

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-065EMT

DATE: December 5, 2018

RESPONDENT: HELLMAN, Marc, former staff member and Administrator, Oregon Public Utility Commission

COMPLAINANT: MCVEE, Matthew, Chief Regulatory Counsel for PacifiCorp

RECOMMENDED ACTION: Move to Dismiss the Complaint

1 **SYNOPSIS:** Over the course of 37 years, Dr. Marc Hellman held many positions during
2 his career with the Oregon Public Utility Commission (PUC), in which he gained both
3 experience and responsibility. Dr. Hellman retired in 2016, but continued working part-
4 time for the PUC on limited duration contracts until January 30, 2018. The complaint in
5 this case alleged that during his last few months at the PUC, Dr. Hellman used his position
6 and his access to confidential information provided to the PUC by PacifiCorp to further
7 his private consulting enterprise. The focus of this investigation was to determine if there
8 was a preponderance of evidence to indicate that Dr. Hellman committed violations of the
9 conflict of interest and use of office provisions of ORS Chapter 244.

10
11 Information available during the investigation appears to be insufficient to indicate that
12 Dr. Hellman failed to comply with the disclosure and disposition requirements of the
13 conflict of interest provisions and the prohibited use of office provisions of Oregon
14 Government Ethics law.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes and Administrative
2 Rules are applicable to the 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
11 is 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 non-remunerative capacity.

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

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

28
29 244.020(13) "Potential conflict of interest" means any action or any decision or
30 recommendation by a person acting in a capacity as a public official, the effect of
31 which could be to the private pecuniary benefit or detriment of the person or the

1 person's relative, or a business with which the person or the person's relative is
2 associated* * * [.]

3
4 244.020(15) "Public official" means the First Partner and any person who, when
5 an alleged violation of this chapter occurs, is serving the State of Oregon or any of
6 its political subdivisions or any other public body as defined in ORS 174.109 as an
7 elected official, appointed official, employee or agent, irrespective of whether the
8 person is compensated for the services.

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

19 * * * * *

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

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

29
30 244.040(5) A person who has ceased to be a public official may not attempt to
31 further or further the personal gain of any person through the use of confidential

1 information gained in the course of or by reason of holding position as a public
2 official or the activities of the person as a public official.

3
4 244.040(6) A person may not attempt to represent or represent a client for a fee
5 before the governing body of a public body of which the person is a member. This
6 subsection does not apply to the person's employer, business partner or other
7 associate.

8
9 244.040(7) The provisions of this section apply regardless of whether actual
10 conflicts of interest or potential conflicts of interest are announced or disclosed
11 under ORS 244.120.

12
13 **244.045 Regulation of subsequent employment of public officials; lobbying**
14 **by former members of Legislative Assembly.** (1) A person who has been a
15 Public Utility Commissioner, * * * may not:

16 (a) Within one year after the public official ceases to hold the position
17 become an employee of or receive any financial gain, other than
18 reimbursement of expenses, from any private employer engaged in the
19 activity, occupation or industry over which the former public official had
20 authority; or

21 (b) Within two years after the public official ceases to hold the position:

22 (A) Be a lobbyist for or appear as a representative before the agency
23 over which the person exercised authority as a public official;

24 (B) Influence or try to influence the actions of the agency; or

25 (C) Disclose any confidential information gained as a public official.

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

31 * * *

1 (c) If the public official is any other appointed official subject to this chapter,
2 notifying in writing the person who appointed the public official to office of
3 the nature of the conflict, and request that the appointing authority dispose
4 of the matter giving rise to the conflict. Upon receipt of the request, the
5 appointing authority shall designate within a reasonable time an alternate
6 to dispose of the matter, or shall direct the official to dispose of the matter
7 in a manner specified by the appointing authority.
8

9 **OAR 199-005-0035 Guidelines for compliance with ORS 244.020(6), 244.025,**
10 **244.040, 244.042 and 244.047**

11 * * *

12 (5) "Confidential information" means any record that is exempt from public
13 disclosure or inspection under state law, or any information obtained in the course
14 of or by reason of holding position as a public official that is not publicly disclosed.
15 The record or information is no longer confidential if it has been voluntarily
16 disclosed by the public body, or been disclosed through a public records disclosure
17 order or court order.
18

19 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
20 a preliminary review based on information in a signed complaint dated February 20, 2018
21 from Matthew McVee, Chief Regulatory Counsel for PacifiCorp. Mr. McVee alleged that
22 while employed at the PUC Dr. Hellman violated Oregon Government Ethics law by
23 soliciting employment from and representing a client in a proceeding where he had
24 previously represented the PUC, and by using his position and his access to confidential
25 information to further his private consulting enterprise. (#PR1).
26

27 On March 30, 2018, the Commission found cause to investigate after considering the
28 information developed in the preliminary review. The focus of the investigation was to
29 determine if there is sufficient evidence to indicate that Marc Hellman violated Oregon
30 Government Ethics law by failing to comply with the disclosure and disposition
31 requirements of the conflict of interest provisions and the prohibited use of office

1 provisions. Dr. Hellman and Mr. McVee were notified of the Commission's actions in this
2 matter and were both invited to provide any information which would assist the
3 Commission in conducting this investigation.

4
5 PUC, PacifiCorp, UM 1050 and the MSP Workgroup

6 The Oregon Public Utility Commission is a state agency that regulates Oregon's investor-
7 owned electric, natural gas, telephone utilities and select water companies. Headed by a
8 three-member commission, the PUC has four divisions: Utility Program, Residential
9 Service Protection Fund, Policy and Administration, and Administrative Hearings Division.

10
11 PacifiCorp is a utility company providing electricity to approximately 1.8 million customers
12 in six western states. PacifiCorp consists of two business units: Pacific Power,
13 headquartered in Portland, which delivers electricity to customers in Oregon, Washington
14 and California; and Rocky Mountain Power, headquartered in Salt Lake City, which
15 delivers electricity to customers in Utah, Wyoming and Idaho. PacifiCorp recovers its
16 costs of providing services using cost allocation methodologies that seek to allocate costs
17 commensurate with the services provided; however, each state individually determines
18 the cost allocation methodology that PacifiCorp will use in that state. Because of the
19 differences in the states' cost allocation methodologies, PacifiCorp may recover more or
20 less than 100 percent of its costs. (#PR4 and #PR5).

21
22 Seeking to solve this problem and streamline the process, in 2002 PacifiCorp initiated a
23 formal Multi-State Process (MSP) where stakeholders from all six states could work
24 together to develop a consistent cost allocation methodology. Among the Oregon
25 stakeholders in the MSP Workgroup are the PUC and the Industrial Customers of
26 Northwest Utilities (ICNU), a non-profit trade association of large energy users in the
27 Northwest. PacifiCorp, through the MSP, organizes stakeholder meetings, provides
28 information to the participants, and negotiates settlement of issues. The MSP includes
29 both public meetings and confidential settlement negotiations. After updated cost
30 allocation methodologies are negotiated in the MSP process, they go before each state's
31 regulatory agency for consideration and approval. (#PR4 and #PR5).

1 In 2005, the PUC opened UM 1050 to consider and approve PacifiCorp's cost allocation
2 methodology for Oregon. Since then, UM 1050 has been an ongoing proceeding, serving
3 as an umbrella docket designation for the PUC to consider each of PacifiCorp's updated
4 cost allocation methodologies. Once updated methodologies are filed in UM 1050, it
5 becomes a contested proceeding under the jurisdiction of the PUC. (#PR4 and #PR5).
6

7 Dr. Hellman's PUC Employment and Private Consulting

8 Dr. Hellman began his PUC employment in 1979 and continued working at the PUC for
9 37 years, rising through the ranks until he retired as a Division Administrator in 2016.
10 Although retired, Dr. Hellman continued working for the PUC part-time on limited duration
11 contracts until January 30, 2018. The dates, positions, and some of the specified duties
12 of Dr. Hellman's employment with the PUC were as follows:
13

- | | | |
|----|----------------------|---|
| 14 | 8/1/79 to 8/31/16 | Started as Utility Analyst; retired as Principal Executive Manager
F/Energy Rates Finance and Audit Division Administrator |
| 15 | | <ul style="list-style-type: none">• Administrator duties included representing the PUC in MSP |
| 16 | | <ul style="list-style-type: none">meetings, testifying for the PUC in UM 1050 proceedings (most |
| 17 | | <ul style="list-style-type: none">recently in 2004), and leading the PUC negotiations for |
| 18 | | <ul style="list-style-type: none">PacifiCorp's 2017 Cost Allocation Protocols |
| 19 | | |
| 20 | | |
| 21 | 9/1/16 to 9/22/17 | Continued as Principal Executive Manager and Division
Administrator on three part-time limited duration contracts |
| 22 | | |
| 23 | | |
| 24 | 10/30/17 to 12/19/17 | Economist 4 on a part-time limited duration contract |
| 25 | | <ul style="list-style-type: none">• Served as resource for Energy Rates, Finance and Audit staff, |
| 26 | | <ul style="list-style-type: none">and trained new Administrator (included providing background |
| 27 | | <ul style="list-style-type: none">detail on the MSP and PacifiCorp cost allocation issues) |
| 28 | | |
| 29 | 1/10/18 to 1/30/18 | Economist 4 on a part-time limited duration contract |
| 30 | | <ul style="list-style-type: none">• Provided training seminars for staff and advised new |
| 31 | | <ul style="list-style-type: none">Administrator on non-MSP matters (#PR2). |

1 In 2017, while working for the PUC as an Administrator on a part-time basis, Dr. Hellman
2 began doing private consulting work, starting with some overseas projects. Davison Van
3 Cleeve, P.C. (Davison), a Portland law firm representing ICNU, then approached him to
4 consult on the Hydro One/Avista Acquisition in Washington State. Because some of the
5 parties in that matter were subject to PUC regulation, Jason Eisdorfer, Dr. Hellman's
6 supervisor at the PUC, advised him that he could not undertake this consulting project
7 while employed as an Administrator, but that this prohibition would likely change if and
8 when he was no longer a PUC Administrator. (#PR2).

9
10 Dr. Hellman resigned as an Administrator effective September 22, 2017. On September
11 21, 2017, using his private e-mail account, Dr. Hellman let Davison know that he would
12 no longer be a PUC Administrator as of September 22nd and would therefore be available
13 for consulting jobs. On October 19, 2017, Dr. Hellman began consulting for Davison and
14 its client ICNU on the Washington Hydro One/Avista matter. This consultation began
15 shortly before Dr. Hellman returned to the PUC as an economist. (#PR2).

16
17 On January 15, 2018, while once again working for the PUC as an economist, Dr. Hellman
18 began consulting for Davison and ICNU on PacifiCorp cost allocations. On January 17,
19 2018, Dr. Hellman appeared on behalf of ICNU at an MSP Workgroup meeting. This
20 meeting was also attended by the PUC and other MSP stakeholders. (#PR2).

21 22 Conflict of Interest Disclosures

23 When Dr. Hellman returned to the PUC as an economist on October 30, 2017, on a limited
24 duration contract, he completed a written public disclosure record which identified that he
25 was engaged in private work on energy regulation matters outside of the PUC's
26 jurisdiction. In a follow-up e-mail to Human Resources on October 31, 2017, he provided
27 additional information:

28
29 The project is working for the Industrial Customers' of Northwest Utilities reviewing
30 the Hydro One/Avista Acquisition application before the Washington Utilities and
31 Transportation Commission. ICNU represents large electricity use customers. In

1 Oregon, a similar application was filed and of note is that Avista only provides
2 natural gas service. Regardless, I informed Jason E [Jason Eisdorfer] of this
3 activity and Jason directed me to not work on or discuss the issue/filing with other
4 PUC staff. (#INV1).

5
6 On January 1, 2018, before returning to the PUC for the final time, Dr. Hellman e-mailed
7 Jason Eisdorfer and Michael Dougherty, PUC's Chief Operating Officer, informing them
8 that he was continuing to work for ICNU on the Washington Avista/Hydro One matter and
9 that ICNU intended to hire him for several projects including the MSP and PacifiCorp
10 allocations as well as a PGE rate case later that year. He wrote that Davison wanted him
11 to attend the January MSP workshop meetings. (#INV1).

12
13 When he returned to the PUC on the final limited duration contract on January 10, 2018,
14 Dr. Hellman completed another public disclosure record. His written disclosure stated:

15
16 I have been hired by Davison Van Cleeve law firm to work on the Hydro One
17 Application in Washington and a generic rate spread collaborative and to work on
18 PacifiCorp allocations for the customer group ICNU. I have not signed any
19 commitment letter on the last two projects listed above. (#INV1).

20
21 Dr. Hellman's limited duration contract with the PUC, signed January 10, 2018, included
22 the following addendum:

23
24 Marc will not work on any matter pertaining to the current Hydro One acquisition
25 docket or any matter relating to PacifiCorp system allocation including MSP. This
26 prohibition includes oral communication and access to any document in PUC
27 possession related to these matters. (#INV2).

28
29 Confidential Information

30 As an Administrator, Dr. Hellman had access to confidential information and documents
31 at the PUC, including confidential information related to the MSP and UM 1050. According

1 to Jason Eisdorfer, Dr. Hellman's supervisor at the PUC, Dr. Hellman's access at the PUC
2 to confidential information and documents relating to the MSP ended on September 22,
3 2017:

4
5 When Dr. Hellman ceased to be Administrator of the Rates, Finance, and Audit
6 Division in late September of 2017, he no longer served as the lead on the UM
7 1050 (Multi-State Process or MSP) docket. Upon returning to the PUC from late
8 October to December 19, 2017, on a limited duration contract, Dr. Hellman ceased
9 working in an active role in that proceeding. He no longer attended MSP meetings.
10 The new Administrator and other staff attended MSP meetings and worked on
11 MSP issues. Dr. Hellman only served as an historian on MSP for the new
12 Administrator and did not engage in MSP on-going issues. (#PR6).

13
14 Mr. Eisdorfer went on to explain that the PUC "treats confidential documents carefully,
15 therefore because he was not working on MSP from the time that Dr. Hellman returned
16 to the PUC on January 10, he would not have had access to confidential documentation
17 utilized by other staff." (#PR6).

18
19 Within the MSP Workgroup, PacifiCorp shares access to confidential information and
20 documents with all stakeholders, not only the PUC. Participation in the MSP Workgroup
21 is open to "any utility regulatory agency, customer, and other person or entity potentially
22 affected by inter-jurisdiction allocation procedures that expresses an interest in
23 participating." To protect confidential information in the MSP, PacifiCorp has participants
24 sign non-disclosure agreements. Additionally, as part of the MSP Intervenor Funding
25 Agreement, Oregon parties, including ICNU, agree that any Protective Order issued in
26 UM 1050 that is currently in effect will also govern the acquisition and use of confidential
27 information in the MSP. (#PR3 and #PR5).

28
29 Representing ICNU, Dr. Hellman signed PacifiCorp's MSP non-disclosure agreement on
30 January 2, 2018. As indicated above, he then attended the January 17, 2018 MSP
31 Workgroup meeting. Following that meeting, PacifiCorp provided written notice to

1 Davison attorney Tyler Pepple that it did not consent to Dr. Hellman's non-disclosure
2 agreement or his participation in the MSP Workgroup as a representative of ICNU. (#PR2
3 and #INV3).

4
5 Corollary Proceeding

6 Because PacifiCorp objected to Dr. Hellman's participating on behalf of ICNU in the MSP,
7 ICNU filed a Motion in UM 1050 on January 26, 2018. ICNU's motion requested, first,
8 that the PUC find Dr. Hellman may represent ICNU in the MSP Workgroup and receive
9 confidential information, and second, that the PUC grant permission, under OAR 860-
10 001-0330(2), for Dr. Hellman to appear as a witness on behalf of ICNU in UM 1050. OAR
11 860-001-0330 is a PUC administrative rule that prohibits former PUC employees from
12 appearing on behalf of other parties in contested cases in which they took an active part
13 on the Commission's behalf, unless the Commission gives written permission. ICNU later
14 withdrew the second request for a finding that Dr. Hellman be permitted to appear as a
15 witness in UM 1050. (#INV3).

16
17 PacifiCorp filed a reply on February 12, 2018 opposing ICNU's motion. Among its
18 arguments, PacifiCorp raised Dr. Hellman's potential violation of ORS 244.040(4) stating,
19 "PacifiCorp believes Dr. Hellman may be incentivized to divulge confidential information
20 gained in the course of his employment by the Commission for the benefit of ICNU to
21 further his independent consulting business." PacifiCorp's reply goes on to posit:
22 "PacifiCorp believes that even if Dr. Hellman's association with ICNU has not already
23 created a conflict of interest, there is a strong possibility that a conflict of interest may
24 occur in the future." (#INV4).

25
26 On April 16, 2018, Administrative Law Judge Sarah Rowe issued a ruling in the corollary
27 proceeding. She held that the PUC has no legal basis to exclude Dr. Hellman from
28 participating in the informal MSP Workgroup meetings, but also "cannot require
29 PacifiCorp to share confidential information with Dr. Hellman because the Commission
30 has no role in determining access to PacifiCorp's confidential information in its MSP
31 Workgroup meetings." Notably, in her ruling Judge Rowe distinguished the MSP

1 Workgroup from the PUC, saying the "MSP Workgroup process is neither a Commission-
2 led nor a Commission-directed process." (#INV5).

3
4 **CONCLUSIONS:** Dr. Marc Hellman was an employee of the Oregon Public Utility
5 Commission during the time period relevant to this investigation. As a PUC employee, Dr.
6 Hellman was at all relevant times a public official as defined in ORS 244.020(15) and
7 subject to compliance with the provisions of ORS Chapter 244.

8
9 CONFLICT OF INTEREST

10 A statutory conflict of interest is any action, decision, or recommendation made by a
11 person in their official capacity as a public official, the effect of which would be (actual) or
12 could be (potential) to the financial benefit or detriment of themselves, a relative, or a
13 business with which they or a relative are associated. Public officials, such as Dr.
14 Hellman, when met with a conflict of interest in the course of their official duties, must
15 provide their appointing authority with written notice of the nature of their conflict and
16 request that the appointing authority dispose of the issue giving rise to the conflict. [ORS
17 244.020(1) and (13), ORS 244.120(1)(c)].

18
19 When Dr. Hellman returned to the PUC on October 30, 2017, he faced a potential conflict
20 of interest because he was representing ICNU in the Washington Hydro One/Avista
21 matter. ICNU is a domestic non-profit corporation, but Dr. Hellman was not associated
22 with it as a member, board director or in a nonremunerative capacity. ICNU is a business
23 as defined in ORS 244.020(2). Rather than being employed by ICNU, Dr. Hellman
24 contracted with Davison to assist it in its representation of ICNU. In so doing, Dr. Hellman
25 may have been acting as an agent of ICNU. For purposes of the conflict of interest
26 statutes, a business with which one is associated includes a business for which one is an
27 agent. [ORS 244.020(3)]. Thus, even though Dr. Hellman was not an ICNU employee, it
28 was a business with which he was associated.

29
30 Because an application similar to the Washington Hydro One/Avista matter was filed in
31 Oregon it was foreseeable that ICNU could be interested in the Oregon application and

1 could realize a financial benefit or detriment as a result of any PUC action, decision or
2 recommendation in that matter. Since ICNU was a business with which Dr. Hellman was
3 associated, this could create a potential conflict of interest for him. Absent disclosure and
4 disposition of the conflict, Dr. Hellman may have been in a position, as an economist at
5 the PUC, to make recommendations in that matter. Dr. Hellman handled this potential
6 conflict of interest by disclosing it to Jason Eisdorfer and to Human Resources. He
7 completed a public disclosure record and followed it up with an e-mail detailing the nature
8 of his potential conflict. Mr. Eisdorfer, Dr. Hellman's appointing authority, then disposed
9 of the potential conflict of interest by directing that Dr. Hellman could not work on or
10 discuss the Hydro One/Avista issue with any PUC staff.

11
12 Dr. Hellman faced this same conflict of interest when, in January 2018, he returned to the
13 PUC for the final time. At this point he also faced a second potential conflict of interest as
14 he was beginning to work for ICNU on the MSP Workgroup and PacifiCorp's cost
15 allocations. When negotiations in the MSP Workgroup produce an updated cost allocation
16 methodology, it gets filed in UM 1050 and subject to the PUC's review and approval; thus
17 an action, decision or recommendation will eventually be made by the PUC that would be
18 to the financial benefit or detriment of a business (ICNU) with which Dr. Hellman was
19 associated. Again, without appropriate disclosure and disposition, Dr. Hellman may have
20 been in a position, as a PUC economist, to make recommendations in that matter.

21
22 On January 1, 2018, Dr. Hellman disclosed his potential conflicts of interest in an e-mail
23 to Jason Eisdorfer and Michael Dougherty. In that e-mail Dr. Hellman specifically made it
24 known that Davison was hiring him to work on the PacifiCorp cost allocations and "wanted
25 him to attend the January [MSP] workshop meetings." When he was hired back at the
26 PUC on January 10, 2018, Dr. Hellman subsequently submitted a written disclosure
27 statement identifying these potential conflicts of interest. Jason Eisdorfer disposed of both
28 conflicts by including an addendum to Dr. Hellman's contract, directing that Dr. Hellman
29 was prohibited from working at the PUC on any matter relating to the Hydro One
30 acquisition or PacifiCorp cost allocations, including the MSP, and that this prohibition
31 included oral communications and access to any documents in the PUC's possession. In

1 effect, the PUC had walled off Dr. Hellman from these matters in order to dispose of his
2 conflicts of interest.

3
4 In both cases, Dr. Hellman's written disclosures and Mr. Eisdorfer's disposition of these
5 conflicts of interest appear to satisfy the requirements of ORS 244.120(1)(c).

6
7 PROHIBITED USE OF OFFICE

8 ORS 244.040(1) prohibits public officials from using or attempting to use their official
9 position to obtain a financial gain or avoid a financial detriment for themselves, their
10 relative or household member, or any business with which they, a relative or household
11 member, are associated, if the financial benefit would not otherwise be available but for
12 their holding of the official position. This prohibition applies regardless of whether a public
13 official has disclosed a conflict of interest under ORS 244.120. [ORS 244.040(7)].

14
15 Oregon Government Ethics law does not prohibit a public official from engaging in private
16 income producing activity or working for a private employer while continuing in their
17 position as a public official, but it does set forth the following limits and restrictions:

- 18 • The public official must not conduct private business on their government
19 agency's time, or use any of their government agency's resources, equipment,
20 records, or personnel to engage in private business interests.
- 21 • The public official may not use their public position to take official action that
22 could have a financial impact on a private business with which they, a relative,
23 or household member are associated.
- 24 • The public official may not use their official position to create new employment
25 opportunities.
- 26 • While employed as a public official and even after leaving public employment,
27 the public official may not use confidential information gained through their
28 public position to financially benefit themselves, a relative or household
29 member, or any business with which any are associated.

30 ///

31 ///

1 In this case, Dr. Hellman engaged in private consulting work before, during and after his
2 last two limited duration contracts with the PUC in the fall of 2017 and in January of 2018.

3 The investigation sought to determine:

- 4 • whether Dr. Hellman used any PUC resources to further his private consulting
5 work;
- 6 • whether he used his official position to obtain these private consulting jobs;
- 7 • whether he represented any of his consulting clients before the PUC; and
- 8 • whether he used confidential information for his personal benefit while
9 employed at the PUC or to benefit any person after he left the PUC.

