

**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of

Isaac Kearns

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**STIPULATED FINAL ORDER**

**CASE NO. 19-088XDG**

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Isaac Kearns.
  
2. JURISDICTION: At all material times, Isaac Kearns was a member of the Board of Directors for the Yamhill County School District 8 (Dayton School District). As the governing body of a public body, the members of the Board of Directors are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 and ORS 192.685.
  
3. STIPULATED FACTS:
  - A. Members of the Dayton School District Board of Directors held executive sessions on the following dates: 2/13/18 and 2/12/19. The statutory authorization cited for holding these executive sessions was ORS 192.660(2)(i) – to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

- B. Isaac Kearns participated in the executive sessions held by the Dayton School District Board of Directors on 2/13/18 and 2/12/19, during which the Directors, as part of their historical practice, collectively reviewed the status of District personnel contracts to determine which contracts would be subject to renewal or non-renewal at the Board meeting to be held in March. This topic was not an authorized topic for executive session, and the Board members have changed the District's practice going forward.
- C. The actions described in paragraph (B) above constitute two violations of ORS 192.660.
- D. ORS 244.360 authorizes the Commission to assess civil penalties of up to \$1,000 as a result of any violation of ORS 192.660 unless the violation occurred as a result of the members of the governing body acting upon the advice of the public body's counsel.
- E. The results of the Commission's investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find two violations of ORS 192.660.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On May 31, 2019, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of these matters. Isaac Kearns has indicated he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.

- B. Isaac Kearns will receive a letter of education in lieu of a civil penalty as authorized by ORS 244.350 in order to settle and compromise this matter.
- C. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Isaac Kearns within the scope of the above-referenced proceedings.
- D. Isaac Kearns will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

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


6. EFFECT:

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

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

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

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

  
\_\_\_\_\_  
Isaac Kearns

10-18-19  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard P. Burke, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date

**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )  
 )  
 ) **STIPULATED FINAL ORDER**  
 Roger Taylor )  
 ) **CASE NO. 19-103XSM**  
 )  
 \_\_\_\_\_ )

1. PURPOSE: The purpose of this stipulated final order is to settle any and all claims, allegations and charges by the Oregon Government Ethics Commission (Commission) against Roger Taylor.
  
2. JURISDICTION: At all material times, Roger Taylor was a member of the Board of Directors (Board) for the Basin Ambulance Service District (District). As the governing body of a public body, the members of the Board are subject to the executive session provisions of Oregon Public Meetings law as set forth in ORS 192.660 and ORS 192.685.
  
3. STIPULATED FACTS:
  - A. Roger Taylor participated in an executive session held by the Board on April 18, 2019. The complaint in this matter alleged that when the Board convened this executive session, the presiding officer of the Board did not identify the specific statutory authorization for holding the executive session.
  
  - B. ORS 192.660(1) provides that a governing body of a public body may hold an executive session "after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session."

- C. By participating in an executive session for which the presiding officer failed to identify the statutory authorization, Roger Taylor violated ORS 192.660(1).
- D. In the executive session, the Board discussed complaints against and considered dismissal of three District volunteers.
- E. ORS 192.660(2)(b) provides that a governing body may go into executive session to “consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.” The statutory prerequisite is that the governing body must provide the affected persons with sufficient notice of the executive session and an opportunity to request an open hearing.
- F. The Board had not satisfied the statutory prerequisites before it discussed the complaints against and dismissal of the three volunteers in the executive session on April 18, 2019. Roger Taylor made an objection to the discussion but remained in the executive session.
- G. By participating in an executive session when the Board discussed the three volunteers without having satisfied the statutory prerequisites, Roger Taylor violated ORS 192.660(2).
- H. The actions set forth in paragraphs 3(C) and 3(G) constitute two distinct violations of ORS 192.660.
- I. ORS 244.350(2)(a) authorizes the Commission to assess civil penalties of up to \$1,000 for each violation of ORS 192.660.
- J. The Commission contends that the results of the investigation, if submitted through exhibits and testimony at a contested case hearing, would establish a preponderance of evidence in support of a post-hearing order to find two violations of ORS 192.660.

K. Roger Taylor asserts that the allegation in paragraph 3(A) that the executive session was not properly convened is false and that he did not violate ORS 192.660(1), as set forth in paragraph 3(C), above. Roger Taylor also asserts that his participation in the executive session identified in paragraph (3)(E), above, was in protest of the actions being taken, specifically the lack of notification to the affected volunteers. He further asserts that the results of the investigation, if submitted through exhibits and testimony in a hearing, would not establish a preponderance of evidence in support of any violations of ORS 192.660 by him. In order to conclude this matter, however, Mr. Taylor agrees to the terms and conditions in this Stipulated Final Order.

4. TERMS OF SETTLEMENT:

The parties agree as follows:

- A. On July 12, 2019, the Commission considered information in the preliminary review phase and acted to find cause to initiate an investigation of this matter.
- B. Roger Taylor has indicated that he wishes to conclude this matter by agreeing to the terms and conditions in this order without completing the investigative phase.
- C. Roger Taylor will receive a letter of education, as authorized by ORS 244.350, in order to settle and compromise this matter.
- D. The Commission releases, settles and compromises any and all claims, which have been or could be asserted against Roger Taylor within the scope of the above-referenced proceedings.
- E. Roger Taylor will initiate no claims, litigation or other action against the Commission as a result of these proceedings.

5. REVIEW BY COUNSEL:

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

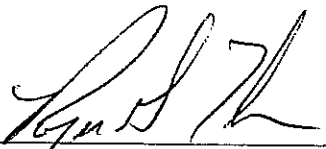
6. EFFECT:

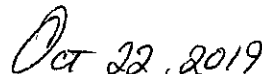
This agreement is subject to the final approval of the Commission. Once approved, this agreement shall be the final disposition of the matter and shall be binding upon all parties.

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

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

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

  
\_\_\_\_\_  
Roger Taylor

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard P. Burke, Chairperson  
Oregon Government Ethics Commission

\_\_\_\_\_  
Date





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

DATE: November 13, 2019

TO: Commissioners

FROM: Ronald A. Bersin  
Executive Director

RE: Thom Cannon Case No. 18-172XDG  
Shannon Tolman Case No. 18-173XDG

SUBJECT: Memo to Commissioners when considering Default Final Orders

OAR 199-001-0015(3) requires that the Executive Director prepare a summary of aggravating or mitigating factors that are not included in the penalty matrix for the Commissioners to consider when a proposed final order deviates from the matrix recommendation. This method will not limit the Commission's authority to exercise its discretion to deviate from the calculated sanctions from the matrix and modify the civil penalty or forfeiture. In the cases cited above, the matrix calculation called for a letter of reprimand, education, or explanation rather than a civil penalty.

The respondents were found in violation of the executive session provisions of Oregon Government Ethics law earlier in March of this year and were offered a proposed settlement offer with a letter of education sanction, per the penalty matrix. The respondents were simultaneously provided with a Notice of Proposed Civil Penalty and Opportunity for a Contested Case Hearing.

The respondents did not request a contested case hearing nor did they respond to the original proposed settlement offer made on 3/12/19 or a subsequent second offer to settle for a letter of education made on 10/16/19.

The correspondence from the Commission in March and again in October advised each respondent that a default final order may be taken by the Commission for a civil penalty up to \$2,000 if the respondents failed to either settle the matter or request a contested case hearing within the time limits prescribed by law.

The default final orders included for the Commission's consideration imposes a civil penalty of \$200 for each respondent, 10% of the maximum possible civil penalty.

The aggravating factors in these cases are: 1) failure of the respondents to respond to repeated attempts to resolve the matter through education rather than civil penalty and 2) failure of the respondents in the first instance to follow written advice from their insurance representative and legal counsel from the League of Oregon Cities not to proceed with the executive session which led to the violations.



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BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of )

Thom Canon )

FINAL ORDER BY DEFAULT

Case No. 18-172XDG

\_\_\_\_\_ )

The Oregon Government Ethics Commission (Commission) made a preliminary finding on 3/7/19 that Thom Canon violated executive session provisions of Oregon Public Meetings law. A Notice of the Commission action and other material concerning contested case rights was sent to Thom Canon on 3/12/19 via certified mail. Receipt of successful certified service was signed by Mr. Canon on 3/14/19.

Thom Canon did not request a contested case proceeding within the 21 day period.

A letter notifying Mr. Canon that a default final order in this matter may be taken by the Commission was sent on 10/16/19 via regular mail, return service requested, to the address on file with the Commission, which matched Mr. Canon's address in current Oregon Department of Motor Vehicles records.

Thom Canon did not respond to the 10/16/19 letter from the Commission and the US Postal Service did not make return service of the mailing.

Mr. Canon never responded to the Commission's proposed stipulated final order offering a sanction of a letter of education in lieu of violation, sent on 3/12/19 and re-sent on 10/16/19.

Now therefore, after considering the relevant portions of the Commission's file relating to this matter, the Oregon Government Ethics Commission enters the following Order by Default in the matter of Thom Canon:

## FINDINGS OF FACT

1. At all material times Thom Canon was a member of the Gold Hill City Council. The City of Gold Hill is a public body as defined in ORS 192.610(2). The Council is composed of two or more persons with authority to make decisions for or recommendations to the City on policy or administration and is a governing body as defined in ORS 192.610(3). Mr. Canon served the City of Gold Hill as an appointed or elected official and is a public official for purposes of ORS 192.685. ORS 244.020(15). When acting in an official capacity as a member of the Gold Hill City Council, Mr. Canon was required to comply with the requirements of ORS 192.660 and Commission rules implementing those requirements.
  
2. An executive session is a meeting or part of a meeting held by a governing body which is closed to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660(1) requires that prior to convening an executive session, the presiding officer of the governing body must publicly announce the statutory authorization for holding the executive session. ORS 192.660(2) enumerates the limited and specific topics that may be discussed in an executive session once statutory prerequisites have been satisfied.
  
3. Thom Canon participated in his official capacity as a City Councilor in an executive session held on 7/6/18 when violations of ORS 192.660 occurred.

## ULTIMATE FINDINGS OF FACT

1. Thom Canon, in his official capacity as a member of the City Council of Gold Hill, participated in an executive session held on 7/16/18 when the prerequisite for convening the executive session was not met.
  
2. Thom Canon, in his official capacity as a member of the City Council of Gold Hill, participated in the 7/16/18 executive session and discussed topics not statutorily authorized to be discussed in executive session.

**CONCLUSION OF LAW**

1. Thom Canon violated ORS 192.660(1) when he participated in the executive session held on 7/16/18 when the prerequisite for convening the executive session was not met.
  
2. Thom Canon violated ORS 192.660(2) when he participated in the executive session held on 7/16/18 and discussed topics not statutorily authorized to be discussed in executive session.

**ORDER**

Thom Canon committed one violation of ORS 192.660(1) and one violation of ORS 192.660(2) when meeting in executive session on 7/16/18.

The Commission orders that Thom Canon be assessed a civil penalty of \$200 for the two violations of ORS 192.660, pursuant to ORS 244.350 and ORS 192.685.

**NOTICE**

You are entitled to judicial review of the Final Order. Judicial review may be obtained by filing a petition for review within 60 days. Judicial review is pursuant to the provisions of ORS 183.482.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard P. Burke, Chairperson  
Oregon Government Ethics Commission

Date of Mailing: \_\_\_\_\_

NON-MILITARY AFFIDAVIT

STATE OF OREGON  
OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of ) Case No. 18-172XDG  
 )  
Thomas Canon ) NON-MILITARY AFFIDAVIT

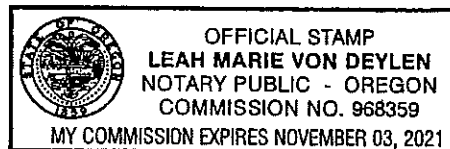
STATE OF OREGON )  
 ) ss.  
County of Marion )

I, Diane E. Gould, being first duly sworn, depose and say that I am employed by the State of Oregon, Oregon Government Ethics Commission, as Compliance Specialist 3. On November 8, 2019, at 11:49am, I searched the United States Department of Defense Manpower Data Center database to determine whether Thomas Canon is a member of the military service. I obtained the attached Military Status Report. Based upon the attached Military Status Report, I say that Respondent is not now a member of the military service of the United States.

Diane E. Gould  
Diane E. Gould

SUBSCRIBED AND SWORN to before me by Diane E. Gould this 13 day of November, 2019.

Leah Marie Von Deylen  
Notary Public for Oregon  
My Commission Expires 11/3/21





**Status Report**  
**Pursuant to Servicemembers Civil Relief Act**

SSN:  
 Birth Date: ██████████  
 Last Name: CANON  
 First Name: THOMAS  
 Middle Name: LEWIS  
 Status As Of: Nov-08-2019  
 Certificate ID: CBMF111LX9CBFYM

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individual's active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty. HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.

Michael V. Sorrento, Director  
 Department of Defense - Manpower Data Center  
 400 Gigling Rd.  
 Seaside, CA 93955

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. ? 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q33) via this URL: <https://scra.dmdc.osd.mil/faq.xhtml#Q33>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. ? 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

### More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC ? 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC ? 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

### Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC ? 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

**WARNING:** This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.



**BEFORE THE OREGON GOVERNMENT ETHICS COMMISSION**

In the Matter of )  
 )  
Shannon Tolman ) **FINAL ORDER BY DEFAULT**  
 ) **Case No. 18-173XDG**  
 )  
 )  
\_\_\_\_\_ )

The Oregon Government Ethics Commission (Commission) made a preliminary finding on 3/7/19 that Shannon Tolman violated executive session provisions of Oregon Public Meetings law. A Notice of the Commission action and other material concerning contested case rights was sent to Shannon Tolman on 3/12/19, via certified mail. Certified service failed after three attempts by the U.S. Postal Service.

A second Notice of the Commission action and other material was sent on 4/17/19 via certified mail to Shannon Tolman c/o Rob Lowe, City Manager, City of Gold Hill, PO Box 308, Gold Hill, Oregon 97525. Receipt of successful certified service was signed and dated 4/24/19. Shannon Tolman was advised that upon receipt of the Notice he had 21 days to submit a written request for a contested case proceeding.

Shannon Tolman did not request a contested case proceeding within the 21 day period.

A letter notifying Mr. Tolman that a default final order in this matter may be taken by the Commission was sent on 10/16/19 via regular mail, return service requested, to Mr. Tolman's home address on file with the Commission, which conformed to the address in current Oregon Department of Motor Vehicles records.

Shannon Tolman did not respond to the 10/16/19 letter from the Commission and the US Postal Service did not make return service of the mailing.

Mr. Tolman did not respond to the Commission's proposed stipulated final order offering a sanction of a letter of education in lieu of violation, sent on 3/12/19 and re-sent on 10/16/19.

Now therefore, after considering the relevant portions of the Commission's file relating to this matter, the Oregon Government Ethics Commission enters the following Order by Default in the matter of Shannon Tolman:

### FINDINGS OF FACT

1. At all material times Shannon Tolman was a member of the Gold Hill City Council. The City of Gold Hill is a public body as defined in ORS 192.610(2). The Council is composed of two or more persons with authority to make decisions for or recommendations to the City on policy or administration and is a governing body as defined in ORS 192.610(3). Mr. Tolman served the City of Gold Hill as an appointed or elected official and is a public official for purposes of ORS 192.685, ORS 244.020(15). When acting in an official capacity as a member of the Gold Hill City Council, Mr. Tolman was required to comply with the requirements of ORS 192.660 and Commission rules implementing those requirements.
2. An executive session is a meeting or part of a meeting held by a governing body which is closed to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660(1) requires that prior to convening an executive session, the presiding officer of the governing body must publicly announce the statutory authorization for holding the executive session. ORS 192.660(2) enumerates the limited and specific topics that may be discussed in an executive session once statutory prerequisites have been satisfied.
3. Shannon Tolman participated in his official capacity as a City Councilor in an executive session held on 7/6/18 when violations of ORS 192.660 occurred.

### ULTIMATE FINDINGS OF FACT

1. Shannon Tolman, in his official capacity as a member of the City Council of Gold Hill, participated in an executive session held on 7/16/18 when the prerequisite for convening the executive session was not met.
2. Shannon Tolman, in his official capacity as a member of the City Council of Gold Hill, participated in the 7/16/18 executive session and discussed topics not statutorily authorized to be discussed in executive session.

### CONCLUSION OF LAW

1. Shannon Tolman violated ORS 192.660(1) when he participated in the executive session held on 7/16/18 when the prerequisite for convening the executive session was not met.
2. Shannon Tolman violated ORS 192.660(2) when he participated in the executive session held on 7/16/18 and discussed topics not statutorily authorized to be discussed in executive session.

### ORDER

Shannon Tolman committed one violation of ORS 192.660(1) and one violation of ORS 192.660(2) when meeting in executive session on 7/16/18.

The Commission orders that Shannon Tolman be assessed a civil penalty of \$200 for two violations of ORS 192.660, pursuant to ORS 244.350 and ORS 192.685.

