. The amendment
30 shows the current Treasurer is Danette Daniel, and the sole Director is Keith Rude. The
31 filings show that financial contributions to J4J were made by Robert Burns (\$300), Brad

1 Cheney (\$1100) and Stan Neal (between \$2500 and \$4370) from 7/5/16 to 11/19/16.
2 Expenditures from J4J include \$3800 in legal fees and \$400 to LUBA. (#PR2a)

3
4 On 11/18/16, citizens registered a petition committee, the Select Reform Committee of
5 Jefferson (SRCOJ), with the Secretary of State's office. The stated purpose of SRCOJ
6 was "2016 Referendum Petition 2016-01 Ordinance #695, August 4, 2016 (Annexation of
7 the Hamby 14.75 acre territory)". Cynthia Hightower was listed as Treasurer and Bob
8 Burns, Brad Cheney, and Stan Neal were listed as Chief Petitioners. On 12/13/16, SRCOJ
9 filed an amendment which shows the current Treasurer is Danette Daniel (the Chief
10 Petitioners remain the same). Records available do not show the contributors to this
11 petition committee and, in fact, there were no funds recorded in their account in 2016 and
12 only \$190 in their account in 2017. (#PR2b)

13
14 LAWSUIT

15 SRCOJ, through the Chief Petitioners (Bob Burns, Brad Cheney, and Stan Neal) filed a
16 lawsuit against the City of Jefferson and the City Recorder (who is also the City elections
17 officer). The lawsuit sought an order from the court (Writ of Mandamus) directing the City
18 to send the issue of the Hamby annexation to the voters of Jefferson. The suit was filed
19 before Brad Cheney and the other chief petitioners were city councilors. On 11/22/16, the
20 Marion County Circuit Court granted the 10/11/16 motion made by the City and the
21 Intervenor (Hamby Family Limited Partnership) to dismiss the suit, finding that the City of
22 Jefferson's Ordinance #695 was administrative in nature and not subject to voter
23 referendum. The SRCOJ filed a notice of appeal from the judgment of dismissal on
24 2/27/17. (#PR3)

25

26 COMPLAINT

27 Apparently, the Hamby's annexation petition concerns property that either abuts or is very
28 close to the properties owned by the three city councilors and the mayor. The complaint
29 alleges that Brad Cheney and the other three recently elected members of the city council
30 have conflicts of interest due to their real property interests, their participation in political
31 action committees, and their financial stake in a lawsuit against the City of Jefferson and

1 the City Recorder. The complaint states the following:

2
3 "...[T]hey have controlling vote on the City Council, they are voting and have
4 directed staff and city attorney to expend city funds in regards to litigation of this
5 issue, whilst they all still have a stake in the outcome...How is it that they can in any
6 way be involved in approving expenditure of City funds for an issue they also have a
7 personal stake in?" (#PR1)

8
9 RESPONSE

10 Brad Cheney provided material and a letter in response to the complaint, which will be
11 provided in its entirety to the Commissioners with this report, and is excerpted below
12 (without any correction or notations):

13
14 "Before becoming a Jefferson City Councilor, I became involved with the formation
15 of two political action groups, J4J... and SRCOJ.... J4J was initially formed to fight
16 SB1573 and its encroachment on Home Rule. This issue was created in Jefferson
17 as the result of an annexation application the City received. SRCOJ was formed to
18 fight the City of Jefferson's decision to NOT send a lawful referendum to the
19 Secretary of State."

20
21 "In a nutshell, the sole and primary focus of both of these PAC's, and their
22 subsequent lawsuits, was to restore the citizen's right to vote on annexations, a vote
23 in which SB1573 took away. Both of these PAC's were formed well before I had
24 ever made any decision to run for Jefferson City Council."

25
26 "Since the date of my resignation from these PAC's, I have not attended any
27 meetings, I have not participated in any decision making, nor do I have any past or
28 present financial obligations to these PAC's."

29
30 "Many people, including Ms. Vaughn, are pointing to the fact that recently SRCOJ
31 has filed an appeal against the decision of a Marion County Judge, who determined

1 that SB1573 amended the Jefferson City Charter through an administrative action
2 and not a legislative one. I am told that because my name was listed on the original
3 SRCOJ lawsuit as a chief petitioner, that my name can not be redacted from the
4 appeal of the decision even though I personally had no involvement in the decision
5 to appeal this ruling. In short, because my name is listed on the appeal of this
6 lawsuit people are pointing to this as evidence that I am still participating in SRCOJ.
7 This fact is simply not true.”

8
9 “I should also point out that anytime any land use topic has come before the City
10 Council that I always declare a potential conflict of interest. Also, at no time have I
11 been asked to make any decisions directly concerning the annexation application
12 and its' subsequent LUBA remand or the referendum appeal.” (#PR4)

13
14 Mr. Cheney included a copy of his email resignation from the J4J committee and SRCOJ
15 committee dated 12/5/16. Mr. Cheney also included a 3/21/17 letter from the current J4J
16 treasurer addressed to the three city councilors who were already on the city council when
17 the four new members were sworn in on 1/12/17. This letter states that the Mayor and
18 councilors resigned their affiliations with J4J and SRCOJ between their elections and
19 assuming office. Councilor Cheney resigned on 12/5/16; Councilor Neal resigned on
20 12/13/16; and Councilor Burns resigned on 11/30/16. Mr. Cheney also included copies of
21 email correspondence he had with the Commission staff. (#PR4)

22 23 CITY OF JEFFERSON RECORDS

24 The City Council holds a work session and a regular meeting each month. Greg Ellis, the
25 current City Manager/City Recorder, explained that, as part of the Council's pre-meeting
26 packet of materials, a “Payment Approval Report” is provided to councilors which details
27 the bills that have come in during that portion of the month and for which payment approval
28 is being sought. Following a council meeting, the City Recorder prints out the checks for
29 payments that have been approved, and they are signed and sent. The records indicate
30 that at each work session, the councilors consider the accounts payable awaiting approval
31 as a separate, stand-alone agenda item. For the accounts awaiting approval at the regular

1 council meetings, the accounts payable are part of a much larger consent agenda which is
2 usually passed as a single item. (#INV1 and #INV2)

3
4 The meetings of the governing body relevant to this investigation are the five meetings that
5 occurred between the time Mr. Cheney and the other new councilors assumed office on
6 1/12/17 and 3/22/17, the date the complaint was received by the Commission.

7
8 1/12/17 Work Session meeting

9 Mr. Cheney and the other newly elected city councilors were sworn in at this work session
10 meeting. There is no indication in the meeting minutes that Councilor Cheney took any
11 official actions, or participated in any discussions or debates of issues relevant to this
12 complaint.

13
14 1/26/17 Regular Council meeting

15 Minutes of the 1/26/17 council meeting indicate the City's attorney gave a presentation to
16 the council members about their duties and responsibilities and specifically spoke to the
17 City of Jefferson Council Rules and the Oregon Government Ethics law.

18
19 The City attorney's bill for legal services was included on the "Payment Approval Report"
20 as part of the council meeting packet. The services were billed by topic and legal fees
21 associated with "annexation" in the amount of \$1673.20 were part of the \$2105.60 legal
22 bill. The councilors voted unanimously (including Councilors Burns, Cheney, and Neal) to
23 approve all payments on the report as part of the larger consent agenda, which included
24 department reports and adoption of prior meeting minutes.

25
26 After the payments were approved, during the "Council Comments" portion of the meeting,
27 Councilors Cheney, Burns, and Neal, each disclosed that they had a conflict of interest
28 concerning the annexation process and were therefore going to refrain from any
29 discussions at this meeting until they received more specific direction, as to whether the
30 conflict was actual or potential.

31 ///

1 Later in the meeting, Councilor Burns moved and Councilor Cheney seconded a motion
2 that the Council have a discussion at a future meeting concerning how the City may work
3 around the issue of SB1573 in *future land annexation matters* and that the issue be placed
4 on the next Council meeting agenda for an open discussion. The minutes note that "all of
5 them were in favor of bringing the subject back to the February regular meeting." (#PR5,
6 #INV1 and #INV2)

7
8 2/9/17 Work Session meeting

9 An agenda item was included entitled "Draft Resolution Related to Voter Approved
10 Annexations and Senate Bill 1573, Directing Staff to Comply with Sections 12.76.010,
11 Subsection (D.) of the City Charter and Jefferson Ordinances".

12
13 The proposed resolution stated that:

14
15 "[N]otwithstanding Senate Bill 1573, the City Council intends to refer all annexation
16 approvals to the voters as required by the City Charter, Comprehensive Plan and
17 Land Development Code;... and that City staff are directed to seek applicants'
18 voluntary agreements to submit annexation proposals to the voters as required by
19 the City Charter."

20
21 The meeting packet sent to the councilors included this draft resolution originally proposed
22 by Councilor Cheney, and edited by the City attorney. The attorney who was working on
23 the pending litigation on behalf of the City, Ross Williamson, included a 2/8/17 memo to
24 the city councilors explaining his thoughts and revisions of the draft. That memo is
25 excerpted below:

26
27 "First, I interpret this proposed resolution as not having an impact on the current
28 Writ of Mandamus case that was filed against the City in Marion County Circuit
29 Court. I do not read the proposed resolution as necessarily impacting the Writ
30 matter. This interpretation also saves Councilors Burns, Cheney and Neal from
31 having to deal with the actual conflict of interest that would certainly arise. Because

1 Councilors Burns, Cheney and Neal are each named plaintiffs (Realtors) [sic] in the
2 Writ matter, it continues to be my opinion that addressing the Writ matter before the
3 Council would create an actual conflict of interest for each of them. By excluding
4 the ongoing Writ case from the reach of this proposed resolution, this particular
5 conflict issue would be resolved.”

6
7 “Further, the City will need to abide by the rulings related to the Hamby annexation
8 as to the LUBA appeal and the Writ of Mandamus matter. To do otherwise would
9 open the City to immediate sanctions and other penalties.” (#INV1)

10
11 The meeting minutes show that prior to discussing this draft resolution, Councilors Neal
12 and Cheney each declared a potential conflict of interest, and referred to written advice
13 and verbal advice they had received from staff of the Commission. (Councilor Burns was
14 absent at this council meeting.) Following some discussion, a councilor moved to table the
15 “draft resolution until after the issues had been settled by the State and the courts.” The
16 motion failed with both Neal and Cheney opposing tabling the draft resolution. However, it
17 is unclear what effect that had on the draft resolution, and the minutes do not show any
18 further action was taken on the issue. (#PR5)

19
20 Another agenda item, entitled “Memo & Materials from Councilor Burns Re: Potential
21 Actions Post Ord. #695”, was tabled until a later meeting because Councilor Burns was
22 absent at this meeting. (#PR5 and #INV1)

23
24 2/23/17 Regular Council meeting

25 Meeting minutes and agenda show an item listed under a “discussion and information”
26 heading, entitled “Memo and Materials from Councilor Burns: West Linn Ordinance 1651,
27 1st pass letter to legislature and SB 1573”.

28
29 According to the meeting minutes, Councilors Cheney and Neal announced a potential
30 conflict of interest concerning this topic and Councilor Burns announced a potential conflict
31 of interest “in discussing anything having to do with annexation, SB 1573, Ord 695, and

1 anything to do with land annexing.” There was a discussion of a draft letter that Councilor
2 Burns proposed be signed by the entire Council, addressed to their legislative
3 representatives concerning bills pending in the Legislative Assembly that modified or
4 amended SB 1573. Also, he shared an ordinance adopted by the City of West Linn to
5 work around SB 1573, and which he suggested could be used as a model for Jefferson.

6
7 After discussion, Councilor Burns moved to have the ordinance vetted by legal counsel to
8 get some direction and have it tailored for the City of Jefferson. Councilor Neal seconded,
9 and Councilors Cheney, Neal, and Burns voted affirmatively. The motion was approved.

10
11 A “Payment Approval Report” included the City attorney’s bill for legal services and was
12 part of the 2/23/17 council meeting packet. The services were billed by topic and legal fees
13 associated with “annexation” in the amount of \$4154.80 were included as part of the
14 \$6674.00 legal bill. A councilor moved to approve the consent agenda, but noted that
15 “legal fees were part of the consent agenda and pertained to the lawsuit.” Councilor Burns
16 seconded the motion, and after discussion concerning the possible need to transfer monies
17 within the budget to cover this year’s legal fees, Councilors Burns, Cheney and Neal voted
18 with the other councilors to approve the consent agenda. (#PR5 and #INV1)

19
20 3/9/17 Work Session meeting

21 There were no agenda items or regular business considered at this meeting that raised
22 issues relevant to this case. During the citizen participation period, apparently there were a
23 few exchanges between audience members questioning the continued involvement of
24 Councilors Burns, Cheney and Neal in the funding or prosecution of the lawsuit against the
25 City. The meeting minutes show that Councilor Burns and Neal engaged with the
26 audience, stating that they did not know who was funding the lawsuit and they had ceased
27 connection with the lawsuit and the political committees before they took office. There is
28 no notation in the records that Brad Cheney engaged with the audience on these matters.

29 (#INV1)

30 ///

31 ///

OTHER RECORDS

1
2 The City of Jefferson's motion to dismiss the lawsuit brought by SRCOJ was granted in
3 Marion County Circuit Court on 11/22/16. SRCOJ filed a notice of appeal of the decision
4 on 2/24/17. (#INV3 and #INV4)
5

6 The City's attorney, Mr. Williamson, sent to Commission staff a copy of the Marion County
7 Circuit Court judgment, apparently issued on 1/27/17, which showed the City was awarded
8 a prevailing party fee of \$337 as well as attorney fees in the amount of \$9550.40. Mr.
9 Williamson explained it is not settled law as to who is liable for the costs in this particular
10 situation, but it is his contention that the three individuals who signed the original filing
11 (chief petitioners Burns, Cheney, and Neal) are personally liable, and remain so. The
12 attorney representing SRCOJ, Mr. Coulombe, argued that only the committee, SRCOJ, is
13 liable. Mr. Williamson said, in order to save the City the cost of arguing the terms of the
14 judgment in court, he agreed to name the SRCOJ as the sole judgment debtor, rather than
15 the three individual petitioners. However, Mr. Williamson said that if the SRCOJ loses its
16 appeal, he is able to argue that the judgment should be paid by the three individuals
17 personally. (#INV3, #INV3a, and #INV4)
18

19 Jefferson's Interim City Manager/Recorder, Greg Ellis, wrote a letter which was submitted
20 to Commission staff during this investigation by Councilor Stan Neal. It is applicable to all
21 three councilors, including Mr. Cheney. Mr. Ellis states the following:
22

23 "After careful review of all Council minutes...from January 11, 2017 to August 15,
24 2017, there was never an occasion where the Writ of Mandamus lawsuit was
25 deliberated on or direction given on the matter by the City Council...The
26 deliberations and negotiations occurred outside of the City Council purview between
27 the attorneys of SRCOJ and the City Attorney. The City Council had nothing to do
28 with the negotiations on the judgment or the stay of the judgment involving the Writ
29 of Mandamus." (#INV5)
30

31 The city councilors had been in contact with the Commission staff by email beginning in

1 January of 2017. At least one councilor had visited the Commission offices in person to
2 consult with a staff member on 2/8/17. Immediately following that, the staff member
3 advised the following in an email to all three councilors:

4
5 "I wanted to confirm one aspect of our in person conversation this afternoon. You
6 indicated that tomorrow you will be participating in a city council meeting, specifically
7 identified as a 'work session' in which you will be acting in your official capacity as a
8 city councilor. The agenda appears to have a matter that will require action,
9 specifically a 'resolution'. The substance of the resolution is to give the citizens of
10 the City of Jefferson the authority to vote on matters of annexation..."

11
12 "It appears that the outcome of this resolution will intervene with a current petition
13 for property annexation. As such, any city councilor, relative of the city council
14 member or any business to which either are associated who owns property adjacent
15 to the property that is subject to the annexation, would be met with a 'potential
16 conflict of interest' if there could be financial benefit or detriment to the adjacent
17 property."