10 11 Use of PUC Resources

12 Other than expressing concern over the possibility that Dr. Hellman could reveal
13 confidential information to his clients (addressed below), the complaint did not allege any
14 misuse of PUC resources. Commission staff found no information to indicate that Dr.
15 Hellman used any PUC resources for his private consulting engagements. We were able
16 to confirm that Dr. Hellman used his private e-mail account to communicate with Davison
17 and ICNU. He also used his private e-mail account to register for the document vault used
18 in the Washington Hydro One/Avista matter.

19 20 Solicitation of Future Employment

21 ORS 244.040(3) provides that a “public official may not solicit or receive, either directly or
22 indirectly, and a person may not offer or give to any public official any pledge or promise
23 of future employment, based on any understanding that the vote, official action or
24 judgment of the public official would be influenced by the pledge or promise.”

25
26 In this case, on September 21st, the day before his final day as an Administrator at the
27 PUC, Dr. Hellman informed Davison of his pending resignation and indicated that he
28 would be available for future consulting engagements. While Dr. Hellman was still a public
29 official, by one day, when this solicitation of future employment was made, there is no
30 information to indicate that the solicitation was based on an understanding that the offer
31 of future employment would influence Dr. Hellman’s actions or judgment as a public

1 official. To the contrary, the e-mail made it clear that Dr. Hellman would no longer be a
2 PUC Administrator and would thus be in no position to take any official actions. When he
3 did subsequently return to the PUC, as an economist, not an administrator, the PUC had
4 walled him off from designated matters to prevent him from taking any such official actions
5 in the cases where his conflicts of interest arose.

6
7 Davison attorney Tyler Pepple asserted that "it was always understood that [Dr. Hellman]
8 would only consult for ICNU if and when he ceased acting as Administrator for the PUC
9 staff." He went on to say:

10
11 ICNU's interest in Dr. Hellman is related exclusively to his understanding of utilities
12 and utility regulation and his long history with the regulatory process. ICNU has no
13 reason to believe Dr. Hellman is in any position to unduly influence the PUC or to
14 achieve any particular benefit for ICNU, nor has ICNU requested that he do so. Dr.
15 Hellman's consulting arrangements with ICNU are for an hourly fee that is earned
16 regardless of the outcome of a case. (#PR3).

17
18 With a Ph.D. in economics and 37 years of experience in utility regulation, Dr. Hellman is
19 undoubtedly of considerable value as a consultant. There is no information, however, to
20 indicate that the value ICNU and others place upon Dr. Hellman is based on anything
21 other than his knowledge and experience. There is also no information to indicate that Dr.
22 Hellman solicited or accepted future employment based on an understanding that his
23 actions or judgment as a public official would be influenced.

24 25 Representation of Clients Before PUC

26 ORS 244.040(6) prohibits a public official from attempting to represent or representing a
27 client for a fee before the governing body of the public body of which the official is a
28 member. For most public officials, the prohibition ends when their public employment
29 ends. For some public officials, however, the prohibition may extend beyond the period
30 of the public official's employment by the public body. ORS 244.045, for example,
31 prohibits Public Utility Commissioners, among others, from appearing as a representative

1 before their former agency for two years after ceasing to hold their official position. Dr.
2 Hellman, however, is not a PUC Commissioner subject to compliance with ORS 244.045.
3 Other statutes and administrative rules go even further, but are outside of our
4 Commission's jurisdiction. PUC has an administrative rule indefinitely prohibiting former
5 employees from appearing on behalf of other parties in contested case proceedings in
6 which the former employees took an active part on the PUC's behalf. [OAR 860-001-
7 0330(1)].

8
9 For purposes of this case, however, ORS 244.040(6) prohibits a public official, such as
10 Dr. Hellman, from representing private clients before the governing body of their public
11 agency while still employed by that agency. Information in this case indicates that on
12 January 17, 2018, Dr. Hellman represented ICNU in an MSP Workgroup meeting, while
13 he was still employed at the PUC. During the investigation, Commission staff sought to
14 determine whether by representing ICNU at this January 17th MSP Workgroup meeting
15 Dr. Hellman was representing a client before the PUC, the public body of which he was
16 still a member.

17
18 The Administrative Law Judge's ruling in the corollary proceeding is dispositive on this
19 issue. In holding that the PUC has no legal basis to exclude Dr. Hellman from participating
20 in the MSP Workgroup meetings, Judge Rowe distinguished the MSP Workgroup from
21 the PUC. She found that the PUC could neither exclude Dr. Hellman from the MSP
22 Workgroup process nor require PacifiCorp to share confidential information with him
23 because the MSP Workgroup is "neither a Commission-led nor a Commission-directed
24 process."

25
26 Because the MSP Workgroup is not a PUC proceeding and is not subject to PUC control,
27 Dr. Hellman's representation of ICNU at the January 17th meeting did not constitute
28 representing a client before the public body of which he was a member. Dr. Hellman's
29 participation in the MSP Workgroup meeting therefore did not violate ORS 244.040(6).

30 ///

31 ///

1 In the corollary proceeding, in addition to seeking a ruling authorizing Dr. Hellman's
2 participation in the MSP Workgroup meetings, ICNU's motion sought a ruling under OAR
3 860-001-0330(1) that the PUC authorize Dr. Hellman to appear as a witness on behalf of
4 ICNU in UM 1050 when or if a contested case were opened. On January 26, 2018, when
5 ICNU filed this motion, Dr. Hellman was still a PUC employee. His limited duration
6 contract was due to end about two weeks later, on February 15th, and in fact, his
7 employment actually ended on January 30th. ICNU later withdrew this request in the
8 corollary proceeding. The request would not appear to violate ORS 244.040(6). At the
9 time the request was made, there was no contested case pending in which Dr. Hellman
10 could appear, and given the short time frame it was unlikely that there would be an
11 opportunity for him to appear while still employed at the PUC.

12

13 Use of Confidential Information

14 ORS 244.040(4) prohibits public officials from attempting to further or furthering their
15 personal gain through the use of confidential information gained in the course of or by
16 reason of holding their official position. Confidential information includes any record
17 exempt from public disclosure or inspection under state law, or any information obtained
18 in the course of acting as a public official that is not otherwise publicly disclosed. [OAR
19 199-005-0035(5)]. ORS 244.040(5) extends this prohibition to persons who have ceased
20 being public officials, prohibiting the use or attempted use of such confidential information
21 for the personal gain of any person.

22

23 PacifiCorp argues that Dr. Hellman should be prohibited from consulting for ICNU
24 because his role in previous UM 1050 actions and his former position as a PUC
25 Administrator mean he had "access to privileged legal advice and confidential internal
26 positions relating to PUC Docket No. UM 1050 and PacifiCorp's cost allocation
27 negotiations." As a PUC Administrator, Dr. Hellman did have access to confidential
28 information and documents; that access ended in September 2017 when he ceased being
29 an administrator. Nonetheless, although Dr. Hellman no longer had such access, and
30 even after he ceased being a PUC employee, the statutory prohibition on Dr. Hellman's
31 use or disclosure of confidential information continues and remains in effect today.

1 In its complaint to the Commission and in its reply filed in the corollary proceeding,
2 PacifiCorp expressed great concern that Dr. Hellman had access to and could reveal
3 confidential information to ICNU and others, yet in neither proceeding has PacifiCorp
4 identified any instance when Dr. Hellman used or revealed such confidential information.
5 As a participant in the MSP Workgroup meeting on January 17, 2018, Dr. Hellman may
6 have been exposed to additional confidential information, but that information would not
7 have been gained in the course of or by reason of holding his official position. Therefore,
8 it could not form the basis of an ORS 244.040(4) violation.

9
10 In this case, there is no information to indicate that Dr. Hellman has attempted to or
11 actually used any confidential information gained in the course of his official duties.
12 Instead, PacifiCorp appears to speculate about the potential of disclosure rather than any
13 existing inappropriate use or disclosure, saying that it "believes Dr. Hellman may be
14 incentivized to divulge confidential information." There must be more than speculation or
15 anticipation of future disclosures for there to be a preponderance of evidence of a
16 statutory violation.

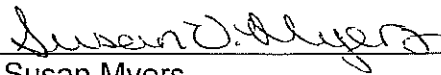
17
18 Information available during the investigation is insufficient to establish that Dr. Hellman
19 used PUC resources to further his private consulting work; that he used his official position
20 to obtain such consulting work; that he represented clients before the PUC; or that he
21 attempted to use confidential information for his personal benefit or for that of his private
22 clients. Consequently there is insufficient information to indicate that Dr. Hellman failed
23 to comply with the prohibitions in ORS 244.040.


24
25 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should move to
26 dismiss the complaint. [Motion 7].

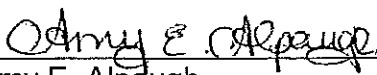
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1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Matthew McVee, received on 2/20/18
- 3 #PR2 Response submitted by Marc Hellman, dated 3/5/18
- 4 #PR3 Letter from Tyler C. Pepple, received on 3/5/18
- 5 #PR4 Additional information from Respondent, email received on 3/12/18
- 6 #PR5 Additional information from Complainant, email received on 3/15/18
- 7 #PR6 Email responses from Jason Eisdorfer, received on 3/15/18
- 8 #INV1 Emails from PUC and public disclosure records
- 9 #INV2 Limited Duration Contract, dated 1/18/18
- 10 #INV3 ICNU's Motion to Determine the Rights and Status of its Expert Consultant,
11 filed in UM 1050 on 1/26/18
- 12 #INV4 PacifiCorp's Reply to ICNU's Motion, filed in UM 1050 on 2/12/18
- 13 #INV5 Ruling on ICNU's Motion, issued in UM 1050 by Administrative Law Judge
14 Sarah Rowe on 4/16/18

PREPARED BY  12-5-18
Susan Myers Date
Investigator

APPROVED BY  12/6/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

March 5, 2018

Government Ethics Commission
ATTN: Michael Stanway Thornicroft, J.D., Investigator
3218 Pringle Rd SE, STE 220
Salem, OR 97302-1544

RE: Marc Hellman
Case No. 18-065EMT

Dear Mr. Bersin:

Thank you for your correspondence alerting me to a complaint that was filed by PacifiCorp and explaining the steps the Ethics Commission follows in deciding whether sufficient cause exists to conduct an investigation. To aid in the Commission deliberations, I am attaching copies of all the correspondence I have identified relating to this matter. I would also like to provide some background on my State service, PacifiCorp multi-state allocations process, as well as discuss what may be some pertinent points:

State Service Background

I was first employed by the State of Oregon, in August of 1979 as a utility analyst, in the Utility Program, for the Public Utility Commission of Oregon (OPUC). After several years of employment, I was promoted to a senior economist and in the 1990s promoted to management service. Around 1999, I became Administrator of the Economic Research and Financial Analysis Division and later, after some agency reorganization, eventually the Administrator of the Energy Rates, Finance and Audit Division. Also beginning in 2008, I was simultaneously employed as an economics instructor at Oregon State University (OSU) and the PUC was kind enough to agree on a schedule that allowed me to fulfill both positions. In 2016, I was informed by OSU that my employment would end in September 2016, at the close of Summer Term as my last term, as they were reducing the number of full-time instructors in the Economics Department. Given the methods by which PERS calculates retirement pay, I concluded that it would be best to retire from state service in September 2016.

Given that I still valued and enjoyed working for the PUC, I expressed an interest in returning to the OPUC after retirement. The OPUC offered, and I accepted, to employ me in my former position as Administrator for the remaining portion of 2016. I entered into a new limited term position for 2017, continuing to work for the OPUC, as Administrator, on a part-time basis. My supervisor, Jason Eisdorfer, Utility Program Director, made it clear that he would be actively searching for a replacement to take over the duties of Administrator. However, Jason was having difficulty obtaining a satisfactory replacement.



I knew my part-time employment with the OPUC would end at some point as well. I also knew that as a state retiree, I was limited to working less than 1040 hours in any calendar year. Therefore, in 2017, I began to look into becoming a consultant. My first employment was to partner with a long-time acquaintance Robert Young, of Economists.Com and Dan Jackson of Wildan, in a consulting opportunity in Saipan for the CUC—the utility that provides services in Saipan. The OPUC knew of this employment before I began working on the Saipan consulting project.

I also had discussions with my supervisor Jason Eisdorfer in 2017 about what consulting I could do with Industrial Customers of Northwest Utilities (ICNU) and separately with Brad Mullins an independent consultant, who also does work with ICNU and other organizations. In 2017, Davison Van Cleve, a law firm representing ICNU, contacted me to see if I would be available to work in Washington involving Puget Sound Energy. Puget Sound Energy does not provide service in Oregon and is not regulated by the OPUC. Even so, Jason Eisdorfer told me, as Administrator, that I could not undertake that consulting role, even though it was regarding a utility that does not provide service in Oregon. However, such a prohibition would likely change if and when I am no longer an OPUC Administrator.

Around August 2017, Jason Eisdorfer informed me that he would be replacing me as Administrator soon, likely by September of 2017. In September (on the 25th), I was replaced by John Crider who moved from another administrator position to become Administrator of the Energy Rates, Finance and Audit Division. I had some personal travel scheduled in September and so I tendered my resignation to be effective on September 22, 2017. Another factor in my decision to resign in September was to have a break in half-time service to ensure I did not exceed the 1040 hour limitation for PERS retirees. I notified Davison Van Cleve on September 21, 2017, that I was no longer going to be administrator and so I could look into consulting projects they might have an interest in using my services. Davison Van Cleve identified several projects for ICNU, including an upcoming OPUC collaborative relating to Senate Bill 978, and another case in Washington related to a Canadian company's (Hydro One) acquisition of Avista Corp., a combined natural gas and electric utility that has operations in Washington and Oregon, among other states. They also identified a case before the Nevada Public Utilities Commission involving a different client of theirs.

The OPUC hired me again in the role of a utility analyst, not as an administrator, in a limited duration position, in October 2017. My duties were to be a resource to the Energy Rates, Finance and Audit staff as well as train the new administrator John Crider, including providing background detail on PacifiCorp allocations issues as John Crider was taking over my role and responsibilities. Jason Eisdorfer, again my supervisor, also directed me to provide seminars on various topics to the Utility Program energy staff. Given that I was working for ICNU on the Hydro One application in the State of Washington to acquire Avista, PUC staff was notified that was a topic not to be discussed with me. I resigned again in early December 2017 as my limited-term duration position was going to end on December 31, regardless; and, I had personal travel plans mid-December and my daughter and grand-daughter were going to visit me in late December.

In late December, I discussed with Davison Van Cleve, what opportunities they might want me to contribute to in 2018. The PacifiCorp multi-state allocations discussions that is the source of the PacifiCorp complaint, was one of the projects identified. In January 2018, I was hired one last time by the OPUC for perhaps through the end of February to provide training to OPUC staff and advise the newly hired administrator. Before being hired, I informed Jason Eisdorfer and Michael Dougherty (Chief Operating Officer for the OPUC) that I would likely consult for ICNU for the PacifiCorp multi-state allocations and potentially for a possible case involving Portland General Electric and inquired as to whether that changed the OPUC thinking of rehiring me. The OPUC still wanted to hire me but we had the understanding that I would not discuss those issues with Staff or counsel for Staff.

At the direction of Jason Eisdorfer, I resigned from the PUC as of January 30, 2018. The resignation was due to my commencement of work for ICNU on SB 978. This investigation involves all of the Commission activities and so that conflict could not be "walled off". I should point out that I have not been involved in any discussions or activities at the OPUC related to SB 978. In addition, PacifiCorp was objecting to my working for ICNU on multistate allocations. Leaving the PUC was thought to remove some of the concerns PacifiCorp might have, even though I had already been "walled off" from PacifiCorp's multi-state discussion.

Additional Points specific to PacifiCorp's Complaint

- My consulting arrangement with ICNU on PacifiCorp's multi-state process (MSP) is in no way tied to any particular result or specific direction provided by ICNU. In my discussions with ICNU, the organization has not even identified what its litigation position is, other than a general intention to achieve a favorable result for its members. As you can see from the CUB comments submitted to the OPUC, they too feel I would provide a valuable service representing Oregon's interest. PacifiCorp is actively opposing my participation in the collaborative workshops held with parties from other states. I do not possess the ability to leverage my past role at the PUC to obtain some behind-the-scenes advantage for ICNU or achieve some quid-pro-quo result.
- I did not use my former position as Administrator as the basis to solicit work for ICNU. My interest in working for Davison Van Cleve and its clients such as ICNU was based on knowing my role as Administrator was coming to an end. At no time, was there ever any discussion on obtaining future employment by ICNU through advocating some position advantageous to ICNU while being employed as an Administrator for the OPUC, or even after I was rehired as an analyst by the OPUC.
- I am not aware of any information marked "Confidential" by PacifiCorp that has been provided to me by ICNU. The current workshops held by PacifiCorp are in a non-contested case format where parties are free to discuss issues with other parties and I believe there have been discussions to date. Given my background in allocations, and utility regulation, and other parties' long history on working on these issues, it is hard to imagine anything secret that I could divulge to ICNU that they do not already know.
- Any confidential information provided by PacifiCorp relating to the various multi-state discussions and contested case hearings that were available to me as an OPUC employee

were also available to ICNU. That is, ICNU can and did seek PacifiCorp confidential information provided in the multi-state forums and contested cases.

- PacifiCorp cites 244.040(6) and claims that it might prohibit me from representing a client before the governing body of which I am a member. It is not clear to me as to how that is applicable to me. I am no longer employed by the OPUC, having resigned for the last time effective January 30, 2018. I did not represent ICNU before the Commission prior to January 30, 2018, and have never represented ICNU in MSP-related matters before the Commission. I am not and have never been a Commissioner at the OPUC. I do hope that in the future I may appear before the Oregon Commission on behalf of ICNU in a contested case, but that has yet to occur.
- Also, PacifiCorp cites 244.120(c), which requires a public official to notify the person who appointed the public official of a potential conflict of interest. I have notified the PUC of potential conflicts of interest. As evidence of that were discussions with Jason Eisdorfer of the possibility of working for ICNU in the Washington Puget rate case. Jason informed me that I could not do that work for ICNU while holding the position on Administrator. I also informed Jason of my intention to represent ICNU in MSP related matters in 2018 and was accordingly “walled off” from these matters when I worked in an advisory role for the OPUC in 2018.
- PacifiCorp has also stated that I was present during internal OPUC meetings that included privileged attorney advice. Over my nearly 40 years at the OPUC, that contention is undoubtedly true. However, as noted above, my consulting role for ICNU is in no way tied to my access to this information and at no time has ICNU ever asked me about any internal OPUC ideas or discussions. In fact, I am unaware of any attorney-client privileged information related to PacifiCorp’s MSP that has not ultimately been expressed in workshop meetings or through the legal briefing process of the contested case dockets. Simply put, I have no ability to influence the OPUC other than through advocacy of positions in an open process, or to provide ICNU with inside information that ICNU representatives cannot obtain through other means.
- PacifiCorp also states that I possess knowledge of settlement positions that give me a means to leverage that knowledge in outside employment. I respectfully disagree. All of the settlements reached in the PacifiCorp allocations arena have been amply discussed in legal briefs and testimony filed with the OPUC in contested case dockets detailing the settlements and provides analysis supporting the settlements as sound and reasonable. This information is a necessity as the OPUC cannot simply adopt a settlement without a solid and sound basis justifying the agreement.
- I also would like to note:
 - I did not conduct private business on public time—my schedule at the PUC was somewhat flexible, was only half-time, and I accrued vacation at almost 10 hours a month.
 - I did not use public supplies or facilities to carry out private business—I have a few newer personal computers to conduct analysis, my i-phone serves as a hot spot, and have a gmail address to communicate (drmarchellman@gmail.com). I also set up a private email account drmarchellman@mhenergyeconomics.com

- o I did not carry out some favor to Davison Van Cleve as a precursor/requirement/request to being hired by the law firm or any of its clients.
- o There is no confidential information being used a means to obtain a benefit—any PacifiCorp confidential information is also available to ICNU.
- o I notified my supervisor of any potential conflict of interest—please see my attached emails.

Timeline of Events

<u>Approximate Date</u>	<u>Action</u>
July 12, 2016	Inter-office memo to Jason Eisdorfer to resign with last day August 31, 2016. Offer to remain in position until a replacement is found.
September 1, 2016	Offer by OPUC for limited-duration appointment as Administrator of Energy Rates, Finance and Audit Division effective September 1 and ending on or before December 31, 2016.
December 23, 2017	Receive OPUC letter of offer of limited term duration position beginning January 3, 2017 through February 28, 2017.
January 3, 2017	Continue role of Administrator of Energy Rates, Finance and Audit Division, working on a half-time basis.
February 24, 2017	Awarded contract by CUC of Saipan to update rule language and employment rules. Team initially includes Stacy Wren of OPUC HR who requested to be replaced on February 15 and drops off of team.
August 22, 2017	Provide notice of resignation from PUC effective September 22, 2017. My role of representing OPUC at PacifiCorp allocations workshops ends.
September 1, 2017	Invite Jesse Cowell (Davison Van Cleve) and Brad Mullins (Consultant for ICNU) to be on team on bid to provide consulting to Guam Power Authority
September 21, 2017	Email ICNU notifying them my role as Administrator is ending September 22 and am available for employment.
September 22, 2017	Resign from OPUC.
September 25, 2017	John Crider becomes Administrator of Energy Rates, Finance and Audit Division.
October 2, 2017	Meet with Jesse Cowell and Tyler Pepple
October 2, 2017	Receive offer email from Tyler Pepple to work on Nevada Power rate case advocating for residential net metering customers.

October 2017 Rehired by OPUC as technical advisor to staff and train John Crider.

October 9, 2017 Brad Mullins introduces me to Ed Maddox, a solar developer with a project in South Dakota who needs assistance reviewing utility avoided cost calculations.

October 12, 2017 Brad Mullins introduces me to Lisa Murphy of South Dakota Intrastate Pipeline Company who needs assistance with general rate case filing in South Dakota.

October 17, 2017 Ask Jesse Cowell how PacifiCorp allocations meetings are going and that maybe I will be present at the October meetings as well.

October 18, 2017 Execute agreement to provide consulting services to South Dakota Intrastate Pipeline Company.

October 19, 2017 Offer letter from ICNU to work on review of Hydro One application in Washington to acquire Avista.

October 20, 2017 Offer letter to work for 174 Power Global building a solar panel project in South Dakota.

October 23, 2017 Discuss working on PacifiCorp allocations with Jason Eisdorfer. Plan is to advise staff on allocations issues through 2017 and then potentially work for ICNU on allocations issues in 2018. I do not attend October meetings for either OPUC or ICNU.

October 23, 2017 Discuss conversation with Eisdorfer with Jesse Cowell of ICNU about availability in 2018 to work on allocations issues.

October 20, 2017 Hydro One and Avista ask about my role at OPUC given my participation at Washington merger application. No opposition made.

October 30, 2017 Re-employed by the OPUC as an analyst assisting staff, advise on PacifiCorp multi-state allocations and mentor new Administrator John Crider on general rate case topics.

December 9, 2017 Contact ICNU regarding plans for 2018 with ICNU

December 10, 2017 Discuss by phone with Jesse Cowell plans for 2018.

December 11, 2019 Send Jason Eisdorfer email of notice of intent to resign effective December 19, 2017.