**NOTICE**

You are entitled to judicial review of the Final Order. Judicial review may be obtained by filing a petition for review within 60 days. Judicial review is pursuant to the provisions of ORS 183.482.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Richard P. Burke, Chairperson  
Oregon Government Ethics Commission

Date of Mailing: \_\_\_\_\_

NON-MILITARY AFFIDAVIT

STATE OF OREGON  
OREGON GOVERNMENT ETHICS COMMISSION

In the Matter of )  
 ) Case No. 18-173XDG  
 )  
Shannon Tolman ) NON-MILITARY AFFIDAVIT

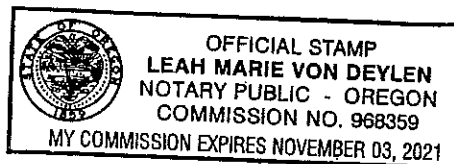
STATE OF OREGON )  
 )  
County of Marion ) ss.

I, Diane E. Gould, being first duly sworn, depose and say that I am employed by the State of Oregon, Oregon Government Ethics Commission, as Compliance Specialist 3. On November 8, 2019, at 11:39am, I searched the United States Department of Defense Manpower Data Center database to determine whether Shannon Tolman is a member of the military service. I obtained the attached Military Status Report. Based upon the attached Military Status Report, I say that Respondent is not now a member of the military service of the United States.

Diane E. Gould  
Diane E. Gould

SUBSCRIBED AND SWORN to before me by Diane E. Gould this 13 day of November, 2019.

Leah Marie von Deylen  
Notary Public for Oregon  
My Commission Expires 11/3/21







**Status Report  
Pursuant to Servicemembers Civil Relief Act**

SSN:  
 Birth Date: ██████████  
 Last Name: TOLMAN  
 First Name: SHANNON  
 Middle Name: RANDAL  
 Status As Of: Nov-08-2019  
 Certificate ID: 0XFPS9CY4TGJX9M

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individual's active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty. HOWEVER, WITHOUT A SOCIAL SECURITY NUMBER, THE DEPARTMENT OF DEFENSE MANPOWER DATA CENTER CANNOT AUTHORITATIVELY ASSERT THAT THIS IS THE SAME INDIVIDUAL THAT YOUR QUERY REFERS TO. NAME AND DATE OF BIRTH ALONE DO NOT UNIQUELY IDENTIFY AN INDIVIDUAL.

Michael V. Sorrento, Director  
 Department of Defense - Manpower Data Center  
 400 Gigling Rd.  
 Seaside, CA 93955

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. ? 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service. Service contact information can be found on the SCRA website's FAQ page (Q33) via this URL: <https://scra.dmdc.osd.mil/faq.xhtml#Q33>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. ? 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

### More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC ? 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC ? 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

### Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC ? 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

**WARNING:** This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.



**OREGON GOVERNMENT ETHICS COMMISSION**  
**INVESTIGATION**

**CASE NO:** 18-171XDG

**DATE:** November 12, 2019

**RESPONDENT:** DELL, Zachariah, City Councilor, City of Gold Hill

**COMPLAINANT:** ALFORD, Christine

**RECOMMENDED ACTION:** Make a Preliminary Finding of 1 violation of ORS 192.660(1) and 1 violation of ORS 192.660(2)

1 **SYNOPSIS:** Zachariah Dell was a member of the city council for the City of Gold  
2 Hill (City) when the events relevant to this investigation occurred. The focus of this  
3 investigation was to determine if there was a preponderance of evidence to  
4 indicate that members of the Gold Hill City Council, including Mr. Dell, violated the  
5 executive session provisions of Oregon Public Meetings law by discussing  
6 unauthorized topics and failing to meet the statutory prerequisites prior to  
7 discussing statutorily authorized topics.

8

9 The agenda for the 7/16/18 executive session cited two statutorily authorized  
10 topics, ORS 192.660(2)(h) - to consult with counsel concerning the legal rights and  
11 duties of a public body with regard to current litigation or litigation likely to be filed,  
12 and ORS 192.660(2)(i) - to review and evaluate the employment-related  
13 performance of an employee who does not request an open hearing.

14 ///

15 ///

1 Information is sufficient to indicate Zachariah Dell participated in an executive  
2 session of the Gold Hill City Council on 7/16/18 during which unauthorized topics  
3 were discussed and statutory prerequisites were not met, in violation of ORS  
4 192.660.

5

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

8

9 **192.610 Definitions for ORS 192.610 to 192.690.** As used in ORS 192.610 to  
10 192.690: \* \* \* \* \*

11 (2) "Executive session" means any meeting or part of a meeting of a governing  
12 body which is closed to certain persons for deliberation on certain matters.

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

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

20 (5) "Meeting" means the convening of a governing body of a public body for which  
21 a quorum is required in order to make a decision or deliberate toward a decision  
22 on any matter.

23

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

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

30 \* \* \* \* \*

1 (h) To consult with counsel concerning the legal rights and duties of a public  
2 body with regard to current litigation or litigation likely to be filed.

3 (i) To review and evaluate the employment-related performance of the chief  
4 executive officer of any public body, a public officer, employee or staff  
5 member who does not request an open hearing.  
6

7 **192.685 Additional enforcement of alleged violations of ORS 192.660.**

8 (1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660  
9 alleged to have been committed by public officials may be made to the Oregon  
10 Government Ethics Commission for review and investigation as provided by ORS  
11 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.  
12

13 **244.350 Civil penalties; letter of reprimand or explanation.** (1) The Oregon  
14 Government Ethics Commission may impose civil penalties not to exceed:

15 \* \* \* \* \*

16 (2)(a) Except as provided in paragraph (b) of this subsection, the commission may  
17 impose civil penalties not to exceed \$1,000 for violation of any provision of ORS  
18 192.660.

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

22 \* \* \* \* \*

23 (5) In lieu of or in conjunction with finding a violation of law or any resolution or  
24 imposing a civil penalty under this section, the commission may issue a written  
25 letter of reprimand, explanation or education.  
26

27 **199-040-0030 Notice to Public Official under ORS 192.660(2)(b) or (i)(1)** In  
28 order to afford to the chief executive officer of any public body, a public officer,  
29 employee, staff member or individual agent the opportunity to request an open  
30 hearing under ORS 192.660(2)(b) or (i), the public official must receive written  
31 notice of the meeting no less than one business day or 24 hours, whichever is

1 greater, in advance of the meeting.

2 (2) At a minimum, the written notice shall include:

3 (a) Identification of the governing body before which the matter will be  
4 considered;

5 (b) The time, date and location of the meeting; .

6 (c) The purpose for which the governing body proposes to convene the  
7 executive session, including the citation to the applicable section of ORS  
8 192.660 and the fact that the governing body will be considering the  
9 dismissal or disciplining of, hearing complaints or charges against, or  
10 reviewing and evaluating the performance of the public official receiving the  
11 notice;

12 (d) Information on how the public official may make a request for an open  
13 hearing.

14 **199-040-0050 Consultation with Legal Counsel** (1) The purpose of this rule is  
15 to provide guidance to governing bodies when the governing body holds an  
16 executive session permitted by ORS 192.660(2)(h): "To consult with counsel  
17 concerning the legal rights and duties of a public body with regard to current  
18 litigation or litigation likely to be filed."

19 (2) In order to meet the requirements for an executive session permitted by ORS  
20 192.660(2)(h), the attorney with whom the governing body is consulting must be  
21 present at the executive session, either in person or by telephone or by other  
22 concurrent means of oral or video electronic communication.

23

24 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission)  
25 initiated a preliminary review based on information in a signed complaint from  
26 Christine Alford on 7/27/18 (#PR1). Christine Alford alleged that Zachariah Dell  
27 and three other members of the Gold Hill City Council may have violated executive  
28 session provisions of Oregon Public Meetings law when participating in an

1 executive session on 7/16/18. The Commission found cause to investigate on  
2 9/21/18 after considering the information developed in the preliminary review. The  
3 focus of the investigation was to determine if there is sufficient evidence to indicate  
4 that Zachariah Dell participated in an executive session when topics not authorized  
5 for executive sessions were discussed and for which prerequisites were not met.  
6 Zachariah Dell and Christine Alford have been notified of the Commission actions  
7 in this matter. Both have been invited to provide any information that would assist  
8 the Commission in conducting this investigation.

9  
10 Ms. Alford's complaint is excerpted below:

11 "The meeting was called under ORS 192.660\* \* \*[t]o consult with counsel  
12 concerning the legal rights and duties of a public body with regard to current  
13 litigation or litigation likely to be filed \* \* \*[and] (t)o review and evaluate the  
14 employment-related performance of the chief executive officer of any public  
15 body, a public officer, employee or staff member who does not request an  
16 open hearing."

17  
18 "Regarding the claim that they are consulting an attorney, it's obvious that  
19 no attorney is being contacted. In fact, the 'potential litigation' that they are  
20 referring to\* \* \*is the potential for the Water Billing Clerk \* \* \* to sue the city  
21 \* \* \*. Secondly, the employee that they are discussing\* \* \*was not notified  
22 that his performance was being evaluated, was not given an opportunity to  
23 have this heard in public." (#PR1)

24  
25 Gold Hill's City Charter shows that the council has six councilors, each elected to  
26 four year terms and a Mayor who is elected to a two year term. The City has a  
27 "weak Mayor" form of governance, in which the Mayor presides over Council  
28 meetings, but may only vote in the event of a tie vote of the councilors. (#PR2)

29  
30 The sole item listed on the 7/16/18 agenda is an executive session to consult with  
31 legal counsel regarding current litigation or litigation likely to be filed and to

1 evaluate the employment related performance of a chief executive officer, public  
2 officer, employee or staff member who does not request an open hearing. (#PR1)

3

4 A review of the audio file shows that the meeting was convened as a public meeting  
5 and roll call showed that four members of the City Council were present:  
6 Councilors Dell, Canon, Palmer, and Tolman. The other two councilors were not  
7 in attendance, nor was the Mayor. One of the staff members present announced  
8 that the meeting had a quorum. In addition to the four City councilors, two staff  
9 members were also present during this executive session, one of whom was the  
10 recently hired city manager. The audio does not indicate that any attorney was  
11 present. (#PR1)

12

13 The audio reveals that before convening the executive session, the presiding  
14 officer cited ORS 192.640(3) as the authority for holding the executive session.  
15 ORS 192.640(3) is a notice statute. No one announced the lawful basis or  
16 statutory authority in ORS 192.660 for holding the executive session. (#PR1)

17

18 The topics discussed included the discontent and turnover of staff members, as  
19 well as the conduct of an elected official and the employment related performance  
20 of a second individual, neither of whom were present at this meeting. The  
21 individuals under discussion were only referred to by their first names, but it  
22 became clear that the elected official being discussed was the Mayor and the other  
23 was a City employee. The executive session participants discussed their concerns  
24 of possible litigation against the City due to the working conditions and internal  
25 dysfunction. No pending or current litigation was discussed and there was no legal  
26 counsel present at the meeting. (#PR1)

27

28 Following the executive session, the meeting re-convened into open session and  
29 a motion was made and passed which directed the Mayor to turn over all City keys,  
30 the information for City bank access, the security code to City Hall, and cease  
31 further oversight of City employees and stop unilaterally using the services of the

1 City's attorney. (#PR1)

2

3 Councilor Dell provided a response to the complaint during the preliminary  
4 review, which is excerpted below:

5

6 "...After getting information on the [executive session] requirements, I  
7 realize the error we made. Please note we are all volunteers and I out of  
8 us have the most experience at 2 years, the rest have a range from 6  
9 months to one year. We are constantly trying our best to do what is right  
10 for the city. As mentioned in the [complaint] narrative we were advised not  
11 to have a meeting, due to the formatting of our notice to the town. That  
12 meeting was cancelled and we reformatted the notice and held the  
13 meeting. We believed we were doing what was required under the line  
14 'litigation likely to be filed'. We discussed two individuals and their action  
15 that would create lawsuits filed against the city. We believed the executive  
16 session best to prevent claims of defamation of character and other like  
17 charges....As for our actions, I ask for the committee to please be sparing  
18 in your punishment and generous in your understanding because we are  
19 eager to do what is right and willing to learn..." (#PR3)

20

21 Commission staff requested copies of any notices of the 7/16/18 executive session  
22 provided to the two individuals whose conduct was to be discussed, which would  
23 have afforded them the opportunity to request a review in open session. No such  
24 written notices were provided to the Mayor or the City employee. The City  
25 Manager responded that the only written notice issued prior to the executive  
26 session was the agenda posted at City Hall. His emails are excerpted below:

27

28 "[O]nly Mayor Stanley was notified of the performance aspect of the  
29 executive session. She declined to attend the meeting however. [The  
30 employee] was not notified, nor did he attend. \* \* \*

31

1           There was a written notice printed and posted at City Hall. The meeting  
2           had been scheduled and discussed among Councilors & staff for 2-3 days.  
3           The Mayor and 2 councilors chose not to attend the special meeting.”  
4           (#PR4)

5  
6           During the investigation, the complainant provided a copy of an email from Kristin  
7           Wick, an agent for the City’s insurance carrier. This email, which included a  
8           forwarded email from an attorney at the League of Oregon Cities, was dated  
9           7/12/18 and was addressed to the six members of the City Council at their City  
10          email addresses. Councilor Dell and the other councilors who participated in the  
11          7/16/18 executive session were included on this email.

12  
13          The 7/12/18 email is excerpted below: (#INV1)

14  
15                 “It has been brought to my attention that an Executive Session was called  
16                 for tonight at 7:30 to discuss issues regarding the mayor and that no ORS  
17                 was identified in the notice nor one of the 14 Specific Reasons to hold an  
18                 Executive session stated. I reached out to the Attorney for the League of  
19                 Oregon Cities for her input to you all regarding the proper protocol for  
20                 holding Executive Sessions since this is out of my area of expertise. \* \* \*  
21                 Please review the below and I would highly discourage that the meeting  
22                 take place tonight. It should be tabled until Council is educated on the  
23                 proper protocol for holding such meetings and review the appropriate  
24                 method for handling complaints or taking action against a council member.  
25                 \* \* \* \* \*

26  
27                 It is extremely important that all Council Members are trained and up to date  
28                 on all aspects of their position and laws governing council  
29                 activities/responsibilities to avoid future or personal liability. \* \* \* \* \*(#INV1)

30          ///  
31          ///



1 Included in the email is a forwarded email from Patty Mulvihill, an attorney from the  
2 League of Oregon Cities, written on 7/12/18 and addressed to "Kristen &  
3 Christine". The attorney's email is excerpted below, with underline and bold as in  
4 original.

5  
6 I understand that the city of Gold Hill has some questions regarding  
7 executive sessions and when they can legally be held. \* \* \*

8  
9 First, ORS 192.640(3) states that special meetings (including executive  
10 sessions) shall not [be] held without at least 24 hours' notice to the  
11 members of the governing body, the news media which have requested  
12 notice and the general public. \* \* \*

13  
14 Second, executive sessions can only be held for 14 specific reasons  
15 identified in ORS 192.660. Of the 14 reasons, 10 are applicable to city  
16 council business.

17 \* \* \* \* \*

18 2. To consider the dismissal or disciplining of, or to hear complaints  
19 or charges brought against, a public officer (this does not include  
20 elected officials), employee, staff member or individual agent who  
21 does not request an open hearing.

22 \* \* \* \* \*

23 7. To consult with counsel concerning the legal rights and duties of  
24 a public body with regard to current litigation or litigation likely to be  
25 filed.

26 8. To review and evaluate the employment-related performance of  
27 the chief executive officer of any public body, a public officer,  
28 employee, or staff member who does not request an open hearing.

29 \* \* \* \* \*

30 ///

31 ///

1 Third, when holding an executive session, the notice of the executive  
2 session must identify the specific reason allowed by statute to hold the  
3 meeting. Here is a link to the League's Guide to Executive Sessions, which  
4 contains sample notices for each of the 10 reasons a city may hold an  
5 executive session. \* \* \*

6  
7 Fourth, if a council wishes to "discipline" a member of its own body, it has  
8 limited authority to do so. Typically, the council may only issue a censure.  
9 The city of Gold Hill's charter does not have any reference to the ability of  
10 its council to censure one of its members. \* \* \* \* \* (#INV1)

11  
12 Ms. Wick and Ms. Mulvihill each confirmed to Commission staff that the email was  
13 written by them on 7/12/18. Commission staff also provided a copy of this 7/12/18  
14 email to Mr. Dell and the other respondents. (#INV1a)

15  
16 Commission staff was in contact with Mr. Dell early on in this case. Staff explained  
17 the Commission process during the investigation period with Mr. Dell, including the  
18 settlement option. Mr. Dell requested to waive time in order to settle this matter  
19 during the investigation phase, but did not respond to subsequent proposed  
20 settlement offers during the waiver period. Therefore, in October 2019, after  
21 Commission staff made further unsuccessful attempts to contact Mr. Dell by phone  
22 and by mail, the investigation was resumed and this report prepared. (#INV2 and  
23 #INV3)

24  
25 **CONCLUSIONS:** Zachariah Dell was a member of the Gold Hill City Council  
26 during the period relevant to this investigation and was a public official. The City  
27 of Gold Hill is a public body and the City Council is its governing body [ORS  
28 192.610(3) and (4)].