18
19 "It sounds like your property could be financially affected by the annexation,
20 therefore avoiding or attempting to avoid the annexation would be a potential
21 conflict of interest (and possibly a prohibited use of office) [.] [T]he disclosure
22 requirement is to publicly announce a potential conflict of interest prior to engaging
23 in any conversation or debate on the matter before you...." (#INV6)

24
25 Brad Cheney, Bob Burns, and Stan Neal, visited the Oregon Government Ethics
26 Commission offices on 3/9/17 and spoke with two Commission staff members about their
27 situations.

28
29 The emails and in-person exchanges emphasized that the Commission staff could not give
30 them a definitive response that would apply in each instance to these complex and ongoing
31 issues. It appears from the exchanges that the information being supplied to the

1 Commission staff by the City Councilors was evolving over time and that they were not
2 necessarily in agreement with the advice they received from the Commission staff.

3
4 An excerpt from a 3/27/17 email from a Commission staff member, addressed to Brad
5 Cheney and copied to Stan Neal and Bob Burns, is representative:

6
7 "As we discussed when you came by the office, I don't have enough information to
8 advise you on whether you have a potential or actual conflict in these
9 circumstances. It sounds like there are many different opinions on the matter."

10
11 "The most conservative option is to announce an actual conflict pursuant to ORS
12 244.120(2)(b). You would generally then refrain from participating in any discussion
13 or debate on the matter and from voting on the matter."

14
15 "As you mentioned, ORS 244.120(2)(b)(B) states, 'If any public official's vote is
16 necessary to meet a requirement of a minimum number of votes to take official
17 action [the public official shall] be eligible to vote, but not to participate as a public
18 official in any discussion or debate on the issue out of which the actual conflict
19 arises.'"

20
21 "...Even if council members have an actual conflict, make the announcement
22 required by ORS 244.120(2)(b), and are a necessary vote to make up a requirement
23 of a minimum number of votes under ORS 244.120(2)(b)(B), they will have to be
24 very careful not to participate in any discussion or debate on the matter in their
25 capacity as a public official, because there is another provision of Oregon
26 Government Ethics law that could be a concern."

27
28 "ORS 244.040(1) prohibits a public official from using or attempting to use their
29 official position or office to obtain financial benefit or avoid a financial detriment, if
30 that financial benefit or avoidance of financial detriment would not otherwise be
31 available but for the holding of the official position or office....ORS 244.040(1)

1 applies regardless of whether actual or potential conflicts of interest are disclosed (
2 under ORS 244.120." (#INV6)

3
4 Information indicates that the councilors had also sought or received advice from the City's
5 attorney, the League of Oregon Cities personnel, and from at least one private attorney,
6 concerning compliance with Oregon Government Ethics law.

7
8 In an interview with Commission staff, the current City Manager/Recorder explained that
9 there were recall petitions circulated in Jefferson for the Mayor and Councilors Cheney and
10 Neal. (He noted that Councilor Burns moved out of Jefferson and resigned his position in
11 July of 2017.) When the recall petitions were turned in to the City and certified in the
12 summer of 2017, officeholders were given a limited time to resign in lieu of having their
13 names placed on the ballot for recall. Councilors Cheney and Neal resigned at that point,
14 prior to the September recall election; the Mayor stood for recall on 9/19/17 and lost.
15 (#INV2)

16
17 **CONCLUSIONS:** Brad Cheney was a City Councilor for the City of Jefferson during the
18 period relevant to this case. Mr. Cheney was a public official as defined in ORS
19 244.020(15), and therefore subject to compliance with the provisions of Oregon
20 Government Ethics law.

21 22 CONFLICT OF INTEREST

23 ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a
24 potential conflict of interest. A public official is met with either an actual or potential conflict
25 of interest when participating in an official capacity, in any action, decision or
26 recommendation if the effect would or could be to the private pecuniary benefit or detriment
27 of the public official, the public official's relative, or any business with which either are
28 associated.

29
30 The difference between an actual and potential conflict of interest is determined by the
31 certainty of the private financial impact. An actual conflict of interest occurs when a public (

1 official participates in an official action that would have a direct and specific financial impact
2 on that official, a relative, or any business with which either is associated. A potential
3 conflict of interest occurs when a public official takes an official action that could have a
4 financial impact on that official, a relative, or any business with which either is associated.
5

6 Elected public officials such as Brad Cheney, when met with a conflict of interest in the
7 course of their official duties, must publicly announce the nature of their conflict of interest
8 once on each occasion when the issue giving rise to the conflict occurs. Further, if the
9 conflict is actual, they must also refrain from participating in any discussion, debate, or vote
10 on the issue. If the conflict is potential, the official may continue to act in their official
11 capacity after their public disclosure. [ORS 244.120(2)]
12

13 Meeting records indicate that Councilor Cheney was present at each of the five Council
14 meetings relevant to this case. Mr. Cheney made a declaration of potential conflict of
15 interest when topics surrounding the annexation or SB 1573 were proposed or considered,
16 which occurred at the following meetings: 1/26/17, 2/9/17, and 2/23/17.
17

18 Public officials are required to disclose their conflict of interest once on each occasion that
19 the issue giving rise to the conflict occurs, per ORS 244.120(3).
20

21 The issue of approving payments to the City's attorney for legal fees concerning
22 "annexation" was before the council on 1/26/17 and 2/23/17, as part of a larger consent
23 agenda. Mr. Cheney voted to approve payment of these legal fees on both occasions. At
24 each of these meetings, Mr. Cheney announced his potential conflict of interest concerning
25 the annexation matters when that topic arose, but he did not specifically disclose that he
26 was conflicted concerning payment of the City attorney fees for work on the annexation
27 issue. Mr. Cheney's approval or disapproval of payment to the City's Attorney for litigation
28 work concerning the Writ appears to be too attenuated to constitute either a potential or
29 actual conflict of interest, because it does not seem that the effect of Mr. Cheney's official
30 action in voting to approve payment to the City Attorney could or would have a personal
31 financial impact on Mr. Cheney.

1 The City Attorney opined in his 2/8/17 memo to the City Council that Councilors Burns,
2 Cheney, and Neal would be met with an actual conflict of interest if they were to address
3 the "Writ matter" before the Council. Thus, as stated by City Manager Ellis, matters
4 concerning the lawsuit were handled outside of the City Council, specifically to avoid such
5 conflicts. The records do not show that Councilor Cheney participated in any official
6 actions, decisions, or recommendations concerning the City's litigation of the Writ, aside
7 from the approval of attorney fee payments, which do not appear to rise to the level of a
8 conflict of interest.

9

10 The resolution Councilor Cheney proposed at the 2/9/17 meeting was a method to mitigate
11 or negate the effects of SB 1573 by stating that the City Council intended to refer
12 annexation matters to a vote of the citizens, notwithstanding SB 1573. Councilor Cheney
13 also discussed, in his official capacity, a draft letter that was proposed to be sent from the
14 Council as a whole to the legislature in support of pending legislation which would amend
15 SB 1573. Councilor Cheney disclosed his potential conflict of interest prior to taking official
16 actions on these matters.

17

18 It appears that Mr. Cheney was met with a potential conflict of interest when these issues
19 arose, and therefore he was required to publicly disclose his conflict of interest prior to
20 taking official actions on the issues. In order for Councilor Cheney to have been met with
21 an actual conflict of interest, which would have required him to refrain from taking official
22 actions after his public disclosure, the official action he was refraining from taking would
23 have had to result in a certain and specific financial impact on himself, a relative, or a
24 business with which he or a relative is associated. It is not apparent that Councilor
25 Cheney's official actions during this period would have resulted in a certain and specific
26 financial impact on Mr. Cheney, a relative, or a business with which he or a relative were
27 associated.

28

29 It appears that Mr. Cheney complied with the conflict of interest provisions of Oregon
30 Government Ethics law in matters relevant to this case.

31 ///

1 PROHIBITED USE OF OFFICE

2 In relevant part, ORS 244.040(1) prohibits Mr. Cheney from using or attempting to use his
3 position as Jefferson City Councilor to obtain a financial benefit or avoid a financial
4 detriment for himself that would not otherwise have been available but for holding his
5 official position. Even if a public official complies with the conflict of interest provisions,
6 they may still be in violation of the prohibited use of office provisions. [ORS 244.040(7)]
7

8 The apparent personal financial interest that Mr. Cheney is alleged to have advanced
9 through the use of his position as a City Councilor, would have been his financial liability
10 concerning the litigation against the City which he and two others initiated by their
11 signatures as chief petitioners of the SRCOJ. Also, the fact that he owned property near
12 the pending Hamby annexation that could be financially affected by the annexation, is a
13 second personal financial interest. However, during the relevant period, Mr. Cheney did
14 not take any official actions on the Hamby annexation or LUBA appeal and the other
15 actions he took or proposed would have been applicable only to future annexations.

16
17 The City's attorney stated that whether Mr. Cheney could be personally liable for costs and
18 attorney fees if the SRCOJ's suit is ultimately unsuccessful, is not a settled matter in law.
19

20 Information available indicates that Mr. Cheney, prior to taking office as a City Councilor,
21 resigned from the SRCOJ and J4J committees, and he contends he had no role in the
22 ongoing litigation as a private citizen. Information also indicates that he and his fellow chief
23 petitioners in the SRCOJ suit attempted to have their names removed from that suit, to no
24 avail. Also, evidence does not show that Mr. Cheney participated in his role as City
25 Councilor in directing the City Attorney concerning the Writ litigation. Also, his official
26 actions in approving City Attorney payments in regard to the litigation would not have been
27 a prohibited use of his office to obtain a personal financial benefit or avoid a financial
28 detriment.

29
30 As explained by the City Attorney and the City Manager/Recorder, precisely due to the
31 circumstances Mr. Cheney, and his newly elected colleagues found themselves in, there

1 were efforts to avoid conflicts, and matters concerning the litigation did not go to the City
2 Council.

3
4 Councilor Cheney sought the advice of the Commission staff as to the correct way to
5 proceed so as to maintain compliance with Oregon Government Ethics law. The staff
6 explained the conflict of interest and use of office provisions to Mr. Cheney and his
7 colleagues on more than one occasion, verbally and in writing. He was instructed that the
8 circumstances of each situation were unique and that there was no "one size fits all" fix for
9 him. Rather, he would have to determine, based on the specific issue before the City
10 Council at the time, and the specific action he was being asked to take in his official
11 capacity, i.e. discussion, recommendation or vote, how to remain in compliance with
12 Oregon Government Ethics law.

13
14 Information appears to be insufficient to determine that Mr. Cheney used or attempted to
15 use his official position as City Councilor to avoid a financial detriment for himself when he
16 took official actions between taking office on 1/12/17 and 3/22/17, when the complaint in
17 this case was received.

18

19 Conclusion

20 Prior to becoming a City Councilor, Mr. Cheney was one of three individuals named as
21 chief petitioners in the SRCOJ's lawsuit against the City of Jefferson to force the City to
22 refer a particular annexation decision to the vote of Jefferson citizens. Mr. Cheney was
23 then elected to the City Council. These circumstances alone do not create a statutory
24 conflict of interest, although it seems they created the perception of a conflict of interest for
25 many Jefferson citizens. Rather, a statutory conflict of interest is an action, decision, or
26 recommendation that a public official takes in their official capacity, the effect of which
27 would or could be to their private financial benefit or detriment.

28

29 Information appears to be insufficient to determine that Brad Cheney violated the use of
30 office and conflict of interest provisions of Oregon Government Ethics law during the
31 relevant period.

1 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should move to
2 dismiss the complaint. [Motion 7]
3

4 **ASSOCIATED DOCUMENTS:**

5 #PR1 Complaint from Tracy Vaughan, received on 3/22/17.

6 #PR2 Copy of Enrolled Senate Bill 1573 and Oregon Laws 2016, Chapter 51, from
7 Oregon Legislature's website (<https://www.Oregonlegislature.gov/bills/laws>

8 #PR2a Copies of records from Secretary of State's website (Orestar) for 2016 and
9 2017 for the Jeffersonians for Jefferson political action committee.

10 #PR2b Copies of records from Secretary of State's website (Orestar) for 2016 and
11 2017 for the Select Reform Committee of Jefferson.

12 #PR3 Copy of documents contained in Commission's Correspondence 2017 file
13 submitted by Cathie Harrington on 3/20/17, concerning Marion County Circuit
14 Court Case No. 16CV28441, "State ex rel. Select Reform Committee of
15 Jefferson, Bob Burns, Chief Petitioner, Stan Neal Chief Petitioner, Brad
16 Cheney, Chief Petitioner v. City of Jefferson, an Oregon Municipal
17 Corporation, Sarah Cook, City's Elections Officer (defendants-respondents);
18 Hamby Family Limited Partnership (Intervenor-Respondent)

19 #PR4 Copy of letter and other material from Brad Cheney via email in response to
20 the complaint, received on 3/27/17 and also delivered in person on 3/28/17.

21 #PR5 Copies of official minutes adopted by the City Council of the City of Jefferson
22 downloaded from the City's website for council meetings held on the
23 following dates: 1/12/17, 1/26/17, 2/9/17 and 2/23/17.
24 (<http://city.jeffersonoregon.us/council/>)

25 #PR6 Copy of unofficial draft minutes of a City of Jefferson Council Meeting held
26 on 3/9/17, received via email from Jefferson City Recorder on 4/17/17.

27 #INV1 Records provided by City Recorder of Jefferson in response to Commission's
28 record request, received 6/26/17.

29 #INV2 Investigator's 11/2/17 memo re contact with Greg Ellis, City Recorder for the
30 City of Jefferson.

31 #INV3 Investigator's 8/10/17 memo re contact with the City of Jefferson's attorney

- 1 Ross Williamson, attorney with Speer Hoyt.
- 2 #INV3a 8/10/17 email from Ross Williamson with attached Copy of Supplemental
- 3 Judgement and Money Award in Marion County Circuit Court Case No.
- 4 16CV28441 issued on or about 1/27/17.
- 5 #INV4 Marion County Circuit Court Case No. 16CV28441 case details obtained
- 6 from <https://webportal.courts.oregon.gov/portal/Home/WorkspaceMode?p=0>.
- 7 #INV5 9/6/17 Letter from Greg Ellis, City of Jefferson Interim City Manager/City
- 8 Recorder, received as email attachment from Stan Neal on 9/16/17.
- 9 #INV6 Emails between Councilors Burns, Cheney, and Neal and Commission staff
- 10 for the period beginning 1/11/17 and ending 3/27/17.
- 11

PREPARED BY *Diane Gould* 11/7/17
Diane Gould Date
Investigator

APPROVED BY *[Signature]* 11/7/17
Ronald A. Bersin Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 11/7/17
Amy E. Alpaugh Date
Assistant Attorney General

RECEIVED

MAR 28 2017

OREGON GOVERNMENT
ETHICS COMMISSION

March 27, 2017

Diane Gould
Oregon Ethics Commission
3218 Pringle Rd SE.
Salem, OR 97302-1554

Sent via Email and Hand Delivered to the OGE

RE: Brad Cheney
Case No. 17-140EDG

COPY

Dear Ms. Gould:

Enclosed please find:

- 1) My resignation from J4J and SRCOJ dated December 5th, 2016
- 2) Affirmation of this resignation from Current Treasurer, Dani Daniels dated March 20th, 2017
- 3) Public testimony I made to the Jefferson Planning Commission and City Council prior to being elected to City Council
- 4) Email Correspondence I have had with the Oregon Ethics Commission

Ms. Vaughn is a disgruntled former City Councilwoman who is not reporting accurate facts.

Before becoming a Jefferson City Councilor, I became involved with the formation of two political action groups, J4J (Jeffersonians for Jefferson) and SRCOJ (Select Reform Committee of Jefferson). J4J was initially formed to fight SB1573 and its encroachment on Home Rule. This issue was created in Jefferson as the result of an annexation application the City received. SRCOJ was formed to fight the City of Jefferson's decision to NOT send a lawful referendum to the Secretary of State.

In a nutshell, the sole and primary focus of both of these PAC's, and their subsequent lawsuits, was to restore the citizen's right to vote on annexations, a vote in which SB1573 took away. Both of these PAC's were formed well before I had ever made any decision to run for Jefferson City Council.