December 19, 2017 Resign from PUC.

December 28, 2018 Discuss possibility or reemployment at OPUC in 2018 as a resource for staff and help train John Crider.

January 1, 2018 Notify Jason Eisdorfer and Michael Dougherty of continuing to work on Hydro One merger application filed in Washington and possibly a rate design docket in Washington as well as work for ICNU on PacifiCorp allocations workshop process.

January 2, 2018	Jason Eisdorfer expresses interest in having me come back to PUC to provide training seminars.
January 10, 2018	Begin new limited duration appointment working for the PUC. Mentor staff and help train John Crider and provide seminars on regulatory topics. Topics not to be discussed are Hydro One application to acquire Avista and PacifiCorp allocations.
January 15, 2018	Engagement letters executed (signed) for working for ICNU on PacifiCorp allocations and WUTC rate design.
January 17, 2018	Appear on behalf of ICNU at meeting with CUB and OPUC staff on PacifiCorp allocations.
January 17, 2018	PacifiCorp objects to my participation in multi-state allocations discussions.
January 17, 2018	Alert Jason Eisdorfer to PacifiCorp objections.
January 18, 2018	Execute amended limited duration agreement as temporary employee status was problematic in providing health insurance.
January 25, 2018	Notify Jason Eisdorfer of attending SB 978 workshop on behalf of ICNU.
January 25, 2018	Jason Eisdorfer states working on SB 978 is problematic as it entails all of regulatory issues and so employment at PUC must end earlier than anticipated.
January 27, 2018	Execute contract to represent ICNU in Oregon PUC docket UM 1854.
January 29, 2018	Jason Eisdorfer decides to end my appointment on January 30 to allow me to attend SB 978 meeting also clarifies for outside any confusion on PacifiCorp allocations.
January 29, 2018	Submit memo of resignation from OPUC.
January 30, 2018	Resign from the OPUC.
January 30, 2018	Attend SB 978 workshop on behalf of ICNU.
January 30, 2018	Email Ed Finklea of Northwest Industrial Gas Users (NWIGU) and Chad Stokes attorney on behalf of NWIGU expressing an interest in working for them.

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OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-100XMT

DATE: December 5, 2018

RESPONDENT: ANDERSON, Mike, Chair of the Board of Directors, Lane County School District #40

COMPLAINANT: Erin Tierney

RECOMMENDED ACTION: Dismiss Complaint

1 **SYNOPSIS:** Mike Anderson is the Chair of the Board of Directors of Creswell School
2 District and participated in an executive session relevant to this investigation. The focus
3 of this investigation was to determine if there was a preponderance of evidence to indicate
4 that the topics discussed in the executive session were statutorily authorized and that the
5 media's exclusion from the executive session was lawful.

6
7 A review of information indicates that the Creswell School District Board of Directors held
8 an executive session to consider a complaint from a student's guardian that was
9 escalated from the principal to the superintendent and then to the Board of Directors, per
10 the District's complaint policy. The guardian's initial complaint to the principal concerned
11 bullying of his student by other children, and when it was appealed to the superintendent,
12 it also contained a complaint about the principal's handling of the complaint. The
13 complaint contained confidential student medical information and information pertaining
14 to a student's educational program, records exempt from public inspection.

15
16 Information is sufficient to determine that Mike Anderson participated as a Board member
17 in an executive session held on 3/14/18 by the Creswell School District Board of Directors
18 to discuss legally permissible topics under ORS 192.660(2). Information is insufficient to

1 determine that the Board members violated ORS 192.660(4) by excluding the media from
2 attendance at the 3/14/18 executive session.

3

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

6

7 **“192.660 Executive sessions permitted on certain matters; procedures; news
8 media representatives’ attendance; limits.**

9 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from
10 holding executive session during a regular, special or emergency meeting, after the
11 presiding officer has identified the authorization under ORS 192.610 to 192.690 for
12 holding the executive session.

13 (2) The governing body of a public body may hold an executive session:

14 * * * * *

15 (b) To consider the dismissal or disciplining of, or to hear complaints or charges
16 brought against, a public officer, employee, staff member or individual agent who
17 does not request an open hearing.

18 * * * * *

19 (f) To consider information or records that are exempt by law from public
20 inspection.

21 * * * * *

22 (4) Representatives of the news media shall be allowed to attend executive sessions
23 other than those held under subsection (2)(d) of this section relating to labor negotiations
24 or executive session held pursuant to ORS 332.061(2) but the governing body may
25 require that specified information be undisclosed. * * *

26

27 **“192.685 Additional enforcement of alleged violations of ORS 192.660.**

28 (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to
29 have been committed by public officials may be made to the Oregon Government Ethics
30 Commission for review and investigation as provided by ORS 244.260 and for possible
31 imposition of civil penalties as provided by ORS 244.350.* * *

32 ///

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

3 * * * * *

4 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may impose
5 civil penalties not to exceed \$1,000 for violation of any provision of ORS 192.660.

6 (b) A civil penalty may not be imposed under this subsection if the violation occurred
7 as a result of the governing body of the public body acting upon the advice of the public
8 body's counsel.

9 * * * * *

10 (5) In lieu of or in conjunction with finding a violation of law or any resolution or imposing
11 a civil penalty under this section, the commission may issue a written letter of reprimand,
12 explanation or education."
13

14 **"332.061 Hearing to expel minor students or to examine confidential medical**
15 **records; exceptions to public meetings law.** Notwithstanding ORS 192.610 to 192.690
16 governing public meetings: (1) Any hearing held by a district school board or its hearings
17 officer on any of the following matters shall be conducted in executive session of the
18 board or privately by the hearings officer unless the student or the student's parent or
19 guardian requests a public hearing:

20 (a) Expulsion of a minor student from a public elementary or secondary school.

21 (b) Matters pertaining to or examination of the confidential medical records of a
22 student, including that student's educational program.

23 (2) If an executive session is held by a district school board or a private hearing is held
24 by its hearings officer under this section, the following shall not be made public:

25 (a) The name of the minor student.

26 (b) The issue, including a student's confidential medical records and that student's
27 educational program.

28 (c) The discussion.

29 (d) The school board member's vote on the issue.

1 (3) The school board members may vote in an executive session conducted pursuant to
2 this section.”

3
4 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
5 a preliminary review based on information in a signed complaint from Erin Tierney,
6 received on 4/13/18 (#PR1). Ms. Tierney, a reporter for The Creswell Chronicle, alleged
7 that Mike Anderson and five other members of the Creswell School District’s Board of
8 Directors (Board), may have violated executive session provisions of Oregon Public
9 Meetings law when participating in an executive session on 3/14/18. The Commission
10 found cause to investigate on 6/29/18 after considering the information developed in the
11 preliminary review. The focus of the investigation was to determine if there is sufficient
12 evidence to indicate that Mike Anderson and the other members of the Board participated
13 in an executive session when topics not authorized for executive session were discussed
14 and from which the media was excluded improperly. Mr. Anderson and Ms. Tierney have
15 been notified of the Commission actions in this matter. Both have been invited to provide
16 any information that would assist the Commission in conducting this investigation.

17
18 Ms. Tierney alleges in her complaint that on 3/14/18, the Board violated Oregon’s Public
19 Meetings Law by not allowing the media to attend an executive session when the media
20 had such a right, and not taking substantive meeting minutes that disclosed the nature of
21 the topics discussed during the executive session. This second allegation of inadequate
22 meeting minutes (ORS 192.650) is not within the Commission’s jurisdiction, but whether
23 the topic of executive session was permissible and the statutory prerequisites were met
24 are within the purview of the Commission.

25
26 The complaint states that after the regularly scheduled Board meeting on 3/14/18, an
27 executive session was held and that Board Chair Mike Anderson prohibited Ms. Tierney,
28 of The Creswell Chronicle, from attending. Ms. Tierney says that on 3/21/18 she met with
29 Mr. Hamilton (superintendent) and Mr. Anderson, and they presented her a booklet of
30 emails regarding a parent’s concerns about bullying. Ms. Tierney reviewed the materials
31 and found it did not contain “any meeting minutes or comparable information to 1) confirm
32 that the information in the emails was actually the topic of discussion, and 2) to confirm

1 whether the board met properly in executive session.” (#PR1)

2
3 The respondents in the complaint are represented by attorney, Rebekah R. Jacobson, of
4 the law firm Garrett Hemann Robertson, P.C. Ms. Jacobson provided a written response
5 to the Commission, along with exhibits, the entirety of which will be provided to the
6 Commission for its review. As part of her response to the Commission, Ms. Jacobson
7 provided background as to what led up to the executive session. (#PR2)

8
9 According to Ms. Jacobson, on 1/11/18, a formal complaint was filed with the Creswell
10 School District (the "District") administrator, alleging that a student felt unsafe at school.
11 This represented Step 2 of the District's Public Complaint Procedure. The administrator
12 reviewed the matter and provided a written decision. Following the decision, the student's
13 family filed a formal complaint with the superintendent, reiterating the family's safety
14 concerns; in addition, the family raised new allegations relating to the administrator's
15 handling of the initial complaint. This represented Step 3 of the District's Public Complaint
16 Procedure. The superintendent reviewed the matter and issued a written decision that
17 did not disturb the administrator's findings. On 2/13/2018, the student's family responded
18 by filing a formal complaint with the Board which was recognized as a Step 4 complaint.
19 (#PR2)

20
21 Following the formal complaint, the Board contacted the Oregon School Boards
22 Association (OSBA) for guidance on how to lawfully handle the matter at a public meeting.
23 OSBA attorney Spencer Lewis provided advice to the Board; as a result, the Board
24 elected to meet in executive session to discuss the complaint. The 3/14/2018 meeting
25 agenda provided that the Board would meet in executive session. According to Ms.
26 Jacobson,

27 “Consistent with the agenda, an executive session was called at the March 14,
28 2018 meeting. All observers were dismissed from the room at that time, including-
29 as permitted by ORS 192.660(4)-the media representative. Only Board members
30 and the Board secretary remained for the discussion of the Level 4 complaint.
31 Following that discussion, open session resumed, at which time the Board affirmed
32 the superintendent's findings and conclusions regarding the complaint.” (#PR2)

1 Ms. Jacobson says that following the meeting, the media representative requested a copy
2 of the executive session materials and minutes. The Board consulted with Mr. Lewis and
3 one of its other attorneys, Nancy Hungerford, for assistance in preparing a response. On
4 3/23/2018, the Board provided the media representative with a draft copy of the requested
5 executive session minutes which reiterated the original notice. (#PR2)

6
7 Ms. Jacobson attached the regular session minutes from that meeting which reflect that
8 the Board returned to regular session at 9:26pm and, at that time, "voted unanimously to
9 affirm the superintendent's decision. Following her review of the executive session
10 minutes, the media representative asserted that they did not meet the requirements of
11 Oregon Public Meetings Law" as she was not able to ascertain what was discussed in
12 executive session. (#PR2)

13
14 Regarding the allegation that the Board violated Public Meetings Law by excluding a
15 member of the media from the executive session, Ms. Jacobson writes,

16
17 "The Board did not violate ORS 192.660 when it excluded media representatives
18 from an executive session held on March 14, 2018. ORS 192.660 authorizes a
19 government body to hold an executive session for, among other purposes, '[t]o
20 consider information or records that are exempt by law from public inspection.'
21 ORS 192.660(2)(f). This includes any consideration of '[s]tudent records required
22 by state or federal law to be exempt from disclosure." ORS 192.398(4)." (#PR2)

23
24 While Ms. Jacobson admits that the news media are generally permitted to attend
25 executive session, such is not the case when the topic of discussion includes matters
26 pertaining to or examination of the confidential medical records of a student, including
27 that student's educational program. (See ORS 192.660(4) and ORS 332.061). Ms.
28 Jacobson says the "OSBA, in its publication Public Meetings Law, Board Meetings and
29 Executive Sessions: A Guide for Public School, Education Service District and
30 Community College Boards, has interpreted ORS 332.061 to allow exclusion when a
31 school board discusses either a student's medical records or a student's educational
32 records." Ms. Jacobson attached that portion of the manual to her response. (#PR2)

1 Ms. Jacobson contends that allowing the media to attend an executive session at which
2 any student education records are discussed would arguably violate FERPA, the Family
3 Educational Rights and Privacy Act if done in the absence of parental consent. She
4 argues that the Board excluded media representatives from its executive session on the
5 good faith belief that exclusion was required under ORS 192.006(2)(f), ORS 332.061, and
6 FERPA. According to Ms. Jacobson, "because that interpretation of the law is reasonable
7 and appropriate, it cannot be the subject of an ethics violation." (#PR2)

8
9 Ms. Jacobson also contends that even if the law did not allow the exclusion of media
10 representatives, the Board in this case should not be subject to civil penalties for the
11 alleged violation because it was acting on the advice of counsel. The Board, which is
12 made up of all volunteers, consulted its attorney, Mr. Lewis, to ensure compliance with
13 "the apparently conflicting provisions of Oregon Public Meetings Law and FERPA. Over
14 the course of the next month, the Board formulated its approach to the upcoming meeting-
15 and ultimately decided to proceed in executive session-based on the legal advice
16 received from Mr. Lewis." Ms. Jacobson submits that under the circumstances presented,
17 where the governing body's legal obligations are unclear and that body relied on the
18 advice of counsel to reconcile apparent conflicts in the law, the Commission may not
19 impose a civil penalty. (#PR2)

20
21 During investigation, Commission staff attempted to corroborate the assertion made by
22 Ms. Jacobson on behalf of the Board members that they had relied on the advice of
23 counsel in taking the alleged actions. Commission staff first attempted to obtain the
24 written advice provided by the OSBA attorney to the Board. Even though Ms. Jacobson
25 had asserted on behalf of the Board members that they had been relying on the advice
26 of counsel, she contends that the Board must formally consent to waive the privilege
27 before the privilege is waived. Although Commission staff did not necessarily agree, staff
28 asked the Board's current attorney to ask the Board to consider making the waiver during
29 its November Board meeting. Commission staff was told that the deadline for "agenda
30 approval" had passed so the matter could not be considered at the Board's November
31 meeting. Commission staff also asked the OSBA attorney to provide a general indication
32 of whether he had provided advice that the Board followed in this case. The OSBA

1 attorney did not respond to phone or email requests from Commission staff. (#INV4)

2
3 The Board's 3/14/18 meeting agenda is excerpted below:

4
5 "X. EXECUTIVE SESSION

6 1. The School Board will meet in executive session,

7 a. To hear complaints or charges brought against, a public officer,
8 employee, staff member or individual agent who does not request an
9 open hearing – pursuant to ORS 192.660(2)(b), and

10 b. To consider information or records that are exempt by law from public
11 inspection – pursuant to ORS 192.660(2)(f)." (#INV1)

12
13 The executive session minutes for the Board's 3/14/18 meeting are excerpted below:

14
15 "The executive session as per ORS 192.660(2)(b) and ORS 192.660(2)(f) of the
16 District School Board of School District 40, Lane County, Creswell Oregon was
17 held Wednesday, March 14, 2018 beginning at 8:40PM in the Creswell School
18 District Office Board Room, 998 A Street, Creswell, OR 97426 with Chair Mike
19 Anderson presiding. ***The Board discussed a complaint brought against a staff
20 member that included information or records that are exempt from public
21 inspection."***(#PR2)

22
23 Staff also received the audio recording of the Board meeting on 3/14/18. The Board does
24 not record its executive sessions, so this recording is only of the public portion of the
25 meeting. The audio contains the following announcement, by Board Chair Mike
26 Anderson, at the opening of the meeting, immediately after the Pledge of Allegiance:

27
28 "Just so everybody knows, we are going to have a normal meeting and then we
29 are going to have an executive session after the end of the meeting and due to the
30 nature of the complaint, we are going to excuse everybody from the room so you
31 can go home..." (#INV2)

32 ///

1 Immediately following this announcement, the Board adopted the agenda and proceeded
2 with the meeting. At the end of the public session, the following announcement can be
3 heard:

4
5 "Now we're going to go into an executive session and because of the nature of the
6 complaint we are going to look at, with several different kids involved, so we ask
7 everybody, thank you for coming and for all the good work you do, but we're going
8 to have to excuse everybody because of the privacy laws, because we are going
9 to be talking about some kids, the media can't be here either." (#INV2)

10
11 The public session was reconvened at 9:25pm and the audio reveals that a motion was
12 made and seconded "to affirm Superintendent Don Hamilton's decision in this matter."
13 The motion passed unanimously. (#INV2)

14
15 Mr. Anderson was interviewed by Commission staff during investigation, with his attorney
16 present, and he said the following:

- 17
- 18 • No subjects were discussed other than the complaint and associated materials as
disclosed to the Commission during investigation.
 - 19 • Aside from the Board secretary, only Board members were in attendance at the
20 executive session. No administrator from the School District attended.
 - 21 • They had followed the attorney's advice about the executive session.
 - 22 • They had spoken with the attorney several times and got a script from him, and
23 were being very careful to protect the privacy of the student.
 - 24 • When asked specifically about the public announcement made prior to convening
25 the executive session, Mr. Anderson stated that the "media lady was not there at
26 the beginning of the meeting when I read the statutory authorizations" and that
27 when they adjourned into executive session, he explained that everyone would
28 have to leave because of the privacy issues and that certain students would be
29 discussed. (#INV5)
- 30

31 During investigation, Commission staff subpoenaed and obtained the records exempt

1 from public inspection that were examined by the Board members during executive
2 session pursuant to ORS 192.660(2)(f). The records exempt from public inspection
3 include a complaint from a student's guardian to the school principal, the principal's
4 written decision, the guardian's appeal of the decision to the superintendent with an
5 added complaint about the principal's handling of the matter, the superintendent's findings
6 and conclusion affirming the principal's decision, and the guardian's appeal to the
7 Creswell School Board. The School Board did not alter the decisions made by the
8 principal and superintendent. These materials included the names of some students and
9 descriptions of one student's social history, medical diagnoses and medication, as well
10 as that student's school support plan. (#INV3)

11

12 When these records were transmitted to the Commission, the following note was included
13 in the cover letter,

14

15 "The involved students' names were not redacted in the materials provided to the
16 Creswell School board but have been redacted to comply with this subpoena given
17 the sensitive nature of their contents." (#INV3)

18

19 The attorney for the respondents also provided copies of the Board's Public Complaint
20 and Public Complaint Procedures Policies (KL and KL-AR), which appear to have been
21 followed in this case. (#INV3)

22

23 In relation to hearing complaints against an employee pursuant to ORS 192.660(2)(b),
24 the attorney for the respondents provided a copy of the District's 3/5/18 letter to the
25 principal notifying him of the 3/14/18 meeting of the School Board at which the guardian's
26 escalated complaint, which now included a complaint about the principal's handling of the
27 initial complaint, would be considered by the Board in executive session, unless the
28 principal requested an open session. (#INV3)

29

30 **CONCLUSIONS:** Mike Anderson was Chair of the Creswell School District Board of
31 Directors during the period relevant to this preliminary review and was a public official.
32 The Creswell School District is a public body and the Board of Directors is its governing

1 body [ORS 192.610(3) and (4)]. As a member of the governing body of a public body, Mr.
2 Anderson is required to comply with the executive session provisions of Oregon Public
3 Meetings law found in ORS 192.660. Under ORS 192.685(1), complaints concerning
4 violations of ORS 192.660 alleged to have been committed by public officials may be
5 made to the Oregon Government Ethics Commission for review and investigation as
6 provided by ORS 244.260.

7
8 An executive session is a meeting or part of a meeting held by a governing body which is
9 closed to certain persons for deliberation on certain matters. [ORS 192.610(2)]
10 Contained in ORS 192.660 are specific provisions allowing members of the governing
11 body of a public body to convene and participate in executive sessions to discuss limited
12 and specific topics once certain conditions and prerequisites are met.

13
14 ORS 192.660 is not the only statute that authorizes a governing body to discuss matters
15 in executive session. Directly relevant to this case, ORS 332.061 requires a school board,
16 when considering the following matters, to hold their meeting in executive session unless
17 the student or their parent/guardian request an open hearing: 1) expulsion of a minor
18 student and 2) matters pertaining to or examination of the confidential medical records of
19 a student, including the student's educational program. Under ORS 192.660(4), a
20 governing body may exclude media representatives from an executive session held under
21 ORS 332.061.

22

23 **Topics Discussed in the Executive Session**

24 In the executive session, the Board discussed a complaint from a guardian alleging
25 bullying of his student by other students and an objection to the principal's handling of the
26 initial complaint. The records being considered contained information about student
27 medical and social history, medical diagnoses and treatment, and current education
28 plans. These records appear to be confidential medical and educational records of a
29 student exempt from disclosure which could be considered in executive session under
30 ORS 192.660(2)(f). In addition, the Board heard complaints brought by the guardian's
31 about the principal's handling of the original complaint. The principal was informed of the
32 discussion and given the opportunity to request an open hearing, which he declined. This

1 discussion appears to fall within the authority to meet in executive session to discuss
2 complaints against employees when the employee does not request an open hearing
3 under ORS 192.660(2)(b).

4
5 Further, Ms. Jacobson asserts that the executive session was also authorized by ORS
6 332.061, which requires “[m]atters pertaining to * * * the confidential medical records of a
7 student, including that student’s educational program” to be heard in executive session
8 “[n]otwithstanding ORS 192.610 to 192.690[.]” Ms. Jacobson contended that the “OSBA,
9 in its publication Public Meetings Law, Board Meetings and Executive Sessions: A Guide
10 for Public School, Education Service District and Community College Boards, has
11 interpreted ORS 332.016 to allow exclusion when a school board discusses either a
12 student’s medical records or a student’s educational records.” The Commission does not
13 have authority to interpret ORS 332.061; its authority is limited to enforcing ORS 192.660.

14
15 It appears from the information available that the Board members discussed only this
16 escalated complaint during its 3/14/18 executive session, and because it contained
17 information exempt from public disclosure and a complaint against an employee, it was
18 permissible to discuss those topics in executive session under ORS 192.660(2).

19
20 **Requirement for Presiding Officer to Identify Authority for Holding Executive**
21 **Session**

22 Before a governing body may hold an executive session, ORS 192.660(1) requires the
23 presiding officer to identify the authority under ORS 192.610 to 192.690 for holding the
24 executive session. Mr. Anderson reported that he identified the statutory authorizations
25 or lawful basis for holding the executive session on 3/14/18. However, the audio
26 recordings do not bear that out. They show that at the beginning of the public portion of
27 the meeting, Mr. Anderson announced:

28
29 “Just so everybody knows, we are going to have a normal meeting and then we
30 are going to have an executive session after the end of the meeting and due to the
31 nature of the complaint, we are going to excuse everybody from the room so you
32 can go home...”