29  
30 As a member of the governing body of a public body, Mr. Dell is required to comply  
31 with the executive session provisions of Oregon Public Meetings law found in ORS

1 192.660. Under ORS 192.685(1), complaints concerning violations of ORS  
2 192.660 alleged to have been committed by public officials may be made to the  
3 Oregon Government Ethics Commission for review and investigation as provided  
4 by ORS 244.260.

5  
6 An executive session is a meeting or part of a meeting held by a governing body  
7 which is closed to certain persons for deliberation on certain matters. [ORS  
8 192.610(2)] ORS 192.660 contains provisions allowing members of the governing  
9 body of a public body to convene and participate in executive sessions to discuss  
10 limited and specific topics once certain conditions and prerequisites are met.

11  
12 Requirement to Identify Authority for Holding Executive Session

13 Before a governing body may hold an executive session, ORS 192.660(1) requires  
14 the presiding officer to identify the authority under ORS 192.610 to 192.690 for  
15 holding the executive session.

16  
17 In this case, the presiding officer failed to identify, prior to convening the session,  
18 the statutory basis for holding the executive session. Rather, the presiding officer  
19 cited ORS 192.640(3) as the statutory basis for holding the executive session on  
20 7/16/18. This is a notice provision which reads, "No special meeting shall be held  
21 without at least 24 hours' notice to the members of the governing body, the news  
22 media which have requested notice and the general public. \* \* \*"

23  
24 Statutorily Authorized Topics and Prerequisites

25 The written agenda for the 7/16/18 executive session stated that the lawful topics  
26 to be discussed were: 1) to consult with counsel concerning the legal rights and  
27 duties of a public body with regard to current litigation or litigation likely to be filed  
28 and 2) to review and evaluate the employment-related performance of the chief  
29 executive officer of any public body, a public officer, employee or staff member  
30 who does not request an open hearing. [ORS 192.660(2)(h) and (i)]

1 In order to meet the requirements for an executive session permitted by ORS  
2 192.660(2)(h), the attorney with whom the governing body is consulting must be  
3 present at the executive session, either in person or by telephone or by other  
4 concurrent means of oral or video electronic communication. [OAR 199-040-0050]  
5 In the executive session, council members did not consult with counsel about legal  
6 rights and duties of the public body with regard to current litigation or litigation likely  
7 to be filed. The public body's counsel was not physically present or present  
8 through other means. Rather, council members simply talked among themselves.

9

10 A governing body is allowed by ORS 192.660(2)(i) to conduct an employment  
11 related performance review of an employee who does not request an open  
12 hearing. A prerequisite for such an executive session is advance notice to the  
13 subject of the performance review.

14 "In order to permit the affected person to request an 'open hearing,' the  
15 governing body must give sufficient advance notice to the person of his or  
16 her right to decide whether to require that the performance evaluation be  
17 conducted in open session." [Attorney General's Public Records and  
18 Meetings Manual, November 2014, p. 164 and OAR 199-040-0030]

19 No such notice was provided to the City employee whose employment related  
20 performance was discussed at the 7/16/18 executive session.

21 A substantial topic discussed during the executive session was the conduct of the  
22 current Mayor, an elected official, and it was the only topic that resulted in official  
23 action by the Council. Following the executive session, the meeting re-convened  
24 into open session and the members of the governing body voted to direct the  
25 Mayor to turn over all City keys, the information for City bank access, the security  
26 code to City Hall, cease further oversight of City employees and stop unilaterally  
27 using the services of the City's attorney.

28 ///

1 ORS 192.660(2)(i) allows a governing body to conduct an employment related  
2 performance review of a chief executive officer, a public officer, employee or staff  
3 member who does not request an open hearing. The Mayor is not employed by  
4 the public body, she is an elected official, therefore ORS 192.660(2)(i), which was  
5 the provision cited in this case as the statutory authority, is not applicable. It  
6 appears that a majority of the Council met in executive session to discuss and  
7 complain about the conduct of a fellow elected member of the governing body, a  
8 topic not allowed under the executive session provisions cited on the agenda or  
9 cited by the presiding officer prior to convening the executive session.

10

11 In conclusion, Zachariah Dell, as a member of the Gold Hill City Council,  
12 participated in an executive session held on 7/16/18 when topics were discussed  
13 which were not statutorily authorized or for which prerequisites were not met.

14

15 A preponderance of evidence indicates that Mr. Dell and the other members of the  
16 Gold Hill City Council participated in an executive session on 7/16/18, during which  
17 he committed one violation of ORS 192.660(1) and one violation of ORS  
18 192.660(2). (The multiple unauthorized topics discussed during executive session  
19 will be counted as a single violation.)

20

21 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should  
22 make a preliminary finding that Zachariah Dell participated in an executive session  
23 on 7/16/18 when 1 violation each of ORS 192.660(1) and ORS 192.660(2)  
24 occurred. [Motion 10]

25 ///

26 ///

27 ///

28 ///

29 ///

30 ///

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint and other material received 7/27/18 from Christine Alford.  
3 #PR2 Gold Hill City Charter, Chapters IV and V, printed from City's website.  
4 #PR3 Response to complaint from Councilor Zachariah Dell, received  
5 8/9/18.  
6 #PR4 Email responses to request for City records from City Manager,  
7 received 8/21/18 and 8/22/18.  
8 #INV1 Copy of email dated 7/12/18, from the City's insurance agent, which  
9 included a 7/12/18 email from Patty Mulvihill, League of Oregon  
10 Cities attorney, addressed to city councilors at their city email  
11 addresses. Received by Commission from complainant on 2/6/19.  
12 #INV1a 2/12/19 emails from Kristen Wick and Patty Mulvihill confirming  
13 authorship of email labeled #INV1.  
14 #INV2 Email from Mr. Dell dated 2/18/19 requesting a waiver of time in order  
15 to settle the matter.  
16 #INV3 11/7/19 Investigator's notes summarizing contact and attempted  
17 contact with Mr. Dell.

PREPARED BY *Diane Gould* 11/12/19  
Diane Gould Date  
Investigator

APPROVED BY *[Signature]* 11/12/19  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY *Amy E. Alpaugh* 11/12/19  
Amy E. Alpaugh Date  
Assistant Attorney General

**From:** Zach Dell  
**To:** GOULD Diane \* OGEC  
**Subject:** Case No. 18-171XDG  
**Date:** Thursday, August 09, 2018 11:11:04 PM

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Hello and thank you for hearing my reply.

I would like to say Diane is very helpful. After a short chat and getting information on the requirements, I realize the error we made. Please note we are all volunteers and I out of us have the most experience at 2 years, the rest have a range from 6 months to one year. We are constantly trying our best to do what is right for the city. As mentioned in the narrative we were advised not to have a meeting, due to the formatting of our notice to the town. That meeting was cancelled and we reformatted the notice and held the meeting. We believed we were doing what was required under the line "litigation likely to be filed". We discussed two individuals and their action that would create lawsuits filed against the city. We believed the executive session best to prevent claims of defamation of character and other like charges. We are facing many serious issues which I explained to Diane, which prompted her to tell me the scope in which you function. Delighted to hear, I and other named councilors will be in touch with you again about those matters. As for our actions, I ask for the committee to please be sparing in your punishment and generous in your understanding because we are eager to do what is right and willing to learn and adjust to do so.

Thank you for your time and consideration.

Sincerely Zachariah Dell

On Aug 8, 2018 6:38 PM, Zach Dell <zach.dell@ci.goldhill.or.us> wrote:

I am willing to answer any questions you have. Do you have a number i may call? Or you may call me. I work from 5am to 330pm after 335pm I am available by phone, My number is 541 816 8758.

Thank you.

(

(

(



# OREGON GOVERNMENT ETHICS COMMISSION

## INVESTIGATION

**CASE NO:** 19-051ESM  
**DATE:** November 14, 2019  
**RESPONDENT:** Michael Springer, Grant County Surveyor  
**COMPLAINANT:** Carl Stout  
**RECOMMENDED ACTION:** Make a Preliminary Finding of Violations of ORS 244.040(1) and ORS 244.120(2)

1 **SYNOPSIS:** Michael Springer is the elected Grant County Surveyor. Mr. Springer is also  
2 an owner and president of Benchmark Land Surveying, Inc. The complaint in this matter  
3 alleged that Michael Springer may have used his official position to financially benefit  
4 himself and his business, Benchmark Land Surveying (Benchmark), by invoicing Grant  
5 County for corner remonumentations needed for private Benchmark surveys and by  
6 seeking reimbursement for reviewing surveys and partitions that were actually reviewed  
7 by the Union County Surveyor.

8  
9 Information available during the investigation appears insufficient to support a finding that  
10 Michael Springer invoiced Grant County for corner remonumentations needed by  
11 Benchmark. Information does indicate, however, that Benchmark received payments  
12 from Grant County, including payment for work performed by Mr. Springer in his position  
13 as County Surveyor and improper reimbursement for survey map reviews. There is a  
14 preponderance of evidence in this case that Michael Springer engaged in a prohibited  
15 use of office in violation of ORS 244.040(1) and was met with actual conflicts of interest  
16 and failed to comply with the disclosure and disposition requirements of ORS 244.120(2).

17 ///

18 ///

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

3  
4 **92.100 Approval of plat by city or county surveyor; procedures; approval by**  
5 **county assessor and county governing body; fees.** (1)(a) Except as provided  
6 in subsection (4) of this section, before a subdivision or partition plat that covers  
7 land within the corporate limits of a city may be recorded, the county surveyor must  
8 approve the plat.

9 \* \* \* \* \*

10  
11 (4) Before a subdivision or partition plat prepared by the county surveyor in a  
12 private capacity may be recorded, the plat must be approved \* \* \* by the surveyor  
13 of a county other than the county in which the land is located and who has been  
14 designated by the county surveyor.

15  
16 (5) For performing the service described:

17 \* \* \* \* \*

18 (c) In subsection (4) of this section, the designated county surveyor shall  
19 collect the applicable subdivision or partition plat check fee, and any travel  
20 expenses incurred, as established by the designated county surveyor's  
21 board of commissioners. \* \* \*

22 \* \* \* \* \*

23  
24 **203.148 Public Land Corner Preservation Fund; fees for recording.** (1) The  
25 County governing body may establish by ordinance a fund to be known as the  
26 Public Land Corner Preservation Fund. Moneys in the Public Land Corner  
27 Preservation Fund shall be used only to pay expenses incurred and authorized by  
28 the county surveyor in the establishment, reestablishment and maintenance of  
29 corners of government surveys under ORS 209.070 (5) and (6).

30 ///

31 ///

1       **209.070 Duties.** The county surveyor of each county shall:

2       (1) Keep a fair and correct record of all surveys made by the county surveyor and  
3       deputies thereof and by the county road official, all surveys received pursuant to  
4       ORS 209.250 and all surveys under ORS 368.106 or 368.206.

5  
6       (2) Number progressively all surveys received and state by whom and, if provided,  
7       for whom made.

8       \* \* \* \* \*

9  
10       (5) Establish or reestablish and maintain all public land survey corners, where  
11       evidence of the corners can be found and the corners can be positively located,  
12       and keep a separate record of the corners, giving the dates and names of persons  
13       present. When so established or reestablished such corner monuments shall be  
14       recognized as the legal and permanent corners.

15  
16       (6) Establish or reestablish, upon order of the county court or board of county  
17       commissioners, all public land survey corners where all physical evidence is  
18       destroyed or cannot be found but where the official government notes are  
19       available, the corners to be reestablished in the manner provided in ORS 209.130  
20       for establishing corners, and keep a separate record of the same, giving the date  
21       and names of persons present, and turn such record over to the surveyor's  
22       successor. When so established or reestablished such corner monuments shall be  
23       recognized as the legal and permanent corners.

24       \* \* \* \* \*

25  
26       **209.080 Compensation.** The compensation for the county surveyor shall be as  
27       determined by the county court or board of county commissioners, and paid out of  
28       the county treasury upon order of the county court.

29  
30       **209.230 Materials for certain purposes.** The county surveyor shall procure at  
31       the expense of the county the materials and requisites for carrying into effect ORS

1 209.100 to 209.230. The county court shall pay for the same and all expenses  
2 incurred therein out of the general fund of the county.

3  
4 **209.260 Fee for filing and indexing.** The county governing body, by resolution  
5 or order, may establish the fee to be collected by the county surveyor for filing and  
6 indexing a map or report of a survey.

7  
8 **244.020 Definitions.** As used in this chapter, unless the context requires  
9 otherwise:

10  
11 (1) "Actual conflict of interest" means any action or any decision or  
12 recommendation by a person acting in a capacity as a public official, the effect of  
13 which would be to the private pecuniary benefit or detriment of the person or the  
14 person's relative or any business with which the person or a relative of the person  
15 is associated unless the pecuniary benefit or detriment arises out of circumstances  
16 described in subsection (13) of this section.

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

24  
25 (3) "Business with which the person is associated" means:

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

1                   \* \* \* \* \*

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

5                   \* \* \* \* \*

6  
7                   (13) "Potential 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 could be to the private pecuniary benefit or detriment of the person or the  
10                  person's relative, or a business with which the person or the person's relative is  
11                  associated, \* \* \*.

12                  \* \* \* \* \*

13  
14                  (15) "Public official" means the First Partner and any person who, when an alleged  
15                  violation of this chapter occurs, is serving the State of Oregon or any of its political  
16                  subdivisions or any other public body as defined in ORS 174.109 as an elected  
17                  official, appointed official, employee or agent, irrespective of whether the person is  
18                  compensated for the services.

19                  \* \* \* \* \*

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

30                  ///

31                  ///

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

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

4 \* \* \* \* \*

5 (c) Reimbursement of expenses.

6 \* \* \* \* \*

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

11  
12 **244.120 Methods of handling conflicts; Legislative Assembly; judges;  
13 appointed officials; other elected officials or members of boards.**

14 \* \* \* \* \*

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

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

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

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

25  
26 **OAR 199-005-0035 Guidelines for compliance with ORS 244.020(6), 244.025,  
27 244.040, 244.042 and 244.047**

28 \* \* \* \* \*

29 (2) The term "official duties" means that the public official's actions are directly  
30 related to serving the state of Oregon or any of its political subdivisions or any  
31 other public body as a public official.

1 (3) An "official compensation package" means the wages and other benefits  
2 provided to the public official. To be part of the public official's "official  
3 compensation package", the wages and benefits must have been specifically  
4 approved by the public body in a formal manner, such as through a union contract,  
5 an employment contract, or other adopted personnel policies that apply generally  
6 to employees or other public officials. "Official compensation package" also  
7 includes the direct payment of a public official's expenses by the public body, in  
8 accordance with the public body's policies.

9  
10 (4) As used in ORS 244.040(2)(c), "reimbursement of expenses" means the  
11 payment by a public body to a public official serving that public body, of expenses  
12 incurred in the conduct of official duties on behalf of the public body. Any such  
13 repayment must comply with any applicable laws and policies governing the  
14 eligibility of such repayment. Expenses paid by the public body to their own public  
15 officials need not be reported by the public official under ORS 244.060.

16 \* \* \* \* \*

17  
18 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated  
19 a preliminary review based on information in a signed complaint from Carl Stout. Mr. Stout  
20 alleged that Grant County Surveyor Michael Springer may have used his official position  
21 to financially benefit himself and his private business. Mr. Stout alleged that Mr. Springer  
22 used County funds to remonument corners needed for private surveys being conducted  
23 by Benchmark and that he was invoicing Grant County for reviewing Benchmark's  
24 surveys, when the surveys were actually reviewed by the Union County Surveyor. (#PR1).

25  
26 In his response, Michael Springer denies Mr. Stout's allegations and explains that the  
27 Grant County Surveyor position is part time, with a total annual compensation of less than  
28 \$6,000. Because the County does not own any surveying equipment, it was his policy "to  
29 simply utilize [my] private company's equipment and vehicles and then submit an itemized  
30 invoice for reimbursement." He asserts that Benchmark's invoices to Grant County are in  
31 accordance with Oregon statutes. Mr. Springer also explains that when Benchmark

1 completes plats or partitions, they are reviewed by the Union County Surveyor.  
2 Benchmark pays review fees to Union County, and then separately pays those same  
3 review fees a second time to Grant County when the reviewed plats or partitions are  
4 submitted for indexing and filing. Benchmark recoups these double-paid fees when it  
5 submits quarterly invoices to Grant County for reimbursement of the services Michael  
6 Springer performs as the Grant County Surveyor. (#PR7).