I resigned in writing from both of these PAC's on December 5th, 2016, because I recognized the obvious conflict of interest my newly elected position of City Councilor presented. Since the date of my resignation from these PAC's, I have not attended any meetings, I have not participated in any decision making, nor do I have any past or present financial obligations to these PAC's. It is this fact that Ms. Vaughn and others refuse to accept.

Many people, including Ms. Vaughn, are pointing to the fact that recently SRCOJ has filed an appeal against the decision of a Marion County Judge, who determined that SB1573 amended the Jefferson City Charter through an administrative action and

not a legislative one. I am told that because my name was listed on the original SRCOJ lawsuit as a chief petitioner, that my name can not be redacted from the appeal of the decision even though I personally had no involvement in the decision to appeal this ruling. In short, because my name is listed on the appeal of this lawsuit people are pointing to this as evidence that I am still participating in SRCOJ. This fact is simply not true.

Currently I am awaiting written communication from Ms. Marie Scheffers, Oregon Ethics Commission, regarding this question that I submitted March 9th, 2017:

The City Council of Jefferson consists of 6 council members and the Mayor. A quorum consists of 4 Councilmen and the Mayor. We operate under a weak Mayor system meaning the Mayor only votes to break a tie.

OR244.120(b)(B) States that... If any public official's vote is necessary to meet the requirement of a minimum number of votes to take official action, be eligible to vote, but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.

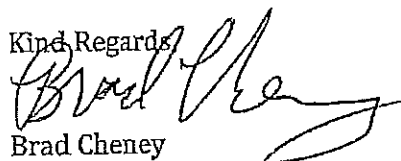
The question is: If 3 council members declare an "actual" conflict of interest on any particular issue and follow the requirement of OR244.120(b)(B),,,, how many of these council members can step back in and vote on that particular issue? Can all 3 step back in and vote on said issue?

Lastly, I should also point out that anytime any land use topic has come before the City Council that I always declare a potential conflict of interest. Also, at no time have I been asked to make any decisions directly concerning the annexation application and its' subsequent LUBA remand or the referendum appeal.

These are complicated issues that have caused much controversy in Jefferson. It has not been a pleasant experience becoming a City Councilman. It is very important to me that I am and remain ethically correct in all of my City dealings as evidence of my previous communication with the OGEC.

If you require further information, please do not hesitate to contact me. I will make myself available to you at your convenience.

Kind Regards,



Brad Cheney
Councilman, City of Jefferson
Email: brad.cheney.cc@gmail.com
Cell: 541-990-5564

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-141EDG

DATE: November 7, 2017

RESPONDENT: NEAL, Stan, City Councilor, City of Jefferson

COMPLAINANT: VAUGHAN, Tracy

RECOMMENDED ACTION: Dismiss the Complaint

1 **SYNOPSIS:** Stan Neal was a City Councilor for the City of Jefferson when the events
2 relevant to this investigation occurred. The focus of this investigation was to determine if
3 there was a preponderance of evidence to indicate that Stan Neal committed violations of
4 the conflict of interest and use of office provisions of ORS Chapter 244.
5

6 Prior to his election to the City Council, Dr. Neal was one of three named chief petitioners
7 of a political committee that initiated a lawsuit against the City of Jefferson to force the City
8 to refer a property annexation decision to the City voters for approval. This lawsuit was still
9 ongoing when he was elected. The complaint in this matter alleged that Dr. Neal took
10 actions as a City councilor that involved the same issues as the lawsuit, in violation of
11 Oregon Government Ethics law.
12

13 Information available during the investigation is insufficient to indicate that Dr. Neal failed to
14 comply with the disclosure and disposition requirements of the conflict of interest provisions
15 and the prohibited use of office provisions of Oregon Government Ethics law.
16

1 #INV7 9/28/17 letter from Michael E. Swaim, attorney representing Dr. Neal,
2 received on 10/2/17.
3

PREPARED BY Diane Gould 11/7/17
Diane Gould Date
Investigator

APPROVED BY [Signature] 11/8/17
Ronald A. Bersin Date
Executive Director

REVIEWED BY Amy E. Alpaugh 11/7/17
Amy E. Alpaugh Date
Assistant Attorney General

LAW OFFICES
OF
MICHAEL E. SWAIM, P.C.
270 COTTAGE STREET NE
SALEM, OREGON 97301

MICHAEL E. SWAIM
Mayor of Salem
(1997-2002)

CECIL H. QUESSETH
(1917-2004)
Formerly OF Counsel

September 28, 2017

TELEPHONE:
(503) 363-0063

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(503) 585-2666

E-MAIL:
MSwainLaw@aol.com

Ms. Diane Gould
Oregon Ethics Commission
3218 Pringle Road SE
Salem, OR 97302-1554

Re: Stan Neal, MD

Dear Ms. Gould:

This office has been retained by Dr. Stan Neal to assist him in the matter of the ethics complaint filed against him by Ms. Tracy Vaughan. I have advised Dr. Neal on a number of occasions respecting Oregon ethics requirements of elected officials, of which I was one at an earlier point in time.

From a close review of all of the relevant facts and law, and for the reasons set forth more fully hereinafter, it appears very clear to me that Dr. Neal has not committed any ethical violation.

It would be useful at the outset to have a chronology of the relevant facts:

CHRONOLOGY

- 1) March 2016: SB 1573, essentially overrode Jefferson City's Charter requirement that its citizens vote on whether or not to approve annexation petitions/applications.
- 2) August 4, 2016: City, without a vote of the people, enacted Ordinance 695, permitting the Hamby annexation.
- 3) August 16, 2016: the Select Reform Committee of Jefferson (SRCOJ) filed a prospective petition for a referendum with the City of Jefferson.
- 4) August 23, 2016: Appeal to LUBA of City's decision to allow annexation without a vote of the people.
- 5) March 18, 2016: SRCOJ filed Alternate Writ of Mandamus to compel the City to forward the prospective petition for referendum to the Secretary of State's Office.

- 6) November 2016: Dr. Neal's election to Jefferson City Council ("City Council").
- 7) December 13, 2016: Dr. Neal's resignation from both J4J and SRCOJ, with no further involvement with either thereafter.
- 8) January 11, 2017: Dr. Neal sworn in as City Councilor.
- 9) March 17, 2017: Tracy Vaughn Complaint to Oregon Government Ethics Commission (OGEC).
- 10) September 6, 2017: Letter from interim City Manager/Recorder confirming that there was never any discussion, deliberation, or action by the City Council on the Writ of Mandamus, so there was no need to ever declare a conflict of interest. The negotiations on the Writ were held out of the City Council's purview, and intentionally so, precisely in order to avoid any conflict of interest.

BACKGROUND

J4J was formed to contest the constitutionality of SB 1573, as it related to Jefferson's Home Rule Charter.

SRCOJ was formed to contest the City of Jefferson's decision refusing to send SRCOJ's prospective referendum on voter decision-making to the Secretary of State's Office. SRCOJ filed a petition for an Alternate Writ of Mandamus.

Dr. Neal ran for the City Council in response to SB 1573, not to oppose the Hamby petition to annex, which had already been approved by the time he ran for City Council.

Dr. Neal resigned from both J4J and SRCOJ as soon as he was elected to the City Council.

After Dr. Neal's election to the City Council, Dr. Neal never participated with J4J or SRCOJ in any fashion whatsoever.

Suspecting that there might be some concern because previously he had been a member of J4J and SRCOJ, Dr. Neal took the following steps to address that potential concern:

- 1) He tried to get his name removed from the Petition for the Alternative Writ and the Appeal before LUBA on three separate occasions with the Secretary of State's Office. Each time he was told he could not do so.

- 2) He consulted with OGEC, a private attorney (myself), the Jefferson City Attorney, and the attorney for SRCOJ as to whether, under all of the facts, he needed to resign from the City Council. Each advised him he did not have to resign. He was fully prepared to resign if anyone had said "yes."
- 3) On March 9, 2017, Dr. Neal discussed conflicts of interest and required actions with Ms. Scheffers of the OGEC, and was told that he would not be committing any unethical act so long as he declared a potential conflict of interest before participating in any discussion and voting. In other words, he would not violate any of the provisions of ORS Chapter 244. The OGEC staff also advised Councilor Brad Cheney, in writing, in a manner that was fully consistent with the information given orally to Dr. Neal regarding the application of ORS Chapter 244, as follows:

"The matter appears to meet the statutory definition of a 'potential conflict of interest' as the outcome of the 'vote' is uncertain. After publicly disclosing the statutory 'potential conflict of interest' the public official can take any action thereon."

Dr. Neal relied on the advice from the OGEC staff, but was never called upon to discuss or vote upon these issues.

- 4) Dr. Neal received assurances from Jefferson's City Attorney that all negotiations and other elements of the matter between the City and SRCOJ would be intentionally kept from the City Council, so as to avoid any potential or actual conflict of interest, and that, if anything was ever scheduled to appear before the City Council on those matters, the City Attorney would advise council ahead of time so that they could act in an ethical fashion. But nothing came before the City Council regarding these matters; so Dr. Neal never had to recuse himself, or declare either an actual or potential conflict of interest, which he was otherwise fully prepared to do.

PERSONAL INTEGRITY

Most important to Dr. Neal is the maintenance of his personal integrity. It has been the single most important goal of Dr. Neal throughout his service on the City Council, and presently.

Dr. Neal was willing to do whatever was necessary to be sure that his personal integrity remained unblemished; Declare a conflict of interest, actual or potential; recuse himself from voting on any related matter; and even to resign his City Council seat.

However, there was no violation whatsoever: Dr. Neal has not violated any provision of ORS Chapter 244, or otherwise, because he was never asked to discuss or vote on those issues. One cannot be guilty of acting unethically when he was never called upon to act on the issue at all.

**DR. NEAL'S MOTIVATION TO SERVE ON THE
JEFFERSON CITY COUNCIL**

Dr. Neal decided to stand for election to the Jefferson City Council because he strongly felt, and continues to feel, that SB 1573 did not, and could not constitutionally, supersede the Jefferson Home Rule City Charter, which requires a public vote on all petitions for annexation, other than those otherwise required because of public health or safety issues.

**ANALYSIS OF AND RESPONSE TO
THE ETHICS COMPLAINT**

1. In her March 17, 2017, Complaint, complainant asserts that J4J was created because Dr. Neal and others wanted to vote down the Hamby Application for Annexation near their properties.

RESPONSE: The Hamby Application for Annexation had been decided in August of 2016. Dr. Neal was not elected until November 2016, and was not sworn in until January 2017. Thus, he had no opportunity to even vote on the annexation application before its approval by the City Council. What Dr. Neal has wanted throughout was to allow the voters to make the decision on annexation applications, either for or against.

2. Complainant asserts, inaccurately, that Dr. Neal is directing staff and voting to spend public funds regarding the litigation with SRCOJ.

RESPONSE: This simply is not factually true. Both the City Manager and City Attorney have intentionally kept all such matters away from City Council's consideration. Dr. Neal has neither directed staff, nor has he voted to spend public funds regarding the litigation with SRCOJ. The City Manager's letter of September 6, 2017, expressly disclaims that allegation. He did approve checks, upon City staff's recommendation, to make payments to the City's attorney for all legal services rendered by the City Attorney on behalf of the City.

3. Finally, complainant asserts that Dr. Neal has appealed the judge's ruling on the Alternate Writ of Mandamus.

RESPONSE: Dr. Neal had no part in dealing with the judgment naming him, had long since resigned from SRCOJ before SRCOJ filed its appeal, and he had no part in any discussion or decision on the matter. All matters involving the judgment were dealt with by the attorneys, outside of the presence of the City Council, and without any input from Dr. Neal regarding either side of the litigation.

CONCLUSION

For the reasons stated more fully hereinabove, Dr. Neal has not committed any violation of ORS Chapter 244.

Dr. Neal took every opportunity to make sure that he was not in violation of any ethical standards, including initiating contact with OGEC, obtaining the opinion of private counsel, soliciting the opinion of the City Attorney, and the attorney for SRCOJ. All concluded, without reservation, that Dr. Neal did not have to resign from the council, and that so long as he asserted a potential conflict of interest he was protected from any ethics violation.

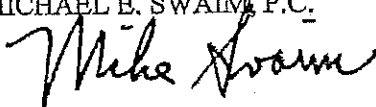
However, and most importantly, Dr. Neal was never called upon to engage in any such discussions or make any such decisions. Having never had the matter before him before that date, it is eminently clear that he could not have violated any ethical rules.

Finally, I can personally attest to the fact that Dr. Neal consulted me for the specific purpose of advising him as to whether he was, in any way, in violation of any ethical statute or rule. I advised him that he was not, and how to handle it if something relevant should arise in the future, so that he would not violate any ethical statute or rule. My advice was consistent with the advice given to him by the OGEC staff, and Dr. Neal followed it to the letter. The Complaint against Dr. Neal should be dismissed.

Respectfully submitted,

MICHAEL E. SWAIM, P.C.

By:


Michael E. Swaim

MES:ks

cc: Dr. Stan Neal

Noted on 10/2/17

March 27, 2017

Diane Gould
Oregon Ethics Commission
3218 Pringle Rd SE
Salem, Oregon 97302-1554



COPY

RECEIVED
MAR 30 2017
OREGON GOVERNMENT
ETHICS COMMISSION

Dear Ms. Gould:

Enclosed please:

- 1) My resignation email to J4J and SRCOJ dated December 13, 2016
- 2) Affirmation of this letter dated March 20, 2017
- 3) Emails and correspondence with Tammy Hedricks at the office of the OGEC

I do not have her notes from the meetings that I and the other councilors had with her and Marie Scheffers.

I am not certain why I have received this complaint from Tracy Vaughn. I believe that she is not understanding the situation we find ourselves in on the Jefferson City Council.

Before being elected to the City Council of Jefferson Oregon and being seated as a council member on January 12, 2017, I had become involved with the formation of 2 political action groups J4J (Jeffersonians for Jefferson and SRCOJ (Select Reform Committee of Jefferson). J4J was initially formed to fight SB 1573 and its encroachment on Home Rule. This issue was created in Jefferson as a result of an annexation application the City received. The SRCOJ was formed to fight the City of Jefferson's decision not to send a lawful referendum to the Secretary of State. Both of these PACs were formed well before I made any decision to run for the City Council.

This PACs and their subsequent law suits were formed in an effort to restore the citizens right to vote on annexations (the right of which 1573 took away). Subsequent to all of this, there were 2 council candidates and myself and the new mayor who ran for (amongst other issues) the effort to restore the vote and were all elected by a solid majority.

I have not participated in any meetings, decisions, planning or vision of either of these PACs and have no past present or future financial obligations with them In fact other than the treasure who sent the letters confirming our resignations, I do not know who their leadership is.

When I was elected, knowing a conflict of interest in being on the council and being part of these PACS, I resigned in early December from both of these before I took my council seat. My resignation email and letters of confirmation are included. Since the date of my resignation, I have not been involved in either of these PACS. The citizens who attend the council meetings along with Ms. Vaughn, do not seem to understand this fact. Many people along with Ms Vaughn, are pointing to the fact that SRCOJ has filed an appeal against the decision of a Marion County judge, who determined that SB 1573 amended the Jefferson City Charter through an administrative action and not a legislative one. I have nothing to do with that lawsuit but I have been told by the Secretary of State's office that I can not get my name redacted because I was one of the initial co petitioner names along with 2 other newly elected council members on the suit. I have never received any information from the PACs, the court, or the city on the suit and the appeal. I did not sign my name to anything in the appeal process as I was no longer involved in SCROJ when that appeal occurred. Because my name is listed on the appeal of this lawsuit, some people including Ms Vaughn think I am still involved with the SCROJ. This is absolutely not true.

Since I took my council seat on January 12, 2017 we have not dealt with either of these cases i.e. the LUBA remand or the Writ of Mandamus referendum appeal.

In the 5 city council and work session meetings we have had since being seated, we have had brief discussions on a possible resolution for voting similar to the Philomath and Corvallis resolutions which could effect future annexation applications, but not the current one. I have consulted with the OGEC and was advised to always declare a possible conflict of interest on those matters and did so. That issue was tabled and we have not addressed it again. We also briefly addressed a possible change in Ordinance on land use procedures that would allow an advisory vote similar to the Ordinance that the West Linn city council passed with consultation from their legal department. This was an ordinance dealing with 1573 That discussion was again tabled to a future meeting and again I declared a possible conflict of interest before any discussion. This also was for future land use applications. Very little time has been spent on anything but routine business. However, the public comment section goes on for longer than it should because of the contentious attitude over these issues.