1 At the end of the public session, Mr. Anderson stated:

2
3 "Now we're going to go into an executive session and because of the nature of the
4 complaint we are going to look at, with several different kids involved, so we ask
5 everybody, thank you for coming and for all the good work you do, but we're going
6 to have to excuse everybody because of the privacy laws, because we are going
7 to be talking about some kids, the media can't be here either."
8

9 It is difficult to tell from Mr. Anderson's statements what the statutory basis was for holding
10 the executive session. The agenda, however, identified ORS 192.660(2)(b) (to consider
11 complaint or discipline against an employee) and (2)(f) (to consider exempt public
12 records) as the statutory bases for holding the executive session. Immediately after the
13 first public announcement, the Board adopted the agenda.
14

15 Although Mr. Anderson's announcements were unclear and, standing alone, likely would
16 not be sufficient to inform persons of the statutory basis for holding the executive session,
17 considered together with the information provided in the agenda which was adopted
18 immediately after the first announcement, the announcements arguably sufficed to meet
19 the requirement in ORS 192.660(1).
20

21 **Exclusion of the Media from the Executive Session**

22 As relevant, ORS 192.660(4) requires governing bodies to allow representatives of the
23 news media to attend executive session "other than those held under * * * ORS 332.061[.]"
24 The Board did not identify ORS 332.061 as a basis for holding an executive session either
25 in the agenda or in the presiding officer's announcements before convening the executive
26 session. However, respondents assert that ORS 332.061 authorized the executive
27 session as interpreted by OSBA, because the discussion pertained to matters concerning
28 a student's confidential medical records, including education records. As discussed, the
29 Commission has no authority to interpret that provision, but Commission staff did review
30 the redacted documents considered by the Board in the executive session and confirms
31 that they contained information about a student's medical records and education plans.
32

///

1 It is not clear whether to comply with ORS 192.660(4) the governing body must identify
2 ORS 332.061 as the basis for holding the executive session. Identifying that statute
3 certainly would help media representatives to understand the ground on which they are
4 being excluded. But, because the executive session appears to have been authorized
5 by ORS 332.061 and ORS 192.660(4) does not clearly require that statute to be identified
6 before excluding the media, there appears to be insufficient evidence to conclude that Mr.
7 Anderson violated ORS 192.660(4) by failing to identify ORS 332.061 as the basis for the
8 executive session.

9

10 In conclusion, the Board of Directors of the Creswell School District discussed topics at
11 the executive session on 3/14/18 that were statutorily authorized topics under ORS
12 192.660(2), the Board substantially complied with the requirement of ORS 192.660(1) to
13 publicly identify the statutory authority prior to holding the executive session, and
14 evidence is insufficient to conclude that the Board members violated ORS 192.660(4) by
15 excluding the media from attendance.

16

17 Information is insufficient to indicate that Mike Anderson and the other members of the
18 Board of Directors of the Creswell School District failed to comply with the provisions of
19 ORS 192.660 when conducting an executive session on 3/14/18.

20

21 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should dismiss
22 the complaint. [Motion 7]

23

24 **ASSOCIATED DOCUMENTS:**

25 #PR1 Complaint and additional information submitted by Erin Tierney, received
26 on 4/13/2018.

27 #PR2 Letter in response to the complaint and other material from attorney
28 Rebekah Jacobson, received on 4/26/2018.

29 #INV1 Copy of agenda for the Creswell School Board's 3/14/18 meeting, received
30 from Rebekah Jacobson via email attachment on 11/13/18.

31 #INV2 Audio recording of the public Creswell School Board meeting held on
32 3/14/18, received from Rebekah Jacobson's office on 11/16/18.

- 2 #INV3 Records received 8/27/18 from Rebekah Jacobson in response to
Commission subpoena.
- 3 #INV4 Investigator's 11/16/18 memo summarizing attempts to obtain records
4 pertaining to legal advice given to Board members re 3/14/18 executive
5 session.
- 6 #INV5 Investigator's 11/19/18 memo summarizing telephone interview with Mike
7 Anderson, accompanied by his attorney.
- 8

PREPARED BY *Diane Gould* *12/5/18*
Diane Gould Date
Investigator

APPROVED BY *RA Bersin* *12/5/18*
Ronald A. Bersin Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* *12/6/18*
Amy E. Alpaugh Date
Assistant Attorney General



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April 26, 2018

Via Hand Delivery

OREGON GOVERNMENT ETHICS COMMISSION
Attn: Michael Thomicroft
Investigator
3218 Pringle Rd. SE, Ste. 220
Salem, OR 97302

RECEIVED
APR 26 2018
OREGON GOVERNMENT
ETHICS COMMISSION

*Re: Our Clients: Creswell School District Board of Directors
OGEC Complaint
Case No. 18-100XMT
Our File No. 16088001*

Dear Mr. Thomicroft:

This office has been retained to represent the respondent members of the Creswell School District Board of Directors (the "Board") in connection with the above-referenced complaint to the Oregon Government Ethics Commission ("OGEC" or the "Commission").

The complaint, which relates to the March 14, 2018 Board meeting, alleges two violations of Oregon law: First, it alleges that a representative of the media was unlawfully excluded from that meeting under the executive session provisions of ORS 192.660. Second, it alleges that the Board's minutes from that meeting do not comply with the provisions of ORS 192.650. The Board's responses to both of those allegations are below.

Background

On January 11, 2018, a formal complaint was filed with a Creswell School District (the "District") administrator, alleging that a student felt unsafe at school. This represented Step 2 of the District's Public Complaint Procedure under *Policy KL-AR*. After reviewing the matter, the administrator provided a written decision. On January 30, 2018, dissatisfied with the administrator's decision, the student's family filed a formal complaint with the superintendent. That complaint reiterated the family's safety concerns, as well as raised new allegations relating to the administrator's handling of the initial complaint. This represented Step 3 of the District's Public Complaint Procedure under *Policy KL-AR*. After reviewing the matter, the superintendent provided a written decision that did not disturb the administrator's findings. On February 13, 2018, the student's family responded by filing a formal complaint with the Board. This represented Step 4 of the District's Public Complaint Procedure under *Policy KL-AR*.



The Board secretary immediately contacted the Oregon School Boards Association (“OSBA”) for guidance on how to lawfully handle a Step 4 appeal at an otherwise public meeting. The Board’s inquiries were referred to OSBA attorney Spencer Lewis. The Board members worked closely with Mr. Lewis to ascertain their obligations under the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and related Board policies;¹ as well as the Oregon Public Meetings Law, ORS 192.610 *et seq.*

On advice of counsel, the Board elected to meet in executive session to discuss the Level 4 complaint. The March 14, 2018 meeting agenda provided that the Board would meet in executive session

“To hear complaints or charges brought against[] a public officer, employee, staff member or individual agent who does not request an open hearing – pursuant to ORS 192.660(2)(b), and

“To consider information or records that are exempt by law from public inspection – pursuant to ORS 192.660(2)(f).”

Consistent with the agenda, an executive session was called at the March 14, 2018 meeting. All observers were dismissed from the room at that time, including—as permitted by ORS 192.660(4)—the media representative. Only Board members and the Board secretary remained for the discussion of the Level 4 complaint. Following that discussion, open session resumed, at which time the Board affirmed the superintendent’s findings and conclusions regarding the complaint.

In March 2018, the media representative requested a copy of the executive session materials and minutes. The Board consulted with Mr. Lewis and one of its other attorneys, Nancy Hungerford, for assistance in preparing a response that complied with FERPA, the Oregon Public Meetings Law, and the Oregon Public Records Law, ORS 192.410 *et seq.* On March 23, the Board provided the media representative with a draft copy of the requested executive session minutes. Those minutes, which are attached to this response as Exhibit A, identify the Board members present and provide as follows:

“[The chair] announced that the School Board will meet in executive session, as per ORS 192.660(2)(b) to hear complaints or charges brought against[] a public officer, employee, staff member or individual agent who does not request an open hearing and ORS 192.660(2)(f), to consider information or records that are exempt from public inspection.

“The board discussed a complaint brought against a staff member that included information or records that are exempt by law from public inspection.”

¹ Namely, student educational records are further shielded from disclosure by *Policy JO/IGBAB* (“Education Records/Records of Students with Disabilities”) and *Policy JO/IGBAB-AR* (“Education Records/Records of Students with Disabilities Management”).

The regular session minutes, which are attached to this response as Exhibit B, note that the Board returned to regular session at 9:26 PM and, at that time, voted unanimously to affirm the superintendent's decision.

Following her review of the executive session minutes, the media representative asserted that they did not meet the requirements of Oregon Public Meetings Law. Shortly thereafter, she filed the complaint that gave rise to this investigation. Each of the complainant's allegations is addressed below.

Allegation 1: *[T]he Creswell School Board violated Public Meetings Law . . . by . . . [d]isallowing media from rightfully attending an executive session [on March 14, 2018].*

The Board did not violate ORS 192.660 when it excluded media representatives from an executive session held on March 14, 2018. ORS 192.660 authorizes a government body to hold an executive session for, among other purposes, "[t]o consider information or records that are exempt by law from public inspection." ORS 192.660(2)(f). This includes any consideration of "[s]tudent records required by state or federal law to be exempt from disclosure." ORS 192.398(4).

And, although members of the news media are generally permitted to attend executive session, such is not the case when the topic of discussion includes "[m]atters pertaining to or examination of the confidential medical records of a student, *including that student's educational program.*" ORS 192.660(4); ORS 332.061 (emphasis added). The OSBA, in its publication *Public Meetings Law, Board Meetings and Executive Sessions: A Guide for Public School, Education Service District and Community College Boards*, has interpreted ORS 332.061 to allow exclusion when a school board discusses *either* a student's medical records *or* a student's educational records. The relevant portion of that manual is attached to this response as Exhibit C.

Moreover, allowing the media to attend an executive session at which *any* student education records are discussed would arguably violate FERPA if done in the absence of parental consent. *See* 34 C.F.R. § 99.31 (outlining circumstances under which parental consent to disclosure is not required under FERPA); 34 C.F.R. § 99.3 (broadly defining "disclosure" as "to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means . . . to any party"); OAR 581-021-0220(3) (same). Here, the Board excluded media representatives from its executive session on the good faith belief that exclusion was required under ORS 192.006(2)(f), ORS 332.061, and FERPA. Because that interpretation of the law is reasonable and appropriate, it cannot be the subject of an ethics violation.

But even if the law did not allow the exclusion of media representatives, the Board should not be subject to civil penalties for the alleged violation because it was acting on the advice of counsel. *See* ORS 244.350(2)(b) ("A civil penalty may not be imposed under this subsection if the violation occurred as a result of the governing body of the public body acting upon the advice of the public body's counsel."). Immediately upon receiving the Level 4 complaint, the all-volunteer Board consulted its attorney, Mr. Lewis, to ensure compliance with the apparently

conflicting provisions of Oregon Public Meetings Law and FERPA. Over the course of the next month, the Board formulated its approach to the upcoming meeting—and ultimately decided to proceed in executive session—based on the legal advice received from Mr. Lewis. Under these circumstances, where the governing body’s legal obligations are unclear and that body relied on the advice of counsel to reconcile apparent conflicts in the law, no civil penalty should issue.

Allegation 2: *[T]he Creswell School Board violated Public Meetings Law . . . by . . . not taking any form of proper minutes from that executive session.*

Respectfully, the Commission does not have jurisdiction to consider the allegation challenging the sufficiency of the executive session minutes. ORS 192.685(1) confers jurisdiction on the Commission to hear “complaints of violations of ORS 192.660 alleged to have been committed by public officials.” However, the complainant’s second allegation challenges the Board’s conduct not under ORS 192.660, but under ORS 192.650. While the former statute governs when executive sessions may be called and under what conditions,² it is the latter statute that outlines the requirements for written minutes. *See* ORS 192.650(2) (addressing “minutes of executive sessions”). Because this allegation falls outside the scope of the Commission’s jurisdiction, the Board understands that it is not subject to review in this proceeding.

But even if the Commission reaches the merits of this allegation, the Board’s preparation of minutes in connection with the March 14, 2018 executive session did not violate ORS 192.650. That statute requires that governing bodies “provide for the sound, video or digital recording or the taking the taking of written minutes” of their meetings that “give a true reflection of the matters discussed at the meeting and the views of the participants.”³ ORS 192.650(1). Although that requirement applies equally to executive sessions, the minutes of a meeting held under ORS 332.061 that involve the “confidential medical records of a student, including that student’s educational program” are subject to special and extensive restrictions. ORS 192.650(2). In particular, such minutes *must* exclude the following:

- “(a) The name of the minor student.
- “(b) The issue, including a student’s confidential medical records and that student’s educational program.
- “(c) The discussion.
- “(d) The school board member’s[sic] vote on the issue.”

² ORS 192.660 makes no reference to meeting minutes, except with regard to those minutes relating to certain investigations conducted by a health professional regulatory board and/or the State Landscape Architect Board or an associated advisory committee. *See* ORS 192.660(9).

³ Such recordings or minutes must include, at a minimum, the following information: (1) all members of the governing body present; (2) all motions, resolutions, and other proposals and their disposition; (3) the result of all votes, including member names; (4) the substance of any discussion; and (5) subject to statutory public records exemptions, a reference to any document discussed. ORS 192.650(1).

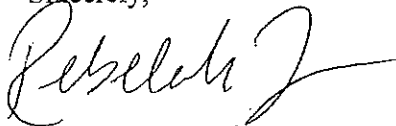
Id.; ORS 332.061(2).

Here, the Board authorized the recording of only summary minutes of the executive session because its members in good faith believed that the discussion was subject to ORS 332.061. If they were correct, virtually all substantive information about the session was subject to redaction under ORS 332.061(2). For the reasons outlined above, the Board's interpretation of the law was reasonable and appropriate, and it cannot form the basis of an ethics violation.

But even if the Board was mistaken and a more robust set of minutes was required, no civil penalty should be imposed. Again, at all relevant times, the all-volunteer Board was acting on advice of counsel. See ORS 244.350(2)(b). As discussed, the Board consulted its OSBA counsel, Mr. Lewis, in advance of its March 14, 2018 meeting to ensure that all discussions were conducted in compliance with Oregon Public Meetings Law. Then, following that meeting and after receipt of the media representative's public records request, the Board consulted another attorney, Ms. Hungerford, for the specific purpose of discussing that request and its concomitant obligations under Oregon Public Records Law. In short, the minutes were both prepared and produced in accordance with counsel's advice, and no civil penalty should issue related to those minutes.

The Board requests that that this Complaint be dismissed. Please contact me if you need further information.

Sincerely,



Rebekah R. Jacobson
Attorney at Law
rjacobson@ghrlawyers.com

RRJ:smr

Enclosures

c: Creswell School Board (w/enclosures) *Personal & Confidential Via Email*

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-101XMT

DATE: December 5, 2018

RESPONDENT: ROGERS, Tim, Director of the Board, Lane County School District #40

COMPLAINANT: Erin Tierney

RECOMMENDED ACTION: Dismiss Complaint

1 **SYNOPSIS:** Tim Rogers is a Director of the Board of Creswell School District and
2 participated in an executive session relevant to this investigation. The focus of this
3 investigation was to determine if there was a preponderance of evidence to indicate that
4 the topics discussed in the executive session were statutorily authorized and that the
5 media's exclusion from the executive session was lawful.

6
7 A review of information indicates that the Creswell School District Board of Directors held
8 an executive session to consider a complaint from a student's guardian that was
9 escalated from the principal to the superintendent and then to the Board of Directors, per
10 the District's complaint policy. The guardian's initial complaint to the principal concerned
11 bullying of his student by other children, and when it was appealed to the superintendent,
12 it also contained a complaint about the principal's handling of the complaint. The
13 complaint contained confidential student medical information and information pertaining
14 to a student's educational program, records exempt from public inspection.

15
16 Information is sufficient to determine that Tim Rogers participated as a Board member in

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

3

4 **ASSOCIATED DOCUMENTS:**

- 5 #PR1 Complaint and material submitted by Erin Tierney, received on 4/13/2018.
6 #PR2 Letter in response to the complaint and other material from attorney
7 Rebekah Jacobson, received on 4/26/2018.
8 #INV1 Copy of agenda for the Creswell School Board's 3/14/18 meeting, received
9 from Rebekah Jacobson via email attachment on 11/13/18.
10 #INV2 Audio recording of the public Creswell School Board meeting held on
11 3/14/18, received from Rebekah Jacobson's office on 11/16/18.
12 #INV3 Records received 8/27/18 from Rebekah Jacobson in response to
13 Commission subpoena.
14 #INV4 Investigator's 11/16/18 memo summarizing attempts to obtain records
15 pertaining to legal advice given to Board members.
16 #INV5 Investigator's 11/19/18 memo summarizing telephone interview with Board
17 Chair Mike Anderson, accompanied by his attorney.

PREPARED BY *Diane Gould* 12/5/18
Diane Gould /Date
Investigator

APPROVED BY *RA Bersin* 12/5/18
Ronald A. Bersin /Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 12/6/18
Amy E. Alpaugh /Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-102XMT

DATE: December 5, 2018

RESPONDENT: SMATHERS, Natalie, Director of the Board, Lane County School District #40

COMPLAINANT: Erin Tierney

RECOMMENDED ACTION: Dismiss Complaint

1 **SYNOPSIS:** Natalie Smathers is a Director of the Board of Creswell School District and
2 participated in an executive session relevant to this investigation. The focus of this
3 investigation was to determine if there was a preponderance of evidence to indicate that
4 the topics discussed in the executive session were statutorily authorized and that the
5 media's exclusion from the executive session was lawful.

6
7 A review of information indicates that the Creswell School District Board of Directors held
8 an executive session to consider a complaint from a student's guardian that was
9 escalated from the principal to the superintendent and then to the Board of Directors, per
10 the District's complaint policy. The guardian's initial complaint to the principal concerned
11 bullying of his student by other children, and when it was appealed to the superintendent,
12 it also contained a complaint about the principal's handling of the complaint. The
13 complaint contained confidential student medical information and information pertaining
14 to a student's educational program, records exempt from public inspection.

15
6 Information is sufficient to determine that Natalie Smathers participated as a Board

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

3
4 **ASSOCIATED DOCUMENTS:**

- 5 #PR1 Complaint and material submitted by Erin Tierney, received on 4/13/2018.
6 #PR2 Letter in response to the complaint and other material from attorney
7 Rebekah Jacobson, received on 4/26/2018.
8 #INV1 Copy of agenda for the Creswell School Board's 3/14/18 meeting, received
9 from Rebekah Jacobson via email attachment on 11/13/18.
10 #INV2 Audio recording of the public Creswell School Board meeting held on
11 3/14/18, received from Rebekah Jacobson's office on 11/16/18.
12 #INV3 Records received 8/27/18 from Rebekah Jacobson in response to
13 Commission subpoena.
14 #INV4 Investigator's 11/16/18 memo summarizing attempts to obtain records
15 pertaining to legal advice given to Board members.
16 #INV5 Investigator's 11/19/18 memo summarizing telephone interview with Board
17 Chair Mike Anderson, accompanied by his attorney.

PREPARED BY *Diane Gould* 12/5/18
Diane Gould / Date
Investigator

APPROVED BY *RM* 12/5/18
Ronald A. Bersin / Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 12/6/18
Amy E. Alpaugh / Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-103XMT

DATE: December 5, 2018

RESPONDENT: EUSTED, Dave, Director of the Board, Lane County School District #40

COMPLAINANT: Erin Tierney

RECOMMENDED ACTION: Dismiss Complaint

1 **SYNOPSIS:** Dave Eusted is a Director of the Board of Creswell School District and
2 participated in an executive session relevant to this investigation. The focus of this
3 investigation was to determine if there was a preponderance of evidence to indicate that
4 the topics discussed in the executive session were statutorily authorized and that the
5 media's exclusion from the executive session was lawful.

6
7 A review of information indicates that the Creswell School District Board of Directors held
8 an executive session to consider a complaint from a student's guardian that was
9 escalated from the principal to the superintendent and then to the Board of Directors, per
10 the District's complaint policy. The guardian's initial complaint to the principal concerned
11 bullying of his student by other children, and when it was appealed to the superintendent,
12 it also contained a complaint about the principal's handling of the complaint. The
13 complaint contained confidential student medical information and information pertaining
14 to a student's educational program, records exempt from public inspection.

15
16 Information is sufficient to determine that Dave Eusted participated as a Board member

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

3

4 **ASSOCIATED DOCUMENTS:**

- 5 #PR1 Complaint and material submitted by Erin Tierney, received on 4/13/2018.
- 6 #PR2 Letter in response to the complaint and other material from attorney
7 Rebekah Jacobson, received on 4/26/2018.
- 8 #INV1 Copy of agenda for the Creswell School Board's 3/14/18 meeting, received
9 from Rebekah Jacobson via email attachment on 11/13/18.
- 10 #INV2 Audio recording of the public Creswell School Board meeting held on
11 3/14/18, received from Rebekah Jacobson's office on 11/16/18.
- 12 #INV3 Records received 8/27/18 from Rebekah Jacobson in response to
13 Commission subpoena.
- 14 #INV4 Investigator's 11/16/18 memo summarizing attempts to obtain records
15 pertaining to legal advice given to Board members.
- 16 #INV5 Investigator's 11/19/18 memo summarizing telephone interview with Board
17 Chair Mike Anderson, accompanied by his attorney.

PREPARED BY *Diane Gould* 12/5/18
Diane Gould Date
Investigator

APPROVED BY *RAM* 12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-104XMT

DATE: December 5, 2018

RESPONDENT: RISDAL, Lacey, Director of the Board, Lane County School District #40

COMPLAINANT: Erin Tierney

RECOMMENDED ACTION: Dismiss Complaint

1 **SYNOPSIS:** Lacey Risdal is a Director of the Board of Creswell School District and
2 participated in an executive session relevant to this investigation. The focus of this
3 investigation was to determine if there was a preponderance of evidence to indicate that
4 the topics discussed in the executive session were statutorily authorized and that the
5 media's exclusion from the executive session was lawful.

6

7 A review of information indicates that the Creswell School District Board of Directors held
8 an executive session to consider a complaint from a student's guardian that was
9 escalated from the principal to the superintendent and then to the Board of Directors, per
10 the District's complaint policy. The guardian's initial complaint to the principal concerned
11 bullying of his student by other children, and when it was appealed to the superintendent,
12 it also contained a complaint about the principal's handling of the complaint. The
13 complaint contained confidential student medical information and information pertaining
14 to a student's educational program, records exempt from public inspection.

15

16 Information is sufficient to determine that Lacey Risdal participated as a Board member

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

4 **ASSOCIATED DOCUMENTS:**

- 5 #PR1 Complaint and material submitted by Erin Tierney, received on 4/13/2018.
6 #PR2 Letter in response to the complaint and other material from attorney
7 Rebekah Jacobson, received on 4/26/2018.
8 #INV1 Copy of agenda for the Creswell School Board's 3/14/18 meeting, received
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10 #INV2 Audio recording of the public Creswell School Board meeting held on
11 3/14/18, received from Rebekah Jacobson's office on 11/16/18.
12 #INV3 Records received 8/27/18 from Rebekah Jacobson in response to
13 Commission subpoena.
14 #INV4 Investigator's 11/16/18 memo summarizing attempts to obtain records
15 pertaining to legal advice given to Board members.
16 #INV5 Investigator's 11/19/18 memo summarizing telephone interview with Board
17 Chair Mike Anderson, accompanied by his attorney.