7  
8 On May 31, 2019, after considering the information developed in preliminary review, the  
9 Commission found cause to open an investigation. The focus of the investigation was to  
10 determine whether there is sufficient evidence to indicate that Michael Springer violated  
11 ORS 244.040(1) and 244.120(2) by using his position as the Grant County Surveyor to  
12 financially benefit Benchmark and by failing to disclose a conflict of interest. Mr. Springer  
13 and Mr. Stout were notified of the Commission's actions in this matter and invited to  
14 provide any information that would assist the Commission in conducting this investigation.

15  
16 County Surveyors

17 In Oregon, county surveyors are responsible, pursuant to ORS 209.070(5) and (6), for  
18 maintaining the infrastructure of Public Land Survey System Corners, primarily through  
19 corner monuments. These monuments are permanent markers, such as stone  
20 monuments or wrought iron posts with brass caps, used to mark the fixed position of  
21 corners. The corner monuments are then used as established markers in private surveys.  
22 The expenses incurred for corner monumentation or remonumentation are paid out of the  
23 County Public Land Corner Preservation Fund, per ORS 203.148.

24  
25 County surveyors also review and approve plats for partitions, subdivisions, and  
26 condominiums. Since a county surveyor cannot review and approve his own plats  
27 (completed in his private capacity or by his private surveying company), those plats must  
28 be submitted to a county surveyor in a separate county for review and approval. [ORS  
29 92.100]. County surveyors also review survey maps, but according to Michael Springer,  
30 it is a superficial review, just to see if they conform to statute. (#IR1). There is no  
31 requirement that survey maps completed by a county surveyor in his private capacity be



1 submitted to a separate county for review. Finally, county surveyors are responsible for  
2 indexing and maintaining a record of all plats, maps and survey reports [ORS 209.070];  
3 the county may establish fees for this filing and indexing [ORS 209.260].  
4

#### 5 Grant County Surveyor

6 Michael Springer was elected to the position of Grant County Surveyor in November  
7 2008, and took office in January 2009. Before this date, he worked for Bagett, Griffith &  
8 Blackman Land Surveyors (BGB). BGB was owned by Robert Bagett, who previously  
9 held the position of Grant County Surveyor. When Robert Bagett retired in early 2009,  
10 Michael Springer and his business partner, Jason Hatfield, purchased BGB's John Day  
11 office and established Benchmark. (#IR1).  
12

13 The Grant County Surveyor has no County office. Instead it is located in Benchmark's  
14 offices in John Day. The telephone number and e-mail address for the Grant County  
15 Surveyor are those for Benchmark. (#IR2). According to Michael Springer, the County  
16 has no surveying equipment of its own and has provided him with only one very old  
17 computer. All of the equipment, vehicles, and computers that Michael Springer uses to  
18 perform his duties as County Surveyor belong to Benchmark. (#IR1).  
19

#### 20 Compensation and Reimbursement

21 ORS 209.080 provides that the compensation for the county surveyor "shall be as  
22 determined by the county court or board of commissioners, and paid out of the county  
23 treasury." Notwithstanding this statute, Michael Springer receives no "compensation"  
24 from Grant County. According to Jim Carpenter, Grant County Counsel, "Michael Springer  
25 does not have an official compensation package and does not receive any wages or  
26 benefits associated with his elected position as Grant County Surveyor." (#IR3). Instead,  
27 Mr. Springer is paid for the work he does through reimbursements.  
28

29 The County receives quarterly invoices for the work performed by Michael Springer.  
30 Commission staff reviewed all of the invoices from April 1, 2015 to June 23, 2019. (#IR4).  
31 These quarterly invoices generally include the following line items:



1 The letter from Jim Carpenter, Grant County Counsel, appears to confirm that this  
2 reimbursement process has been in place for quite some time:

3  
4 Grant County is satisfied with the work that Springer does as the elected Grant  
5 County Surveyor, and is satisfied with the reimbursement process of compensating  
6 Springer for his time and the use of his equipment. The model that Grant County  
7 uses for an elected surveyor is common to many smaller counties. Grant County  
8 and these other counties simply cannot afford to purchase the equipment,  
9 software, etc., or the regular upgrades necessary to perform the limited functions  
10 of the elected county surveyor. The benefit to the County of having a private full-  
11 time surveyor who is capable of providing these services and resources is  
12 substantial. (#IR3).

#### 13 14 Corner Remonumentation

15 The complaint in this case alleges that Michael Springer uses his position as County  
16 Surveyor to remonument corners, at the County's expense, needed for surveys that  
17 Benchmark is doing for private clients. Specifically, the complaint asserts that if Michael  
18 Springer finds surveys corners "that he needs for control of a private job he is doing,  
19 Springer will remonument the corner or otherwise bring it up to state requirements as  
20 Grant County Surveyor, bill the county, and the next day (or as shown on his plat) find the  
21 updated corner as part of the private survey[,] thus benefitting his client by using county  
22 funds to update a needed corner." (#PR1).

23  
24 Among the Benchmark invoices, Commission staff reviewed 24 invoices for corner  
25 restorations. Each invoice identifies corner section references and the specific corners  
26 (N, SE, S1/4, etc.) being restored or remonumented. (#IR4). Commission staff then  
27 examined the private surveys involving these same corner section references, as indexed  
28 on the Grant County Surveyor's website. We looked at the dates of the private surveys,  
29 as compared to the corner restoration invoices, and whether the private surveys included  
30 the specific corners that had been restored or remonumented. Among the 24 invoices,  
31 there was only one invoice where Benchmark invoiced the County for a corner restoration

1 one month prior to Benchmark recording a private survey involving the same corner. For  
2 the remaining 23 invoices, the restored corners were used in private surveys, but those  
3 private surveys either pre-dated the restorations or were many months later. (#IR8).

4  
5 Double Billing for Plat Review Fees

6 ORS 92.100(1) requires that all plats (partition, subdivision or condominium) completed  
7 by a private surveyor must be reviewed and approved by the county surveyor. A county  
8 surveyor who completes a plat in their private capacity cannot approve their own plat;  
9 instead, ORS 92.100(4) requires the county surveyor to submit their private plats to the  
10 county surveyor in a separate county for review and approval.

11  
12 For plats it prepares for property located in Grant County, Benchmark submits the plats  
13 to the Union County Surveyor for review and approval. Benchmark pays Union County  
14 for that review/approval, at Grant County's established rates. After the plats are approved,  
15 Benchmark then submits them to Grant County to be recorded and indexed. According  
16 to Michael Springer, Benchmark pays the plat review fees twice – once to Union County  
17 for the review/approval and a second time to Grant County for the recording/indexing.  
18 Benchmark then recoups the second payment by including it in its quarterly invoices to  
19 Grant County. (#PR7). In his interview, Michael Springer explained that the main reason  
20 for the double billing is accountability, so that others can track that Benchmark is actually  
21 paying for the plat reviews. (#IR1).

22  
23 During the period at issue, Benchmark invoiced Grant County for 28 plat reviews. (#IR4).  
24 The index on the County Surveyor's website indicates that 19 of these 28 plats were  
25 prepared by Benchmark. Commission staff obtained the transaction ledgers showing  
26 Benchmark's payments to Union County (#IR9) and to Grant County (#IR10). The Union  
27 County transaction ledger indicates that from April 2015 to June 2019, Benchmark made  
28 27 payments to Union County for plat reviews (#IR9); however, the transaction ledger  
29 does not specify which, if any, of these plat reviews was for property located in Grant  
30 County. The Grant County transaction ledger shows Benchmark payments for over 30  
31 plat reviews. (#IR10).

1 Unfortunately, because the transaction ledgers include only limited information,  
2 Commission staff could not determine whether the payments to the two counties are for  
3 the same plat reviews or whether they match up with the plat reviews itemized in  
4 Benchmark's invoices to Grant County.

5

#### 6 Survey Map Review Fees

7 Unlike plats, survey maps receive only a superficial review to ensure that they conform  
8 with statutory requirements. (#IR1). County surveyors who prepare survey maps in their  
9 private capacity are not required to submit those survey maps to a separate county for  
10 review.

11

12 ORS 209.260 directs that the county governing body "may establish the fee to be  
13 collected by the county surveyor for filing and indexing a map or report of a survey." Grant  
14 County established such a fee in 2010, with Ordinance 10-01. (#PR9). This ordinance  
15 provides for a "fee of \$10.00 for the first sheet and \$10.00 for each additional sheet for  
16 filing survey maps that meet the requirements of ORS 209.250." (#PR9).

17

18 During the period at issue, Benchmark invoiced Grant County for 90 survey map reviews.  
19 (#IR4). The index on the County Surveyor's website indicates that 52 of the 90 survey  
20 maps were prepared by Benchmark. It appears from the Grant County transaction ledger  
21 that Benchmark paid the fees of \$10 per survey map to Grant County. (#IR10).  
22 Benchmark's invoices then indicate it recouped the survey map fees it had paid. (#IR4).

23

24 **CONCLUSIONS:** Michael Springer is the elected Grant County Surveyor and held that  
25 position during the period relevant to this investigation. As an elected official, Mr. Springer  
26 is a public official as defined in ORS 244.020(15).

27

28 A conflict of interest means any action, decision, or recommendation by a person acting  
29 in their capacity as a public official, the effect of which would or could be to the private  
30 financial benefit or detriment of the person, their relative, or a business with which they  
31 or their relative are associated. An actual conflict of interest exists if the effect of the official

1 action, decision or recommendation would have a financial impact on the public official,  
2 their relative, or a business with which they or a relative are associated. A potential conflict  
3 of interest exists if the effect of the official action, decision, or recommendation could have  
4 a financial impact on the public official, their relative, or a business with which they or their  
5 relative are associated. [ORS 244.020(1) and 244.020(13)].

6  
7 An elected public official such as Mr. Springer, when met with a conflict of interest, is  
8 required to publicly announce the nature of the conflict of interest. Then if the conflict of  
9 interest is potential, the public official may proceed to take action on the matter giving rise  
10 to the conflict. If the conflict of interest is actual, the public official must refrain from  
11 participating in the matter out of which the official's conflict arises. [ORS 244.120(2)(a)  
12 and (b)]. In this case, Michael Springer has not disclosed any conflicts of interest.

13  
14 ORS 244.040(1) prohibits a public official from using or attempting to use the official's  
15 position to obtain a financial benefit or avoid a financial detriment for the public official, a  
16 relative or household member, or a business with which the public official or relative or  
17 household member is associated, if the financial benefit would not otherwise be available  
18 but for the public official's holding the official position. This prohibition does not apply to  
19 a public official's official compensation package or to reimbursement of expenses. [ORS  
20 244.040(2)(a) and (c)].

21  
22 A business includes any corporation, firm, or other legal entity operated for economic  
23 gain, but excluding income producing 501(c) corporations with which the person is  
24 associated only as a member, board director, or in a nonremunerative capacity. [ORS  
25 244.020(2)]. A business with which a person is associated includes any private business  
26 or closely held corporation of which the person is a director, officer, owner, employee or  
27 agent. [ORS 244.020(3)(a)]. It also includes any business listed as a source of income on  
28 a public official's statement of economic interest. [ORS 244.020(3)(d)].

29  
30 In this case, Benchmark is a closely held corporation and Michael Springer is an owner  
31 and officer of that corporation. As the elected county surveyor, Michael Springer is

1 required by ORS 244.050 to file a statement of economic (SEI) interest. Mr. Springer lists  
2 Benchmark as a source of income on his SEI. Accordingly, Benchmark is a business with  
3 which Michael Springer is associated for purposes of analysis under ORS Chapter 244.  
4

5 There is a preponderance of evidence in this case indicating that Michael Springer used  
6 his position as the Grant County Surveyor to benefit Benchmark, his private company,  
7 and that he failed to disclose his conflicts of interest relating to these matters.  
8

#### 9 Corner Remonumentations

10 A public official who used their position to complete work needed for their private business  
11 would violate ORS 244.040(1). In this case, the complaint alleged that Michael Springer  
12 used his position to remonument corners needed for private surveys being completed by  
13 Benchmark.  
14

15 Our examination of Benchmark's invoices for corner restorations and of the index of  
16 private surveys reveals that while some of the remonumented corners appear in private  
17 surveys completed by Benchmark, the timing does not suggest that the two events  
18 (remonumentations and private surveys) are necessarily linked. Information available  
19 during this investigation is insufficient to support a finding that Michael Springer used his  
20 position to remonument corners needed for Benchmark's private surveys.  
21

#### 22 Benchmark Reimbursements

23 ORS 244.040(1) prohibits a public official from using their official position to financially  
24 benefit their private business if that financial benefit would not otherwise be available but  
25 for their holding the official position. In this case, between April 2015 and June 2019,  
26 Benchmark invoiced Grant County and Grant County paid Benchmark \$127,104.42, even  
27 though Benchmark does not have a contract with Grant County. These payments  
28 represent a financial benefit to Benchmark that would not otherwise be available but for  
29 Michael Springer holding his official position.  
30

30 ///

31 ///

1 The prohibition in ORS 244.040(1) does not apply to a public official's official  
2 compensation package or to any reimbursement of expenses as these terms are defined  
3 in the Oregon Administrative Rules.

4  
5 OAR 199-005-0035(3) provides that an "official compensation package" means the  
6 wages and other benefits provided to the public official." Such wages and benefits must  
7 be formally approved by the public body. Official compensation package may also include  
8 the direct payment of a public official's expenses in accordance with the public body's  
9 policies. In this case, according to the Grant County Counsel, "Michael Springer does not  
10 have an official compensation package and does not receive any wages or benefits  
11 associated with his elected position as Grant County Surveyor."

12  
13 OAR 199-005-0035(4) defines "reimbursement of expenses" as "the payment by a public  
14 body **to a public official** serving that public body, of expenses incurred in the conduct of  
15 official duties on behalf of the public body." (emphasis added). Michael Springer asserts  
16 that the County's payments to Benchmark are reimbursement for Michael Springer's  
17 services and his use of Benchmark's equipment. An examination of the invoices indicates  
18 Benchmark was being paid for work that Michael Springer completed. Such payments  
19 could qualify as reimbursement of expenses if the payments were made to the public  
20 official. In this case, however, Grant County did not pay \$127,204.42 to Michael Springer;  
21 it paid Benchmark. These payments do not appear to qualify as "reimbursement of  
22 expenses," and do appear to violate ORS 244.040(1).

23  
24 To illustrate how a county surveyor in another county conducts his official duties, Michael  
25 Springer provided a portion of a personal services contract between Jefferson County  
26 and Gary DeJarnatt, the Jefferson County Surveyor. While we do not have the entire  
27 contract, the portion we do have is quite illuminating, and demonstrates where Grant  
28 County's reimbursement process has gone awry. Jefferson County has contracted with  
29 the public official, not his private company, and the contract sets forth the rates of  
30 compensation to be paid to that official. Payments to the public official made under such  
31 a contract would appear to fall within the definition of official compensation package, and



1 thus would not violate ORS 244.040(1). The Jefferson County method of operation  
2 appears to be a model that Grant County could follow to ensure that its elected surveyor  
3 remains in compliance with Oregon Government Ethics law in the future.

#### 4 5 Plat and Survey Map Review Fees

6 It does appear from the invoices and transaction ledgers that Benchmark is paying plat  
7 review fees to both Union County and Grant County, and then recouping the double-paid  
8 fees from Grant County when it submits its quarterly invoices. This double-billing system  
9 is somewhat baffling and seems burdensome and unnecessary. It does not, however,  
10 appear to violate ORS 244.040.

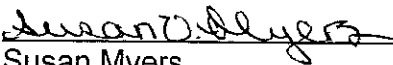
11  
12 The same cannot be said for Benchmark's recoupment of the survey map fees.  
13 Benchmark's survey maps are not reviewed by Union County. Instead, Benchmark  
14 submits its survey maps to Michael Springer, as the Grant County Surveyor, for what Mr.  
15 Springer describes as a "superficial review." The survey maps are then filed and indexed.  
16 As required by Grant County Ordinance 10-01, Benchmark, like every other surveyor,  
17 pays the \$10 fee for filing the survey maps. Unlike every other surveyor, Benchmark then  
18 recoups those survey map fees in its quarterly invoices to Grant County.

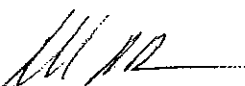
19  
20 From April 2015 to June 2019, there were 90 separate survey maps filed and indexed; 52  
21 of the 90 were filed by Benchmark. Benchmark paid \$520 to file these survey maps and  
22 then turned around and collected \$520 back from Grant County. The effect of  
23 Benchmark's process makes it seem as if Benchmark never really pays to file and index  
24 its survey maps. This recoupment of survey map fees violates ORS 244.040(1). But for  
25 Michael Springer's official position, Benchmark would not be able to recoup its survey  
26 map fees.

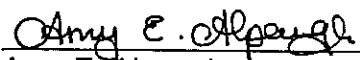
27  
28 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make  
29 preliminary findings that Michael Springer engaged in a prohibited use of office, resulting  
30 in two violations of ORS 244.040(1), and failed to disclose his conflicts of interest, thus  
31 violating ORS 244.120(2). (Motion 10).