I realize these are complicated issues that we are dealing with. I in no way want to compromise my integrity as a member of the city council and that is why I have had numerous email contacts and 2 face to face discussions with your colleagues at the OGEC to help guide myself through these difficult issues.

Sincerely,
Stanley Neal
Councilman, City of Jefferson
stkneal.70@gmail.com
Cell 541-619-3346

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-142EDG

DATE: November 7, 2017

RESPONDENT: BURNS, Bob, City Councilor, City of Jefferson

COMPLAINANT: VAUGHAN, Tracy

RECOMMENDED ACTION: Dismiss the Complaint

SYNOPSIS: Bob Burns was a City Councilor for the City of Jefferson when the events relevant to this investigation occurred. The focus of this investigation was to determine if there was a preponderance of evidence to indicate that Bob Burns committed violations of the conflict of interest and use of office provisions of ORS Chapter 244.

Prior to his election to the City Council, Mr. Burns was one of three named chief petitioners of a political committee that initiated a lawsuit against the City of Jefferson to force the City to refer a property annexation decision to the City voters for approval. This lawsuit was still ongoing when he was elected. The complaint in this matter alleged that Mr. Burns took actions as a City councilor that involved the same issues as the lawsuit, in violation of Oregon Government Ethics law.

Information available during the investigation is insufficient to indicate that Mr. Burns failed to comply with the disclosure and disposition requirements of the conflict of interest provisions and the prohibited use of office provisions of Oregon Government Ethics law.

- 1 #INV3a 8/10/17 email from Ross Williamson with attached Copy of Supplemental
2 Judgement and Money Award in Marion County Circuit Court Case No.
3 16CV28441 issued on or about 1/27/17.
4 #INV4 Marion County Circuit Court Case No. 16CV28441 case details obtained
5 from <https://webportal.courts.oregon.gov/portal/Home/WorkspaceMode?p=0>.
6 #INV5 9/6/17 Letter from Greg Ellis, City of Jefferson Interim City Manager/City
7 Recorder, received as email attachment from Stan Neal on 9/16/17.
8 #INV6 Emails between Councilors Burns, Cheney, and Neal and Commission staff
9 for the period beginning 1/11/17 and ending 3/27/17.
10 #INV7 Letter and other material from Bob Burns, received by the Commission on
11 7/10/17.

PREPARED BY *Diane Gould* 11/7/17
Diane Gould Date
Investigator

APPROVED BY *[Signature]* 11/8/17
Ronald A. Bersin Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 11/7/17
Amy E. Alpaugh Date
Assistant Attorney General

Robert M. Burns
691 High Ct.
Jefferson, OR 97352
Tel (541) 327-7882

RECEIVED

JUL 10 2017

OREGON GOVERNMENT
ETHICS COMMISSION

July 7, 2017

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

REF: Case No. 17-14EDG

Dear Ms. Gould,

I have been re-reading some of the material the commission has sent me in connection with the above referenced matter, specifically the April 20 "Preliminary Review" in which the complainant asserts that "...they are voting and have directed staff and city attorney to expend city funds in regards to litigation of this issue, whilst they all still have a stake in the outcome..."

This is an untrue statement from Vaughn. I have neither voted on any matter nor have I directed or voted to instruct anyone on city staff to "expend city funds" in any way specifically connected to the lawsuit which the Select Reform Committee of Jefferson group brought against the City of Jefferson in as it relates to the (then) City Recorder's refusal to process the referendum petition brought to her by J4J. I can also state that, to my knowledge, none of my fellow elected councilors voted or instructed staff on any matter connected with this lawsuit. About the closest I've gotten to a vote referencing that lawsuit is voting to instruct the city administrator to "pay the [monthly] bills" during regular council meetings when the consent agenda came up for a vote. I am sure that attorney's fees were included as an item. If that constitutes an instruction, as described by Vaughn, "directing staff in regards to litigation of this issue..." then I would simply say that that's old-fashioned hair splitting. Paying bills has nothing to do with any instruction of any kind germane to the lawsuit.

Furthermore, in an email dated March 6th, 2017 (enclosed), Sarah Cook, (then) the City Recorder, stated that the decision to process or not process the referendum was a decisions that she, as the city's Elections Officer, reserved to herself exclusively. I accepted that assertion on its face and have therefore had absolutely nothing to do with the lawsuit against the city to this day, with the understanding Ms. Cook's replacement will take over any city interest in the case currently active in the Court of Appeals.

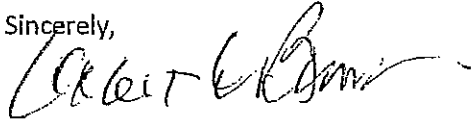
I would point out to you that in fact, Ms. Cook implies that the decision to not process that referendum was based not on the validity of the petition itself but rather denying the J4J petition was based on the likelihood that the applicant, with pockets far deeper than J4J's, would possibly sue the city for allowing the petition to proceed, possibly resulting in a withdrawal of the city council's original 6-0 vote to annex. It is not until her next paragraph that Ms. Cook seeks the refuge of the J4J petition being brought against an "administrative," action, not a legislative decision—a matter yet to be finally decided in the appeals court.

Finally, let me state that whenever any discussion of the lawsuit initiated by someone in the audience comes up, as it certainly has, I have been careful to state "the potential for a conflict" when saying anything at all (ORS 244.120).

I have also resigned from the Jefferson City Council, effective the end of July. I have already sold my home (It closes on July 27th) in Jefferson and bought another in Lane county. Any potential gain or loss from the final outcome of the annexation matter itself will not occur while I am a resident or city councilor in Jefferson. (ORS 224.040).

I respectfully ask that the commission drop its investigation of me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert M. Burns".

Robert M. Burns

Encl: Sarah Cook email.

Robert M. Burns
691 High Ct.
Jefferson, OR 97352
Tel (541) 327-7882

RECEIVED

March 27, 2017

APR 04 2017

TO: Oregon Government Ethics Commission
Ref: Complaint filed by Ms. Tracy Vaughn - Case No. 17-142EDG

OREGON GOVERNMENT
ETHICS COMMISSION

Commissioners:

To address Ms. Vaughn's concerns I submit the following:

1. The annexation at issue was a voters rights issue only. Myself and the three other new council members engaged in trying to preserve the rights of the public to vote on this issue which was taken away by SB 1573. It is not logical to think that we were trying to stop this annexation since the voters would have control over this issue not myself or anyone else? I am only interested in preserving that right.
2. The lawsuit against Jefferson is based on the fact that the voters were denied the right to vote through the process of referendum. Even though this was concerning the rushed-through annexation ordinance (that Land Use Board of Appeals has already remanded back to the city), it is still a voters rights issue and we do not have control over how the people would vote. This is absolutely a ballot measure issue and the right to put annexation issues on the ballot.
3. Attached is an aerial view that details the location of my property in correlation to the property that is still in the process of being annexed since LUBA has remanded it. As you can see, my property is not affected by this annexation if it were developed. I do not know how Ms. Vaughn comes to her conclusions as annexations in itself does not affect the immediate local area, only when it is developed does this happen.

Unfortunately, Ms. Vaughn lost her seat in the recent November, 2016 election and is moreover closely associated with the land owner (the applicant for annexation) and a group of individuals who are upset they lost an election in which they lost control of a city council and in which their influence will not be accepted in the manner it has been apparently established for years. I do not feel that this will be the last complaint this commission will see, as my fellow elected commissioners and the new mayor are being badgered and harassed to no end.

I have included a longer version of this situation for your optional perusal.

Thank You



Robert M. Burns

Robert M. Burns
691 High Ct.
Jefferson, OR 97352
Tel (541) 327-7882

March 25, 2017

TO: OGEC

FROM: Robert M. Burns, Councilmember

RE: Case No. 17-142EDG

Statement Regarding the Above Case

In 2009, (approx.) Ellis Hamby, a long time landowner and real estate broker inside the city of Jefferson petitioned the Jefferson city council to annex 14.5 (approx.) acres of farmland he owned into the city's boundary, with the purpose of building around 60 new houses on that land. Applicable law at the time mandated that petitions for annexation were subject to a vote of the citizens of the town. Accordingly, a vote was held and the citizens rejected the annexation application by a handy majority, largely on the grounds that increased traffic, public resources, and quality of life would be problematic.

In March of 2016, the Oregon State Legislature and Governor signed SB 1573 into law, which effectively removed the citizens' ability to accept or refuse petitions for annexations by means of a vote. Immediately after the bill became law the landowner, now called the Hamby Family Trust, came back the council and petitioned the city council to annex his property. The petitions were referred to the Jefferson Planning commission, approved, and sent to the council for a full vote. Throughout that approval process, many inside the city, including myself, came to ask the planning commission and later, the full city council, to uphold its own city charter, which still contained the provision requiring citizen ratification. Though not stated explicitly, rumors were afloat that the council was going to approve the Hamby petition on the grounds that SB 1573 tied their hands

By June of 2016, in an attempt to mobilize the public and put pressure on the city council—one member of which was the complainant in this action—to abide by its own charter and allow a vote, Msrs. Burns, Cheney and Neal, along with other citizens, formed a registered political action committee called Jeffersonians for Jefferson, or J4J. I was named the chairman of J4J, Neal and Cheney were listed as directors. Nathan Hightower, my neighbor was named director of public relations.

J4J set out, physically calling on Jefferson residents to show up at city hall and allow a vote on the Hamby petition. We felt that the charter was being trampled on and that this particular petition for annexation was the first of many to come in the future, leaving the residents of the city with no redress. We felt that any applicant for annexation of property would no longer have to allow his petition to compete in the marketplace; rather, by convincing just four members of the city council, he could go forward with his plans—plans which would have an enormous impact on the entire town of just 3,000 people.

Also, by this time the cities of Philomath and Corvallis, through their respective councils, had decided to disregard SB 1573. Corvallis instituted a law suit against state of Oregon to have SB 1573 ruled unconstitutional. It was initially lost in circuit court but will be appealed.

On July 28th, 2016, the Jefferson city council indeed voted 6-0 to approve the Hamby annexation, despite numerous errors in the annexation process at the planning commission stage, and despite massive turnouts by citizens requesting a vote on the petition J4J whereupon hired a land use attorney, David Coulombe, to file a complaint with the Oregon Land use Board of Appeals (LUBA).

Additionally, J4J immediately set out to gather signatures for a referendum which would override the council's annexation vote of 28 July. In a single weekend, J4J had lined up substantially more signatures than were needed to allow the referendum to go forward in the upcoming November election.

In August, J4J presented the signed referendum petition to the City Recorder, Sarah Cook, who also is the Elections Officer for the city of Jefferson. She had been employed for the city for 17 years (approx.) and had worked hand in glove with the various city councils, most members of which were not elected, but rather appointed to their positions or, if they ran for office, invariably ran unopposed. This included the mayor at the time, Patrick McKenzie.¹ Cook, as elections officer, refused J4J's petition on the grounds that the council's action was administrative, not legislative, and therefore not subject to referendum. Cook had effectively closed off any remaining ability for the citizens of Jefferson to choose its own destiny.

J4J, through its attorney, then filed suit in the Marion County circuit court for relief from Cook's action.² At the same time, the founding members of J4J determined that the only way to restore good government to the city, and to return the right to vote back to the citizenry was to stand for election ourselves, an action which none of us were looking forward to doing but which nevertheless demanded that we either "put up or shut up." All of us had contributed significant financial resources in pursuit of what we felt—and continue to feel—was justice.

At this point, Cyndie Hightower, the wife of Nathan Hightower, my next door neighbor, agreed to stand for election as the city mayor, with Burns, Neal and Cheney standing for council. We had now a slate of candidates who, if elected, would give us a working majority on the city council, dislodging the "old boys network" who had run the city for years, due to apathy on the part of voters as well as the electorate feeling powerless to change anything.³ We would run a campaign based on returning responsive government to the people as well as amend the city charter for the purpose keeping annexation decisions inextricably in the hands of the people via a vote. In November of 2016, our slate was duly elected by a large majority of Jefferson voters, defeating the incumbent mayor, Patrick McKenzie and three others, two of whom were running for re-election (including complainant Vaughn).

Accordingly, we four council members-elect resigned from J4J, the purpose being that we wanted to be free of membership in any PAC and fully responsible to the citizens. We submitted our letters of resignation to Nathan Hightower, who accepted them as the remaining member of J4J.⁴

¹ It should be noted that McKenzie, who ran for election in 2016, asked to be "re-elected" in his campaign literature, not ever having actually stood for election.

² The suit was initially found in the City's favor, but is currently before the Court of Appeals.

³ This was confirmed in our door-to-door canvassing as we gathered signatures for the referendum petition.

⁴ Later to resign himself, as husband of the newly elected mayor.

We also attended the class given by the League of Oregon Cities (LOC) which outlined our duties and responsibilities to the people of Jefferson, including specific descriptions of potential and actual conflicts of interest. To an extent, what we learned at the LOC class that there was a potential for a conflict of interest in getting ourselves involved in anything having to do with annexations. This, I particularly found to be troublesome in the sense that, in trying to stay out of such conflicts, we would seemingly have to abandon the very cause for which we stood of election.

Over the weeks since taking office we have consulted several times with the LOC ethic people as well as with personnel in the OGEC as to how to go about talking in open council about anything having to do with the Hamby annexation, SB 1573, and annexations in general. We have also been advised, we believe incorrectly, to just generally keep quiet about these matters by the Jefferson city attorney who stated to us that when there is even a potential for a conflict it's better to avoid it whenever possible or alternatively, to state openly the potential for a conflict before commenting on such matters. This we all have done whenever necessary at council meeting.

The complainant, Ms. Vaughn, seems to believe that we are parties to the current Mandamus lawsuit. We are not. She bases that belief on the fact that we are still named as parties to it in the original August 2016, filing. The fact is that we have asked the Secretary of State's office to remove our names from that suit, since we no longer have anything to do with it.

At this point every local government seems to be in a state of flux. I and my fellow councilors and mayor have been accused of being "crooked," of having nefarious motives for upsetting the city, of "suing" Jefferson forcing it to spend tax dollars needlessly. Council meetings are attended by "old guard" residents—including the defeated candidates for mayor and the city council—and have become near-mob encounters during comments time. The irony couldn't be more obvious: In our attempt to restore the voters' right to decide on something, a right they had enjoyed for decades, we are now billed as all manner of evil doers.

All this said, I do not believe the vast majority of Jefferson residents, the people who elected all four of us by a considerable majority feel the way this crowd, including Ms. Vaughn, does. I believe that I have the moral high ground in this drama.

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-153EDG

DATE: November 7, 2017

RESPONDENT: THOMPSON, Roger, Port Commissioner, Port of Brookings Harbor

COMPLAINANT: FITZGERALD, Michael, Former Executive Director, Port of Brookings Harbor

RECOMMENDED ACTION: Make a Preliminary Finding of 1 violation of ORS 244.040(1) and 2 violations of ORS 244.060(2)

1 **SYNOPSIS:** Roger Thompson was a Port Commissioner for the Port of Brookings Harbor
2 during the relevant time period. The focus of this investigation was to determine if there
3 was a preponderance of evidence to indicate that Mr. Thompson: 1) used or attempted to
4 use his official position as Port Commissioner to obtain a prohibited financial benefit for
5 himself, a household member, or a business with which he or his household member were
6 associated concerning buildings on Port property and 2) failed to comply with the conflict of
7 interest provisions of Oregon Government Ethics law.

8
9 Some events relevant to this case occurred either before Mr. Thompson's election or
10 installation as Port Commissioner, prior to the time he was subject to compliance with ORS
11 Chapter 244. Evidence was sufficient to recommend the finding of one (1) violation of the
12 use of the use of office provisions of Oregon Government Ethics law in this case. Also, in
13 the course of this investigation, it was determined that Mr. Thompson failed to disclose a
14 business with which his household member was associated on his 2016 and 2017
15 Statements of Economic Interest.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
2 issues addressed herein:

3
4 **244.020 “Definitions.** As used in this chapter, unless the context requires
5 otherwise:

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 (13) of this section.”