PREPARED BY *Diane Gould* 12/5/18
Diane Gould Date
Investigator

APPROVED BY *RA Bersin* 12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-105XMT

DATE: December 5, 2018

RESPONDENT: RANDALL, Paul, Director of the Board, Lane County School District #40

COMPLAINANT: Erin Tierney

RECOMMENDED ACTION: Dismiss Complaint

1 **SYNOPSIS:** Paul Randall is a Director of the Board of Creswell School District and
2 participated in an executive session relevant to this investigation. The focus of this
3 investigation was to determine if there was a preponderance of evidence to indicate that
4 the topics discussed in the executive session were statutorily authorized and that the
5 media's exclusion from the executive session was lawful.
6

7 A review of information indicates that the Creswell School District Board of Directors held
8 an executive session to consider a complaint from a student's guardian that was
9 escalated from the principal to the superintendent and then to the Board of Directors, per
10 the District's complaint policy. The guardian's initial complaint to the principal concerned
11 bullying of his student by other children, and when it was appealed to the superintendent,
12 it also contained a complaint about the principal's handling of the complaint. The
13 complaint contained confidential student medical information and information pertaining
14 to a student's educational program, records exempt from public inspection.
15

16 Information is sufficient to determine that Paul Randall participated as a Board member

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

3

4 **ASSOCIATED DOCUMENTS:**

- 5 #PR1 Complaint and material submitted by Erin Tierney, received on 4/13/2018.
6 #PR2 Letter in response to the complaint and other material from attorney
7 Rebekah Jacobson, received on 4/26/2018.
8 #INV1 Copy of agenda for the Creswell School Board's 3/14/18 meeting, received
9 from Rebekah Jacobson via email attachment on 11/13/18.
10 #INV2 Audio recording of the public Creswell School Board meeting held on
11 3/14/18, received from Rebekah Jacobson's office on 11/16/18.
12 #INV3 Records received 8/27/18 from Rebekah Jacobson in response to
13 Commission subpoena.
14 #INV4 Investigator's 11/16/18 memo summarizing attempts to obtain records
15 pertaining to legal advice given to Board members.
16 #INV5 Investigator's 11/19/18 memo summarizing telephone interview with Board
17 Chair Mike Anderson, accompanied by his attorney.

PREPARED BY *Diane Gould* 12/5/18
Diane Gould Date
Investigator

APPROVED BY *[Signature]* 12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY *Amy E. Alpaugh* 12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-113XMT

DATE: December 5, 2018

RESPONDENT: EVANS, Phil, President, Mosier Fire District Board of Directors

COMPLAINANT: APPLETON, Jim, former Fire Chief, Mosier Fire District

RECOMMENDED ACTION: Move to Dismiss the Complaint

1 **SYNOPSIS:** Phil Evans served as a member and Board President of the Mosier Fire
2 District Board of Directors and participated in the executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that members of the Mosier Fire District Board of
5 Directors violated the executive session provisions of Oregon Public Meetings law by
6 participating in multiple executive sessions when statutory prerequisites were not met and
7 final decisions were made.

8
9 Information reviewed in the investigation does not show by a preponderance of the
10 evidence that Mr. Evans violated the executive session provisions of Oregon Public
11 Meetings law.

12
13 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
issues addressed herein:

1 **192.610 Definitions for ORS 192.610 to 192.690.** As used in ORS 192.610 to
2 192.690:

3
4 192.610(1) "Decision" means any determination, action, vote or final disposition
5 upon a motion, proposal, resolution, order, ordinance or measure on which a vote
6 of a governing body is required, at any meeting at which a quorum is present.

7
8 192.610(2) "Executive session" means any meeting or part of a meeting of a
9 governing body which is closed to certain persons for deliberation on certain
10 matters.

11
12 192.610(3) "Governing body" means the members of any public body which
13 consists of two or more members, with the authority to make decisions for or
14 recommendations to a public body on policy or administration.

15
16 192.610(4) "Public body" means the state, any regional council, county, city or
17 district, or any municipal or public corporation, or any board, department,
18 commission, council, bureau, committee or subcommittee or advisory group or any
19 other agency thereof.

20
21 **192.660 Executive sessions permitted on certain matters; procedures; news**
22 **media representatives' attendance; limits.** (1) ORS 192.610 to 192.690 do not
23 prevent the governing body of a public body from holding executive session during
24 a regular, special or emergency meeting, after the presiding officer has identified
25 the authorization under ORS 192.610 to ORS 192.690 for holding the executive
26 session.

27
28 192.660(2) The governing body of a public body may hold an executive session:

29 * * * * *

30 (b) To consider the dismissal or disciplining of, or to hear complaints or
31 charges brought against, a public officer, employee, staff member or

1 individual agent who does not request an open hearing.

2 * * * * *

3
4 192.660(6) No executive session may be held for the purpose of taking any final
5 action or making any final decision.
6

7 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
8 a preliminary review based on information in a signed complaint from Jim Appleton
9 received on April 24, 2018. (#PR1). Mr. Appleton, former Fire Chief for the Mosier Fire
10 District, alleged that Phil Evans and other members of the Mosier Fire District Board of
11 Directors (Board) may have violated executive session provisions of Oregon Public
12 Meetings law.
13

14 Mr. Appleton's complaint arose from a series of public meetings and executive sessions
15 where the Board considered his employment status and ultimately terminated his
16 employment. The complaint raised issues concerning multiple meetings, including both
17 public sessions and executive sessions. (#PR1). As the Commission's jurisdiction
18 extends only to executive session meetings held under ORS 192.660, the Commission's
19 preliminary review examined the four executive sessions held on July 13, 2017,
20 September 25, 2017, October 23, 2017 and November 1, 2017.
21

22 After considering the information developed in the preliminary review, the Commission
23 found cause to investigate on June 29, 2018. The preliminary review did not indicate any
24 statutory violations occurred in the October 23rd and November 1st executive sessions,
25 but did find that the executive sessions held on July 13th and September 25th warranted
26 further investigation. The focus of the investigation was to determine whether, for the
27 executive sessions held on July 13, 2017 and September 25, 2017, the Board satisfied
28 the statutory prerequisites for holding an executive session under ORS 192.660(2)(b) by
29 providing the affected employee with an opportunity to request an open hearing, and
30 whether the Board made a final decision in the executive session held on July 13, 2017.
31

///

1 Mr. Evans and Mr. Appleton were notified of the Commission actions in this matter and
2 were both invited to provide any information which would assist the Commission in
3 conducting this investigation.

4
5 Statutory Prerequisites for an Executive Session under ORS 192.660(2)(b)

6 The Board's executive sessions held on July 13, 2017 and September 25, 2017 were
7 both convened under ORS 192.660(2)(b) "to consider the dismissal or disciplining of, or
8 to hear complaints or charges brought against, a public officer, employee, staff member
9 or individual agent who does not request an open hearing." (#PR1). Mr. Appleton's
10 complaint acknowledges that he attended both of these executive sessions. The
11 complaint did not include any documentation that Mr. Appleton was afforded the
12 opportunity to request an open hearing. (#PR1).

13
14 Mr. Evans' attorney provided a response asserting that Mr. Appleton was given the
15 opportunity to request an open hearing and was in attendance at both executive sessions.
16 The response argues, "Mr. Appleton cannot have it both ways. At every opportunity where
17 he could have discussed these matters in open session, he chose for the Board to hold
18 discussions regarding complaints against him in executive session." (#PR2).

19
20 In a supplemental response, Mr. Evans' attorney provided copies of the following e-mails
21 between Mr. Evans and Mr. Appleton:

22
23 July 10, 2017 e-mail from Jim Appleton to Phil Evans:

24 Would like to know what this [ORS 192.660(2)(b) executive session notice]
25 refers to.

26
27 July 10, 2017 e-mail from Phil Evans to Jim Appleton:

28 It is opportunity to discuss as a group the Team Mosier document. I know
29 you stated you didn't follow through with obtaining the document but there
30 are enough concerns by both the board and other involved parties that it at
31 least warrants time set aside to discuss this and hear your side. You of

1 course can waive the Exec Session but since it involved a potential criticism
2 of your performance as Chief I wanted to secure this as an option. Any type
3 of discipline may or may not occur but the first thing we need to [do] is talk
4 as a group.

5
6 September 21, 2017 e-mail from Phil Evans to Jim Appleton:

7 Pursuant to ORS 192.660 "(b) To consider the dismissal or disciplining of,
8 or to hear complaints or charges brought against, a public officer, employee,
9 staff member or individual agent who does not request an open hearing."

10
11 The board will meet to discuss the letter from the four volunteers. Would
12 you like this done in executive session or public session?

13
14 September 22, 2017 e-mail from Jim Appleton to Phil Evans:

15 Personally, I think we should do this while mud wrestling, but that may not
16 be the answer you're looking for.

17
18 Let's notice for executive session. Can always waive if desired. (#INV1).

19
20 Final Decision in Executive Session on July 13, 2017

21 Following the July 13, 2017 executive session, convened under ORS 192.660(2)(b) to
22 discuss complaints against and discipline of Mr. Appleton, he received what he termed a
23 letter of reprimand. His complaint suggests that the letter of reprimand is evidence the
24 Board took final action or made a final decision in its executive session. (#PR1).

25
26 In the complaint, Mr. Appleton states:

27 Discussion in the executive session indicated a disconnect between the board's
28 apparent acceptance of unsubstantiated claims and my own assertion of
29 dispositive facts. The board agreed to my suggested remedial procedures, later
30 acknowledged on the record by MFD board president Phil Evans to be effective.
31 Evans told me towards the end of the executive session that he would draft a

1 written memorialization, in words to the effect "that we had this discussion." The
2 minutes of the 7/13 board meeting (attached) show no action was taken following
3 the executive session. (#PR1).
4

5 The written memorialization of the July 13th executive session came in the form of a letter
6 of reprimand dated 9/19/17. The letter was signed by Phil Evans, President Mosier Fire
7 Board, and by Jim Appleton, Chief Mosier Fire Dept. (#INV2). In a memorandum to the
8 Board, dated October 12, 2017, Mr. Appleton asserted that his signature on the letter
9 "does not indicate acceptance of the reprimand, only acceptance of a copy of the letter
10 as Phil indicated when he asked for my signature." (#PR1).
11

12 The letter of reprimand begins by saying, "as Board President I am duty-bound to address
13 your recent performance issues and provide you with this written reprimand." It then
14 summarizes the matters discussed by the Board and Mr. Appleton in the executive
15 session on July 13th. The letter closes with: "This is you[r] written warning and [i]f you
16 exhibit further unprofessionalism or unwillingness to comply with Board policy direction,
17 actions, further disciplinary measures, up to and including termination, may occur."
18 (#INV2).
19

20 During the preliminary review phase, Mr. Evans, through his attorney, submitted a
21 response addressing the letter of reprimand:

22 Board President Evans assured Mr. Appleton that Mr. Appleton would receive a
23 written synopsis of the charges discussed, and such a summary was delivered on
24 September 19, 2017. * * * The summary reprimand * * * was compiled from the
25 meeting, in Mr. Evans' capacity as Board President. As promised, it reiterates the
26 charges and resulting Board discussion held in executive session at Mr. Appleton's
27 request. No decisions were made or reflected in the summary – only Board
28 expectations expressed in the executive session. (#PR2).
29

30 In a supplemental response, Mr. Evans' attorney submitted an affidavit in which Mr. Evans
31 stated:

1 During the July 13, 2017 executive session, at no time did the Board make any
2 final decisions while in executive session. We had already been counseled not to
3 do so. Instead, we discussed possible disciplinary options, the facts and
4 circumstances of the Chief's performance, and the pros and cons of various
5 disciplinary options. We then closed the executive session, opened up a regular,
6 public meeting. No further disciplinary action was taken, but the Board did discuss
7 in the public meeting its concerns with the Chief's performance. I, as the Board's
8 representative, then continued to work with the District's attorney to provide better
9 oversight and supervision to the Chief. (#INV1).

10
11 The supplemental response also points out that when "formal disciplinary action was
12 finally taken, it was taken in a properly noticed open meeting by a formal Board vote on
13 November 8, 2017." (#INV1).

14
15 Commission staff reviewed the minutes of the July 13th Board meeting, which indicated
16 that at 8:13 pm the Board went into executive session under ORS 192.660(2)(b), and
17 then at 9:11 pm the executive session adjourned. The minutes show that the Board took
18 no action following the executive session. (#PR1). Commission staff also requested
19 copies of the minutes or recording of the July 13th executive session.

20
21 On November 5, 2018, Mr. Evans' attorney responded to the request for the executive
22 session recording:

23
24 While a recording of the July 13th, 2017 meeting was made, the District no longer
25 possesses it.

26
27 Expert technicians have been employed to identify and forward the recorded
28 minutes of that meeting, but they have disappeared. I have inserted an email
29 string, below, which commences the evening of July 13th, 2017 after the meeting,
30 from Board Chair Phil Evans. This email indicates that the recording was left for
31 the then paid staff District Recorder (Ms. Tracie Hornung), and includes the

1 Recorder's request to Complainant Appleton that the recording be left in her box.
2 That District Recorder ceased working for the District in the fall of 2017, as did
3 Complainant – both of whom were responsible for the recording's retention and
4 safekeeping.

5 * * * * *

6 Board Chair Phil Evans has checked with Ms. Hornung, but she cannot identify
7 any other place for the Board to look, nor does she have any copies of the
8 recording. Written minutes (already part of your file) were created and approved
9 based upon the recording. John Stein from Special District's Association of Oregon
10 was even present during the July 13th, 2017 Executive Session, per Complainant
11 Appleton's request, to ensure that the Board adhered to applicable public meetings
12 laws for the duration of the meeting. However, the audio recorder now shows no
13 recording for the July 13th meeting, public or executive session. (#INV3).

14
15 The e-mail string attached to the response shows a July 13th e-mail from Phil Evans to
16 Tracie Hornung, saying "I left the recorder on the table. Since it has exec session on it
17 would you suggest I keep it someplace different until you pick it up?" This is followed by
18 a July 14th e-mail from Tracie Hornung to Phil Evans and Jim Appleton, which says: "Jim,
19 can you put it in my in-box?" (#INV3).

20
21 Commission staff subsequently spoke with Mr. Appleton. He reported that he had given
22 the recording to Ms. Hornung so that she could transcribe the minutes. He does not know
23 what happened to it after that. He did suggest that the recording may have been
24 downloaded onto the MFD's hard-drive. He apparently discovered at some point that
25 when a recording is downloaded, it gets automatically erased from the recorder. (#INV4).

26
27 When asked about the July 13th executive session, Mr. Appleton stated that he attended
28 the executive session and was told he would be provided with a written summary, but that
29 it "was not characterized as a letter of reprimand." He went on to state, "They didn't say
30 anything in the meeting saying that he'd receive a letter of reprimand." He also confirmed
31 the Board did not vote in the executive session to issue a letter of reprimand. (#INV4).

1 **CONCLUSIONS:** Phil Evans was President of the Mosier Fire District Board of Directors
2 during the period relevant to this investigation and a public official. The Mosier Fire District
3 is a public body and the Board of Directors is its governing body [ORS 192.610(3) and
4 (4)]. As a member of the governing body of a public body, Mr. Evans is required to comply
5 with the executive session provisions of Oregon Public Meetings law found in ORS
6 192.660.

7
8 An executive session is a meeting or a part of a meeting of a governing body that is closed
9 to certain persons for deliberation on certain matters. [ORS 192.610(2)]. ORS 192.660
10 allows a governing body to hold an executive session to discuss specific topics once
11 certain conditions and prerequisites are met. ORS 192.660(2)(b) includes one such
12 prerequisite, requiring that when a governing board elects to hold an executive session
13 to consider dismissal or discipline of an employee, the employee must be notified so that
14 he or she may request an open hearing. ORS 192.660(6) provides that in an executive
15 session a governing body may not take any final action or make any final decision.

16
17 Statutory Prerequisites for an Executive Session under ORS 192.660(2)(b)

18 The Board held two executive sessions on July 13, 2017 and September 25, 2017, both
19 of which were convened under ORS 192.660(2)(b) "to consider the dismissal or
20 disciplining of, or to hear complaints or charges brought against, a public officer,
21 employee, staff member or individual agent who does not request an open hearing." The
22 necessary prerequisite for this statute is that the employee be notified and permitted to
23 request an open hearing. While Mr. Appleton acknowledged attending these executive
24 sessions, he suggests the Board failed to satisfy the statutory prerequisite.

25
26 An examination of the materials provided by Mr. Evans' attorney, however, demonstrates
27 that the Board did, in fact, provide notification to Mr. Appleton. On July 10th, three days
28 before the executive session, Mr. Evans sent Mr. Appleton an e-mail informing him of the
29 topic to be discussed and letting him know that he could waive the executive session if
30 he wished. Again on September 21st, four days before the meeting, Mr. Evans sent Mr.
Appleton an e-mail quoting ORS 192.660(2)(b), informing him of the topic the Board

1 would be discussing, and specifically asking him: "Would you like this done in executive
2 session or public session?" Mr. Appleton responded by requesting that it be done in
3 executive session. (#INV3).

4
5 Information indicates that the Board provided Mr. Appleton with notification of the topics
6 to be discussed in the executive sessions convened under ORS 192.660(2)(b) and
7 provided him with the opportunity to request an open hearing. He chose not to do so.
8 There is not a preponderance of evidence that the Board failed to provide Mr. Appleton
9 with sufficient notice of the executive sessions and the opportunity to request a public
10 meeting.

11
12 Final Decision in Executive Session on July 13, 2017

13 Mr. Appleton's complaint suggests that the letter of reprimand is evidence that the Board
14 may have violated ORS 192.660(6). If the Board voted to take action or reached a final
15 decision to send a letter of reprimand while in executive session, this would violate the
16 statute. ORS 192.660(6) prohibits governing boards from taking final action or making
17 final decisions while in executive session. A decision is defined in ORS 192.610(1) as a
18 determination, action, vote or final disposition on a motion, proposal, resolution, order,
19 ordinance or measure on which a vote of a governing body is required.

20
21 To confirm whether the Board took final action or reached a final decision in the executive
22 session on July 13th, Commission staff sought to listen to the executive session recording.
23 That recording, however, has been lost or disposed of by the Board and is no longer
24 available. Mr. Evans' attorney appears to suggest Mr. Appleton was one of the last
25 persons in possession of the recording. This seems unlikely, since the District Recorder
26 did prepare minutes of the rest of the Board meeting held that evening, and she would
27 have needed the recording to prepare those minutes.

28
29 The letter of reprimand summarizes the complaints against Mr. Appleton and the Board's
30 concerns with his conduct and warns that further infractions could result in disciplinary
31 action. The letter appears to be the "written memorialization" of the discussion held in

1 executive session that Mr. Appleton was told he would receive. Mr. Appleton, who was
2 present in the executive session, confirms that the Board did not vote to send the letter
3 while they were in executive session. In fact, he stated that the Board did not say anything
4 in the executive session about a letter of reprimand. Information suggests that rather than
5 taking action or reaching a final decision about the letter of reprimand while they were in
6 executive session, the Board may have reached this decision at some later date outside
7 of any public meeting. Alternatively, as suggested by his attorney's response, Mr. Evans
8 may have acted on his own when he decided to send the letter of reprimand. Regardless,
9 a preponderance of the evidence in this case indicates that the Board did not take final
10 action or reach any final decision in its executive session on July 13, 2017.

11

12 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should move to
13 dismiss the complaint. [Motion 7].

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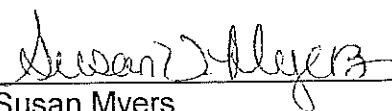
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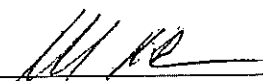
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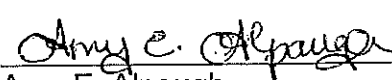
31 ///

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Jim Appleton, received on 4/24/2018
3 #PR2 Response from attorney Carolyn Connelly, received on 5/9/2018
4 #INV1 Supplemental response from attorney Christy Monson, dated 6/27/2018
5 #INV2 Letter of Reprimand, dated 9/19/2017
6 #INV3 E-mail from Carolyn Connelly, dated 11/5/2018
7 #INV4 Investigator's memo re contact with Jim Appleton

PREPARED BY  12/5/18
Susan Myers Date
Investigator

APPROVED BY  12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

**LOCAL
GOVERNMENT
LAW GROUP**

A member of Spear-Hoyt LLC

Carolyn H. Connelly
Christy K. Monson
Ross M. Williamson*
Diana Moffat
Mark A. Wolf
Rebekah Dohrman**
John A. Wolf, *Of Counsel*
*Also Admitted in Washington
**Member of American Institute of
Certified Planners

May 4, 2018.

***Via Email To: michael.thornicroft@oregon.gov
and Regular U.S. Mail***

Oregon Government Ethics Commission
3218 Pringle Road SE, Ste. 220
Salem, OR 97302-1544

Re: Phil Evans/Mosier Fire District
Case No. 18-113XMT

Dear Commissioners:

This office represents Mr. Evans with regard to the above-referenced complaint submitted by Mr. Jim Appleton, dated Tuesday, April 24, 2018. This letter explains why Mr. Appleton's complaint should be dismissed and no Commission investigation undertaken.

As evidenced by my individual responses to Mr. Appleton's 9 allegations, below, the primary reason to dismiss Mr. Appleton's complaint is that his allegations raise issues outside the jurisdiction of the Oregon Government Ethics Commission. ORS 192.685 authorizes the Commission to review and investigate complaints of violations of ORS 192.660, relating only to executive sessions. To the extent complaints raised within Mr. Appleton's paragraphs 1-9 pertain to inadequate or incomplete notice, minutes, and opportunity for public comment, the Commission lacks jurisdiction to review those public meeting elements.

Further, Mr. Appleton raises no complaints with regards to the basis or holding of the various executive sessions at issue. To the extent that Mr. Appleton alleges violations of ORS 192.660(6), he is mistaken. Based on the material submitted with Mr. Appleton's complaint, as well as the additional materials submitted with this preliminary response, it is clear that no executive session was held improperly, nor for the purpose of taking any final action or making any final decision. Rather, executive sessions were properly identified and held. Each Board decision is well documented in the minutes, following the conclusion of various executive sessions (many of which complainant requested and attended), once the Board reconvened in open session.

Allegation 1: Mr. Appleton complains that several executive session violations stem from the Board meeting held on July 13, 2017. However, Mr. Appleton does not allege that the executive session was incorrectly called or held under ORS 192.660(2)(b). Although permitted by law, Mr. Appleton did not request that executive session be held in open session, and he was in attendance. A significant number of his subsequent complaints allege certain "decisions" were made during that executive session. However, even as an attendee, he is unable to point to any such unlawful decisions.

Board President Evans assured Mr. Appleton that Mr. Appleton would receive a written synopsis of the charges discussed, and such a summary was delivered on September 19, 2017 (attached, as Exhibit A). The summary reprimand (referred to as a "LOR" in Mr. Appleton's complaint) was compiled from the meeting, in Mr. Evans' capacity as Board President. As promised, it reiterates the charges and resulting Board discussion held in executive session at Mr. Appleton's request. No decisions were made or reflected in the summary—only Board expectations expressed in the executive session.

All other complaints regarding this meeting, including points raised in Mr. Appleton's email of September 24, 2017, are outside the Commission's jurisdiction. The July 13 executive session was held during a regular Board meeting, and noticed as such. No intent to circumvent the public meeting or executive session laws are evidenced. As discussed in greater detail under Allegation 4, below, no higher level of specificity in the notice was required to inform the public of the Board's anticipated agenda. The Commission should dismiss Allegation 1, without further review or investigation.

Allegation 2: No executive session violations are raised in Allegation 2. However, Mr. Appleton identifies Assistant General Counsel for SDAO, Spencer Rockwell, as the District's Counsel in these matters. This becomes relevant only if an investigation is conducted as mentioned in my conclusion, below.