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint from Carl Stout, received on 3/29/19.
- 3 #PR2 Exhibits 1-5 attached to complaint.
- 4 #PR3 Exhibit 6, attached to complaint.
- 5 #PR4 Supplemental exhibit 1, received from Carl Stout on 4/25/19.
- 6 #PR5 Supplemental exhibit 2, received from Carl Stout on 4/25/19.
- 7 #PR6 Supplemental exhibit 3, received from Carl Stout on 4/25/19.
- 8 #PR7 Response from Michael Springer, received on 4/4/19.
- 9 #PR8 Additional response from Michael Springer, received on 4/25/19.
- 10 #PR9 Grant County Ordinance 10-01.
- 11 #IR1 Memorandum re contact with Michael Springer, dated 9/17/19.
- 12 #IR2 Grant County Surveyor website, <https://grantcountyoregon.net/267/Surveyor>
- 13 #IR3 Letter from Jim Carpenter, Grant County Counsel, received 10/15/19.
- 14 #IR4 Invoices from Benchmark Land Surveying and Michael Springer.
- 15 #IR5 Spreadsheet of Benchmark/Springer Invoices.
- 16 #IR6 Copies of Grant County checks, payable to Benchmark and to Springer.
- 17 #IR7 Addendum to Agreement, Jefferson County, dated 6/13/18.
- 18 #IR8 Spreadsheet of Benchmark Corner Restorations.
- 19 #IR9 Transaction Ledger showing Benchmark payments to Union County.
- 20 #IR10 Transaction Ledger showing Benchmark payments to Grant County.

PREPARED BY  11/14/19  
Susan Myers Date  
Investigator

APPROVED BY  11/14/19  
Ronald A. Bersin Date  
Executive Director

REVIEWED BY  11/14/19  
Amy E. Alpaugh Date  
Assistant Attorney General

GRANT COUNTY  
OFFICE OF COUNTY COUNSEL

Jim Carpenter  
County Counsel

Jamie McKay  
Legal Assistant

November 19, 2018

Susan Myers  
Government Ethics Commission  
3218 Pringle Rd. SE, Ste 220  
Salem, OR 97302

Sent via fax only to: (503) 373-1456

RE: SPRINGER, Michael  
Case no. 19-051ESM

Dear Ms. Myers

I have reviewed your request for information dated September 20, 2019.

Grant County does not have any contracts awarded or entered into with Benchmark Land Surveying, Inc.

Grant County does not have any procurement files or procurement processes that resulted in Benchmark Land Surveying, Inc., receiving a Grant County contract.

Michael Springer does not have an official compensation package and does not receive any wages or benefits associated with his elected position as Grant County Surveyor.

Grant County is satisfied with the work that Springer does as the elected Grant County Surveyor, and is satisfied with the reimbursement process of compensating Springer for his time and the use of his equipment. The model that Grant County uses for an elected surveyor is common to many smaller counties. Grant County and these other counties simply cannot afford to purchase the equipment, software, etc., or the regular upgrades necessary to perform the limited functions of the elected county surveyor. The benefit to the County of having a private full-time surveyor who is capable of providing these services and resources is substantial.

Respectfully



Jim Carpenter  
County Counsel, Grant County

GCAAttorney@grantcounty-or.gov

201 S. Humbolt St., Ste 100  
Canyon City, OR 97820

(541) 575-4034  
(541) 575-0173 fax

Office of the  
**GRANT COUNTY SURVEYOR**  
Courthouse, Canyon City, Oregon  
mailing address: P.O. Box 476  
John Day, Oregon 97845  
541-575-1251

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April 4, 2019

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

Re: Response to complaint by Carl Stout (Case No. 19-051ESM)

Dear Ronald,

This letter is in response to a correspondence I received via an email from your office. The email is dated March 29<sup>th</sup> and was authored by Mr. David R. Hunter and contains a complaint submitted by Carl Stout regarding my conduct as County Surveyor for Grant County, Oregon. Upon examining the complaint I unequivocally assert that Mr. Stout's allegations are unfounded. They are based on ignorance of Oregon Revised Statutes, the County Surveyor's duties and my policies and practices.

My duties and responsibilities are primarily enumerated in ORS chapter 209. To aid in my response I have outlined a brief description of the Grant County Surveyor's office including my practices and policies.

For nearly the last 50 years Grant County has either elected or appointed a licensed Professional Land Surveyor with a private surveying practice as the County Surveyor. This is largely due to budgetary constraints and the relatively low demands of the County Surveyor's office. In this respect, Grant County's approach is identical to nearly all Eastern Oregon Counties.

The Grant County Surveyor position is part time. Currently the total guaranteed compensation is less than \$6,000 annually. However, the Surveyor, or his firm, is also reimbursed for work done on Public Land Survey System (PLSS) corner maintenance and plat reviews. PLSS corners were originally set in the 1800's and early 1900's by Federal Government surveyors at approximately one half mile increments along the boundaries of 1-square mile sections of land. These corners were set prior to homesteader entry and they control the subsequent division of sections into smaller tracts of land.

The Grant County Surveyor's department does not own any surveying equipment. The supplies on hand largely consist of office supplies, filing cabinets and survey monuments. Again, this is due to budgetary constraints and practicality. Properly outfitting a survey crew would include the purchase of survey instruments, a computer, software, vehicles, etc. that could quickly reach the \$100,000 mark. Of course this does not even include a salary. The equipment would then go unused for long periods of time and potentially risk becoming obsolete.

It has been my policy as well as my predecessor's and many current and previous County Surveyors across Eastern Oregon to simply utilize their private company's equipment and vehicles and then submit an itemized invoice for reimbursement. Invoices from Benchmark Land Surveying, Inc., to Grant County are in accordance with Oregon Revised Statutes and are based on the time and materials it took to accomplish specific projects.

Mr. Stout claims that I use my position as County Surveyor to my advantage. I argue that I use my position in a way that best benefits all of the public while at the same time fulfilling my obligations and duties as outlined in ORS chapter 209. For example, often times in my role as a private Land Surveyor I find evidence of an original PLSS corner. My client is charged for the time and expense searching for corner evidence and making survey measurements to each corner. Clients are also charged for deed and survey research, Right of Entry notification, calculations, data analysis and mapping. County Surveyor's funds will pay for the monument (typically a pipe with brass cap), the time it takes to set the new monument and the time it takes to prepare the official report. Time spent performing County Surveyor duties is carefully noted and separated from private practice time spent on each project.

It has been my standing policy since taking office in 2009 that upon request by any licensed surveyor, I will evaluate corner evidence and if acceptable, re-monument the corner with County material and funds. I maintain this policy so as to keep the corners marked with a county surveyor's brass cap as monuments of the highest order. Over the course of the last 10 years, I have had one surveyor request that I perform this service.

Mr. Stout also repeatedly claims that, as a licensed surveyor he is obligated by law to "update" a corner that he may "come across". I can only assume that he is referring to ORS chapter 209.250(9) which states in part: *If, in the performance of a survey, a registered professional land surveyor finds or makes changes in a public land survey corner or its accessories as described in an existing corner record or survey map in the office of the county surveyor, the surveyor shall complete and submit to the county surveyor a record of the changes found or made to a corner or accessories to the corner.*

To begin with, I believe that for the purpose of his complaint Mr. Stout has grossly misinterpreted this statute. He apparently believes that if he even sees a PLSS corner that he is somehow obligated to file a report. In truth the statute does not dictate that private surveyors make any changes to PLSS corners. In fact if Mr. Stout's interpretation were correct, he and nearly every surveyor in the state of Oregon would be in violation of this statute. Simply stated, private surveyors are not obligated to maintain PLSS corners and/or their accessories. However if they choose to do so, they must file a report with the County Surveyor.

On the other hand, as County Surveyor, I am obligated to maintain PLSS corners and their accessories. ORS 209.070(5) describes my duties and responsibilities with regard to corner maintenance. ORS 203.148 and ORS 209.230 discuss how I am to be compensated for my time and materials.

In my role as County Surveyor I have always carefully separated any time and materials that will be paid for by public funds. In addition I have made myself available to private and public licensed surveyors. If the evidence they have found is acceptable I will use county funds to update the corner position. This does not however mean that I will allow Surveyors to utilize the corner funds at their discretion.

Regarding Mr. Stout's claim that I pay myself for fees paid to another County Surveyor; again, this could not be further from the truth. His claim is due to his ignorance of my billing policies and practices.

Per ORS 209.250(1) Surveyors are required to submit subdivision and land partition plats to the County Surveyor for review. ORS 209.260 and subsequently Grant County Ordinance 10-01, dated March 17, 2010 set the fee schedule for plat review fees. When a licensed Surveyor submits a plat for review, it is required that he also remit the review fees. Depending on the plat being reviewed, the fee is typically \$140.00-\$180.00 (in Grant County only). Upon receiving a check from a Surveyor, I then deliver the check to the County Treasurer who in turn gives me a receipt. Four times per year I submit an invoice to the County for reimbursement of the review fees. The funds are reimbursed to Benchmark Land Surveying, Inc. and not me personally.

In order to avoid a conflict of interest and per ORS 92.100(4), I do not review my own land partition or subdivision plats. Per ORS 92.100(4), I have designated the Union County Surveyor for this task. Just as other private Surveyors pay me, I pay plat review fees directly to the Union County Surveyor. Since this transaction would not otherwise be seen by our county officials or the public, I then remit a check in the same amount (for the same plat review) to the Grant County Treasurer. In turn, my review fees and those of other private surveyors are all included in my quarterly invoice to the County.

This process was created and adopted nearly 30 years ago in order to keep the record of reimbursed fees as transparent and accountable as possible. As such, for a short period of time, I am actually paying twice as much as other private surveyors until such a time that I receive my quarterly reimbursement check.

In Summary I believe that Mr. Stout's complaint is the result of his of ignorance of my practices and policies as well as a malicious attempt to harm my professional reputation. As County Surveyor, I perform my duties in a manner that provides the most efficient and best use of public funds and I submit invoices to the county in the most fair and transparent way possible. In addition I have made myself and the County Surveyor's resources available to any private surveyor upon request. There is no commingling of funds nor are there misappropriations of funds or "kick-backs". Per Oregon Revised Statutes, I am simply being compensated for the work I have completed.

Mr. Stout repeatedly claims that I "enrich" myself at the County's expense. ORS 203.148 clearly sets aside funding for the revitalization and maintenance of PLSS corners. ORS 209.230 and Grant County Ordinance 10-01 clearly state that the County Surveyor is to be compensated for duties performed. As Grant County Surveyor, I have a statutory obligation to maintain PLSS corners. As a private Surveyor, Mr. Stout is not obligated to maintain PLSS corners.

Mr. Stout is correct on one point: I am a co-owner of Benchmark Land Surveying, Inc. and I am also the Grant County Surveyor. As mentioned above, the practice of a licensed surveyor with a private firm holding the office of County Surveyor is common throughout much of Eastern Oregon, including the following counties: Lake County, Harney County, Grant County, Crook County, Jefferson County, Wheeler County, Gilliam County, Morrow County, Union County, Wallowa County, and Baker County.

In closing, I appreciate that surveying practices and terminology can at times be difficult to follow. If at any time you or any of the Ethics Commission staff would like to speak with me, please feel free to contact me at your convenience. For your convenience I have also attached a copy of Grant County Ordinance 10-01.

Respectfully Submitted,



Michael C. Springer  
Grant County Surveyor

[mike@benchmarkls.com](mailto:mike@benchmarkls.com)  
mobile ph: (541) 620-0676

*Attachment A: Grant County Ordinance 10-01*

Office of the  
**GRANT COUNTY SURVEYOR**

Courthouse, Canyon City, Oregon

mailing address: P.O. Box 476

John Day, Oregon 97845

541-575-1251

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April 25, 2019

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

Re: Supplemental response to complaint by Carl Stout (Case No. 19-051ESM)

Dear Ronald,

I received an email from Susan Myers on Thursday April 25<sup>th</sup>. The correspondence contained additional information provided by Carl Stout purportedly supporting his allegations of my misconduct. I appreciate you giving me the opportunity to supplement my response.

1. Mr. Stout claims that I was paid for work done on Record Map of Survey No. 1978 twice: once by the private landowner and then later by Grant County. To begin with, Mr. Stout has no idea how much or what Benchmark Land Surveying's clients pay for.

However, as mentioned in my original response, Clients of Benchmark Land Surveying, Inc. are charged with the time and expense searching for corner evidence and making survey measurements to each corner. Clients are also charged for deed and survey research, Right of Entry notification, calculations, data analysis and mapping.

County Surveyor's funds will pay for the monument (typically a pipe with brass cap), the time it takes to set the new monument and the time it takes to prepare the official report. Time spent performing County Surveyor duties is carefully noted and separated from private practice time spent on each project.

In this particular case, the survey was conducted in 2013 by Benchmark Land Surveying for a private party. Later in 2017 I was asked (in my role as County Surveyor) by the Oregon State Board of Examiners for Engineers and Land Surveyors (OSBEELS) to gather additional information at this corner due to an ongoing law enforcement case by OSBEELS. I was subsequently reimbursed by the County's Corner fund for the additional work performed due to the OSBEELS request.

2. Regarding the amount I pay for Land Partition Plat Reviews: Due to the fact that I am the Grant County Surveyor and in order to avoid a conflict of interest, I have designated the Union County Surveyor to review my plats. I pay him the Grant County fee of approximately \$160 for his services. Carl is simply incorrect in assuming that I pay the Union County fee (approximately

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Complaint Supplemental Response: Case No. 19-051 ESM.


Page 1

- \$110). A minimal amount of research or a simple phone call by Carl would have clarified this.
3. As discussed in my original response, I do not get a kick back or pay less for my map and plat reviews. In fact for a short time I actually pay twice the amount of other private surveyors. This is done in order to track Benchmark Land Surveying's review fees in a transparent manner. Again, it would have taken a minimal amount of research or perhaps a single phone call to discover this information.
  4. Carl states that "*it looks like Springer gets \$500 per month for records and upkeep...*" I actually get paid \$2,000 per year for "Records and Upkeep". I submit my invoice to the County Treasurer on a quarterly basis. Again, either intentionally or by mistake, Mr. Stout has made a misleading and incorrect assumption.

In conclusion, Mr. Stout's allegations are based on faulty assumptions and ignorance of county policy. If his intentions were anything but malicious he would have certainly taken the time to make a few phone calls in order to become more familiar with my policies. In fact, Mr. Stout has not contacted this office or the office of the County Treasurer, County Clerk or County Court in an attempt to obtain factual information.

Thank you for the opportunity to supplement my response based on these new allegations:

Respectfully Submitted,



Michael C. Springer  
Grant County Surveyor

[mike@benchmarkls.com](mailto:mike@benchmarkls.com)  
mobile ph: (541) 620-0676





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

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November 22, 2019

Directors Chris Wytoski, Jeffrey Crapper, and Ann Coleman  
Board of Directors, Dayton School District #8  
c/o Chris Wytoski  
818 Howard Jordan Loop  
Dayton, Oregon 97114

Re: Commission Advisory Opinion 19-240A

Dear Directors Wytoski, Crapper and Coleman:

At its November 22, 2019 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion in response to the request set forth in your e-mail to the Commission dated October 7, 2019.

### **OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 19-240A**

#### **SYNOPSIS OF FACTS AS PRESENTED TO THE COMMISSION:**

The following factual information is derived from your request, subsequent e-mails with Commission staff, and information available on the Dayton School District #8 (District) website, including the two collective bargaining agreements currently in effect.

The District has multi-year collective bargaining agreements with two unions: the Dayton Education Association (DEA) represents 62 certified staff (57 full-time and 5 part-time) and negotiates the Licensed Collective Bargaining Agreement (Licensed CBA). The Oregon School Employees Association Chapter #88 (OSEA) represents 42 classified staff and negotiates the Classified Collective Bargaining Agreement (Classified CBA). Both of the current collective bargaining agreements run through the 2020-2021 school year. Negotiations for the next collective bargaining agreements will take place in 2021.

The current Classified CBA sets forth the rights and duties of the District and the OSEA with respect to classified staff employment matters. Article XII and Appendices A and B include salary schedules for seven categories of classified employees and twelve salary steps. The Classified CBA provides for a 1% across the board salary increase for 2018-2019, 1% for 2019-2020, and 1%-3% for 2020-2021. Classified staff who perform extra duties, such as scoreboard operator, authorized by the school principal or the Board may receive extra duty compensation at their standard rate of pay per hour.



The current Licensed CBA sets forth the rights and duties of the District and the DEA with respect to certified staff employment matters. Article IV and Appendices A, B, and C set forth salary schedules for six categories of certified employees (based on degree and credit hours earned) and 21 salary steps. The Licensed CBA provides for a 2% across the board salary increase for 2018-2019, 1% for 2019-2020, and 2% for 2020-2021. Appendix D sets forth a premium pay schedule, at a percentage of base pay, for certified staff in extra-duty positions, such as athletic coaches, FFA advisor, class/club activity advisors, and event/game/dance duties. The premium pay schedule also provides payment of a set amount for class coverage and other specified duties. The Licensed CBA also provides that part-time teachers receive prorated pay for required attendance at meetings held during off-duty hours.