13
14 244.020(2) “Business’ means any corporation, partnership, proprietorship, firm,
15 enterprise, franchise, association, organization, self-employed individual and any
16 other legal entity operated for economic gain but excluding any income-producing
17 not-for-profit corporation that is tax exempt under section 501(c) of the Internal
18 Revenue Code with which a public official or a relative of the public official is
19 associated only as a member or board director or in a nonremunerative capacity.”

20
21 244.020(3) “Business with which the person is associated’ means:

22
23 (a) “Any private business or closely held corporation of which the person or
24 the person’s relative is a director, officer, owner or employee, or agent or any
25 private business or closely held corporation in which the person or the
26 person’s relative owns or has owned stock, another form of equity interest,
27 stock options or debt instruments worth \$1,000 or more at any point in the
28 preceding year; ...”

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

1 244.020(11) "Member of the household" means any person who resides with the
2 public official or candidate."
3

4 244.020(13) "Potential conflict of interest" means any action or any decision or
5 recommendation by a person acting in a capacity as a public official, the effect of
6 which could be to the private pecuniary benefit or detriment of the person or the
7 person's relative, or a business with which the person or the person's relative is
8 associated, unless the pecuniary benefit or detriment arises out of the following:"
9

10 (a) "An interest or membership in a particular business, industry, occupation
11 or other class required by law as a prerequisite to the holding by the person
12 of the office or position.
13

14 (b) Any action in the person's official capacity which would affect to the same
15 degree a class consisting of all inhabitants of the state, or a smaller class
16 consisting of an industry, occupation or other group including one of which or
17 in which the person, or the person's relative or business with which the
18 person or the person's relative is associated, is a member or is engaged...."
19

20 244.020 (15) "Public official" means the First Partner and any person who, when an
21 alleged violation of this chapter occurs, is serving the State of Oregon or any of its
22 political subdivisions or any other public body as defined in ORS 174.109 as an
23 elected official, appointed official, employee or agent, irrespective of whether the
24 person is compensated for the services."
25

26 244.020(16) "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 (b) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or
30 daughter-in-law of the spouse of the public official or candidate;

31 (c) Any individual for whom the public official or candidate has a legal

1 support obligation;

2 (d) Any individual for whom the public official provides benefits arising from
3 the public official's public employment or from whom the public official
4 receives benefits arising from that individual's employment; or

5 (e) Any individual from whom the candidate receives benefits arising from
6 that individual's employment."
7

8 **244.040 "Prohibited use of official position or office; exceptions; other**
9 **prohibited actions.** (1) Except as provided in subsection (2) of this section, a
10 public official may not use or attempt to use official position or office to obtain
11 financial gain or avoidance of financial detriment for the public official, a relative or
12 member of the household of the public official, or any business with which the public
13 official or a relative or member of the household of the public official is associated, if
14 the financial gain or avoidance of financial detriment would not otherwise be
15 available but for the public official's holding of the official position or office."
16

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

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

20 (c) Reimbursement of expenses.

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

25 244.040(7) "The provisions of this section apply regardless of whether actual
26 conflicts of interest or potential conflicts of interest are announced or disclosed
27 under ORS 244.120."

28 //

29 //

1 **244.050 “Persons required to file statement of economic interest; filing**
2 **deadline.** (1) On or before April 15 of each year the following persons shall file with
3 the Oregon Government Ethics Commission a verified statement of economic
4 interest as required under this chapter.”

5
6 (s) “Every member of the board of commissioners of a port governed by ORS
7 777.005 to 777.725 or 777.915 to 777.953.”

8
9 **244.060 “Form of statement of economic interest; contents.** The statement of
10 economic interest filed under ORS 244.050 shall be on a form prescribed by the
11 Oregon Government Ethics Commission. The public official or candidate filing the
12 statement shall supply the information required by this section and ORS 244.090, as
13 follows:”

14 (1) “The names of all positions as officer of a business and business
15 directorships held by the public official or candidate or a member of the
16 household of the public official or candidate during the preceding calendar
17 year, and the principal address and a brief description of each business.”

18
19 (2) “All names under which the public official or candidate and members of
20 the household of the public official or candidate do business and the principal
21 address and a brief description of each business.”

22
23 (3) “The names, principal addresses and brief descriptions of the sources of
24 income received during the preceding calendar year by the public official or
25 candidate or a member of the household of the public official or candidate
26 that produce 10 percent or more of the total annual household income.”

27
28 **244.120 “Methods of handling conflicts; Legislative Assembly; judges;**
29 **appointed officials; other elected officials or members of boards.** (1) Except as
30 provided in subsection (2) of this section, when met with an actual or potential
31 conflict of interest, a public official shall:”

1 244.120(2) "An elected public official, other than a member of the Legislative
2 Assembly, or an appointed public official serving on a board or commission, shall:

3 (a) When met with a potential conflict of interest, announce publicly the
4 nature of the potential conflict prior to taking any action thereon in the
5 capacity of a public official; or

6 (b) When met with an actual conflict of interest, announce publicly the nature
7 of the actual conflict and:

8 (A) Except as provided in subparagraph (B) of this paragraph, refrain
9 from participating as a public official in any discussion or debate on
10 the issue out of which the actual conflict arises or from voting on the
11 issue.

12
13 (B) If any public official's vote is necessary to meet a requirement of a
14 minimum number of votes to take official action, be eligible to vote,
15 but not to participate as a public official in any discussion or debate on
16 the issue out of which the actual conflict arises."

17
18 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated a
19 preliminary review based on information in a signed complaint from Michael Fitzgerald on
20 4/17/17 (#PR1). Mr. Fitzgerald alleged that Roger Thompson, Port Commissioner for the
21 Port of Brookings Harbor (Port), may have violated Oregon Government Ethics law. The
22 Commission found cause to investigate on 5/25/17 after considering the information
23 developed in the preliminary review. The focus of the investigation was to determine if
24 there is sufficient evidence to indicate that Roger Thompson used or attempted to use his
25 position as Port Commissioner to gain a prohibited financial benefit, or failed to disclose
26 the nature of a conflict of interest concerning the rental of an empty building on Port
27 property. Roger Thompson and Michael Fitzgerald have been notified of the Commission
28 actions in this matter. Both have been invited to provide any information which would
29 assist the Commission in conducting this investigation. Note: The complainant is the
30 former Executive Director of the Port and is referred to as "Ted" Fitzgerald in all the audio
31 and written records available.

1 A private business, Tidewinds Charter, owned two buildings on Port property, and they
2 relocated their business to another Port location, leaving the two buildings empty. The
3 issues in this case concern the vacation of these two buildings, and the brief occupation of
4 one of the buildings by ABC Creations, a business owned by Roger Thompson's then-
5 girlfriend and household member.

6
7 Information from Curry County's election website indicates that Roger Thompson was
8 elected Port Commissioner on 5/19/15, but was not seated until later. Port meeting
9 records show that he was first sworn in at the Board of Commissioners executive session
10 meeting on 7/7/15 and later meeting minutes show that he was sworn in as Commissioner
11 for a second time at the 7/21/15 regular meeting. (#PR2, #PR3, #INV1 through #INV3)

12
13 The complaint includes a 20 page document which is apparently a compilation of excerpts
14 of other documents, memos, minutes, narratives, and recollections. It is unclear from the
15 complaint the origin of much of the information provided by the complainant. The
16 complaint is excerpted below in its original form without any notations or spelling/grammar
17 corrections:

18
19 "…I was contacted by Roger Thompson who was newly elected asking what the
20 port's plans were for the Tidewinds buildings. I told him that the port intended to
21 tear them down as a part of its agreement with… Tidewinds Charters to conform with
22 the Strategic Plan."

23
24 "Commissioner-elect Thompson said he would never have voted for that, since the
25 buildings can make money for the port and should not be torn down. He then said
26 that he was interested in renting one of the buildings for Angie Christian his
27 girlfriend so she would have a place to operate during the farmer's market during
28 the summer, as he was running her booth for her at the Bandon market. He said
29 they wanted to store her materials in the building and use it as a store during the
30 farmer's market."

31 ///

1 "I talked to Commissioner Thompson and told him that since the use would be very
2 limited in scope and was forecasted to be short-term, the terms would be .30 per
3 square foot per month, month to month tenancy. This rate is less than half of the
4 rate charged for like-situated buildings owned by the port."

5
6 "The commission held an executive session July 7 where the Tidewinds lease was
7 discussed and approved. This was Roger Thompson's first meeting. He asked
8 numerous questions about the Tidewinds lease and offered to buy the buildings
9 themselves." (#PR1)

10
11 It should be noted that much of the alleged conduct in the complaint occurred either prior to
12 Mr. Thompson becoming a Port Commissioner, or is not within the Commission's
13 jurisdiction. (#PR1)

14
15 Mr. Thompson submitted a response to this complaint, the entirety of which will be
16 provided to the Commissioners with this report. The response is excerpted below without
17 any notations or spelling/grammar changes:

18
19 "Ms. Christian and I had a personal relationship during 2015 when I was elected to
20 the Brookings Harbor Port District. She is the sole owner of ABC Creations. I have
21 never been an employee of that business....I've never had any financial gain from
22 her or her business. I have never supported her. During our relationship, we split
23 the monthly bills, rent, utilities and so forth. Our personal relationship ended in
24 February 2016."

25
26 "At her first storefront, the electricity was in my name due to the fact that I already
27 had an established account with Coos Curry Electric. She was under time restraints
28 to get her store opened, it required a simple phone call from me verses an
29 application and hefty deposit. I was billed, she issued checks to me and I can get
30 copies of the bills and her cancelled checks if needed."

31 ///

1 "Ms. Christian had requested that I attend the original meeting that she had set up
2 with Mr. Fitzgerald, which I did....Other than the initial meeting with Ms. Christian
3 and Mr. Fitzgerald, all of ABC Creations business dealings with the Port were
4 between the two of them."
5

6 "Any private party could of made an offer on either or both of the buildings. I made
7 a preliminary offer as a private party and had the Board expressed interest, they
8 would have gone on to define appropriate procedures to avoid conflict and ensure
9 that I didn't participate as a Commissioner in any discussions of the board, or vote.
10 My offer was in no way unique and was in lieu of tearing the buildings down
11 immediately....However, the Commission was not interested and the buildings were
12 not even the Port's , so there were never any negotiations."
13

14 "I certainly question why this was even filed 23 months after what Mr. Fitzgerald
15 alleges took place. My theory is that its because Ms. Christian is a candidate for a
16 seat in the Port of Brookings Harbor in the upcoming election this month...." (#PR4)
17

18 Mr. Thompson also submitted material from Ms. Christian concerning these events,
19 including: 1) copy of a letter apparently from Ms. Christian addressed to the five Port
20 commissioners dated 10/13/15, referencing an enclosed timeline; 2) an apparent timeline
21 of events surrounding Ms. Christian's occupancy of the building, which is excerpted below,
22 with no notations or corrections of spelling/grammar/capitalization:
23

24 "6/3/15 I messaged Ted [complainant] regarding a meeting to discuss renting space
25 from the Port for abc Creations."
26

27 "6/4/15 We met with Ted and spoke about the Tidewinds building. Roger was
28 present but was not included in the conversation, as I am the sole owner of abc
29 Creations."
30

31 "6/23/15 I opened for business. I went into the Port office to pay my rent and asked

1 how much For the prorated amount from 06/13 – 06/30. Jeremy went to ask Ted
2 and Ted said 'no charge'. I paid \$120.00 for 07/01 – 07/31.”

3
4 "8/26/15 Late afternoon Jeremy delivered a letter...from Ted stating that I had until
5 09/30/15 to remove my products from the building. Jeremy stated that the
6 commission voted to tear the buildings down immediately." (#PR4)

7
8 Records from the Oregon Secretary of State's Business Registry shows that Angela
9 Christian registered under the assumed business name of ABC Creations, a "direct selling
10 establishment", on 1/15/13. She is the only person listed on this registration. (#PR5)

11 12 PORT RECORDS

13 The current Port manager provided several records to Commission staff in response to a
14 records request, including the following: (#INV1 and #INV1a)

15
16 1) An 11 page Lease which opens with the following: "This lease is made and entered into
17 at Brookings, Oregon this 1st day of June 2015, by and between the Port of Brookings
18 Harbor (the Landlord) and Kyle Aubin (the Tenant) dba Tidewinds Sportfishing. Although
19 the signatures of Roy Davis, Chairman of Port Board of Commissioners, and Kyle Aubin,
20 are not dated, each page of the lease is initialed by each party and dated as 6/1/15. Some
21 of the terms are summarized below.

- 22
- 23 • Tidewinds will lease 735 sq. feet of commercial retail space at 16350 Lower Harbor
24 Road, Suite 201, for the term commencing June 1, 2015 through May 31, 2020 at a
25 base rental of \$668.85 per month, with option for three additional five year terms.
 - 26 • Clause 29 states "This lease and the attached Addenda and floor plan, if any,
27 constitute the entire agreement of the parties... "

28
29 2) A 2 page "Agreement Between Port of Brookings Harbor and Kyle Aubin dba Tidewinds
30 Charter Regarding Lease Terms" signed by Kyle Aubin and "Ted Fitzgerald, Manager, Port
31 of Brookings Harbor". The signatures are not dated, but above the signatures is a line that

1 reads "Signed and Agreed this 10th day of 2015" and above the "2015" is handwritten
2 "April". Some terms are quoted or summarized below.

- 3
- 4 • Tidewinds "proposes to occupy retail space of approximately 640 sq. ft." to carry on
5 retail business which is "currently ongoing within structures located on port property
6 but owned by Kyle Aubin."
- 7 • Tidewinds Charters currently owns its own buildings and is paying a fixed rental for
8 ground lease only and the Port's strategic plan is to terminate certain long-term
9 leases to allow the planning and development of future retail space.
- 10 • In return for the promise to enter into the above-described long term lease with the
11 Port, Tidewinds Charters agrees to sell, in return for diminished rent, the above
12 described building for a purchase price of \$18,000.00.
- 13 • "The Port agrees to immediately demolish the buildings upon Tidewinds' occupation
14 of the new space, and not rent said real property locations or within that retail facility
15 that Tidewinds is occupying to any business that is in competition or could be
16 deemed to be in competition with Tidewinds' businesses. This shall be considered
17 a material term of this agreement."
- 18 • Breach by the Port of any material term of the agreement allows Kyle Aubin to
19 terminate his agreement with the Port and be fully reimbursed for the unpaid
20 balance of the purchase price remaining at the time of such breach.

21 Note: This 2-page Agreement was attached to the Lease described above and was
22 apparently the addenda referred to in the Lease and incorporated in the Lease.

23

24 3) Port financial records for "ABC Creations" show the following:

- 25 • Invoice and payment both dated 7/1/15 for "July 2015 Lease" for \$120.00
- 26 • Invoice dated 8/1/15 for "August 2015 Lease"; payment dated 7/29/15 for \$120.00
- 27 • Invoice dated 9/1/15 for "September 2015 Lease"; payment dated 9/2/15 for
28 \$120.00.
- 29 •

30 4) Port financial records for Roger Thompson show no transactions for the period relevant
31 to this case.

1 5) The Port manager confirmed in writing that the Port records do not contain a written
2 lease between the Port and ABC Creations or Angela Christian. (#INV3)

3
4 6) The Port manager confirmed in writing that the Port Commissioners are not
5 compensated for their positions, but they are reimbursed for Port approved training and
6 events. (#INV4)

7
8 Statements of Economic Interest

9 Port Commissioners are required to file an annual verified statement of economic interest
10 (SEI). Commissioner Thompson timely filed his 2016 and 2017 SEIs, each of which
11 disclose his financial interests for the prior calendar year. The 2016 SEI, filed in April of
12 2016, discloses Commissioner Thompson's financial interests for 2015, and his 2017 SEI,
13 filed in April of 2017, discloses his financial interests for 2016.

14
15 In answer to question 1a, Mr. Thompson is required to disclose any business for which he
16 or a member of his household was an officer or director in the prior year. On his 2016 and
17 2017 SEIs, Mr. Thompson listed his own business, an RV park, in answer to this question.