Allegation 3: As discussed above, under Allegation 1, the "LOR," did not represent unlawful Board action. Written in Mr. Evans capacity as Board President, that letter summarizes the discussion between then Chief Appleton and his Board of Directors regarding complaints and charges against the District's Chief Executive Officer. This discussion was held in executive session, at Mr. Appleton's request. He chose not to request an open hearing. No executive session violations are alleged. Thus, the Commission should dismiss Allegation 3, without further review or investigation.

Allegation 4: Mr. Appleton does not allege that the Board's September 25, 2017, meeting or executive session pursuant to ORS 192.660(2)(b) was unlawfully called or held. As on July 13, 2017, Mr. Appleton did not request an open hearing and was allowed to attend the executive session. The crux of his complaint seems to be that the notice for the special meeting did not specifically delineate the possibility of Board action, once the Board reconvened in open session. As noted above, the adequacy of

notice for a special meeting is outside the Commission's jurisdiction under ORS 192.685.

Further, notice of the special Board meeting was provided to members of the governing body, the general public and to the news media which requested notice, pursuant to ORS 192.640(3). The notice included a list of the principal subjects anticipated to be considered at the meeting, pursuant to ORS 192.640(1).

"The public meetings law does not require that every proposed item of business be described in the notice. . . . If an executive session is being held, the discussion must be limited to the topics listed in the statutory provisions identified as authority for the executive session, ORS 192.640(2)." Attorney General Public Records and Meetings Manual, p. 145.

Although allowed by law, no items not listed were discussed. Public notice is not required to indicate whether any decision will result from an identified executive session. Further, public comment is not a right during general or special Board meetings. The notice met the two-fold goal of notice for any meeting—it provided general notice to the public at large and it provided actual notice to specifically interested persons (namely, Mr. Appleton).

The minutes document that the meeting was called to order in public session, then properly closed for executive session pursuant to ORS 192.660(2)(b). The public meeting was thereafter reconvened "with Appleton present." Once in open session and before the meeting adjourned, a motion was made and passed pursuant to the subject of the properly called executive session. The specific motion passed:

". . . place[d] Fire Chief Jim Appleton on paid administrative leave not to exceed forty-five (45) days starting immediately and . . . delegate[d] any supervisory or oversight duties pertaining to the Chief to Director Evans during this period of time."

To the extent Allegation 4 pertains to the accuracy of the approved minutes, that review is outside the Commission's jurisdiction. To the extent Allegation 4 relates to executive sessions, no violations are identified. The Commission should dismiss Allegation 4, without further review or investigation.

Allegation 5: The Board's October 9, 2017, letter issued by Board President Evans was authorized by the unanimously approved motion of September 25, 2017, quoted above. Mr. Evans held full, properly delegated Board authority, granted in open session over Mr. Appleton's employment as Chief. For this reason, the Commission should dismiss Allegation 5, without further review or investigation.

Allegation 6: These paragraphs allege inadequate notice for the Board's Monday, October 23, 2017, special meeting. All responses set out under Allegation 4, above, apply in this respect. In sum, adequacy of notice is outside the Commission's jurisdiction. Further, notice was adequate pursuant to ORS 192.640. Both the notice and minutes for the October 23 meeting evidence that the meeting was called to order in open session, the executive session was properly called, followed by open session, then adjournment. Upon conclusion of the executive session, and prior to adjournment, the Board moved, seconded and acted unanimously to adopt the following motion:

"I move that we adopt the recommendation of legal counsel and authorize him (Spencer Rockwell) to negotiate with Jim Appleton regarding the conclusion of his (Jim's) employment."

This motion, made in open session, pertains precisely to the basis for the executive session—which notably is not challenged by Mr. Appleton. Thereafter, Mr. Rockwell held authority to negotiate terms for then Chief Appleton's contract termination. Such negotiations proved unfruitful; but that does not undermine the appropriateness of the Board's authorization nor Mr. Rockwell's actions on that authority. Mr. Appleton provides no evidence of or basis for his conclusion that other "formal decisions" were made during executive session.

Mr. Appleton's fundamental allegation is that the Board lacked the authority to adopt the above quoted motion in open session, following the executive session and prior to adjournment. That is an incorrect legal premise. No other executive session violations are alleged. The Commission should dismiss Allegation 6, without further review or investigation.

Allegation 7: Allegation 7 reiterates the same notice and decision issues addressed above. Notice of the November 1 special meeting was properly provided, which listed an executive session pursuant to ORS 192.660(2)(f) as the only agenda item. The meeting was convened in open session, the executive session properly called, and the meeting reconvened in open session thereafter. While in open session and prior to adjournment, the Board passed a motion directly pertaining to the executive session topic—to "meet with Jim on November 8." While perhaps "confusing," as alleged by Mr. Appleton, the form of a motion or how it is captured in minutes is outside the Commission's jurisdiction. ORS 192.685. The minutes for the November 1 meeting (attached as Exhibit B) evidence that this Board decision was made in open session, not in violation of 192.660(6).

As part of his Allegation 7, Mr. Appleton refers to the notice for the November 8 special meeting, but did not attach that notice to his complaint. It is attached for your convenience as Exhibit C, and shows a properly noticed special public meeting. While outside the scope of the Commission's jurisdiction, it is worth noting that the notice meets all statutory requirements. ORS 192.640. It clearly identifies the only principle

subject anticipated to be considered, and members of the public clearly recognized the matter at issue. The minutes for that meeting (attached as Exhibit D) indicate a "large turnout of citizens at this meeting (approx. 40)."

For the above reasons, the Commission should dismiss Allegation 7, without further review or investigation.

Allegation 8: Allegation 8 takes issue with the form of the Board's motion at its November 8, 2017, special meeting—specifically whether it effected termination of Mr. Appleton's employment or not. As such, he alleges no executive session violation. His other allegations regarding inadequate due process for his termination are outside the Commission's jurisdiction. The Commission should dismiss Allegation 8, without further review or investigation.

Allegation 9-Conclusion: Mr. Appleton's various complaints can be summarized as:

1. Unlawful decisions were made during the Board executive session held on July 13, 2017; and
2. Subsequent Board decisions following three properly called executive sessions between September 25 and November 1, 2017, were improperly noticed.

In the first instance, Mr. Appleton attended the executive session during which he claims the Board must have unlawfully made decisions regarding his employment. Despite his attendance, he is unable to identify any such unlawful decision. With regard to his complaints regarding inadequate notice, such complaints are outside the Commission's jurisdiction under ORS 192.685. Further, as evidenced by the supplied notices, each conforms with the requirements governing public meeting notice. ORS 192.640. Both subsets of Mr. Appleton's complaints should be dismissed.

While the Board's actions were not ultimately favorable to Mr. Appleton, no action evidences a violation of ORS 192.660, "willful" or otherwise. Rather, each meeting closely adhered to the requirements of ORS 192.660, as well as other statutory public meeting requirements. Executive sessions were called pursuant to identified statutory authority and any resulting final action or decision was made in open session. This fact is evidenced by Mr. Appleton's own allegations and submittals, and is further borne out by Exhibits A-D to this letter.

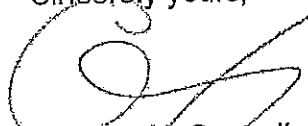
Mr. Appleton cannot have it both ways. At every opportunity where he could have discussed these matters in open session, he chose for the Board to hold discussions regarding complaints against him in executive session. When given an opportunity to submit written and oral comments, he failed to address the substantive employment issues raised, and complained about perceived procedural errors. The Board's decision to terminate Mr. Appleton's employment was made in open session after a public

hearing on the matter. No unlawful decision in executive session preceded this final Board action, and no executive session violations occurred.

As alluded to above, and as evidenced by Mr. Appleton's complaints and submittals, at all times the Board was acting on the advice of Counsel. For that reason, pursuant to ORS 244.350, even if the Commission does open an investigation into this matter, and ultimately finds violations did occur, no civil penalties may be imposed.

On behalf of the Board, for the reasons stated above, I request that Mr. Appleton's complaint be dismissed in whole, and no further review of this matter undertaken. To the extent that any additional materials are needed by the Board to decide this matter on a preliminary basis, please let me know and I'll be happy to provide any such documentation.

Sincerely yours,



Carolyn H. Connelly
chc@localgovlaw.com

CHC:kad

Enclosures

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AGENDA ITEMS:

127, #128, #129, #130 and #131

June 27, 2018

Carolyn H. Connelly
Christy K. Monson
Ross M. Williamson*
Diana Moffat
Mark A. Wolf
Rebekah Dohrman**
John A. Wolf, *Of Counsel*
*Also Admitted in Washington
**Member of American Institute of
Certified Planners

Ethics Commissioners
Executive Director Ronald A. Bersin
Investigator Michael Thornicroft
Government Ethics Commission
3218 Pringle Road SE, Ste. 220
Salem, OR 97302-1544

Sent via email

Re: District Response to Preliminary Review Report in Case No. 18-114XMT, Case No. 18-113XMT, and related Cases

Dear Director Bersin, Investigator Thornicroft, and Commissioners:

I represent the Mosier Fire District. I am writing to you regarding the above-referenced Preliminary Review Report (PRR) drafted by Investigator Thornicroft. (My colleague Carrie Connelly initially handled this matter; however, I am providing this supplemental letter because she is away on vacation.)

Thank you for forwarding the confidential PRR relating to alleged potential violations of ORS 192.660 by Board members of the Mosier Fire District. I understand that the PRR will be considered during an Executive Session of the regular Government Ethics Commission meeting, which is scheduled for July 29, 2018, at 9:00 a.m. The PRR appears to request more information from the District. Specifically, Investigator Thornicroft notes on pages 6-7 that confirming documentation would be helpful regarding:

- The requisite notices provided to Mr. Appleton under OAR 199-040-0030 pertaining to the executive sessions held on 7/13/17 and 9/25/17.
- Proof that the Board did not make any prohibited final decisions in the 7/13/17 execution session.

The purpose of this letter is to provide you with the above-requested documentation.

District Provided Proper OAR 199-040-0030 Notice

Attached as Exhibits 1 and 2, please find confirming documentation and proof that Mr. Appleton did in fact receive the required written notice in excess of 24 hours prior to each of the executive sessions. While the written notices were provided via a series of informal emails and emailed meeting agendas, they complied with OAR 199-040-0030. See, in particular, the highlighted portions of Exhibits 1 and 2.

In the alternative, if the Commission determines that the informality or serial nature of the notices were somehow non-compliant, we would ask it to consider the District's multiple good faith email attempts to provide notice as conclusive evidence that Mr. Appleton had effective constructive notice of the meeting and of his right to require an open session. In fact, Mr. Appleton did indeed request open meetings.

No Final Decisions at the 7.13.17 Executive Session

While it is difficult to prove a negative, please accept the attached Exhibit 3 Affidavit from Board President Phillip Evans as confirmation that the Board did not make any final decisions in the Execution Session held on 7.13.17.

This is further supported by the fact that after the Board adjourned the executive session, it went back into open session during which no immediate Board action or votes were taken. If indeed the Board had made prohibited final decisions inside the executive session, the more likely result would have been a quick Board vote with little or no discussion. Instead, the Board went into open session and merely publicly voiced its concerns with the Chief's performance and allowed him to comment. This indicates that the executive session was an opportunity for the Board to discuss the facts and provide feedback to Board President Evans, who was tasked with the job of acting as the Chief's primary supervisory contact. (For local governments, it is a recommended best practice for board presidents to be tasked with the day-to-day supervisory duties for chiefs. As a result, it is common for board presidents to seek input and guidance from the entire board in executive session when supervisory problems arise.)

When formal disciplinary action was finally taken, it was taken in a properly noticed open meeting by a formal Board vote on November 8, 2017, approximately four months after the 7.13.17 executive session. This also supports the District's position that no final decisions were made on 7.13.17.

Procedural Clarification

Lastly, as a purely procedural matter, I am unclear about which Board members in particular are the named respondents in the complaint or are in fact under investigation. As you can see from the letter dated May 4 from Carolyn H. Connelly, our firm was retained to represent Mr. Evans regarding Case No. 18-113XMT. However, we also represent the District as a whole. For these reasons, and in the interest of our

Government Ethics Commission

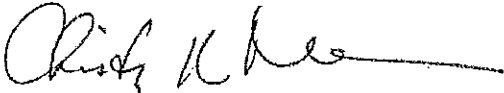
June 27, 2018

Page 3

advocacy on behalf of both Mr. Evans and the District as a whole, please accept this supplementary material in support of both Mr. Evans' defense and in support of any authorized District actions, policies and practices.

If you have any further questions or need any further information, please don't hesitate to call or contact me. The District does not intend to appear at the hearing on June 29. Thank you for your time.

Respectfully,



Christy K. Monson
christy@localgovtlaw.com

CKM:cad
Attachments

F:\1\Clients\Muni\Mosier FDA\Appleton OGEC Complaint\LTR to Bersin et al OGEC 6.26.18 CKMcad.docx

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-114XMT

DATE: December 5, 2018

RESPONDENT: AYERS, Barb, Board Member, Mosier Fire District Board of Directors

COMPLAINANT: APPLETON, Jim, former Fire Chief, Mosier Fire District

RECOMMENDED ACTION: Move to Dismiss the Complaint

1 **SYNOPSIS:** Barb Ayers served as a member of the Mosier Fire District Board of
2 Directors and participated in the executive sessions relevant to this investigation. The
3 focus of this investigation was to determine if there was a preponderance of evidence to
4 indicate that members of the Mosier Fire District Board of Directors violated the executive
5 session provisions of Oregon Public Meetings law by participating in multiple executive
6 sessions when statutory prerequisites were not met and final decisions were made.

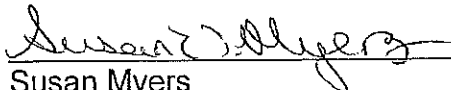
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8 Information reviewed in the investigation does not show by a preponderance of the
9 evidence that Ms. Ayers violated the executive session provisions of Oregon Public
10 Meetings law.

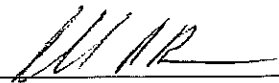
11
12 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
13 issues addressed herein:

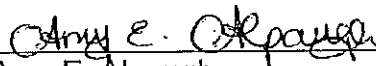
14

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Jim Appleton, received on 4/24/2018
3 #PR2 Response from attorney Carolyn Connelly, received on 5/9/2018
4 #INV1 Supplemental response from attorney Christy Monson, dated 6/27/2018
5 #INV2 Letter of Reprimand, dated 9/19/2017
6 #INV3 E-mail from Carolyn Connelly, dated 11/5/2018
7 #INV4 Investigator's memo re contact with Jim Appleton

PREPARED BY  12-5-18
Susan Myers Date
Investigator

APPROVED BY  12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-115XMT

DATE: December 5, 2018

RESPONDENT: SACAMANO, Joe, Board Member, Mosier Fire District Board of Directors

COMPLAINANT: APPLETON, Jim, former Fire Chief, Mosier Fire District

RECOMMENDED ACTION: Move to Dismiss the Complaint

1 **SYNOPSIS:** Joe Sacamano served as a Board Member of the Mosier Fire District Board
2 of Directors and participated in the executive sessions relevant to this investigation. The
3 focus of this investigation was to determine if there was a preponderance of evidence to
4 indicate that members of the Mosier Fire District Board of Directors violated the executive
5 session provisions of Oregon Public Meetings law by participating in multiple executive
6 sessions when statutory prerequisites were not met and final decisions were made.

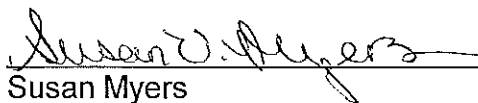
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8 Information reviewed in the investigation does not show by a preponderance of the
9 evidence that Mr. Sacamano violated the executive session provisions of Oregon Public
10 Meetings law.

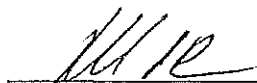
11
12 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
13 issues addressed herein:

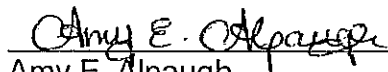
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1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Jim Appleton, received on 4/24/2018
- 3 #PR2 Response from attorney Carolyn Connelly, received on 5/9/2018
- 4 #INV1 Supplemental response from attorney Christy Monson, dated 6/27/2018
- 5 #INV2 Letter of Reprimand, dated 9/19/2017
- 6 #INV3 E-mail from Carolyn Connelly, dated 11/5/2018
- 7 #INV4 Investigator's memo re contact with Jim Appleton

PREPARED BY  12.5.18
Susan Myers Date
Investigator

APPROVED BY  12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-116XMT

DATE: December 5, 2018

RESPONDENT: RUBIN, Joanne, Board Member, Mosier Fire District Board of Directors

COMPLAINANT: APPLETON, Jim, former Fire Chief, Mosier Fire District

RECOMMENDED ACTION: Move to Dismiss the Complaint

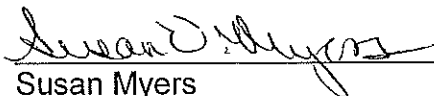
1 **SYNOPSIS:** Joanne Rubin served as a Board Member of the Mosier Fire District Board
2 of Directors and participated in some of the executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that members of the Mosier Fire District Board of
5 Directors violated the executive session provisions of Oregon Public Meetings law by
6 participating in multiple executive sessions when statutory prerequisites were not met and
7 final decisions were made.

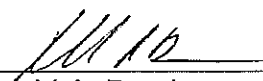
8
9 Information reviewed in the investigation does not show by a preponderance of the
10 evidence that Ms. Rubin violated the executive session provisions of Oregon Public
11 Meetings law.

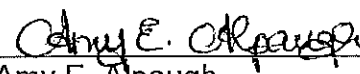
12
13 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
14 issues addressed herein:

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Jim Appleton, received on 4/24/2018
- 3 #PR2 Response from attorney Carolyn Connelly, received on 5/9/2018
- 4 #INV1 Supplemental response from attorney Christy Monson, dated 6/27/2018
- 5 #INV2 Letter of Reprimand, dated 9/19/2017
- 6 #INV3 E-mail from Carolyn Connelly, dated 11/5/2018
- 7 #INV4 Investigator's memo re contact with Jim Appleton

PREPARED BY  12-5-18
Susan Myers Date
Investigator

APPROVED BY  12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  12/6/18
Amy E. Alpaugh Date
Assistant Attorney General

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 18-117XMT

DATE: December 5, 2018

RESPONDENT: REEVES, Todd, Board Member, Mosier Fire District Board of Directors

COMPLAINANT: APPLETON, Jim, former Fire Chief, Mosier Fire District

RECOMMENDED ACTION: Move to Dismiss the Complaint

1 **SYNOPSIS:** Todd Reeves served as a Board Member of the Mosier Fire District Board
2 of Directors and participated in the executive sessions relevant to this investigation. The
3 focus of this investigation was to determine if there was a preponderance of evidence to
4 indicate that members of the Mosier Fire District Board of Directors violated the executive
5 session provisions of Oregon Public Meetings law by participating in multiple executive
6 sessions when statutory prerequisites were not met and final decisions were made.

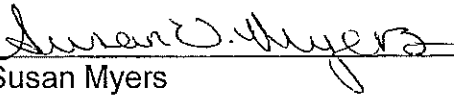
7
8 Information reviewed in the investigation does not show by a preponderance of the
9 evidence that Mr. Reeves violated the executive session provisions of Oregon Public
10 Meetings law.


11
12 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
13 issues addressed herein:

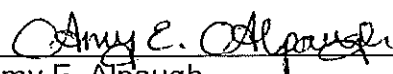
14

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint submitted by Jim Appleton, received on 4/24/2018
3 #PR2 Response from attorney Carolyn Connelly, received on 5/9/2018
4 #INV1 Supplemental response from attorney Christy Monson, dated 6/27/2018
5 #INV2 Letter of Reprimand, dated 9/19/2017
6 #INV3 E-mail from Carolyn Connelly, dated 11/5/2018
7 #INV4 Investigator's memo re contact with Jim Appleton

PREPARED BY  12-5-18
Susan Myers Date
Investigator

APPROVED BY  12/5/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  12/6/18
Amy E. Alpaugh Date
Assistant Attorney General



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

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

November 15, 2018

Roger Leachman
742 SW Vista Avenue #36
Portland, Oregon 97205

Dear Mr. Leachman:

This letter of advice is provided in response to your request received on November 13, 2018, which presented a question regarding whether or not the Directors of Portland's District Coalitions would be considered as the "governing body of a public body". 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.

In the information you supplied, you stated there are seven (7) District Coalitions in Portland that provide support to the Neighborhood Associations. These Coalitions are funded directly by the city through the Office of Community and Civic Life (OCCL). Two (2) of the seven (7) Coalitions are operated directly by the city and the staff members are OCCL employees. The other five (5) are organized as nonprofit corporations, funded by fiscal year base grants from OCCL.

The Oregon Government Ethics Commission's (OGEC) jurisdiction is very specific and relates to matters involving Oregon Lobby Regulation laws pursuant to ORS 171.725, executive session provisions of Oregon Public Meetings law pursuant to ORS 192.660 and Oregon Government Ethics law, which prohibits the use of public office for personal gain pursuant to ORS Chapter 244.

The jurisdiction of the OGEC is limited under Oregon Public Meetings law to the permissible purposes in which governing bodies can convene an Executive Session. However, ORS 192.610 provides definitions for a governing body, public body and meeting. Access to this information can be obtained via the following link: <http://www.open-oregon.com/laws/oregon-public-meetings-law/>



Roger Leachman
November 15, 2018
Page 2

You may also find the Attorney General's Public Records and Meetings Manual helpful. The following are some links to the manual that you may find useful:

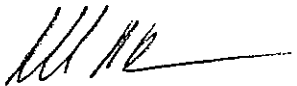
Public meetings law: <https://www.doj.state.or.us/oregon-department-of-justice/public-records/attorney-generals-public-records-and-meetings-manual-2014/attorney-generals-public-records-and-meetings-manual-2014-ii-public-meetings/>

Guide to Bodies Subject to Public Meetings Law:
https://www.doj.state.or.us/wp-content/uploads/2017/06/appendix_k_1.pdf

From the information you provided, it appears that the Directors of Portland's District Coalitions would be considered public officials and be subject to Oregon Government Ethics laws in ORS Chapter 244. However, the OGEC would not have the jurisdiction to determine whether or not these coalitions would be considered a "governing body of a public body", but the links provided above may answer your question.

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/mjw

*****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

From: Roger Leachman <rogerleachman@hotmail.com>
Date: Tuesday, November 13, 2018 12:32 PM
To: OGEC Mail * OGEC
Subject: Request for staff advisory opinion

TO: Oregon Government Ethics Commission

I write to seek an opinion from the Commission.

I serve on the Board of Directors of my Neighborhood Association, the Goose Hollow Foothills League (GHFL), and on the Board of Directors of the Neighbors West/Northwest Coalition (NWNW). My inquiry arises from my service (2015-present) on the latter.

There are ninety-five Neighborhood Associations in the city of Portland. Most are organized as nonprofit corporations under the provisions of ORS, Chapter 65, although that is not a requirement, and not all of them are so organized. There are seven District Coalitions in Portland, which are charged under 3.96 of City Code to provide support to the Neighborhood Associations. Coordinating this is a city bureau, the Office of Neighborhood Involvement (ONI), recently renamed the Office of Community and Civic Life (OCCL).