Directors Ann Coleman, Jeffrey Crapper and Chris Wytoski were recently elected to the District Board of Directors (Board). Their terms run through June 2023. All three of these Directors have relatives working for the District. Four of the five relatives are certified staff covered by the Licensed CBA. One of the relatives is classified staff covered by the Classified CBA. These Directors are very cognizant of the actual or potential conflicts of interest that may arise because they have relatives working for the school district.

Director Ann Coleman has three relatives working for the District. Her husband Mitch and son McCord are members of the certified staff, and her daughter-in-law Claire is a member of the classified staff. Claire Coleman is an agriculture instructional technician. Mitch Coleman is an agriculture and natural resources teacher at Dayton High School; he also serves as the FFA advisor. McCord Coleman is a high school science teacher; he also occasionally signs up for extra duty at events/games/dances. When asked by the high school administration, Mitch and McCord may also cover an absent teacher's class.

Director Jeffrey Crapper has one relative working for the District. His spouse Rhonda is a member of the certified staff, serving as a part-time mathematics teacher at Dayton Junior High School. Rhonda occasionally signs up for extra duty at events/games/dances, and may be assigned by the administration to cover an absent teacher's class. As a part-time teacher, she may also receive extra duty pay when she attends required meetings during off-duty hours.

Director Chris Wytoski has one relative, his spouse Beth, working as a member of the District's certified staff. Beth Wytoski is a part-time economics and government teacher at Dayton High School. Beth also serves as a class/club activity advisor. She occasionally signs up for extra duty at events/games/dances, and may be assigned by the administration to cover an absent teacher's class. As a part-time teacher, Beth may receive extra duty pay when she attends required meetings during off-duty hours.

#### LEGAL BACKGROUND:

Under Oregon Government Ethics law, elected members of a school district board of directors are public officials and must comply with the provisions of ORS Chapter 244. (See ORS 244.020(15) for the definition of public official.)

For purposes of Oregon Government Ethics law, the definition of "relative" includes the "spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law" of a public official. [ORS 244.020(16)(a)].

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

When an elected public official is met with either an actual or a potential conflict of interest, the public official must publicly announce the nature of the conflict of interest once on each occasion that the issue giving rise to the conflict occurs. If met with a potential conflict of interest, following the public announcement, the public official may continue to participate in his or her official capacity in any discussion, debate, or vote on the issue. [ORS 244.120(2)(a)]. If met with an actual conflict of interest, following the public announcement, the public official must refrain from discussion, debate, or vote on the issue. [ORS 244.120(2)(b)].

Exceptions to the conflict of interest statutes include the class exception set forth in ORS 244.020(13)(b). The class exception applies if the private financial benefit or detriment arises out of any action in the person's official capacity that would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group in which the person, a relative or a business with which the person is associated, is a member or is engaged. If the class exception applies, then the public official does not have a conflict of interest. The public official is not required to disclose a conflict of interest and can participate in the discussion and vote on the matter.

Only the Commission may limit the minimum size of, or otherwise establish criteria for or identify the smaller classes that qualify under the class exception. [ORS 244.020(13)(b);

ORS 244.290(3)(a)]. In order to make the determination, the Commission must examine the membership of the class and determine whether the specific members at issue would be affected to the same degree as all of the other members of the class. The phrase "to the same degree" has previously been interpreted to mean that all members of the class would have to be affected exactly equally, or at least proportionately, in order for the class exception to apply. For example, a class exception would apply where a public official votes to approve a 2% cost-of-living raise for all employees, an action that would affect all members of the class of employees to the same proportionate degree.

**QUESTIONS:** You have asked for the Commission to make a class determination for purposes of application of the class exception in ORS 244.020(13)(b). In order to do so, the Commission must address the following questions:

1. Do the two groups of District employees – classified employees and certified employees – constitute classes for the purposes of ORS 244.020(13)(b)?
2. If so, are the relatives of Directors Wytoski, Crapper and Coleman members of these classes?
3. When the Board negotiates, discusses and votes on the District's new collective bargaining agreements with the DEA and the OSEA, will the relatives of Directors Wytoski, Crapper and Coleman all be affected to the same degree as all other members of the classes to which they belong?

**ANSWERS:** District classified and certified employees appear to constitute two distinct classes, and the Directors' relatives are class members; however, not all of those relatives would be affected to the same degree as other class members by the Board's action on the new collective bargaining agreements.

#### Class Determination

ORS 244.020(13)(b) sets out the following classes: (1) all inhabitants of the state; (2) or a smaller class consisting of (a) an industry; (b) an occupation; or (c) an "other group." Webster's Third New Int'l Dictionary (unabridged 2002) defines "group" as "a number of individuals bound together by a community of interest, purpose or function." The statute lists "industry" and "occupation" as groups that qualify as smaller classes than all inhabitants of the state. Ordinarily a general word that follows such a specific list would be interpreted as being restricted to things of the same type. In this case, the general wording of "other group" would be interpreted as being restricted to the same type of things as the preceding list of "industry" or "occupation."

The legislature has given the Commission discretion to adopt rules that “limit the minimum size of, or otherwise establish criteria for or identify, the smaller classes that qualify under the class exemption[.]” [ORS 244.290(3)(a)]. The Commission has not adopted such rules, so there is no minimum size requirement or established criteria for what constitutes a “class.” But the Commission has explained its interpretation of “class” in A Guide for Public Officials (2010) (Guide) as follows:

The Commission has the authority to identify a group or class and determine the minimum size of that “class.” \* \* \* For example, if a county commissioner votes to approve a contract to improve or maintain a county road that leads to the property the commissioner owns, but the improvements would also benefit many other property owners to the same degree, the commissioner would be exempt from the conflict of interest disclosure requirements and participation restrictions. Under the Guide, a class can be unlike an “industry” or an “occupation,” and can instead be comprised of groups like property owners in a certain area.

The Commission decides on a case by case basis whether the number of persons in a proposed class is sufficient. According to the Guide, the “number of persons affected to the same degree as the public official will help to determine whether this exception applies.” For the District, there are potentially two “classes”: (1) classified district employees; and (2) certified district employees. There are 42 classified district employees. There are 62 certified employees. While these numbers are certainly smaller than an entire industry or occupation, they are not necessarily smaller than property owners affected by a public improvement contract to maintain a county road. In this case, the Commission has determined that the numbers are sufficient, and that there are two distinct classes: (a) the classified employee class; and (b) the certified employee class.

#### Application of the Class Exception

Given the existence of these two classes, application of the class exception in ORS 244.020(13)(b) would apply to the three Directors as follows:

- Director Coleman’s daughter-in-law is a member of the classified employee class. Assuming the new Classified CBA is similar to the current Classified CBA and affects her daughter-in-law to the same degree as other members of the class, the class exception would apply and no conflict of interest would arise for Director Coleman with respect to negotiating, discussing or voting on the new Classified CBA.

- The spouses of Directors Wytoski and Crapper are members of the certified employee class. Assuming the new Licensed CBA is similar to the current Licensed CBA and affects their spouses to the same degree as other members of the class, the class exception would apply and no conflict of interest would arise for Directors Wytoski and Crapper with respect to negotiating, discussing or voting on the new Licensed CBA.
- Director Coleman's spouse and her son are members of the certified employee class. As the District's FFA Advisor, Director Coleman's spouse is treated differently from other class members under the premium pay schedule in the current Licensed CBA. Assuming the new Licensed CBA contains similar terms, then Director Coleman's spouse again would not be affected to the same degree as other members of the certified employee class. Thus, when it comes time to negotiate, discuss or vote on the new Licensed Collective Bargaining Agreement, Director Coleman *would* have a conflict of interest. She will need to publicly disclose her conflict of interest each time it arises and refrain from any participation in the negotiations, discussion or vote on the new Licensed CBA.

#### Classified Employee Class

Based on the information provided, the District's 42 classified employees are members of the classified employee class. The rights and duties set forth in the current Classified CBA, including the salary schedule and annual salary increases, appear to affect all 42 classified employees to the same degree, either equally or proportionately. Assuming that the new Classified CBA contains the same or similar terms, including the salary schedules, as the current Classified CBA, and that any new terms or changes to the existing terms would affect the classified employee class members to the same degree, then the class exception set forth in ORS 244.020(13)(b) would apply.

Director Coleman's daughter-in-law Claire is covered by the current Classified CBA and is a member of the classified employee class. Although Board action on the new Classified CBA could be to the private financial benefit or detriment of her daughter-in-law, Director Coleman would not have a conflict of interest because the Board action would affect to the same degree all members of the classified employee class, including her daughter-in-law.

#### Certified Employee Class

Based on the information provided, the District's 62 certified employees are members of a certified employee class. The rights and duties set forth in the current Licensed CBA, including the standard salary schedule and annual salary increases, appear to affect all

62 certified employees to the same degree, either equally or proportionately. Except as noted below, assuming the new Licensed CBA contains the same or similar terms, including the salary schedules, as the current Licensed CBA, and that any new terms or changes to the existing terms would affect the certified employee class members to the same degree, then the class exception set forth in ORS 244.020(13)(b) would apply.

The premium pay schedule in Appendix D of the current Licensed CBA provides employees in certain positions with additional salary at specified percentages of base pay. Some of these positions, such as event/game/dance duties, are available to all licensed staff who choose to sign up. Other positions, such as class coverage or extra duty attendance are assigned by the administration on an as needed basis. Other positions, however, are specialized positions available only to certain designated staff members. These specialized positions include athletic coaches and the FFA advisor.

Director Wytoski's spouse Beth and Director Crapper's spouse Rhonda are covered by the current Licensed CBA and are members of the certified employee class. They do not hold any of the specialized positions identified in the premium pay schedule. Although Board action on the new Licensed CBA could be to the private financial benefit or detriment of their spouses, Directors Wytoski and Crapper would not have conflicts of interest because the Board action would affect their spouses to the same degree as all other members of the certified employee class.

Director Coleman's spouse Mitch, however, is in a specialized position as the FFA advisor and is treated differently under the current Licensed CBA than other members of the certified employee class. Assuming that the new Licensed CBA includes a premium pay schedule similar to that in the current Licensed CBA, then he would not be affected by the new Licensed CBA to the same degree as other members of the class.

Because the class exception would not apply to her spouse, an actual conflict of interest would arise for Director Coleman any time the Board engaged in negotiations, discussions or votes on the new Licensed CBA. On each such occasion, Director Coleman would be required by ORS 244.120(2)(b) to make a public announcement of the nature of her conflict of interest and then refrain from further participation in the matter giving rise to that actual conflict of interest.

The analysis set forth in this opinion is based on assumptions concerning future circumstances, including that the number of class members will remain relatively stable and that the provisions in the new Classified CBA and the new Licensed CBA will be similar to the District's existing collective bargaining agreements and will continue to treat all class members equally or proportionately. Based on these assumptions, all three

Directors may participate in the negotiation, discussion and vote on the new Classified CBA. Directors Wytoski and Crapper may participate in the negotiation, discussion and vote on the new Licensed CBA. Director Coleman will need to disclose a conflict of interest and refrain from participating with respect to the new Licensed CBA.

As noted above, the Directors may not have conflicts of interest and therefore may not be required to make any disclosures. In the interest of transparency and impartial decision-making, however, the Directors may choose to make some disclosures when the new collective bargaining agreements come before the Board. The Directors to whom the class exception applies could disclose that their decisions will affect their relatives, and explain that they received advice from the Ethics Commission that the class exception applies and they do not have to disclose or refrain from participating in the discussion or vote, but that they are choosing to make the disclosure before proceeding. Alternatively, the Directors could choose to disclose their conflicts of interest *and* refrain from participating in the negotiations, discussions or votes. There are seven members on the District Board, and the votes of these three Directors may not be required. Even if their votes are required, the minimum votes exception in ORS 244.120(2)(b)(B) could apply to permit these Directors to vote after disclosing their conflicts of interest.

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

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the \_\_\_ day of November, 2019.

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Richard P. Burke, Chairperson  
Oregon Government Ethics Commission

  
\_\_\_\_\_  
Amy E. Alpaugh, Assistant Attorney General



**HUNTER David \* OGEC**

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**From:** Chris Wytoski <cwytoski@gmail.com>  
**Date:** Monday, October 07, 2019 2:29 PM  
**To:** OGEC Mail \* OGEC  
**Cc:** colemana210@yahoo.com; jeffcrapper14@gmail.com  
**Subject:** Request to determine class

Dear Oregon Government Ethics Commissioners,

I'm writing on behalf of myself, Ann Coleman, and Jeffrey Crapper to request a letter of advice regarding the appearance of conflicts of interest. Specifically, I'm requesting a determination of the existence of a class as used in Oregon Revised Statute, Chapter 244. We have sought advice from commissioner O'Day and commission staff which lead to this email.

History

Recently, Ann Coleman, Jeffrey Crapper, and I were elected to the Dayton School District #8 board of directors. Each of us have relatives working for the school district and recognize that actual or potential conflicts of interest may arise as we carry out our duties as school board directors. The three of us are committed to transparency in government and ethical conduct. This is why we are writing this request. We would like the commission to review and determine that a class exists so we may exercise our responsibility to vote when it comes time for the board to confirm bargaining agreements.

The Class

Our district adopts collective bargaining agreements with two unions: one that represents 62 certified staff and one that represents 42 classified staff.

Relatives

The following table outlines the relationships Ann, Jeff, and I have with staff at the school:

<b>Director</b>	<b>Relative</b>	<b>Union</b>
<b>Ann Coleman</b>	Spouse	Certified
	Son	Certified
	Daughter-in-law	Classified
<b>Jeffrey Crapper</b>	Spouse	Certified
<b>Chris Wytoski</b>	Spouse	Certified

Thank you for your time and consideration. We look forward to your response.

- Chris Wytoski, Ann Coleman, Jeffrey Crapper

--  
Chris Wytoski  
[cwytoski@gmail.com](mailto:cwytoski@gmail.com)

From: Chris Wytoski <cwytoski@gmail.com>  
: Friday, October 11, 2019 6:57 AM  
To: MYERS Susan \* OGE  
Subject: Re: Opinion Request

Hi Susan,

Here's the answer to your questions in both emails.

The table below shows the premium pay that each of the relatives receive. Here is some additional information about these:

Licensed Class Coverage per period - This is provided to all teachers when asked by administration to cover an absent teacher's class.

Licensed Extra Duty pay - This is paid to Rhonda and Beth for inservice all-staff meetings on Mondays because they work part-time and the hours spent in the inservice are above and beyond their contracted FTE.

JH/HS Event Duty/Game Duty/Dance Chaperones - This is available to all licensed staff who wish to sign up on a volunteer basis.

HS Class/Club Advisor - This is an extra duty assignment made by administration and contracted separately according to the collective bargaining agreement. Each class, Freshman, Sophomore, Junior, and Senior, is assigned one to three advisors and each class's advisor(s) receives/share a single stipend.

Board member	Relative	Relationship	Premium Pay
Ann Coleman	Mitch Coleman	Spouse	<ul style="list-style-type: none"> <li>• FFA</li> <li>• Licensed Class Coverage per period</li> </ul>
	McCord Coleman	Son	<ul style="list-style-type: none"> <li>• HS Event Duty/Game Duty/Dance Chaperones</li> <li>• Licensed Class Coverage per period</li> </ul>
	Claire Coleman	Daughter in-law	<ul style="list-style-type: none"> <li>• None (Classified)</li> </ul>
Jeff Crapper	Rhonda Crapper	Spouse	<ul style="list-style-type: none"> <li>• JH Event Duty/Game Duty/Dance Chaperones</li> <li>• Licensed Class Coverage per period</li> <li>• Licensed Extra Duty, Detention, Grant Programs</li> </ul>
Chris Wytoski	Beth Wytoski	Spouse	<ul style="list-style-type: none"> <li>• HS Class/Club Activity Advisor</li> <li>• HS Event Duty/Game Duty/Dance Chaperones</li> <li>• Licensed Class Coverage per period</li> <li>• Licensed Extra Duty, Detention, Grant Programs</li> </ul>

Regarding the move to a tiered rate structure:

Typically a tiered rate structure for insurance is intended to more equitably apply insurance costs based on the number of people covered in each enrollment. Currently, Dayton staff are offered a selection of insurance plans that each contemplate benefits for individuals and families. The monthly plan premium is the same within a

plan in either case except different benefits apply when there is more than one person covered. For example, out-of-pocket maximums may be higher when more than one person is covered.

A tiered rate structure would move to an offering where monthly plan premiums would differ based on familial make-up. The tiered model may offer options similar to:

- Employee only
- Employee and spouse
- Employee with children but no spouse
- Family

In this case monthly plan premiums would change depending upon the tier in which the employee enrolls. Those with more people covered would pay a higher premium. In some cases this can save the employer costs as well. In the Dayton agreements maximums are set for the school district's contribution and where the premium is lower the district saves.