18
19 In answer to question 1b, Mr. Thompson is required to disclose the name of any business
20 under which he or a member of his household conducted business in the prior year. On
21 his 2016 and 2017 SEIs, Mr. Thompson again listed his own business, Driftwood LLC.
22 ABC Creations is not disclosed on Mr. Thompson's 2016 or 2017 SEI, although it is a
23 business name under which a member of his household conducted business in the prior
24 year. Ms. Christian resided with Mr. Thompson during 2015 and part of 2016. [ORS
25 244.060(1) and (2)]

26
27 Mr. Thompson must also list sources of income received by himself and adult members of
28 his household which produced 10% or more of the household's total annual income. Mr.
29 Thompson did not list ABC Creations as a source of income on his 2016 or 2017 SEIs.
30 Any business which is a source of 10% or more of one's annual household income and
31 therefore required to be listed on one's SEI pursuant to ORS 244.060(3) meets the

1 definition of a business with which one is associated for purposes of the conflict of interest
2 and use of office provisions of ORS Chapter 244. [ORS 244.020(3)(d)]. (#INV5)

3
4 Mr. Thompson confirmed that ABC Creations was not a source of 10% or more of his
5 annual household income in either 2015 or 2016, so it was not listed as such on his 2016
6 or 2017 SEI. Information is insufficient to indicate Ms. Christian's business was a source of
7 10% or more of the household's total annual income in 2015 or 2016. (#INV5a)

8

9 RELEVANT MEETING RECORDS:

10 In response to a records request, the Port provided a thumb drive which contained
11 recordings of two executive sessions they have in their records for the period covering July
12 through October 2015. There was at least one other executive session during this period,
13 but the Port had no meeting records for it. (#PR3, #INV1 through #INV3)

14

15 July 7, 2015 Executive Session Audio Recording

16 The first audio file is for the 7/7/15 executive session, in which Mr. Thompson was present.
17 The audio captures a swearing in of Roger Thompson as Port Commissioner, apparently
18 after the initiation of the executive session. Although a second swearing in of Roger
19 Thompson took place at the Port's regular, public meeting held on 7/21/15, Mr. Thompson
20 did participate in the 7/7/15 executive session as a Port Commissioner.

21

22 Port executive director Fitzgerald (complainant) can be heard saying that he entered into
23 an agreement with Tidewinds in order to come into possession of the two buildings
24 Tidewinds owned on Port property. He says that he needs the Commission to affirm the
25 agreement that the Port will not rent or lease buildings to any business that would compete
26 with Tidewinds.

27 Mr. Thompson can be heard saying that he will buy the two buildings and rent them out,
28 saying that people have already spoken to him about renting the second building.

29

30 Fitzgerald said that from the Port's perspective, it would be in the Port's best interests to
31 rent out the two buildings for a few years and get some income before the Port is ready to

1 tear them down. He said that he would get the modifications into the agreement with
2 Tidewinds.

3

4 7/21/15 Public Meeting Minutes

5 Minutes posted on the Port's website indicate that during the 7/21/15 meeting at which Mr.
6 Thompson was sworn in as a Port Commissioner for the second time, the topic of the
7 "Tidewinds Lease" was an action item. Apparently, this lease was between the Port and
8 the owner of Tidewinds for their new Port location. There was discussion during the
9 meeting that the lease included a "credit" on their new Port lease rate in exchange for their
10 relinquishment of their prior two buildings to the Port, provided "that those building will *not*
11 be used for businesses that compete with Tidewinds Fishing Charter." Mr. Thompson did
12 participate in the discussion and voted to approve this lease. (#PR1 and #PR3)

13

14 8/18/15 Public Meeting Minutes

15 The Port commission's meeting minutes for its 8/18/15 public meeting indicate that Mr.
16 Thompson asked to add an agenda item to discuss why the Tidewinds lease had not yet
17 been signed. The minutes reflect that the Executive Director (complainant) then
18 suggested, and the commissioners agreed, that the Tidewinds lease be discussed in a
19 separate executive session to be held on 8/25/15.

20

21 No records of an 8/25/15 executive session were available from the Port during the
22 investigation. (#PR3 and INV#1)

23

24 9/15/15 and 10/20/15 Public Meeting Minutes

25 Meeting minutes for the 9/15/15 and 10/20/15 public meetings of the Port commission do
26 not indicate that issues concerning the buildings on Port property that were occupied or
27 formerly occupied by Ms. Christian, or the "Tidewinds lease", were discussed or acted upon
28 by the commissioners. (#PR3).

29

30 October 28, 2015 Executive Session Audio Recording

31 This executive session was apparently to distribute and discuss two letters addressed to

1 the Commissioners, one from Angie Christian. Ted Fitzgerald states at one point that he
2 called the executive session and contacted the Port's attorney (who was present at this
3 executive session) because he felt that the letters were false and defamatory attacks on
4 him.

5 Timeline of Events:

6 Mr. Thompson was residing with Angela Christian, owner of ABC Creations, in 2015 and
7 until February of 2016.

8
9 4/10/15 Agreement signed between Tidewinds and Fitzgerald, Port
10 Executive Director, including a term not to lease newly vacated
11 Tidewinds buildings or any other Port property to businesses that
12 would or could compete with Tidewinds and to demolish the former
13 Tidewinds buildings immediately. This Agreement was incorporated
14 into the 6/1/15 Lease.

15 5/19/15 Roger Thompson elected Port Commissioner.

16 6/1/15 Lease signed between Tidewinds and the Port containing terms for
17 relocation to its new premises. This Lease incorporates the 4/10/15
18 Agreement.

19 June 2015 One of the recently vacated Tidewinds buildings is occupied, with the
20 approval of Port Executive Director, by ABC Creations, a fabrics
21 business. No written lease between these two parties found in Port
22 records.

23 7/1/15 ABC Creations pays rent for their "July 2015 Lease" with the Port.

24 7/7/15 Port Commissioners hold an Executive Session; Commissioner-Elect
25 Thompson is sworn in during the Executive Session and participates
26 in discussion of the 4/10/15 Agreement with Tidewinds and offers to
27 purchase the two recently abandoned buildings and rent them out.

28 7/21/15 Regular, public meeting; Thompson is sworn in a second time.
29 Commissioner Thompson participated in discussion and vote to
30 approve Tidewinds new lease which incorporated the Agreement to
31 demolish the buildings and not to rent the buildings to competing

1 businesses which could or would compete with Tidewinds.
2 7/29/15 ABC Creations pays rent for their "August 2015 Lease" with Port.
3 8/18/15 Regular, public meeting at which Commissioner Thompson asks about the
4 delayed execution of the lease with Tidewinds. Executive Director
5 Fitzgerald suggests that the lease issue be discussed in upcoming
6 8/25/15 executive session.
7 8/25/15 No records available from the Port for the 8/25/15 executive session.
8 8/26/15 Owner of ABC Creations receives a notice to vacate the premises by
9 September 30, 2015.
10 9/2/15 ABC Creations pays rent for their "September 2015 Lease" with Port.
11 10/28/15 Executive Session held, with Port's attorney in attendance, to distribute and
12 discuss 10/13/15 letters addressed to individual Commissioners from
13 owner of ABC Creations and another individual.
14

15 **CONCLUSIONS:** Roger Thompson was a Brookings Harbor Port Commissioner during
16 some of the period relevant to this investigation. As a Port Commissioner, he was a public
17 official as defined in ORS 244.020(15) and subject to compliance with the provisions of
18 ORS Chapter 244.

19
20 Mr. Thompson was elected on 5/19/15 and assumed his office as Port Commissioner on
21 7/7/15. As the information shows, Ms. Christian and her business entered into an unwritten
22 rental agreement with the Port sometime in June of 2015, and first paid rent on 7/1/15 for
23 July 2017. Mr. Thompson was not a public official at the time and thus not required to
24 comply with the use of office or conflict of interest provisions of ORS Chapter 244.

25

26 Conflict of Interest

27 A public official is met with a conflict of interest when they take actions in their official
28 capacity, the effect of which would or could be to the private financial benefit or detriment
29 of themselves, a relative, or a business with which they or a relative are associated. An
30 actual conflict of interest occurs if the official's action would have the effect of a private
31 financial impact. A potential conflict of interest occurs if the official's action could have the

1 effect of a private financial impact. [ORS 244.020(1) and (13)]

2
3 An elected public official such as Commissioner Thompson, when met with a conflict of
4 interest, must publicly announce the nature of his conflict and, if the conflict is actual, must
5 also refrain from any discussion, debate, or vote on the issue. If the conflict is potential, he
6 may take official actions following his public disclosure. [ORS 244.120(2)]

7
8 Commissioner Thompson confirmed in his letter to the Commission that Ms. Christian was
9 a member of his household during the relevant period in 2015, and that their personal
10 relationship ended in early 2016. He stated that they split all living expenses equally during
11 the period in question.

12
13 Ms. Christian is not one of the statutorily specified relatives of Mr. Thompson (e.g. spouse,
14 parent, child, etc.). If Ms. Christian were a person to whom Mr. Thompson had a legal
15 support obligation, or if Commissioner Thompson provided benefits arising from his public
16 employment to Ms. Christian, she would also meet the definition of "relative." Finally, if
17 Commissioner Thompson received benefits arising from Ms. Christian's employment, she
18 would be a "relative". [ORS 244.020(16)]

19
20 Ms. Christian could not receive any benefits arising from Mr. Thompson's public
21 employment because the position of Port Commissioner does not provide any benefits or
22 compensation. There is insufficient information to indicate that Mr. Thompson received
23 benefits arising from Ms. Christian's employment or her business. Because Ms. Christian
24 does not appear to meet the statutory definition of "relative" in ORS Chapter 244,
25 Commissioner Thompson could not have been met with a statutory conflict of interest
26 related to her or her business on that basis.

27
28 Thus, for the conflict of interest provisions to apply to Mr. Thompson in these
29 circumstances, ABC Creations would have to be a business with which he is associated in
30 his own right as either an officer, director, owner, employee or agent, or through operation
31 of law.

1 Mr. Thompson denies being an employee, owner, officer, director, or agent of ABC
2 Creations and there is no evidence to the contrary.

3
4 If ABC Creations was a business which was required to be included on Mr. Thompson's
5 2016 SEI because it was a source of 10% or more of his household's 2015 income, then it
6 would meet the definition of a business with which he is associated per ORS 244.020(3).

7
8 However, information available during investigation is insufficient to indicate that ABC
9 Creations was a source of 10% or more of Mr. Thompson's annual household income in
10 2015. It was not listed as such on his 2016 SEI, and Mr. Thompson confirmed that it was
11 not a source of 10% or more of his household's annual income.

12
13 For all these reasons, and the records available show that any actions Mr. Thompson may
14 have taken concerning ABC Creations and their occupation of the building on Port property
15 occurred prior to his swearing in as a Port Commissioner on 7/7/15.

16 17 Prohibited Use of Office

18 In relevant part, ORS 244.040(1) prohibited Roger Thompson, in his capacity as a public
19 official, from using or attempting to use his official position to obtain financial gain or to
20 avoid financial detriment for himself, a household member, or a business with which he or
21 a household member was associated, if the opportunity for financial gain or avoidance of
22 financial detriment would not otherwise be available but for Mr. Thompson's holding of his
23 official position with the Port.

24
25 "Member of household" is defined in ORS 244.020(11) as a person who resides with the
26 public official. Mr. Thompson does not dispute that he and Ms. Christian cohabited during
27 the relevant period. There is no dispute that ABC Creations was a business with which Ms.
28 Christian was associated during this period.

29
30 The complainant alleged that Mr. Thompson was financially contributing to ABC Creations
31 because during the brief time ABC rented the space in question from the Port, it received

1 its electricity through the use of Mr. Thompson's electric account. Not only did this occur
2 prior to Mr. Thompson becoming a public official, but it does not appear that ABC
3 Creations avoided a financial detriment in these circumstances that would not have
4 otherwise been available "but for" Mr. Thompson's position as a Port Commissioner.

5
6 Records available do not indicate that there was ever a vote or discussion of the Port's
7 rental of one of the vacated Tidewinds building to Ms. Christian's business. It appears that
8 this was an unwritten agreement between former Executive Director Fitzgerald and Ms.
9 Christian. Mr. Thompson did not take any actions in his official capacity concerning this
10 unwritten rental agreement.

11
12 During the 7/7/15 executive session, which was Mr. Thompson's first meeting as a Port
13 Commissioner, he offered to purchase the two buildings formerly occupied by Tidewinds
14 Charter, and rent them out himself. Mr. Thompson was only allowed to participate in the
15 executive session because he was a Port Commissioner, and therefore the opportunity to
16 make a purchase offer during the closed executive session was only available to him due
17 to holding his official position. Whether his offer was pursued or taken seriously by the
18 governing body is irrelevant to whether it was an attempted use of his official position in a
19 prohibited manner.

20
21 The 6/1/15 Tidewinds Lease, which incorporated the 4/10/15 Agreement, was approved by
22 the Commissioners, including Mr. Thompson, at a 7/21/15 meeting. It appears that this
23 was a ratification of a property lease that had already been signed prior to Mr. Thompson's
24 tenure as a Commissioner. Further, it is unclear how Mr. Thompson's participation in
25 discussions and "approval" of this lease would constitute a prohibited use of office by
26 Commissioner Thompson to obtain a financial gain for himself or his household member or
27 her business that otherwise would not have been available if he had not been a Port
28 Commissioner. There were conflicting terms in this Lease to both 1) immediately demolish
29 the building that Ms. Christian's business was then occupying and 2) to rent it out only to
30 businesses that did not compete with Tidewinds.

31 ///

1 Statement of Economic Interest

2 Mr. Thompson is required to disclose the name of any business on his SEI under which a
3 household member is conducting business. Thus, he was required to list ABC Creations
4 on his 2016 and 2017 SEIs because Ms. Christian was doing business under that name in
5 2015 and the portion of 2016 when she was a member of Mr. Thompson's household. His
6 failure to disclose this appears to be a violation of ORS 244.060(2).

7
8 Conclusion

9 In conclusion, it does not appear that there is sufficient information to indicate that Mr.
10 Thompson violated either the conflict of interest or use of office provisions of Oregon
11 Government Ethics law concerning the rental of a building on Port property to Mr.
12 Thompson's household member for her business. This rental took place prior to Mr.
13 Thompson's term as Port Commissioner.

14
15 It does appear that there is sufficient evidence to indicate that Mr. Thompson attempted to
16 use his official position as Port Commissioner in a prohibited manner during the 7/7/15
17 executive session meeting at which he offered to purchase the two Tidewinds buildings
18 himself and rent them out.

19
20 Also, it appears that there is sufficient evidence to recommend a finding that Mr. Thompson
21 did not fully comply with the 2016 and 2017 SEI disclosures required by ORS 244.060(2).

22
23 **RECOMMENDATIONS:** The Commission should make a preliminary finding that Roger
24 Thompson committed 1 violation of ORS 244.040(1) and 2 violations of ORS 244.060(2).
25 [Motion 10]

26
27 **ASSOCIATED DOCUMENTS:**

- 28 #PR1 Complaint and other material submitted by Ted Fitzgerald, received 4/17/17.
29 #PR2 Information downloaded from Curry County's election website.
30 #PR3 Copies of meeting agendas and minutes downloaded from the official
31 website of Port of Brooks Harbor for 7/21/15, 8/18/15, 9/15/15 and 10/20/15.

- 2 #PR4 Letter to the Commission and other material submitted by Roger Thompson
in response to the complaint, received 5/4/17.
- 3 #PR5 Records printed from the Oregon Secretary of State's Business Registry
4 website.
- 5 #INV1 Email with attached records provided by Gary Dehlinger, Manager, The Port
6 of Brookings Harbor, in response to records request, received 9/8/17.
- 7 #INV1a Email from Gary Dehlinger, Port Manager, received 9/8/17.
- 8 #INV2 Thumb drive containing audio of two executive sessions labeled as July and
9 October 2015 and investigator's memo summarizing the audio.
- 10 #INV3 Email from Gary Dehlinger, Port Manager, received 10/25/17.
- 11 #INV4 Email from Gary Dehlinger, Port Manager, received 10/26/17.
- 12 #INV5 Copies of 2016 and 2017 SEI filings by Roger Thompson.
- 13 #INV5a Investigator's 10/31/17 memo re contact with Roger Thompson.