It is important to note that the Neighborhood Associations receive no monies directly from the city, i.e., OCCL. Some of them may occasionally be recipients of grants from the coalitions, e.g., for such matters as sign caps, communications funds, street fairs, etc.

The District Coalitions, however, are funded directly by the city through OCCL, and their responsibilities are mandated in 3.96.040 of city code. Two of the seven coalitions are operated directly by the city, and the staff are OCCL employees. Both of them also have advisory committees, generally drawn from the Neighborhood Associations in the areas served.

The other five are organized as nonprofit corporations under ORS, Chapter 65. They are funded by fiscal year base grants from OCCL. The NWNW FY 2017-2018 base grant, for example, was \$298,405. With the exception of Southeast Uplift (SEUL), all are governed by boards consisting of one director each from the member Neighborhood Associations.

Section II -Purpose of NWNW's Bylaws begins by stating "Neighbors West/Northwest is established to provide services to neighborhood association [sic] within boundaries hereinafter defined..." Later, under Section XIV – Public Meetings and Records Rules & Governing Statues [sic] it is stated that the "...board shall abide by the appropriate governing rules and statutes, including the Office of Neighborhood Involvement *Standards for Neighborhood Associations, District Coalitions, Business District Associations, And the Office of Neighborhood Involvement* ORS 65, and the applicable sections of State and Federal tax regulations."

Prior to the 2005 formulation of the *ONI Standards*, Neighborhood Associations and the District Coalitions were directed (beginning in 1974) to follow the State Open Meetings and Public Records rules (ORS, Chapter 192). The *ONI Standards* were designed to "meet the spirit" of the state law and to meet "the unique needs of neighborhood volunteer-based organizations" (*ONI Standards*, p. [iv]).

When I read p. 6 of *Oregon Government Ethics Law: A Guide for Public Officials*, the "elements" listed there seem to apply to my service on the NWNW Board of Directors. The only question regards "Elected or appointed to a *governing body of a public body* [my emphasis]."

I am not an attorney, but it would seem to me that the roles and responsibilities of the District Coalitions indicate they serve as public bodies in effect, especially since the five coalitions organized as nonprofits fulfill the same functions and receive funding on the same basis as the two city staffed and operated coalitions. The definitions in ORS 192.610 (3) and (4) suggest this as well.

Therefore my question to you is whether or not the Directors of Portland's District Coalitions would be considered as the "governing body of a public body," and thence come under the jurisdiction of Oregon's standards and practices law?

I hope that I have given you sufficient information to begin your deliberations. Please do not hesitate to contact me should you have any questions.

I will very much appreciate your attention to this matter.

Yours truly,
Roger Leachman

Roger Leachman
742 SW Vista Ave., # 36
Portland, OR 97205
(704)962-6523
rogerleachman@hotmail.com

Roger M. Leachman
742 SW Vista Avenue, #36
Portland, OR 9720

Mr. Ronald A. Bersin
Executive Director
Government Ethics Commission
3218 Pringle Road SE, Ste. 220
Salem, OR 97302-1544

24 November 2018

RECEIVED
NOV 28 2018
OREGON GOVERNMENT
ETHICS COMMISSION

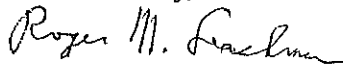
Dear Mr. Bersin:

I am in receipt of your 15 November 2018 letter of advice. Thank you for your prompt response to my inquiry.

I am not an attorney, of course, but your advice dovetails with the opinion I had reached, having read the DOJ manuals et al. It was also in line with the Commission's Advisory Opinion No. 07A-1001 of 30 March 2007, concerning advisory committees of the Portland Development Commission (PDC).

Let me say I am very appreciative of your attention to this matter. Thank you for your time and please thank your staff on my behalf.

Yours truly,



Roger M Leachman



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

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

November 20, 2018

Daneene Fry
2929 Eldorado Dr.
Medford, Oregon 97504

RE: Advice 18-243I

Dear Ms. Fry:

This letter of advice is provided in response to your request received on September 26, 2018 which presented a question regarding the application of Oregon Government Ethics law relevant to outside employment restrictions. 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.

According to the information provided, you have been involved in the real estate profession since 1979. You possess multiple credentials and designations: Oregon State Certified General Appraiser (OSCGA) credential, Senior Real Property Appraiser (SRPA), and Senior Residential Appraiser (SRA) designations as a member of the Appraisal Institute. In addition, you are a nationally certified instructor of the Uniform Standards of Professional Appraisal Practice (USPAP) since 2002. According to the Appraisal Foundation website, there are 11 appraisers in Oregon that have earned the USPAP instructor credential. Oregon appraisers are required to take a 7 hour USPAP course as part of their biennial license renewal cycle.

Since 1979, you have either owned or co-owned businesses that specialized in real estate appraisal, consulting and appraisal continuing education. You currently own DJ Fry & Associates, providing real estate appraisal and continuing education courses. As an independent contractor, you taught appraisal courses for the Rogue Valley Association of Realtors (RVAR).

During the period of July 2009 through February 2017, you served on the Appraiser Certification and Licensure Board. Currently, you are employed with the Appraiser Certification and Licensure Board (Board) as a Compliance Specialist 2, as such you are a public official for the State of Oregon.



During your years in the private sector, you have established many business relationships in the real estate and appraisal communities. The RVAR has recently contacted you to teach a USPAP class and appraisal courses in 2019.

Your question is: "What restrictions or prohibitions relevant to Oregon Government Ethics law would you need to consider if, while in state service, you were to engage in outside employment endeavors?"

ORS 244.040(1) prohibits a public official from using or attempting to use an official position to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the public official, relative or household member of the public official are associated, if the opportunity would not otherwise be available but for the public official's holding the official position.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. For example, if you use your current position as a public official to obtain future employment, that would be a prohibited use of office. The public official must also ensure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources.

The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.

5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
 - o Employees of governmental agencies must give written notice to their appointing authority.
 - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

As a Compliance Specialist 2, you investigate complaints filed against appraisers and appraisal management companies. Your duties require you to determine levels of compliance, negotiate and recommend settlement agreements, represent the Board during contested case hearings, audit appraisal reports and coordinate the compliance program and development related policy, identify training-related compliance problems, develop training goals and materials to improve compliance with regulations.

Under Oregon Government Ethics law, there are two kinds of statutory conflicts of interest: "actual" and "potential". In general, as a public official, you have a conflict of interest anytime you undertake any official action, decision or recommendation, which "would" ("actual") or "could" ("potential") financially affect you, a relative, or any business with which you or a relative is associated. [ORS 244.020(1), (13)] The difference between "actual" and "potential" conflicts of interest is determined by financial affect resulting from the action, decision or recommendation made by the public official. To clarify, an actual conflict occurs when a public official participates in an official action that would have a direct and specific financial impact, whereas a potential conflict exists when, at most, the action could possibly have a financial impact. ORS 244.120(1) requires an employee like you to notify your supervisor or manager in writing of the nature of your conflict and request that they dispose of the matter.

For example, as a Compliance Specialist 2, working for the Appraiser Certification and Licensure Board your duties include identifying training-related compliance problems & developing training goals and materials. If you were to take action, make decisions or recommendations that concern trainings that you could offer as part of your continued education business, you would be met with a conflict of interest and possibly a prohibited use of office.

Per ORS 244.040(1) you would be prohibited from financially benefiting from any opportunity to refer individuals or businesses that came before the Board, to your continuing education business. (See #3 above in Guidelines for Outside Employment)

In conclusion, it appears that your current job duties pertaining to training issues and compliance would present conflicts of interests for you. On each occasion that you were met with taking an official action that would or could financially affect you or your business, you would be met with

a conflict of interest and you would be required by ORS 244.120(1)(c) to make written notification to your supervisor of the nature of your conflict and ask the supervisor to dispose of the issue giving rise to the conflict. For example, I have an assignment to update training materials and because my business provides appraiser trainings, I have a conflict of interest. Please dispose of this conflict." Or, "I have a case where I would like to recommend the appraiser take "X" training, but I have a conflict of interest because my business provides such trainings. Please dispose of this conflict." Your supervisor must delegate another to take care of the matter or instruct you in how to proceed.

In addition, even if you properly disclose your conflict of interest on each such occasion, you may still be in violation of ORS 244.040(1), which prohibits using your official position to create an income-producing opportunity for you or your business. For example, if you make an official recommendation that an appraiser you are investigating take a particular training course that is currently, or could be, offered by you or your company, it may be a prohibited use of your official position. ORS 244.040 would also prohibit you from personally, or via the school through which you offer training classes, promoting your classes by reference to your current public position.

It appears that it would be very difficult to perform your current job duties while privately conducting paid outside trainings in the same subject area, and remain in compliance with Oregon Government Ethics law.

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

DJ Fry & Associates

2929 Eldorado Dr
Medford, OR 97504

September 25, 2018

(541) 772-2620

Tammy Hedrick
Oregon Government Ethics Commission
3218 Pringle Rd. SE
Salem, OR

RECEIVED
SEP 26 2018
OREGON GOVERNMENT
ETHICS COMMISSION

Dear Ms. Hedrick,

I write to request clarification of permitted employment activity during my personal, off-duty time. I understand that as a fulltime employee of the Oregon Appraiser Certification and Licensure Board (ACLB) that I am considered a public official under Oregon Ethics Laws.

As I understand the Laws, I am not prohibited per se from owning and operating a private for-profit business or from working for a private employer while I am employed by the ACLB.

I have been involved in the real estate appraisal profession since 1979. I possess the Oregon State Certified General Appraiser credential as well as the SRPA and SRA designations as a member of the Appraisal Institute. I also am a nationally certified instructor of the Uniform Standards of Professional Appraisal Practice (USPAP) and have held the credential continuously since 2002. According to the Appraisal Foundation website, there are 11 appraisers in Oregon that have earned the USPAP instructor credential. The Appraisal Foundation is the organization designated by Congress to develop and interpret USPAP and is the only organization permitted to credential USPAP instructors to teach its national professional ethics and standards course. Oregon appraisers are required to take the 7-hour USPAP course as a part of their biennial license renewal cycle.

I moved to Oregon and, along with my cousin Linda Fry, owned and operated Fry & Associates Inc., a real property appraisal business, until 2016 when my cousin retired and we dissolved the corporation. I continued to provide appraisal services as DJ Fry & Associates, a sole proprietorship I registered with the Secretary of State in 2016, and, although currently inactive, it continues to be so registered.

In October, 1998, Linda and I registered Rogue Valley Processing Inc. as a separate entity with the Secretary of State and began developing courses for qualifying education for persons interested in entering the profession. In April, 2000 we completed negotiations with a local real estate broker who was teaching real estate brokerage courses under the dba of the Appraisal &

Real Estate School of Oregon (ARESO) to enable a merger to offer classes in both disciplines. In July, 2002 Linda and I acquired complete ownership of ARESO which we continued to operate until December, 2015 when we transferred operations to Fry & Associates Inc. and dissolved Rogue River Processing Inc.

We registered ARESO with the Oregon Department of Education as a private career school in 2000 and remained registered until 2013 when we decided to cease offering qualifying education courses and focus on continuing education. The Department does not require registration for continuing education course offerings.

We became an approved course provider with the ACLB in 2000 and continuously operated as ARESO until April, 2015 when I submitted a name change to Fry & Associates Education as a result of our planned transfer of operations to Fry & Associates Inc.

We had incorporated and registered Fry & Associates Inc. with the Oregon Secretary of State in November, 1996 in anticipation of our moving to Oregon and began operations in 1998. In September, 2016 we dissolved Fry & Associates Inc. with the intent of my continuing appraisal and school operations to DJ Fry & Associates. I continued to offer real estate appraisal and continuing education courses and it continues to be registered as such today.

I served on the Appraiser Certification and Licensure Board from July, 2009 until February 24, 2017 when I resigned so I could apply for the Compliance Specialist position. During my tenure on the Board, I was privileged to serve 2 years as Board Chair and 1 year as Vice Chair. Until my appointment to the Compliance Specialist position, I was an independent fee appraiser and part-time instructor and performed those functions both before and during the entire time I served on the Board, a policy making entity. State statutes require that 5 of the 8 Board members be credentialed appraisers in good standing with the Board.

In addition to our limited course offerings, during the last several years of teaching, I developed a relationship with the Rogue Valley Association of Realtors (RVAR) wherein I periodically taught appraisal courses it marketed to appraisers throughout southern Oregon as well as courses for its Realtor members. RVAR handled marketing and registration for the courses and provided facilities for the course offerings. I performed as an independent contractor and not as an RVAR employee. I received reimbursement for course materials and related expenses as well as a teaching fee we negotiated on a course by course basis. My relationship with the ACLB was not included in any advertising or promotional materials of which I am aware and I disclosed at the beginning of each course that I was not representing the Board in any capacity.

I ceased accepting appraisal assignments when I was appointed to the Compliance Specialist position but completed my 2017 RVAR teaching commitments while I was a part-time employee of the ACLB. I have maintained a friendship with RVAR staff and we are interested in me resuming my teaching under our former arrangement. I have been asked to teach a USPAP

class in December, 2018 because of requests RVAR has received as well as to commit to teaching 6 other appraisal courses next year.

As long as I am employed at the ACLB, I would limit my teaching to vacation/personal days/comp time at the probable rate of 6 to 8 offerings a year. I have no need to use state equipment in this activity since I still own sufficient equipment to operate an appraisal office and small career school. I do not use Board supplies, etc. for either business. I have, in fact, occasionally personally purchased supplies such as toner and thumb drives that I have used for state business. I have not requested compensation from the ACLB for any of the supplies.

In addition to a residence that Linda and I co-own in Medford, I continue to maintain a small office space in Medford where I store a significant amount of equipment and continue to expend several thousand dollars per year of my personal funds to maintain the credentials I bring to the Agency (license, designations, membership in a major professional organization, USPAP instructor certification, membership in RVAR and MLS monthly membership fees, continuing education, etc.). I have not sought reimbursement from the Board for any of the expenses.

I submit each course that I offer to the Board for review and approval through the prescribed course approval process available to all other persons and entities desiring to provide continuing education in Oregon and have not sought any special accommodation as a Board member or employee. USPAP instructors are required by the Appraisal Foundation to follow strict procedures including little flexibility in varying from its prescribed power point program and subject matter interpretations. Failure to adhere to the Appraisal Foundation guidelines and requirements is considered to be a violation that is subject to disciplinary action including revocation of the Instructor credential. My status as a nationally certified USPAP Instructor also allows me to be qualified as an expert witness in administrative hearings of the ACLB's contested cases.

I believe that my teaching activities actually benefit the Board. The appraisal industry, like real estate in general, is a dynamic field that is constantly changing in response to diverse influences. Being in the classroom, interacting with appraisers of varying degrees of experience and practice, affords an opportunity for a "boots on the ground" perspective and information that cannot be obtained in a confining office cubicle in Salem. It is information that is important to being able to investigate alleged appraisal practice violations because one measurement standard is what one's peers would do in a similar assignment. The Board's mission is to protect the public interest and doing so in a fair, knowledgeable and consistent manner is a critical component of the process.

I apologize for the lengthy dissertation but this is a matter about which I am obviously passionate. I included the lengthy business history to demonstrate that my interest in teaching is not due to my relatively recent public employment but is, rather, a continuation of a long-

Ms. Hedrick – Page 4

standing commitment to providing classroom educational opportunities for appraisers. I have not sought special favor nor do I attempt to use my position to increase classroom enrollment.

In addition to the issue of permitted off-duty employment as an ACLB employee, I would appreciate your interpretation of guidelines or restrictions of which I should be aware should I retire or otherwise cease to be an employee of the ACLB.

I have limited my attachments to my job description and statement of my qualifications but would be happy to provide any additional documentation you think would be helpful in this matter. If you wish to verify information, Linda Fry can be reached at (541) 772-5192. Susan Ladue, RVAR Education Coordinator, can be reached at (541) 770-7060.

Thank you for your consideration and guidance,

Daneene Fry

Daneene "Danee" Fry
daneefry@live.com

(541) 772-2620

STATEMENT OF QUALIFICATIONS

DANEENE J FRY, SRPA, SRA

DJ Fry & Associates
2929 Eldorado Dr.
Medford, OR 97504

(541) 772-2620

EDUCATION:

Graduated, Bowling Green State University, College of Business Administration, Bowling Green, Ohio 1970

Attended Midwestern College, Denison, IA 1967-1968

EXPERIENCE and CURRENT STATUS:

Compliance Investigator, Oregon Appraiser Certification & Licensure Board, March, 2017 to present

Owner, DJ Fry & Associates, an Oregon firm specializing in real estate appraisal, consulting and appraisal continuing education, 2016 to present

Certified National USPAP Instructor by The Appraisal Foundation, Appraisal Qualifications Board, 2002 to present

Certified as an FHA Independent Fee Appraiser, Portland Area Office, 1999 to present

Certified as an FHA Independent Fee Appraiser, Columbus Area Office, 1985 to 1998

Appraiser Member, Oregon Appraiser Certification and Licensure Board, July 2009 to February, 2017

Co-owner, Fry & Associates Inc, an Oregon firm specializing in real estate appraisal and consulting, 1998 to 2016

Co-owner and instructor, Appraisal & Real Estate School of Oregon, 2000 – 2016

Chief Appraisal Officer, PremierWest Bank, 2009-2010

Co-owner, WF Smith & Associates Inc. (Lima, Ohio) as certified general appraiser, 1993 – 1997

Owner of Dan-Lee Enterprises Inc (Lima, Ohio), a firm specializing in real estate appraisal and consulting, 1979 – 1993

Associate Planner, City of Lima, Ohio, 1976 – 1984

Reporter, The Lima News, Lima, Ohio, 1971 – 1976
Reporter, The Cleveland Press, Cleveland, Ohio 1970 – 1971

LICENSES/PROFESSIONAL ORGANIZATIONS/DESIGNATIONS:

Oregon State Certified General Real Estate Appraiser Certificate #C000639, 1999 to present
Appraisal Institute: SRPA (Senior Real Property Appraiser) 1990 to present
SRA (Senior Residential Appraiser) 1987 to present
Earth Advantage Institute: AGA (Accredited Green Appraiser) 2014 to 2018
Ohio Certified General Real Estate Appraiser Certificate #383070, 1991 – 1998
Indiana Certified General Real Estate Appraiser Certificate #CG69302586, 1992-1997
Oregon State Certified General Real Estate Appraiser Certificate #C000339, 1992-1993



State of Oregon
Appraiser Certification and Licensure Board

Position Description

- This Position is:**
- Mgmt Service-Supervisory
 - Mgmt Service-Managerial
 - Mgmt Service-Confidential
 - Classified
 - Unclassified
 - Executive Service

*** PLEASE READ INSTRUCTIONS BEFORE COMPLETING THIS FORM ***

- New Revised

SECTION 1. POSITION INFORMATION

- a. Class Title: Compliance Specialist 2
 b. Class No.: C5247
 c. Effective Date:
 d. Position No.:
 e. Working Title: Appraiser Compliance Investigator
 f. Work Unit: ACLB
 g. Agency No.: 974000
 h. Agency Name: ACLB
 i. Employee Name:
 j. Work Location (City-County): Salem - Marion

- k. Position: Permanent Seasonal Limited Duration Academic Year
 Full Time Part Time Intermittent Job Share

- l. FLSA: Exempt If Exempt: Exec m. Eligible for Overtime: Yes No
 Non-Exempt Prof
 Admin

SECTION 2. PROGRAM/POSITION INFORMATION

a. Describe the program in which this job exists. Include program purpose, who's affected, size, and scope. Include relationship to agency mission.

The Appraiser Certification and Licensure Board is a semi-independent state agency operating under ORS 182. The mission of the agency is to protect the public interest by verifying minimum qualifications and enforcing minimum competency requirements and standards of professional practice for real estate appraisers and appraisal management companies operating in Oregon. Under ORS Chapter 674 and Title XI of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, the agency registers, licenses and/or certifies real estate appraisers, registered appraiser assistants and appraisal management companies as well as supervises and disciplines these regulated persons and/or entities. The agency investigates complaints, performs audits of appraisers/appraisal management companies, approves or denies applications for registration, licensure and certification and disciplines persons/entities who violate applicable Oregon Revised Statutes, related Administrative Rules and Uniform Standards of Professional Appraisal Practice.

b. Describe the purpose of this position, and how it functions within this program, by completing this statement:
The purpose of this job/position is to . . .

The Compliance Specialist 2 works to investigate complaints filed against appraisers and appraisal management companies; use discretion to decide levels of compliance; solve the most difficult compliance issues; negotiates and recommends settlement agreements to the Administrator and the Board; represent the Board during contested case hearings; audit appraisal reports to determine compliance with Oregon Revised Statutes and/or Administrative Rules and Uniform Standards of Professional Appraisal Practice (USPAP) and coordinate the compliance program and development related policy.

SECTION 3. DESCRIPTION OF DUTIES

List major duties. Note percentage of time duties is performed. If this is an existing position, mark "N" for new duties or "R" for revised duties.

Time	N/R	DUTIES
------	-----	--------

65%	R	Conduct in-office and on-site routine (and for-cause) audits and investigations; perform appraiser and appraisal management company complaint investigations, including evaluation of documents, procedures and processes to ensure compliance with laws and rules pertaining to appraisers and appraisal management companies. Utilize investigative techniques to investigate potential fraudulent or illicit activities by appraisers and appraisal management companies. Prepare examination reports on the findings which identify and explain violation of the Oregon Statutes and Administrative Rules and USPAP. Meet directly with licensees/registrants and/or their legal counsel and correspond accordingly to resolve problems and to follow-up to ensure implementation of necessary changes. Solves the most complex compliance issues that lack readily available guidelines or precedents. When violations require enforcement action, prepare investigative report to document and evaluate violations, provide facts and evidence, cite Oregon statutes, administrative rules and USPAP violations.
15%	R	Interpret provisions and respond to written inquiries, complaints and questions raised by applicants, consumers, appraisers, appraisal management companies, attorneys and other governmental agencies concerning issues arising under state and federal laws, rules and procedures concerning appraisers and appraisal management companies. Obtain and examine documents, records and information to determine if violations occurred. Provide expertise to the agency on appraiser issues. Provide training and guidance to the industry: Assist in collecting and analyze data on industry trends to determine necessary changes to the Board.
10%	R	Audit appraisal reports to ensure that the results of each report assignment comply with USPAP and all applicable appraisal laws and rules prior to a licensee becoming an appraiser or obtaining a supervisory endorsement.
10%	R	Coordinate compliance program with agency management directives. Develop compliance policy and guidelines to ensure compliance with State and Federal Law. Identify training-related compliance problems and develop training goals and materials to improve compliance with regulations. Perform other duties as assigned.
Ongoing	N	Perform position duties in a manner, which promotes customer service and harmonious working relationships, including treating all persons professionally, courteously and respectfully. Engage in effective team participation through willingness to assist and support co-workers, administrator, and other work related associations. Develop good working relationships with agency staff through active participation in projects and in identifying and resolving problems in a constructive, collaborative manner. Demonstrate openness to constructive feedback and suggestions in an effort to strengthen work performance. Expectations of all agency employees: Provide prompt customer service; create and maintain productive working relationships; treat colleagues and the public fairly, courteously, and respectfully; fully participate in work teams and; collaborate with coworkers in the improvement of work processes; improve interpersonal and job skills; provide and receive feedback and suggestions in an open and constructive manner; and, regularly and timely report to work.
Ongoing	N	<u>Confidentiality Expectation:</u> This position will be accessing or hearing confidential information during the course of performing position responsibilities. This information includes but is not limited to: financial accounts, SSN, criminal background history, financial information or status of an entity, examination results and investigations. The information accessed or heard while at work is confidential and may not be shared with anyone inside or outside the agency unless there is a business purpose for the information to be shared.
100%		

SECTION 4. WORKING CONDITIONS

Describe special working conditions, if any that are a regular part of this job. Include frequency of exposure to these conditions.