On Wed, Oct 9, 2019 at 10:47 AM MYERS Susan \* OGEC <[Susan.MYERS@oregon.gov](mailto:Susan.MYERS@oregon.gov)> wrote:

Chris –

One additional question: Both Collective Bargaining Agreements include MOUs that state “the agreement to move to a tiered rate structure for benefits will be delayed for one year ...”. Presumably, these delays may end when the new collective bargaining agreements are entered, meaning that the agreements that you and the other board members vote on could include such a tiered rate structure. Could you provide more information regarding this proposed tiered rate structure? How exactly would it work or be applicable to the relatives identified in your request?

- Susan

Susan Myers

Investigator

Oregon Government Ethics Commission

3218 Pringle Rd SE, Suite 220

Salem, OR 97302

503-378-6808

**\*\*Disclaimer\*\***

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance

on how Oregon Government Ethics law may apply to the specific facts described in your request. This

opinion is based on my understanding and analysis of the specific circumstances you described and

should not be applied to circumstances that differ from those discussed in this request.

**From:** Chris Wytoski <cwytoski@gmail.com>

**Sent:** Tuesday, October 8, 2019 6:42 PM

**To:** MYERS Susan \* OGEC <[Susan.MYERS@oregon.gov](mailto:Susan.MYERS@oregon.gov)>

**Subject:** Re: Opinion Request

Hi Susan,

Thanks for the quick attention to my request. You are correct the Licensed contract is what I referred to as the Certified contract. Let me know if you need anything else.

On Tue, Oct 8, 2019 at 4:54 PM MYERS Susan \* OGEC <[Susan.MYERS@oregon.gov](mailto:Susan.MYERS@oregon.gov)> wrote:

Mr. Wytoski –

I am an investigator with the Oregon Government Ethics Commission. I believe we may have spoken on the telephone a while ago. I have been assigned to draft the Commission Advisory Opinion you have requested, with respect to a class determination. As I do so, I may need some additional information from you.

You indicate that you and two other Directors have relatives employed at the District, either as certified or classified staff, and you provide the numbers of certified and classified staff represented in the two unions. You are requesting the class determination so that as Directors you can exercise voting responsibilities when it comes time for the Board to confirm the collective bargaining agreements with these two unions.

I see that the collective bargaining agreements are available on the District's website; however, the website does not list such an agreement for "certified staff". Could you confirm that the collective bargaining agreement for "Licensed" staff is what applies to "certified staff" identified in your request?

If you have any questions regarding the Commission's process, please let me know.

- Susan

Susan Myers

Investigator

Oregon Government Ethics Commission

3218 Pringle Rd SE, Suite 220

Salem, OR 97302

503-378-6808

**\*\*Disclaimer\*\***

This electronic message may contain information that is privileged, confidential, or otherwise protected from disclosure to anyone other than its intended recipient(s). Any dissemination or use of this electronic message or its contents by persons other than the intended recipient(s) is strictly prohibited, and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender so that we may correct our internal records, and then delete the original message.

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Chris Wytoski  
[cwytoski@gmail.com](mailto:cwytoski@gmail.com)

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Chris Wytoski  
[cwytoski@gmail.com](mailto:cwytoski@gmail.com)

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Chris Wytoski  
[cwytoski@gmail.com](mailto:cwytoski@gmail.com)



# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

November 22, 2019

Roger Johnson  
c/o Sisters-Camp Sherman Fire District  
301 S. Elm Street  
P.O. Box 1509  
Sisters, Oregon 97759

Dear Roger Johnson:

At its November 22, 2019 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion in response to the request set forth in your email to the Commission dated November 7, 2019.

### **OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 19-259A**

Your question pertains to your position as Fire Chief for the Sisters-Camp Sherman Fire District (Fire District). You indicate that the Fire District Board of Directors (Board) is considering adopting a policy regarding work after retirement, in light of the coming implementation of Oregon Senate Bill 1049 (SB 1049), and have asked you to provide a staff report and draft policy for the Board to consider regarding the issue. You will be eligible to take advantage of any "work after retirement" policy of SB 1049 which goes into effect on January 1, 2020 and will modify the Public Employees Retirement System and, in part and relevant to your question, modify the limitations on the number of hours PERS employees may work if they choose to engage in "post retirement" employment. You would like to know if there are any ethical considerations raised by the same.

Initially, as Fire Chief, you are a public official as defined in ORS 244.020(15) and subject to Oregon Government Ethics laws. Two potential ethical concerns are raised by your inquiry: whether or not you would be using your position to obtain financial gain or avoid financial detriment for yourself, in violation of Oregon Revised Statutes (ORS) 244.040(1) ("prohibited use of office") and whether or not your act of providing a staff report and draft policy to the Board would create an actual or potential conflict of interest pursuant to ORS 244.020(1) and (13) and if so, in what manner would that need to be addressed.

#### Prohibited Use of Office

Public officials are prohibited by ORS 244.040(1) from using or attempting to use their official position or office to obtain financial gain or avoid financial detriment for the public official, a relative or household member, or any business with which the official, relative or household member is associated, if the financial gain or avoidance of financial



detriment would not otherwise be available but for the public official's holding of the official position or office. The Commission's Guide for Public Officials advises that public officials must not use their positions to create new employment opportunities or the opportunity for additional personal income. You have indicated that you will most likely take part in post-retirement employment when you are eligible and would thus receive the financial benefit of continued employment. It does not appear, however, that this is a type of "financial gain" or "opportunity" that would "not otherwise be available but for" your position. As outlined above, Senate Bill 1049 applies to all "PERS" employees, whether they are subject to Tier One, Tier Two or OPSRP retirement plans. The policies of SB 1049 will go into effect as to all PERS employees beginning on January 1, 2020, whether or not your agency has drafted a policy, and any policy being drafted will have to conform to SB 1049. It is also not a "new employment opportunity" created by you; it is merely a local policy which conforms to the new state mandate. You will not have "used your position" to create any personal financial gain.

Your role in drafting that local policy is merely an implementation of a new state law and does not appear to be the type of "use of office" referenced in ORS 244.040(1). From the information provided, the situation you describe—drafting a staff report and local policy regarding implementation of SB 1049 to your organization, the Fire District—does not appear to be a violation of ORS 244.040(1).

#### Conflicts of Interest

Actual and potential conflicts of interest are defined in ORS 244.020(1) and (13), respectively, as arising when a public official, acting in his or her official capacity, participates in any action, decision, or recommendation, the effect of which would be (actual) or could be (potential) to the private pecuniary benefit or detriment of the public official, a relative, or any business with which the public official or a relative is associated. ORS 244.120(1)(c) requires an appointed public official, when met with an actual or potential conflict of interest, to provide written notice to their appointing authority of the nature of the conflict and request that authority dispose of the matter giving rise to the conflict. The appointing authority must then either designate an alternate to dispose of the matter or direct the public official to dispose of it in a specified manner. You have the potential to be financially affected by the policy if, after you retire, you seek to be reemployed by the Fire District and the policy affects the terms of your reemployment. You state that you are likely to seek to be reemployed by the district after retirement. As such, you have a "potential" conflict of interest. It is clear that even though you will not be voting to implement the policy, your "action" or "recommendation" on the matter would still require that you declare your potential conflict.

In conclusion, it appears that declaring a potential conflict of interest, in writing, pursuant to the rules of ORS 244.120(1)(c), would be appropriate, given that you could potentially be financially affected by the draft policy you prepare.



Roger Johnson, Fire Chief  
Sisters-Camp Sherman Fire District  
November 22, 2019  
Page 3

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

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 22<sup>nd</sup> day of November 2019.

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Richard Burke, Chairperson  
Oregon Government Ethics Commission

  
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Amy E. Alpaugh, Assistant Attorney General

19-259A/lc

### RELEVANT STATUTES

#### **ORS 244.040 Prohibited use of official position or office; exceptions; other prohibited actions.**

(1) Except as provided in subsection (2) of this section a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

#### **244.020 Definitions.**

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

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

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

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

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

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

**ORS 244.120 Methods of handling conflicts**

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

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

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

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

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

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**CHRISTON Lisa \* OGEC**

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**From:** Roger Johnson <rjohnson@sistersfire.com>  
**Sent:** Thursday, November 07, 2019 10:53 AM  
**To:** CHRISTON Lisa \* OGEC  
**Subject:** Conflict of Interest Question  
**Attachments:** work after retirement policy.pdf

Lisa,

Thanks for taking time to talk with me this morning about a question I had regarding conflict of interest reporting. Following is further background on the situation.

I am the Fire Chief for the Sisters-Camp Sherman Fire District. We employ nine full-time firefighter paramedics and three full-time administrative staff including myself. We also employ three part-time employees and one contract employee (financial manager). Our Board of Directors are considering adopting a policy regarding work after retirement and have asked me to provide a staff report and draft policy for the Board to consider regarding the issue. The Board of Directors has also created a sub-committee of two Board of Directors to research the issue and make a recommendation to the full Board regarding the issue. We have employed part-time PERS retirees in the past to perform Fire Marshal and fleet maintenance services. Our current fleet maintenance employee is a PERS retiree. Four of our current employees are retirement eligible (including myself) and would be interested in working after retirement.

I have been working with the Board sub-committee to provide information they have requested and will be presenting them with a draft of the staff report and policy prior to our upcoming Board of Director meeting. The Board of Directors will be making the decision on this issue and nobody serving on the Board would have a conflict of interest on the issue.

I am seeking guidance regarding the need to identify a conflict of interest in the written staff report I provide for the Board of Directors. I also want to make sure that it is not a violation of Oregon Ethics Laws for me to conduct the research on this topic since it may personally benefit me in the future. We have limited staff to perform this research.

I have also attached a draft policy we will be presenting to our Board sub-committee for review.

Thank you for your help.

Roger Johnson

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

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

October 11, 2019

Mr. Jeffrey Condit, P.C.  
Miller, Nash, Graham and Dunn, LLP  
3400 U.S. Bancorp Tower  
111 S.W. 5<sup>th</sup> Avenue  
Portland, Oregon 97204

Dear Mr. Condit:

This is in response to your correspondence, dated September 12, 2019, regarding possible government ethics law implications for members of the Tualatin Hills Park and Recreation District Board of Directors when considering implementing a framework for a pre-existing stipend for each day of work as a board member.

### **OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 19-211S**

**STATED FACTS:** Tualatin Hills Park and Recreation District (District) is recognized as a "special district" under ORS 198.010(4). The District is governed by an elected five-member Board of Directors (Directors). The compensation at issue is expressly authorized by statute, ORS 198.190, and incorporated in the Tualatin Hills Parks & Recreation District Compiled Policies at policy 3.19(B), which provides that Directors are limited to compensation of \$50 per "... day or portion thereof as compensation for services performed as a member of the [Board]." Pursuant to this policy, Directors may elect to forego the compensation. Despite the statute and policy, the Directors have historically received an automatic stipend of \$50 per month each, regardless of how many days or portions of days they have engaged in official services during each month.

The Directors now wish to amend the policy to define the "services" that are compensable and to establish a process for approving compensation. Although the new policy would not increase the amount of compensation that the directors are entitled to receive under statute and current policy, it may increase amounts they actually receive in the future over what they have been receiving based on current district practices that are not delineated in the district's policy.



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

ORS 198.010(4) District includes "park and recreation" district organized under ORS chapter 266 (Park and Recreation Districts).

ORS 198.190 "A member of the governing body of a district may receive an amount not to exceed \$50 for each day or portion thereof as compensation for services performed as a member of the governing body. Such compensation shall not be deemed lucrative."

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

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

- (a) "An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position."
- (b) "Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged."
- (c) "Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code."

ORS 244.020(15) "'Public official' means the First Partner and any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109



as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.”

ORS 244.040(1) “Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official’s holding of the official position or office.”

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

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

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

(c) “Reimbursement of expenses.”

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

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

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

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

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

(B) “If the public official’s vote is necessary to meet a requirement of a minimum number of votes to take official action, be eligible to vote,

but not to participate as a public official in any discussion or debate on the issue out of which the actual conflict arises.”

OAR 199-005-0035 (3) “An ‘official compensation package’ means the wages and other benefits provided to the public official. To be part of the public official’s ‘official compensation package’, the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. ‘Official compensation package’ also includes the direct payment of a public official’s expenses by the public body, in accordance with the public body’s policies.”

QUESTION ONE: Could the Board vote to approve a framework for qualifying for the statutory compensation without violating ORS 244.040(1)(use of office for personal gain/avoidance of financial detriment)?

ANSWER: Yes. ORS 244.040(1) defines prohibited use of official position or office in that a public official “may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official . . . if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official holding the official position or office”. However, that subsection does not apply to “[a]ny part of an official compensation package as determined by the public body that the public official serves.” Here, as noted, ORS 198.190 authorizes the stipend of \$50 per day or portion of day for services performed as a member of the Tualatin Hills Parks & Recreation Board. In addition, Tualatin Hills Parks & Recreation District has formulated its own policy which quotes that statute and provides:

Compensation. Consistent with ORS 198.190, Board members are limited to compensation of \$50 per . . . day or portion thereof as compensation for services performed as a member of the [Board]. . . [m]embers may decide to forego this compensation. [Tualatin Hills Park and Recreation District, Policy 3.19(B)].

The Directors are currently authorized by statute and their own policy to get \$50 per day or partial day for services performed as a member of the board. This is their “official compensation” and they are entitled to receive it, although they may also disclaim it if they wish. No policy change is necessary to receive \$50 compensation for full or partial days of service. From the information provided by Mr. Condit, however, it appears that the district has not been compensating directors in accordance with the statute and policy.

Rather, the Directors each receive an automatic \$50.00 stipend each month, regardless of how many meetings they attend each month. The monthly check is mailed to each board member or direct-deposited and is handled through the District's payroll. The Board holds approximately 16-22 meetings each year.

The directors are considering amending the board's policy to define what qualifies as a "service" and a "partial day," and to establish who would be responsible for approving, verifying or auditing claims for remuneration. To the extent that these policies would merely clarify what the existing law and policy already allows, it would not appear to be a prohibited use of office. Because the fixed amount and type of compensation is set by statute and incorporated into the District's bylaws, the Directors would be unable to give themselves more than the \$50.00 per day or portion of day conducting District business. Moreover, the Directors are not asking to create a new type of benefit or adding to the benefits that they are already entitled to receive, which would raise an ORS 244.040 concern. In creating and implementing a structured policy to administer the Board's compensation, in line with existing statute and bylaws, the Directors would not be using their official position to create a personal financial benefit that would not otherwise be available to them. As such, the Board may vote to approve a framework for qualifying for the statutory compensation without violating ORS 244.040(1).

QUESTION TWO: Could the Board vote to approve a framework for qualifying for the statutory compensation without creating an actual conflict of interest under ORS 244.020(1), requiring recusal under ORS 244.120(2)(b)?

ANSWER: Yes. Actual and potential conflicts of interest are defined in ORS 244.020(1) and (13) as arising when a public official, while acting in his or her capacity as a public official, participates in any action, decision or recommendation, the effect of which would (actual) or could (potential) be to the private pecuniary benefit or detriment of the public official, a relative or any business with which the public official or a relative is associated.

ORS 244.120(2) describes the method by which elected officials, including special district commissioners, shall handle conflicts of interest. When met with a potential conflict of interest, the public official shall announce publicly the nature of the potential conflict of interest prior to taking any action thereon in the capacity of a public official. When met with an actual conflict of interest, the public official shall announce publicly the nature of the actual conflict of interest and refrain from participating as a public official in any discussion or debate on the matter out of which the actual conflict arises, as well as refrain from voting on the issue.

In the present matter, a director's decision to amend the policy would not appear to change the amount of compensation that the director is eligible to receive under the statute or current policy. But it might affect the amount that the director actually receives if there is a change in district practice due to the amended policy and the change results

in the director receiving more or less than \$50 per month. The financial effect is not so clear as to be certain, but each director's decision **could** be to their private pecuniary benefit or detriment, therefore each Director would have a potential conflict of interest. When met with a potential conflict of interest, a Director must publicly announce the nature of his or her conflict prior to taking any action thereon in the capacity of a public official. [ORS 244.120(2)(a)].

QUESTION THREE: Do the answers to questions one and or two change if the Board applies any change prospectively to begin at start of the next term in office for each Board position?

ANSWER: Yes. If the current Directors were to vote on a Policy that financially affected only **future** Directors, then a Director would either not be met with a conflict of interest, if ineligible to serve another term, or would be met with a potential conflict of interest if eligible for a future term of service. For example, if the Policy did not become effective until after the expiration of the term of service of a current Director, that Director could, if eligible for another term of service, publicly announce the nature of the potential conflict and then proceed to participate in any discussion, debate, or vote on the Policy. [ORS 244.120(2)(a)]. If not eligible for a future term of service, he or she would have no conflict if the discussion and vote pertain to prospective changes to the compensation structure.