PREPARED BY *Diane Gould* 11/7/17
 Diane Gould Date
 Investigator

APPROVED BY *[Signature]* 11/7/17
 Ronald A. Bersin Date
 Executive Director

REVIEWED BY *Amy E. Alpaugh* 11/7/17
 Amy E. Alpaugh Date
 Assistant Attorney General

May 2, 2017

RECEIVED

Government Ethics Board

MAY 04 2017

Attn: Diane Gould

OREGON GOVERNMENT
ETHICS COMMISSION

Case No. 17-tha153EDG

Ms. Christian and I had a personal relationship during 2015 when I was elected to the Brookings Harbor Port District. She is the sole owner of ABC Creations. I have never been an employee of that business. Please see her attached forms from the Dept. of Treasure and the State of Oregon Business Registry. I've never had any financial gain from her or her business. I have never supported her. During our relationship, we split the monthly bills, rent, utilities and so forth. Our personal relationship ended in February 2016.

At her first storefront, the electricity was in my name due to the fact that I already had an established account with Coos Curry Electric. She was under time restraints to get her store opened, it required a simple phone call from me verses an application and hefty deposit. I was billed, she issued checks to me and I can get copies of the bills and her cancelled checks if needed.

Ms. Christian had requested that I attend the original meeting that she had set up with Mr. Fitzgerald, which I did. Please see the attached timelines and letter to the Commissioners that were submitted by Ms. Christian and Mrs. Stein. Ms. Christian submitted her letter and timeline to the Port office on 10/13/15. When she didn't hear from any of the commission, she sent an email to the Chair and cc: the rest of the Commission. Attached are a copy of the original email on 10/16/15 and the responses from 3 of the Commissioners. She did not formally or informally ever hear from any of us. These timelines were written contemporaneously in October 2015 and were submitted to the Port at that time. I concur with Ms. Christians recall of the first meeting that took place on June 4, 2015. Other than the initial meeting with Ms. Christian and Mr. Fitzgerald, all of ABC Creations business dealings with the Port were between the two of them.

Mr. Fitzgerald alleges that while he was out of the country, Ms. Christian and I recruited Diana Stein. I had absolutely nothing to do with recruiting or trying to rent the 2nd building to Mrs. Stein. The evidence in both timelines supports this.

Any private party could have made an offer on either or both of the buildings. I made a preliminary offer as a private party and had the Board expressed interest, they would have gone on to define appropriate procedures to avoid conflict and ensure that I didn't participate as a Commissioner in any discussions of the board, or vote. My offer was in no way unique and was in lieu of tearing the buildings down immediately. Mr. Fitzgerald, in the minutes agrees that this would have been beneficial to the Port due to the continued land lease. However, the Commission was not interested and the buildings were not even the Port's, so there were never any negotiations.

I've requested to see the "FILE" in the Port office. I reviewed the entire file and it did not contain the correspondence submitted by Mr. Fitzgerald. I asked the Port Manager to put that in writing, he checked with the Ports attorney, who now would like to review the complaint first. I question their authenticity and if they were contemporaneous. I am waiting to hear from the Port, but wanted to get the majority of the evidence I have to you within the time period that you have requested.

I certainly question why this was even filed 23 months after what Mr. Fitzgerald alleges took place. My theory is that it's because Ms. Christian is a candidate for a seat in the Port of Brookings Harbor in the upcoming election this month. I believe it is a political ploy to discredit Ms. Christian. I've come to this conclusion because Mr. and Mrs. Fitzgerald have publically endorsed Ms. Christian's opponent, which happens to be Mr. Kyle Aubin. Mr. Fitzgerald submitted the complaint to our local paper, The Pilot. When they decided not to address it in the paper until I had an opportunity to respond to the complaint or if an investigation was opened. Mrs. Fitzgerald posted the entire complaint on our local face book group, which has approximately 2700 members in our voting district. Mrs. Fitzgerald has said that this was for vengeance; please see the attached screen shots. This also concerns me due to the fact that some of the conversations in the complaint were taken from Executive Sessions.

I believe the Bandon information has no material relationship and appears to be included solely as prejudicial information, or to further the Fitzgerald's publicly stated motivation of revenge, by way of making that information public. Again,

please review the screen shots for the local face book forum. There were not notes or emails regarding the Port Manager of Bandon in the "FILE".

It appears that Mr. Fitzgerald contradicts himself on many instances throughout the complaint. Just one example:

On Page 9 of 20 is a signed agreement between the Port and Mr. Aubin, signed and dated on April 10, 2015.

I question why Mr. Fitzgerald even agreed to a meeting with Ms. Christian, subsequently renting the buildings to ABC Creations and Sea Jewels.

During the two years that Mr. Fitzgerald was the manager and I a Commissioner, when I disagreed or questioned why certain things were being done, Mr. Fitzgerald would threaten filing a complaint with the Board of Ethics. I was not the only Commissioner that he threatened.

I have followed all of the OR Statues regarding the Code of Ethics and do not think I have any violations. Please let me know if you need any further documentation.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Thompson".

Roger L. Thompson



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544


Telephone: 503-378-5105


Fax: 503-373-1456

E-mail: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

DATE: November 7, 2017

TO: Ronald A. Bersin 
Executive Director

FROM: Marie Scheffers 
Compliance and Education Coordinator

RE: Request for Extension of Deadline on Commission Advisory Opinion
17-089A

The purpose of this memorandum is to request a 60 day extension to the deadline for issuance of the above-mentioned Commission Advisory Opinion, as is allowed by statute.

Legislative Counsel submitted a request for a Commission Advisory Opinion by mail on 11/3/17.

ORS 244.280(2) provides that the Commission shall issue either an opinion or a written denial of the request within 60 days of the date of the request for an opinion. Due to the timing of this request, the deadline for issuing this opinion is 1/1/18. The Commission meets on 11/17/17, which does not allow enough time to analyze the request.

The Commission's next meeting is on 1/5/18. ORS 244.280(2) allows the Commission, by vote of a majority of its members, to extend the 60-day deadline by one period not to exceed 60 days. A 60 day extension will allow the Commission to consider the opinion at its meeting on 1/5/18.



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Oregon

Kate Brown, Governor

Government Ethics Commission

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Website: www.oregon.gov/ogec

November 7, 2017

Tammy Dennee
C/o Oregon Dairy Farmers Association
1320 Capitol Street NE
Suite 160
Salem, OR 97301

RE: 17-0901

Dear Ms. Dennee:

This letter of advice is provided in response to your request received on November 6, 2017 which presented a question regarding the application of Oregon Government Ethics law and how the law may apply to public officials who may wish to participate in the Oregon Dairy Farmers Association educational tour which is planned for February 2, 2018. This analysis and advice is being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

From the information provided, it appears that the Oregon Dairy Farmers Association (ODFA) is hosting an educational tour for public officials. The purpose of the tours is to educate and inform state government officials on the technological advances that are key to protecting the environment and protecting animal welfare. The tours will highlight two dairy farms that have implemented these technologies including a robotic milking system.

During these tours, ODFA will provide and pay for food, beverage and transportation expenses. In this request, the question asked is what restrictions or requirements Oregon Government Ethics law may impose on public officials who may wish to participate in this tour.

Under most circumstances when a public official is offered food, beverage and transportation at no cost to the public official, it would be a gift as defined in ORS 244.020(7)(a). However, there are several exclusions, ORS 244.020(7)(b) excludes several items from the statutory definition of "gift", including reasonable food, beverage and transportation expenses provided to a public official when



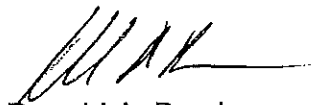
representing government. ORS 244.020(7)(b)(F) allows acceptance of the payment of reasonable expenses for food, beverage and transportation for public officials, when the public official is representing their government agency during a fact-finding mission. The Oregon Government Ethics Commission (Commission) has adopted an administrative rule in OAR 199-005-0001(2) which provided clarification to the term "fact-finding mission or trip."

Based on the information provided it appears that ORS 244.020(7)(b)(F) would allow public officials to accept meals and transportation expenses to participate in the Oregon Dairy Farmers Associations dairy farm tours, which appears to meet the definition of a fact-finding mission, as defined in OAR 199-005-0001(2).

For those legislative public officials who participate in the event and who must file electronically the Annual Verified Statement of Economic Interest with the Commission, would be required to report the aggregate value of these paid expenses pursuant to ORS 244.060(5) if the value of what is received is \$50 or more. It is required that ODFA, as the source of these paid expenses, provide a detailed cost analysis of the value of what was received by the individual public official.

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

Sincerely,



Ronald A. Bersin
Executive Director

RAB/th

*****DISCLAIMER*****

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

ethicsOP5

November 2, 2017



1320 Capitol Street NE
Suite 160
Salem, OR 97301
(971) 599-5269
oregondairyfarmers.org

RECEIVED
NOV 06 2017
OREGON GOVERNMENT
ETHICS COMMISSION

Ron Bersin
Executive Director
Oregon Government Ethics Commission
3218 Pringle Drive SE, Ste. 220
Salem, OR 97302-1544

Dear Mr. Bersin:

The Oregon Dairy Farmers Association (ODFA) was formed in 1892, 125 years ago, by Oregon's Dairy Producers for the purpose of providing a place for the producers to work together on matters of importance. The same is true in 2017. At the time of formation, Oregon was home to more than 1,000 dairies. Today, Oregon is home to approximately 220 dairy farms and 126,000 dairy cows. The ODFA is governed by eight dairy farmers and one representative from allied industry.

This letter serves as a request for a written opinion on a proposed educational tour that the Oregon Dairy Farmers Association is planning for Friday, February 2, 2018. The primary audience of the tour will be the members of the State Legislature and their key staff members.

This is the first tour of its kind with the primary objective of bringing legislators onto dairy farms to view robotic milking systems and technological advances that are key to protecting the environment and protecting animal welfare.

The Oregon Dairy industry ranked 4th among all of Oregon's commodities in its economic contribution in 2016. While the number of dairy farms has declined in Oregon, the economic and environmental contributions have remained strong.

The tour will showcase two dairy farms. A boxed lunch and transportation will be provided. The costs associated with the tour will be commensurate with the number of attendees. We will invite every elected official in the Oregon Legislature and encourage them to bring a staff person with them. Therefore, the cost per person could range between \$30 - \$70 per person, depending upon the number of participants. Since this is a fact finding event, elected officials and other public officials will attend at no cost.

A written response from OGEC clarifying this is a fact finding tour and that it meets the statutory requirements is hereby requested and sincerely appreciated.

Thank you for your assistance. Please do not hesitate to contact me at (541) 980-6887 for additional information.

Sincerely,

Tammy Dennee, CMP, CAE – Legislative Director
OREGON DAIRY FARMERS ASSOCIATION

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Oregon

Kate Brown, Governor

17-0911

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

E-mail: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

November 6, 2017

Shawn Haywood
Human Resources Manager
Oregon Corrections Enterprises
3691 State St.
Salem OR 97301

Dear Shawn Haywood:

This letter of advice is provided in response to your request received on November 6, 2017, which presented a question regarding the application of Oregon Government Ethics conflicts of interest laws to the appointment of a specific member of the Advisory Committee for Oregon Corrections Enterprises. 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 below.

As stated in your request for guidance, Oregon Corrections Enterprises (OCE) is a semi-independent state agency governed by ORS Chapter 421. Pursuant to ORS 421.349, a voluntary Advisory Committee provides advice and assists OCE in discharging its functions. Members of the committee provide input, suggestions and political insight to agency leaders regarding the direction and pace of the agency, but do not make business decisions. The committee is required to be comprised of various members of the community, one of which must represent the interests and perspective of the banking or finance industry.

Kent Aldrich has been named to the Advisory Committee. Mr. Aldrich is the previous owner of Aldrich CPAs and Advisors, a local accounting and auditing firm. For the past 4 years, Aldrich CPAs and Advisors has provided annual financial audit services for OCE. While Mr. Aldrich no longer owns the firm, he does have a familial relationship with the current owners.

It is important to note that the Oregon Government Ethics Commission (Commission) does not have jurisdiction over agencies; however, the Commission does have jurisdiction over individual public officials, such as members of the Advisory Committee.

Under Oregon Government Ethics laws, there are two kinds of conflict of interest, "actual" or "potential". Conflicts of interest occur any time a public official is faced with making any action, decision or recommendation, while acting in an official capacity, the effect of which would (an actual conflict) or could (a potential conflict) financially affect the public official, the public official's relative, or a business that is associated with either the public official or their relative (ORS 244.020(1), (13)). Because Mr. Aldrich is on the



Advisory Committee, which only provides input and makes suggestions but does not make final business decisions, his conflict of interest would be considered "potential" at most when dealing with issues regarding Aldrich CPAs and Advisors

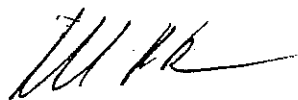
When Mr. Aldrich is met with a potential conflict of interest while on the Advisory Committee, ORS 244.120 directs the conflicted public official in how to properly dispose of the conflict. ORS 244.120(2)(a), requires appointed officials serving on a board or commission, such as Mr. Aldrich, when met with a potential conflict of interest, to publicly disclose the nature of their conflict prior to taking further official action on the issue.

It is possible that Mr. Aldrich may not have a potential conflict of interest regarding Aldrich CPAs and Advisors. According to the facts submitted, he no longer owns the firm. As a result, Aldrich CPAs and Advisors may not be a business with which he is associated. ORS 244.040(3) states that a business with which a person is associated mean any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year.

If and when the Advisory Committee is presented with any matter involving Aldrich CPAs and Advisors, Mr. Aldrich must decide whether or not he has a potential conflict of interest. If he decides he does have a conflict of interest, he must publicly disclose the nature of the conflict prior to taking any action on the issue.

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/mst

*****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.

THORNICROFT Michael * OGEC

n: HUNTER David * OGEC
Sent: Monday, November 06, 2017 10:06 AM
To: THORNICROFT Michael * OGEC
Subject: FW: Conflict of Interest - Opinion Request

From: Shawn Haywood [mailto:shaywood@oce.oregon.gov]
Sent: Monday, November 06, 2017 8:21 AM
To: OGEC Mail * OGEC <OGEC.Mail@oregon.gov>
Cc: Ken Jeske <kjeske@oce.oregon.gov>; Joshua Cook <jcook@oce.oregon.gov>; Ann Struxness <astruxness@oce.oregon.gov>
Subject: Conflict of Interest - Opinion Request

Oregon Corrections Enterprises is a semi-independent state agency governed by ORS Chapter 421. Under ORS 421.349, a voluntary Advisory Committee provides advice and assists OCE in discharging its functions. Members of the committee provide input, suggestions and political insight to agency leaders regarding the direction and pace of the agency, but do not make business decisions. The committee is required to be comprised of various members of the community, one of which must represent the interests and perspective of the banking or finance industry.

OCE recently identified a new member of the committee named Kent Aldrich of Salem. Mr. Aldrich is the previous owner of Aldrich CPAs and Advisors, a local accounting and auditing firm. For the past 4 years, Aldrich CPAs and Advisors has provided annual financial audit services for OCE. While Mr. Aldrich no longer owns the firm, he does have a familial relationship with the current owners. In order to select an audit firm 4 years ago, OCE solicited interest from several audit firms approved by the Secretary of State's Audit Division. Aldrich CPAs and Advisors was the only audit firm to respond with the capability to conduct an audit for an organization the size and type of OCE. To insure the integrity of the auditing process and to avoid complacency, OCE is required by policy to change auditing firms every three to five years. Merina and Company provided auditing services to OCE for 10 years and will be available in the future. However, to follow policy, OCE will have to rotate between Merina and Company and Aldrich CPAs and Advisors if we cannot find another firm.

OCE would like an opinion from the Ethics Commission to determine whether the use of Aldrich CPA's and Advisors to conduct an annual audit, while Mr. Aldrich is a member of the Advisory Committee, creates any conflict of interest, or what steps the agency can take to avoid concerns of a conflict.