Moderate travel in and out-of-state for audits, investigations, training and meetings with industry representatives and other regulators.

May deal with angry, hostile or difficult individuals who are the subject of an investigation or audit.

This position may require occasional lifting of file boxes up to 50 pounds.

SECTION 5. GUIDELINES

- a. List any established guidelines used to do this job, such as state or federal laws or regulations, policies, manuals or desk procedures.

Oregon Revised Statutes
Oregon Administrative Rules
ACLB Policies and Procedures
Uniform Standards of Professional Appraisal Practice
Appraiser Qualification Board Licensing Guidelines
Appraiser Subcommittee Policy Statements
Title XI, Financial Institutions Reform, Recovery and Enforcement Act
Other Federal Laws and Guidelines

- b. How are these guidelines used to perform the job?

The above information is used to respond to users of real estate appraisal services concerning regulation of appraisal services administered by the agency and are the basis for all actions formulated and put into effect by the Board and staff, to ensure that the agency is in compliance with state and federal regulations.

Judgment and decisions made determines whether individuals can make their livelihood as an appraiser. Investigations provide the foundation of enforcement actions up to and including suspension and revocation of and appraiser's license/certificate or an appraisal management companies' registration.

SECTION 6. WORK CONTACTS

With whom outside of co-workers in this work unit must this position regularly come in contact?

<u>Who Contacted</u>	<u>How</u>	<u>Purpose</u>	<u>How Often?</u>
Licensees; General Public; Professional Organizations; The Appraisal Foundation; Federal Appraisal Subcommittee; Local, State, and Federal Law Enforcement Agencies; Board members; and Other State and Federal Agencies	Phone, in person, FAX, email, in writing	To respond to inquiries and provide technical assistance regarding licensing regulations.	Daily
State and Federal Agencies	Phone, in person, FAX, e-mail, in writing	Advise on appraisal, rules and policies; resolve complaints, discuss investigations	Daily

SECTION 7. JOB-RELATED DECISION MAKING

Describe the kinds of decisions likely to be made by this position. Indicate effect of these decisions where possible.

The person holding this position will exercise independent judgment and make recommendation relative to license compliance with Oregon Statutes and Administrative Rules and/or recommend action to be taken against possible non-compliant individuals. These decisions affect whether individuals may conduct real estate appraisal activity in Oregon.

SECTION 8. REVIEW OF WORK

Who reviews the work of this position? (List classification title and position number.) How? How often? Purpose of the review?

ACLB Administrator (PEM E) reviews work to ensure accuracy and to approve disciplinary sanctions.

SECTION 9. SUPERVISORY DUTIES TO BE COMPLETED ONLY FOR POSITIONS IN MANAGEMENT SERVICE

a. How many employees are directly supervised by this position? Through Subordinate Supervisors? None

b. Which of the following supervisory/management activities does this job perform?

- Plans Work
- Responds to Grievances
- Hires/Fires (or Effectively Recommends)
- Assigns Work
- Disciplines/Rewards
- Prepares and Signs Performance Appraisals
- Approves Work

SECTION 10. ADDITIONAL JOB-RELATED INFORMATION

Any other comments that would add to an understanding of this position:

This person must have five years' experience as a state certified appraiser; and be in "good standing" for at least 3 years. Not be subject to any disciplinary actions within the last 3 years that affect the legal eligibility to engage in appraisal practice. A working knowledge of the real estate appraisal industry, appraisal theory, procedures and practices, and the Uniform Standards of Professional Appraisal Practice.

This position works collaboratively in a team setting. Team building skills are essential which include maintaining open lines of communication with all staff members, offering suggestions to improve office efficiency, willingness to change priorities at a moment's notice.

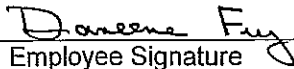
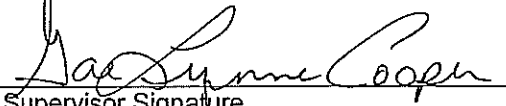
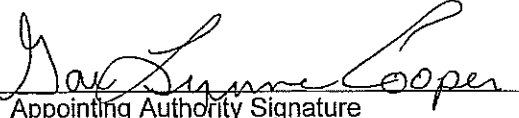
SPECIAL REQUIREMENTS: List any special mandatory recruiting requirements for this position:

- This person must have seven (7) years' experience as a state certified appraiser; and be in "good standing" for at least 3 years. Not be subject to any disciplinary actions within the last 3 years that affect the legal eligibility to engage in appraisal practice. A working knowledge of the real estate appraisal industry; appraisal theory, procedures and practices; and the Uniform Standards of Professional Appraisal Practice.
- A minimum of one (1) year of technical or professional experience performing appraisal reviews, monitoring appraisal programs, or auditing appraisal reports.
- This position must pass a criminal background check.
- Driving is an essential function of this position. The position requires a valid motor vehicle driver's license and satisfactory driving record.

BUDGET AUTHORITY: If this position has authority to commit agency operating money, indicate in what area, how much (biennially) and type of funds:

SECTION 11. ORGANIZATIONAL CHART

Attach a current organizational chart. See instructions for detail to be included on the chart.

 _____ 5/23/18  _____ 5-23-18
Employee Signature Date Supervisor Signature Date
 _____ 5-23-18
Appointing Authority Signature Date

Trainers' Report December 14, 2018

This report covers the time period of November 5, 2018, through December 14, 2018.

Completion of training:

- City of Brookings – ORS 244 (Brookings)
- Willamette University – ORS 244 (Salem)
- Northern Wasco County Public Utility District – ORS 244 (The Dalles)
- Oregon Volunteer Commission (HECC) – ORS 244 (Salem)
- City of Halsey (Host) & City of Harrisburg – ORS 244 (Halsey)
- Association of Oregon Counties County Road Program – ORS 244 (Salem)
- Oregon Health Authority – ORS 244 (Portland)
- Capitol Club – ORS 244 (Portland)
- Oregon State Treasury (Session 1) – ORS 244 (Tigard)
- Workforce and Talent Development Board (HECC) – ORS 244 (Portland)

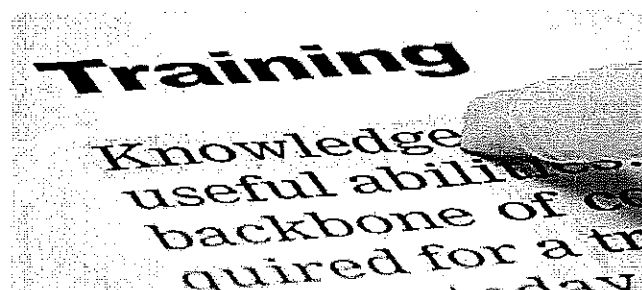
Upcoming Trainings:

<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
12/17/18	10:00 – 12:00 PM	Oregon State Treasury (ORS 244 - Session 2)	16290 SW Upper Boones Ferry Rd. Mt. Hood Board Room Tigard, Oregon 97224
12/17/18	4:00 – 5:00 PM	Portland Village School (ORS 192)	Webinar – Adobe Connect
12/18/18	2:30 – 3:45 PM	Department of Administrative Services - New to Public Management (ORS 244)	Executive Building 155 Cottage St NE Conference Room A Salem OR 97301

12/19/18	10:30 – 12:00 PM	Clackamas County (ORS 244)	Clackamas County Public Services Building 2051 Kaen Road Suite 254 Oregon City, OR 97045
12/19/18	9:30 – 10:15 AM	Educator Advancement Council (ORS 244)	Broadway Commons 1300 Broadway St NE 3 rd Floor / Peru Room Salem, Oregon 97301
1/8/19	8:00 – 10:00 AM	Board of Examiners for Engineering and Land Surveying (ORS 244 & ORS 192)	670 Hawthorne Avenue SE Suite 220 Salem, OR 97301
1/16/19	9:00 – 11:00 AM	Lane County (ORS 244; ORS 171 & ORS 192)	Lane County Public Service Bldg. 125 E 8 th Avenue Eugene, Oregon 97408
1/17/19	3:30 – 5:00 PM	Association of Oregon Counties County College (ORS 244)	Memorial Union 2501 SW Jefferson Way Room 109 Corvallis OR 97331
1/23/19	9:00 – 11:00 AM	Portland Metro (ORS 244)	600 NE Grand Avenue Room 501 Portland, Oregon
1/30/19	5:30 – 7:00 PM	City of Gladstone (ORS 244)	Gladstone City Hall 525 Portland Ave Gladstone, OR 97027

Upcoming Conferences: NONE

Training Staff: Tammy Hedrick 503-378-6802 tammy.r.hedrick@oregon.gov
Monica Walker 503-378-2011 monica.walker@oregon.gov



January 2019

Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
31	1 OFFICE CLOSED- HOLIDAY	2	3	4
7 Executive Session 2:00 – 3:00 PM	8	9 Gifts 10:00 – 11:00 AM	10	11
14	15 Lobby Law 10:00 – 11:00 AM	16	17	18 New Employees: you're a public official, now what! 1:00 – 2:00 PM
21 OFFICE CLOSED- HOLIDAY	22	23	24 Use of Position / Office 2:00 – 3:00 PM	25 COMMISSION MEETING
28	29 Conflicts of Interest 10:00 – 11:00 AM	30	31	<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"> Email ogec.training@oregon.gov to register for a webinar. </div>

February 2019

Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
28	29	30	31	1 New Employees: you're a public official, now what! 10:00 – 11:00 AM
4	5	6 Gifts 2:00 – 3:00 PM	7	8
11	12	13 Lobby Law 2:00 – 3:00 PM	14	15
18 OFFICE CLOSED- HOLIDAY	19	20 Use of Position / Office 10:00 – 11:00 AM	21 Conflicts of Interest 2:00 – 3:00 PM	22
25	26	27 Executive Session 10:00 – 11:00 AM	28	<div style="border: 1px solid black; padding: 5px; width: fit-content;"> Email ogec.training@oregon.gov to register for a webinar. </div>

Executive Director's Report

December 14, 2018

- Budget
 - 2017-19 biennial budget
 - Currently projected with a \$190,386.20 surplus.
 - Expenditures through March, \$111,622.60 spent per month; \$114,910.68 average to spend per month.
 - General Fund Revenues have exceeded predictions, forecasted \$30,000 for biennium; moneys collected to date, \$52,745.75.
 - 2019-21 biennial budget
 - Governor's Budget released.
 - \$2,913,971 biennial budget proposed by Governor.
 - No Policy Packages, a current service level request budget.
 - Adjusted for inflation for DAS assessments and AG costs.
- Legislative Concepts
 - Met with Governor's staff to explain problems the agency is currently experiencing and the legislative solution through concepts.
 - Legislative Concepts accepted by Governor's office.
- SEI
 - Continue to work non-filers. 14 non-filers for 2016-2018.
 - Continue to work past year non-filers to file SEIs due.
- Other
 - Met with DAS IT on services and service levels.
 - Provided 2019 legislative concepts to Capitol Club.
 - Lobbyist filings due for all three quarters of 2018, 1 Client, 2 Lobbyists.

	General Fund	Lottery Funds	Other Funds	Federal Funds	Nonlimited Other Funds	Nonlimited Federal Funds	Total Funds	Positions	Full-Time Equivalent (FTE)
2017-19 Leg Adopted Budget	-	-	2,705,247	-	-	-	2,705,247	9	9.00
2017-19 Emergency Boards	-	-	53,441	-	-	-	53,441	-	-
2017-19 Leg Approved Budget	-	-	2,758,688	-	-	-	2,758,688	9	9.00
2017-19 Leg Approved Budget (Base)	-	-	2,758,688	-	-	-	2,758,688	9	9.00
Summary of Base Adjustments	-	-	96,382	-	-	-	96,382	-	-
2019-21 Base Budget	-	-	2,855,070	-	-	-	2,855,070	9	9.00
010: Non-PICS Pers Svc/Vacancy Factor	-	-	7,307	-	-	-	7,307	-	-
030: Inflation & Price List Adjustments	-	-	72,215	-	-	-	72,215	-	-
2019-21 Current Service Level	-	-	2,934,592	-	-	-	2,934,592	9	9.00
Modified 2019-21 Current Service Level	-	-	2,934,592	-	-	-	2,934,592	9	9.00
Total Appeals/Gov's Adj. Working Policy Packages	-	-	(20,621)	-	-	-	(20,621)	-	-
2019-21 Appeals / Gov's Adj Working	-	-	2,913,971	-	-	-	2,913,971	9	9.00
Net change from 2017-19 Leg Approved Budget	-	-	155,283	-	-	-	155,283	-	-
Percent change from 2017-19 Leg Approved Budget	0.00%	0.00%	5.63%	0.00%	0.00%	0.00%	5.63%	0.00%	0.00%
Net change from 2019-21 Current Service Level	-	-	(20,621)	-	-	-	(20,621)	-	-
Percent change from 2019-21 Current Service Level	0.00%	0.00%	(0.70%)	0.00%	0.00%	0.00%	(0.70%)	0.00%	0.00%

OREGON GOVERNMENT ETHICS COMMISSION
 AY19 CASH FLOW

		Appn 30000 - Admin - PCA 41501					Appn 70000 - GF - PCA 00501				
	Beginning Cash Balance	Actuals To Date	Actuals + Projected	2017-2019 LAB	Variance	Actuals To Date	Actuals + Projected	2017-2019 LAB	Variance		
REVENUE											
0415 ADMINISTRATIVE AND SERVICES CHARGES		2,519,661.39	2,519,661.39	2,524,954.00	5,292.61	52,745.75	64,745.75	30,000.00	(34,745.75)		
0505 FINES AND FORFEITS		52.25	52.25	2,000.00	1,947.75				0.00		
0975 OTHER REVENUE					7,240.36	52,745.75	64,745.75	30,000.00	(34,745.75)		
Total Revenue		2,519,713.64	2,519,713.64	2,526,954.00							
TRANSFERS											
2010 TRANSFER OUT TO OTHER FUNDS		(10,000.00)	(10,000.00)		10,000.00				0.00		
1107 TRANSFER IN FROM DEPT OF ADMIN SVCS					0.00				0.00		
Total Transfers		(10,000.00)	(10,000.00)								
PERSONAL SERVICES											
3110 CLASS/UNCLASS SALARY & PER DIEM		696,772.05	1,093,353.02	1,119,202.00	25,848.98				0.00		
3160 TEMPORARY APPOINTMENTS				466.00	466.00				0.00		
3170 OVERTIME PAYMENTS		1,514.98	1,514.98	456.00	(1,058.98)				0.00		
3190 ALL OTHER DIFFERENTIAL		255.04	1,392.00	206,804.00	657.77				0.00		
3210 ERB ASSESSMENT		143,155.50	206,166.23	61,420.00	(3,836.65)				0.00		
3220 PUBLIC EMPLOYEES' RETIREMENT SYSTEM		42,310.10	65,256.65	82,741.00	(1,088.45)				0.00		
3221 PENSION BOND CONTRIBUTION		53,632.94	83,829.45	521.00	1,40.52				0.00		
3230 SOCIAL SECURITY TAX		274.56	480.48	6,450.00	9.78				0.00		
3250 WORKERS' COMPENSATION ASSESSMENT		4,189.58	6,480.22	5,450.00	9.78				0.00		
3260 MASS TRANSIT		139,557.64	229,334.13	319,448.00	81,813.87				0.00		
3270 FLEXIBLE BENEFITS									0.00		
Total Personal Services		1,081,662.39	1,686,807.16	1,789,348.00	102,540.84						
SERVICES AND SUPPLIES											
4100 INSTAITE TRAVEL		9,740.26	16,074.98	9,004.00	2,929.02				0.00		
4125 OUT-OF-STATE TRAVEL		2,324.00	3,504.00	7,980.00	0.00				0.00		
4150 EMPLOYEE TRAINING		7,418.40	14,604.04	21,557.00	3,576.00				0.00		
4175 OFFICE EXPENSES		10,423.37	16,107.93	19,723.00	5,957.96				0.00		
4200 TELECOMM/TECH SVC AND SUPPLIES		50,239.40	51,039.40	52,557.00	2,643.67				0.00		
4225 STATE GOVERNMENT SERVICE CHARGES		31,313.96	33,473.96	38,254.00	1,517.60				0.00		
4250 DATA PROCESSING		455.02	898.02	1,023.00	132.98				0.00		
4275 PUBLICITY & PUBLICATIONS		2,048.42	5,204.78	9,469.00	4,264.22				0.00		
4300 PROFESSIONAL SERVICES		227,168.00	293,318.00	310,552.00	17,224.00				0.00		
4315 IT PROFESSIONAL SERVICES		137,457.00	183,276.00	161,995.00	(21,281.00)				0.00		
4325 ATTORNEY GENERAL LEGAL FEES		199.99	1,441.99	2,484.00	1,042.01				0.00		
4375 EMPLOYEE RECRUITMENT & DEVELOPMENT			225.00	450.00	225.00				0.00		
4400 DUES AND SUBSCRIPTIONS		53,159.63	82,491.37	94,494.00	12,002.63				0.00		
4425 FACILITIES RENT & TAXES		2,048.89	63,194.12	169,091.00	(2,048.89)				0.00		
4475 AGENCY PROGRAM RELATED SVCS & SUPP		159,274.12	3,800.00	7,607.00	896.88				0.00		
4650 OTHER SERVICES AND SUPPLIES					3,807.00				0.00		
4700 EXPENDABLE PROPERTY \$250-\$5000		11,028.76	11,028.76		(1,028.76)				0.00		
4715 IT EXPENDABLE PROPERTY									0.00		
Total Services and Supplies		704,299.22	881,694.64	969,340.00	87,645.36						
5900 OTHER CAPITAL OUTLAY									0.00		
TOTAL EXPENDITURES		1,785,961.61	2,568,501.80	2,758,688.00	190,186.20						
Ending Cash Balance*		1,521,919.33	739,379.14			52,745.75	64,745.75		0.00		

*Outstanding Revenue Invoices not taken into consideration



OREGON GOVERNMENT ETHICS COMMISSION
Fund 4150 OF LIMIT - ADMIN
For the Month of OCTOBER 2018

REVENUES

Budget	Budget Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Spend
0415	ADMINISTRATIVE AND SERVICES CHARGES	266,629.64	2,484,895.11	2,524,954.00	40,058.99	155,305.94	5,007.36
0975	OTHER REVENUE	0.00	52.25	2,000.00	1,947.75	3.27	243.47
		266,629.64	2,484,947.36	2,526,954.00	42,006.64	155,309.21	5,250.83

TRANSFER OUT

Budget	Budget Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Spend
9999	DEFAULT	0.00	10,000.00	0.00	-10,000.00	625.00	-1,250.00
		0.00	10,000.00	0.00	-10,000.00	625.00	-1,250.00

PERSONAL SERVICES

Budget	Budget Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Spend
3110	CLASS/UNCLASS SALARY & PER DIEM	46,631.05	696,772.05	1,081,008.00	384,235.95	43,548.25	48,029.49
3160	TEMPORARY APPOINTMENTS	0.00	0.00	466.00	466.00	0.00	58.25
3190	ALL OTHER DIFFERENTIAL	0.00	1,514.98	0.00	-1,514.98	94.69	-189.37
3210	ERR ASSESSMENT	17.12	255.04	456.00	200.96	15.94	25.12
3220	PUBLIC EMPLOYEES' RETIREMENT SYSTEM	9,373.54	143,155.50	202,950.00	59,794.50	8,947.22	7,474.31
3221	PENSION BOND CONTRIBUTION	2,617.26	42,310.10	61,151.00	18,844.90	2,644.38	2,355.11
3230	SOCIAL SECURITY TAX	3,594.18	53,632.94	82,741.00	29,108.06	3,352.06	3,638.51
3250	WORKERS' COMPENSATION ASSESSMENT	20.21	274.56	621.00	346.44	17.16	43.31
3260	MASS TRANSIT	279.78	4,189.58	6,480.00	2,300.42	261.85	287.55
3270	FLEXIBLE BENEFITS	10,897.85	139,557.64	300,024.00	160,466.36	8,722.35	20,058.30
		73,430.99	1,081,662.39	1,735,907.00	654,244.61	67,603.90	81,780.58

SERVICES AND SUPPLIES

Budget	Budget Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Spend
4100	INSTATE TRAVEL	138.25	9,740.26	19,004.00	9,263.74	608.77	1,157.97
4150	EMPLOYEE TRAINING	150.00	2,324.00	7,080.00	4,756.00	146.25	594.50
4175	OFFICE EXPENSES	559.70	7,418.40	21,557.00	14,138.60	463.65	1,767.33
4200	TELECOMM/TECH SVC AND SUPPLIES	1,380.12	10,423.37	18,723.00	8,299.63	651.46	1,037.45
4225	STATE GOVERNMENT SERVICE CHARGES	22,291.85	50,239.40	52,557.00	2,317.60	3,139.96	289.70
4250	DATA PROCESSING	206.04	31,313.96	98,254.00	66,940.04	1,957.12	8,367.51
4275	PUBLICITY & PUBLICATIONS	50.00	455.02	1,023.00	567.98	28.44	71.00
4300	PROFESSIONAL SERVICES	259.04	2,048.42	9,469.00	7,420.58	128.03	927.57
4315	IT PROFESSIONAL SERVICES	7,350.00	227,168.00	310,552.00	83,384.00	14,198.00	10,423.00
4325	ATTORNEY GENERAL LEGAL FEES	22,909.50	137,457.00	161,995.00	24,538.00	8,591.06	3,067.25

Budget	Budget Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Spend
4375	EMPLOYEE RECRUITMENT AND DEVELOPMENT	0.00	199.99	2,484.00	2,284.01	12.50	285.50
4400	DUES AND SUBSCRIPTIONS	0.00	0.00	450.00	450.00	0.00	56.25
4425	FACILITIES RENT & TAXES	3,652.77	53,159.63	94,494.00	41,334.37	3,322.48	5,166.80
4650	AGENCY PROGRAM RELATED SVCS & SUPP	216.96	2,048.89	0.00	-2,048.89	128.06	-256.11
4850	OTHER SERVICES AND SUPPLIES	738.09	159,274.12	164,091.00	4,816.88	9,954.63	602.11
4700	EXPENDABLE PROPERTY \$250-\$5000	0.00	0.00	7,607.00	7,607.00	0.00	950.88
4715	IT EXPENDABLE PROPERTY	950.00	11,028.76	0.00	-11,028.76	689.30	-1,378.60
		60,852.32	704,299.22	969,340.00	265,040.78	44,018.70	33,130.10

SUMMARY TOTALS

REVENUES	REVENUE	EXPENDITURES	PERSONAL SERVICES	SERVICES AND SUPPLIES	TRANSFER OUT	TRANSFER OUT
	Total				Total	Total
	266,629.64		73,430.99	60,852.32	134,283.31	10,000.00
						10,000.00
						10,000.00
						10,000.00

4150
OFFICE ADMIN