Shawn Haywood
Human Resources Manager
Office: 503.428.5518 / Fax: 503.363.0137
www.oce.oregon.gov

"The Mission of Oregon Corrections Enterprises, in partnership with the Department of Corrections, is to promote public safety by providing adults in custody with work and training opportunities in a self-sustaining organization."

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Trainers' Report November 17th, 2017

This report covers the time period of October 9th, 2017, through November 17th, 2017.

Completion of training:

- Department of Administrative Services Foundational Management Program – ORS 244 (Portland)
- Oregon Commission for the Blind – ORS 244 (Portland)
- Oregon Housing and Community Services – ORS 244 (Salem)
- Linn, Benton, Lincoln ESD – ORS 244 (Albany)
- Oregon Institute of Technology – ORS 244 (Klamath Falls)
- North Bend School District– ORS 244 (Bend)
- Lincoln County School District – ORS 244 (Newport)
- Department of Administrative Services Foundational Management Program – ORS 244 (Salem)
- Oregon Fire Directors Association– ORS 244 (Ashland)
- Oregon Department of Energy– ORS 244 (Salem)

Upcoming Trainings:

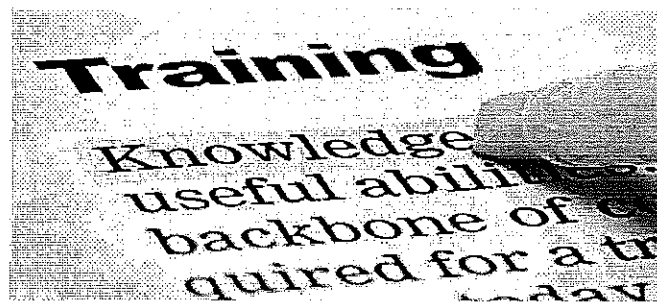
<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
11/30/2017	1:30 – 3:00 PM	Oregon Medical Board (ORS 244)	1500 SW 1 st Ave Suite 620 Portland, OR 97201
12/4/2017	11:00 AM	Oregon Department of Education (ORS 244)	Oregon Department of Education 255 Capitol Street N.E. Salem, OR 97310
12/6/2017	3:30 – 4:30 PM	Oregon Capitol Club (ORS 171)	Kell's Irish Pub 112 SW 2 nd Ave 2 nd Floor Portland, OR 97204
12/7/2017	Afternoon TBD	Oregon Department of Energy (ORS 244)	550 Capitol Street Salem, OR 97301

12/7/2017	2:30 – 3:45 PM	Oregon School Boards Association (OSBA) (ORS 244)	Eugene Hilton 66 E 6 th Avenue Eugene, OR 97401
12/13/2017	3:00 – 4:00 PM	Oregon Health Authority (OHA) (ORS 244)	3414 Cherry Avenue N.E. Salem, OR 97303
1/11/2018	9:00 – 11:00 AM	City of Newport (ORS 244)	169 SW Coast Highway Newport, OR 97365

Upcoming Conferences

2/6/2018	1:15 – 3:15 PM	Oregon Clerks Association (OACC) (ORS 244, emphasis on Jurisdictional Contact responsibility and SEI)	Grand Hotel 201 Liberty St SE Salem, OR 97301
3/12/2018	TBD	Institute of Internal Auditors Salem and Portland (ORS 244)	TBD Wilsonville, OR

Training Staff: Tammy Hedrick 503-378-6802 tammy.r.hedrick@oregon.gov
Hayley Weedn 503-378-8066 hayley.weedn@oregon.gov



Executive Director's Report

November 17, 2017

- Budget
 - 2017-19 biennial budget
 - Completed biennial financial plan (see biennial projections).
 - Currently projected with a \$55,366.74 surplus.
 - Starting in November, DAS reports will include financial plan.

- Case Management System
 - Scheduled launch for Phase 3 for week of November 20th.
 - Development and launch date are on time.
 - Continue working with DAS CIO office to ensure success of launch of final phase.

- Other
 - Working with CIO office on Agency IT Strategic Plan.
 - 5 SEI filers for 2017 remain outstanding.
 - Only 2 Lobbyists and 0 Client not filed for third quarter 2017.
 - Website redesign project continues into its final phase.
 - Meeting with Capitol Club next month.
 - Marie is graduating from Leadership Oregon in December.
 - Early discussions with DAS Chief Financial Office on 2019-21 budget rules.
 - Presented with Marie and Amy at Public Law Conference. Session was well attended.

OREGON GOVERNMENT ETHICS COMMISSION
AY19 CASH FLOW

	Appn 30000 - Admin - PCA 41501				Appn 70000 - GF - PCA 00501			
	Actuals To Date	Actuals + Projected	2015-2017 LAB	Variance	Actuals To Date	Actuals + Projected	2015-2017 LAB	Variance
Beginning Cash Balance	798,127.30	798,127.30			-	-		
REVENUE								
0415 ADMINISTRATIVE AND SERVICES CHARGES	237.66	2,525,191.66	2,524,954.00	(237.66)	-	5,480.75	30,000.00	24,519.25
0505 FINES AND FORFEITS	-	-	2,000.00	2,000.00	-	-	-	0.00
0975 OTHER REVENUE	-	-	1,762.34	1,762.34	-	-	-	0.00
Total Revenue	237.66	2,525,191.66	2,526,954.00	1,762.34	5,480.75	5,480.75	30,000.00	24,519.25
TRANSFERS								
2010 TRANSFER OUT TO OTHER FUNDS	-	-		0.00	-	-	-	0.00
1107 TRANSFER IN FROM DEPT OF ADMIN SVCS	-	-		0.00	-	-	-	0.00
Total Transfers	-	-	-	0.00	-	-	-	0.00
PERSONAL SERVICES								
3110 CLASS/UNCLASS SALARY & PER DIEM	135,744.91	1,119,855.12	1,081,008.00	(38,847.12)	-	-	-	0.00
3160 TEMPORARY APPOINTMENTS	-	-	466.00	466.00	-	-	-	0.00
3170 OVERTIME PAYMENTS	-	-	-	0.00	-	-	-	0.00
3190 ALL OTHER DIFFERENTIAL	49.60	372.16	456.00	83.84	-	-	-	0.00
3210 ERB ASSESSMENT	27,891.95	230,688.00	202,950.00	(27,738.00)	-	-	-	0.00
3220 PUBLIC EMPLOYEES' RETIREMENT SYSTEM	8,119.49	66,584.94	61,151.00	(5,403.94)	-	-	-	0.00
3221 PENSION BOND CONTRIBUTION	10,301.47	85,192.44	82,741.00	(2,451.44)	-	-	-	0.00
3230 SOCIAL SECURITY TAX	50.87	591.41	621.00	29.59	-	-	-	0.00
3250 WORKERS' COMPENSATION ASSESSMENT	814.45	6,700.88	6,490.00	(210.88)	-	-	-	0.00
3260 MASS TRANSIT	25,847.16	206,777.28	300,024.00	93,246.72	-	-	-	0.00
3270 FLEXIBLE BENEFITS	208,819.90	1,716,732.23	1,735,907.00	19,174.77	-	-	-	0.00
Total Personal Services	208,819.90	1,716,732.23	1,735,907.00	19,174.77	-	-	-	0.00
SERVICES AND SUPPLIES								
4100 INSTATE TRAVEL	1,388.60	18,017.11	19,004.00	986.89	-	-	-	0.00
4150 EMPLOYEE TRAINING	2,513.00	5,463.00	7,080.00	1,617.00	-	-	-	0.00
4175 OFFICE EXPENSES	1,869.78	20,732.15	21,557.00	824.85	-	-	-	0.00
4200 TELECOMM/TECH SVC AND SUPPLIES	1,204.68	15,553.48	18,723.00	3,169.52	-	-	-	0.00
4225 STATE GOVERNMENT SERVICE CHARGES	586.98	50,588.98	52,557.00	1,970.02	-	-	-	0.00
4250 DATA PROCESSING	324.61	86,296.85	98,254.00	11,957.15	-	-	-	0.00
4275 PUBLICITY & PUBLICATIONS	112.32	1,020.00	1,023.00	3.00	-	-	-	0.00
4300 PROFESSIONAL SERVICES	76,869.00	8,397.70	9,469.00	1,071.30	-	-	-	0.00
4315 IT PROFESSIONAL SERVICES	22,909.50	295,652.00	310,552.00	14,900.00	-	-	-	0.00
4325 ATTORNEY GENERAL LEGAL FEES	-	183,276.00	161,995.00	(21,281.00)	-	-	-	0.00
4375 EMPLOYEE RECRUITMENT & DEVELOPMENT	-	2,484.00	2,484.00	0.00	-	-	-	0.00
4400 DUES AND SUBSCRIPTIONS	-	450.00	450.00	0.00	-	-	-	0.00
4425 FACILITIES RENT & TAXES	9,357.27	74,858.16	94,494.00	19,635.84	-	-	-	0.00
4575 AGENCY PROGRAM RELATED SVCS & SUPP	237.60	237.60		(237.60)	-	-	-	0.00
4650 OTHER SERVICES AND SUPPLIES	76,124.00	162,523.00	164,091.00	1,568.00	-	-	-	0.00
4700 EXPENDABLE PROPERTY \$250-\$5000	-	7,607.00	7,607.00	0.00	-	-	-	0.00
4715 IT EXPENDABLE PROPERTY	-	-	-	-	-	-	-	0.00
Total Services and Supplies	193,497.34	933,148.03	969,340.00	36,191.97	-	-	-	0.00
5900 OTHER CAPITAL OUTLAY	-	-	-	-	-	-	-	-
TOTAL EXPENDITURES	402,317.24	2,649,880.26	2,705,247.00	55,366.74	5,480.75	5,480.75	-	0.00
Ending Cash Balance	396,047.72	673,438.70						



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

REVENUES

<u>Agy. Obj.</u>	<u>Agy. 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 spend</u>
1810	PENALTY GENERAL FUND REVENUE - GF	150.00	5,480.75	0.00	-5,480.75	1,826.92	-260.99
		150.00	5,480.75	0.00	-5,480.75	1,826.92	-260.99

SUMMARY TOTALS

REVENUES	REVENUE	Month Activity	Biennium Activity
Total	Total	150.00	5,480.75
		150.00	5,480.75

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



REVENUES

<u>Agy Obi</u>	<u>Agy Obi 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 spend</u>
0401	LOCAL GOVT ASSESSMENT CHARGES	0.00	237.66	0.00	-237.66	79.22	-11.32
		0.00	237.66	0.00	-237.66	79.22	-11.32

PERSONAL SERVICES

<u>Agy Obi</u>	<u>Agy Obi 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 spend</u>
3111	REGULAR EMPLOYEES	44,882.00	134,628.76	0.00	-134,628.76	44,876.25	-6,410.89
3120	BOARD MEMBER STIPENDS	0.00	420.00	0.00	-420.00	140.00	-20.00
3210	PUBLIC EMPLOYEES' RETIREMENT	6,181.80	18,543.67	0.00	-18,543.67	6,181.22	-883.03
3212	PENSTON BOND ASSESSMENT	2,706.84	8,119.49	0.00	-8,119.49	2,706.50	-386.64
3215	PERS CONTRIBUTION - RHIA	211.03	633.02	0.00	-633.02	211.01	-30.14
3216	PERS CONTRIBUTION - RHIPA	198.61	595.77	0.00	-595.77	198.59	-28.37
3217	PERS CONTRIBUTION - PICK-UP	2,706.84	8,119.49	0.00	-8,119.49	2,706.50	-386.64
3221	SOCIAL SECURITY TAXES	3,423.54	10,301.47	0.00	-10,301.47	3,433.82	-490.55
3241	WORKERS' COMPENSATION	18.31	50.87	0.00	-50.87	16.96	-2.42
3262	SEBB HEALTH CARE CASH	232.05	696.15	0.00	-696.15	232.05	-33.15
3263	MEDICAL, DENTAL, LIFE INSURANCE	8,615.72	25,847.16	0.00	-25,847.16	8,615.72	-1,230.82
3281	MASS TRANSIT TAX	270.68	814.45	0.00	-814.45	271.48	-38.78
3291	EMPLOYMENT RELATIONS BOARD	17.12	49.60	0.00	-49.60	16.53	-2.36
		69,464.54	208,819.90	0.00	-208,819.90	69,606.63	-9,943.80

SERVICES and SUPPLIES

<u>Agy Obi</u>	<u>Agy Obi 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 spend</u>
4101	INSTATE MEALS WITH OVERNIGHT STAY	0.00	140.25	0.00	-140.25	46.75	-6.68
4106	INSTATE LODGING AND TAX	0.00	100.83	0.00	-100.83	33.61	-4.80
4108	INSTATE GROUND TRANSPORTATION	11.50	74.83	0.00	-74.83	24.94	-3.56
4113	INSTATE MILEAGE REIMBURSMNT-	0.00	1,072.69	0.00	-1,072.69	357.56	-51.08
4200	OFFICE SUPPLIES	0.00	1,236.22	0.00	-1,236.22	412.07	-58.87
4206	CATERING SERVICES	21.78	237.60	0.00	-237.60	79.20	-11.31
4251	POSTAGE	63.30	63.30	0.00	-63.30	21.10	-3.01
4252	MAIL SERVICES	159.84	374.84	0.00	-374.84	124.95	-17.85
4302	RENTAL OF OFFICE EQUIPMENT	195.42	195.42	0.00	-195.42	65.14	-9.31

Agv Obj	Agv Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Date	Monthly Avg to Date	Monthly Avg to Date
						Date	Date	spend	spend
4375	COMPUTER TECHNOLOGY COMPUTER	324.61	324.61	0.00	-324.61	108.20	108.20	-15.46	-15.46
4406	PROF DEV IN STATE TUITION/	0.00	2,513.00	0.00	-2,513.00	837.67	837.67	-119.67	-119.67
4531	TELECOM/VOICE USAGE	187.63	466.78	0.00	-466.78	155.59	155.59	-22.23	-22.23
4535	TELECOM/NETWORK SERVICES	737.90	737.90	0.00	-737.90	245.97	245.97	-35.14	-35.14
4614	PROFESSIONAL SVS APPLICATION MODIFY	0.00	70.00	0.00	-70.00	23.33	23.33	-3.33	-3.33
4615	PROFESSIONAL SERVICES APPLICATION	4,433.00	76,799.00	0.00	-76,799.00	25,599.67	25,599.67	-3,657.10	-3,657.10
5003	EMPLOYEE ASSISTANCE PROGRAM	0.00	112.32	0.00	-112.32	37.44	37.44	-5.35	-5.35
5050	ATTORNEY GENERAL LEGAL FEES	0.00	22,909.50	0.00	-22,909.50	7,636.50	7,636.50	-1,090.93	-1,090.93
5101	DAS-EGS-RISK ASSESSMENT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5105	CENTRAL GOVERNMENT SERVICE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5106	OREGON STATE LIBRARY ASSESSMENT	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5107	STATE TREASURERS CHARGES	10.00	30.10	0.00	-30.10	10.03	10.03	-1.43	-1.43
5108	SECRETARY OF STATE CHARGES	381.00	556.88	0.00	-556.88	185.63	185.63	-26.52	-26.52
5119	COVID - CERT OFC BUS INCLUSION/	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5122	STATE OF OREGON LAW LIBRARY	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5200	OTHER SERVICES	0.00	15.00	0.00	-15.00	5.00	5.00	-0.71	-0.71
5204	PRIZES & AWARDS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5234	DAS-EGS-SFS-SHARED ACCOUNTING	0.00	76,109.00	0.00	-76,109.00	25,369.67	25,369.67	-3,624.24	-3,624.24
5400	FACILITIES RENT	3,119.09	9,357.27	0.00	-9,357.27	3,119.09	3,119.09	-445.58	-445.58
		9,645.07	193,497.34	0.00	-193,497.34	64,499.11	64,499.11	-9,214.16	-9,214.16

SUMMARY TOTALS

REVENUES	REVENUE	Month Activity	Biennium Activity
Total	0.00	0.00	237.66
EXPENDITURES	PERSONAL SERVICES	69,464.54	208,819.90
	SERVICES AND SUPPLIES	9,645.07	193,497.34
Total		79,109.61	402,317.24