QUESTION FOUR: If a Board vote on compensation under ORS 198.190 is an actual conflict of interest, could Board members still vote under ORS 244.120(2)(b) (the "Rule of Necessity")?

ANSWER: No. The conflict of interest at issue here is "potential" rather than "actual" and ORS 244.120(2)(b) would not apply. In general, however, the term "rule of necessity" is not found in any statutory language contained in ORS Chapter 244, but rather in judicial decisions. In a footnote in a 1996 opinion concerning the Oregon Public Employee Retirement System (PERS), the "rule of necessity" was invoked by the Oregon Supreme Court justices to explain that, although the justices may have had personal financial interests in the outcome of PERS cases, they are obligated, as the justices of the court of last resort for Oregon, to adjudicate PERS claims, despite their conflicts of interest [Oregon State Police Officers' Assn v. State, 323 Or 356, 361 n.3 (1996)].

ORS 244.120(2)(b)(B) uses the word "necessary" in the context of situations in which the vote of a public official such as a Director, who is met with an actual conflict of interest, is necessary to meet the minimum number of votes in order for the governing body to take action on a matter. In those instances, the public official must publicly announce the nature of the actual conflict of interest, refrain from discussion or debate, but be eligible to vote on the issue. These circumstances occur rarely. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in those infrequent situations where a

governing body is required to take an action on a matter, yet a majority of members of the governing body are met with an actual conflict of interest that arises due to circumstances apart from their official positions.

Prior commission staff advisory opinions, 14S-001 and 14S-002, determined that prior commission opinions are incorrect to the extent that they rely upon the "rule of necessity" as an implicit exception to the application of government ethics statutes. Opinions 14S-001 and 14S-002 supersede any prior opinions.

**THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT ETHICS COMMISSION.**

Please contact this office again if you would like this opinion submitted to the Oregon Government Ethics Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/lc 19-211S



Jeffrey G. Condit, P.C.  
Admitted in Oregon and Washington  
jeff.condit@millernash.com  
(503) 205-2305 direct line

September 12, 2019

**BY FIRST-CLASS MAIL AND E-MAIL  
RON.A.BERSIN@STATE.OR.US**

Mr. Ronald A. Bersin, Executive Director  
Oregon Government Ethics Commission  
3218 Pringle Road S.E., Suite 220  
Salem, Oregon 97302-1544

Subject: Request for Staff Opinion (ORS 244.282)

Dear Director Bersin:

We represent Tualatin Hills Park & Recreation District (the "District"). We request a staff opinion under ORS 244.282 regarding the application of the Government Ethics statute (ORS Chapter 244) to the authority of the District Board of Directors (the "Board") to manage the Board compensation under ORS 198.190.

#### **BACKGROUND**

The District is a park and recreation district organized under ORS Chapter 266 (Park and Recreation Districts). As a special district, it is also subject to ORS Chapter 198 (Special Districts Generally). *See* ORS 198.010(4). The District's officers and employees are "public officials" subject to the Government Ethics statute. *See* ORS 244.020(15).

The District is governed by an elected five-member Board. ORS 198.190 provides for compensation and expenses for special district board members:

"A member of the governing body of a district may receive an amount not to exceed \$50 for each day or portion thereof as compensation for services performed as a member of the governing body. Such compensation shall not be deemed lucrative. The governing body may provide for reimbursement of a member for actual and reasonable traveling and other expenses necessarily incurred by a member in performing official duties."

Mr. Ronald A. Bersin  
September 12, 2019  
Page 2

Current District Policy 3.19(B)<sup>1</sup> quotes the statute:

"Compensation. Consistent with ORS 198.190, Board members are limited to compensation of \$50 per "...day or portion thereof as compensation for services performed as a member of the [Board]."  
Members may decide to forego this compensation."

Notwithstanding the statute and the policy, the Board has historically received a stipend of \$50 per month, regardless of how many days "or portions thereof" they engage in official services during the month.<sup>2</sup>

The Board is interested in removing barriers to participation for elected service. Members of the Board believe that increasing the monthly stipend afforded to Board members may enable more people to consider elected office and provide the opportunity for a board more representative of the district to be elected. The Board's goal is to ensure that everyone has the ability to serve, regardless of socioeconomic status. The Board is interested in increasing the amount of the stipend within the statutory framework by further defining the type of service that qualifies as compensable service on a given day. They would not increase the compensation above the \$50 per day for service on such day authorized under the statute, but would increase compensation above the \$50 per month historic stipend to account for the times during the month that Board members spend on Board activities.

## QUESTIONS

Question One: Could the Board vote to approve a framework for qualifying for the statutory compensation without violating ORS 244.040(1) (use of office for personal gain/avoidance of financial detriment)?

Question Two: Could the Board vote to approve a framework for qualifying for the statutory compensation without creating an actual conflict of interest under ORS 244.020(1) requiring recusal under ORS 244.040(2)(b)?

Question Three: Do the answers to questions one and/or two change if the Board applies any change prospectively to begin at start of the next term in office for each Board position?

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<sup>1</sup> This policy is part of the District's Compiled Policies, which are adopted by resolution of the Board and govern the operations of the District.

<sup>2</sup> This stipend was \$40 per month prior to 2007.



Mr. Ronald A. Bersin  
September 12, 2019  
Page 3

Question Four: If a Board vote on compensation under ORS 198.190 is an actual conflict of interest, could Board members still vote under ORS 244.120(2)(b) (the "Rule of Necessity")?

### ANALYSIS

The OGEC has addressed similar questions before in the context of elective financial benefits. In Staff Opinion 14S-001-dg (Stokes, March 7, 2014), a People's Utility District ("PUD") proposed a policy that would reimburse a board member for legal expenses incurred by a board member sued in an individual capacity in the performance of their job duties and not fully reimbursed by PUD insurance. The OGEC Director concluded that it would be an actual conflict of interest for current board members to vote on the policy because it would be to their private pecuniary benefit, and, for the same reason, would be a violation of the Code of Ethics as use of office for personal gain. The Director concluded that approval of reimbursement policy did not fall into the class exemption. The Director also concluded that the action did not fall under the "Rule of Necessity" allowing conflicted board members to vote when necessary because the policy was elective. The Director concluded, however, that the board could adopt the policy to apply prospectively to future board members, as long as any board member who could run for an additional term declared a potential conflict of interest. In a related staff opinion, 14S-002-dg (Stokes, March 7, 2014), the Director reached a similar conclusion regarding a proposal to pay a stipend to board members so that they could buy health insurance through the PUD.

The difference in this case is that the compensation is expressly authorized by statute. For this reason, any payment under the statute should be considered "official compensation" of Board members under ORS 244.040(2)(a) (exempting official compensation). Any decision modifying the compensation in compliance with ORS 198.190 should therefore be exempt from the "use of office for personal gain" rule.

ORS 198.190 authorizes compensation up to a maximum amount, meaning that there is some discretion in setting the compensation within that framework. Any board decision exercising that discretion at all, whether to authorize the maximum compensation, provide for less than the maximum compensation, or provide for no compensation, is arguably to the "private pecuniary benefit or detriment" of a board member within the meaning of ORS 244.020(1). ORS 198.190 also states, however, that "[s]uch compensation shall not be deemed lucrative." "Lucrative" is not defined in the statute. *Webster's Third New International Dictionary* defines "lucrative" as "producing wealth." ORS 174.020(2) states that when a general statutory provision potentially conflicts with a specific provision, the specific provision controls.

Mr. Ronald A. Bersin  
September 12, 2019  
Page 4

If the OGEC is required to consider a payment in compliance with ORS 198.190 to be nonlucrative, then any decision by a board exercising its discretion in compliance with ORS 198.190 should not be considered to be to the "private pecuniary benefit or detriment" of a board member under ORS 244.020(1)(a).

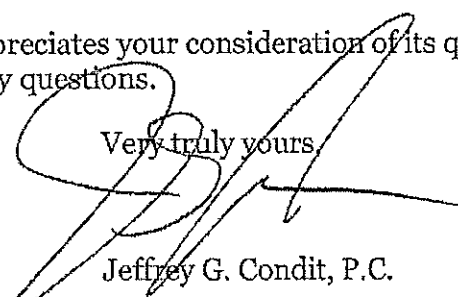
As noted above, in Staff Opinion 14S-001-dg, the OGEC Director determined that the Rule of Necessity did not apply to permit conflicted board members to vote because the policies were elective. In this case, the compensation is authorized by ORS 198.010. There is discretion under the statute as to the amount up to the cap, but a decision is required, whether that decision is to approve the maximum compensation, a lesser compensation, or no compensation. Each of those decisions has a pecuniary impact, positive or negative, on a board member.<sup>3</sup> Since some decision has to be made under ORS 198.010, it would seem the Rule of Necessity would apply. Yes, the Board could make this decision in compliance with your prior opinions by applying it prospectively, but that writes a requirement into the statute that is not supported by the text. ORS 174.010 requires a statute to be construed based on text, without inserting what has been omitted or omitting what has been inserted into the text.

### CONCLUSION

For the reasons above, we believe that the terms and conditions of ORS 198.190 should change the analysis from the OGEC's prior opinions. A decision of the Board to modify its compensation as authorized and in compliance with the statute should not be considered in violation of the Government Ethics statute or require the Board to apply the change prospectively.

The District greatly appreciates your consideration of its questions. Please feel free to contact me if you have any questions.

Very truly yours,

  
Jeffrey G. Condit, P.C.

cc: Mr. Doug Menke, General Manager

<sup>3</sup> Unless the OGEC is required to consider such a payment as nonlucrative under ORS 198.010, as discussed above.



# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

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Fax: 503-373-1456

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

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

September 17, 2019

Daniel Jarman  
c/o Crosswater Strategies  
P.O. Box 246  
Lake Oswego, Oregon 97034

RE: Letter of Advice 19-214I

Dear Daniel Jarman:

This letter of advice is provided in response to your request received on September 16, 2019, which presented a question regarding the application of Oregon Government Ethics law to a situation in which the Portland Trail Blazers, your public affairs client, would like to recognize state legislators and other Oregon elected officials during an upcoming 50<sup>th</sup> anniversary commemorative Trail Blazers basketball game at the Moda Center. 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.

You have indicated that your client, the Portland Trail Blazers, is planning on inviting Oregon legislators and other elected officials to a special event to commemorate its 50<sup>th</sup> anniversary season. This event would occur during a game at the Moda Center. During this game, the Trail Blazers would publicly recognize these elected officials. In addition, complimentary tickets to the game, as well as complimentary food and beverages at a pregame reception, would be provided for each official and their spouse. In your request, you have asked whether state public officials' participation in this commemorative event would "fall outside Oregon's gift laws and rules" for elected officials.

Under most circumstances, when a public official is offered complimentary tickets to entertainment and accompanying food and beverages, it would be a "gift" as defined in ORS 244.020(7)(a). There are exceptions. ORS 244.020(7)(b)(N) permits a public official or "relative or member of the household" to receive paid or complimentary admission to "entertainment" when the public official is acting in "an official capacity while representing state government. . . a local government. . . or a special government body. . . for a ceremonial purpose." The Oregon Administrative Rules further define "ceremonial purpose" as follows:

(2) Entertainment is ceremonial when a public official appears at an entertainment event for a "ceremonial purpose" at the invitation of the source of the entertainment who requests the presence of the public official at a special occasion associated with the entertainment. Staff members accompanying a public official may also attend if they are performing official duties. An example of an appearance by a public official at an entertainment event for a ceremonial purpose includes, but is not limited to, throwing the first pitch at a professional or college baseball game, appearing in a parade, and ribbon cutting for an opening ceremony. To qualify, the entertainment must be provided by the source of the entertainment, and **the public official must have an official role** in the entertainment event. [Oregon Administrative Rules 199-005-0025(2)(emphasis added)].

In order to comply with the law and rules, the public officials must have an active, official role in the basketball game. Although the manner in which the Trail Blazers choose to incorporate the public officials into the game will be decided by you, the officials must have an official role during the game in order for the "entertainment" to be "ceremonial" as defined by OAR 199-005-0025(2), and thus fall within the exception in ORS 244.020(7)(b)(N). Note that the example provided regarding sporting events is that of an official throwing out the first pitch at a baseball game.

ORS 244.020(7)(b)(L) provides that "[f]ood or beverage consumed by a public official or candidate at a reception where the food or beverage is provided as an **incidental part** of the reception and no cost is placed on the food or beverage" is also excepted from the definition of "gifts" as that definition pertains to government officials (emphasis added). You've described a "private gathering" before the game which will include food and beverages. Oregon Administrative Rules define "reception" for purposes of evaluating exceptions to gifts as: "a social gathering. . . often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal". OAR 199-005-001(8). The primary purpose of the reception you've described would need to be something other than eating and drinking. The Oregon Administrative Rules clarify, as noted above, that receptions to formally or ceremonially welcome or honor guests are the type of receptions in which a public official may accept food and beverage as exceptions to "gifts". In addition, the exception in ORS 244.020(7)(b)(L) applies only to public officials and candidates and not to relatives or household members, such as spouses.

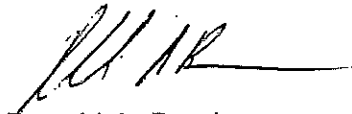
Based on the information provided, ORS 244.020(7)(b)(N) and the applicable Oregon Administrative Rules would allow public officials and their spouses ("relative or member of the household of the public official") to accept admission to

Daniel Jarman  
September 17, 2019  
Page 3

the above-referenced 50<sup>th</sup> anniversary commemorative Trail Blazers game, if the officials actively participate in an "official role" in the Trail Blazers game as outlined above and thus meet the "ceremonial purpose" exception outlined in ORS 244.020(7)(b)(N). ORS 244.020(7)(b)(L) would also permit the officials, but not spouses, to accept "incidental" food and beverages at a reception preceding the game so long as the primary purpose of the reception fits the requirements of OAR 199-005-001(8).

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

\*\*\*\*\*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.

RAB/lc

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September 16, 2019

Mr. Ron Bersin  
Executive Director  
Oregon Government & Ethics Commission  
VIA EMAIL

Dear Ron,

I'm writing on behalf of the Portland Trail Blazers, a client of our public affairs firm, Crosswater Strategies.

The Trail Blazers this season will be celebrating its 50<sup>th</sup> anniversary as a NBA franchise. Although the Trail Blazers play in Portland, it has always considered itself an "Oregon" team, with a loyal fan base stretching to all corners of the state.

Throughout its upcoming season, which begins in October, the Trail Blazers will be having a series of commemorative events to celebrate the state's first major professional sports team. Most of the commentative events will occur during games that run throughout the season, which concludes next spring.

The Trail Blazers would like to invite Oregon legislators and other elected officials to a special event that commemorates its 50<sup>th</sup> anniversary season. This would occur during a game at the Moda Center. During the game, the Trail Blazers would recognize these elected officials.

The question is whether the Trail Blazers can offer to a legislator or other elected official a complimentary ticket to the game, along with a ticket for a spouse, in addition to food and beverages that would be served at a private gathering before the game. We are asking the OGEC to provide guidance whether participation at this commentative event would fall outside Oregon's gift laws and rules for elected officials.

We would be grateful for any guidance you can provide. Please let me know if you have any questions. I'm happy to provide any additional information. I can be reached via email at [danj@crosswaterstrategies.com](mailto:danj@crosswaterstrategies.com). We look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel E. Jarman', with a stylized flourish at the end.

Daniel E. Jarman

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

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September 26, 2019

Representative Caddy McKeown  
900 Court St N.E., H-476  
Salem, Oregon 97301

RE: Advice Number 19-222I

Sent via USPS and email

Dear Representative McKeown:

This letter of advice is provided in response to your request received on September 24, 2019 which inquired as to the application of Oregon Government Ethics law with regard to you accepting travel related expenses paid for by the Oregon Truckers Associations Inc. (OTA) to attend the 2019 Leadership Convention on September 25, 2019.

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 information provided in the initial request, OTA has extended an invitation to legislative officials to participate in their 68<sup>th</sup> Annual Convention from September 25 – 27, 2019. You have been invited to participate on a legislative panel titled "The On-Going Saga of Carbon Policy in Oregon". The purpose of this legislative panel is for members of the legislative assembly to discuss carbon legislation from the 2019 session, global climate issues and the effects on the transportation industry.

OTA will be paying your hotel accommodations and fees associated with lodging. In addition, the Director of Government Affairs of OTA has extended an offer of lunch for all the members of the legislative panel. It is not clear based on the provided information if the invitation to lunch is associated with the paid expenses of the conference. What is known is that others in attendance at this event are not included in this invitation.



In offering this invitation to participate as a member of a legislative panel, OTA identified several objectives: inform and share information regarding carbon legislation from the 2019 session, how the environmental policy tool in the cap-and-trade bill HB 2020 would impact transportation and more specifically the trucking industry in Oregon, alternatives to the cap-and-trade program, and address what other mitigation or sequestration methods Oregon could explore to reduce carbon emissions. The benefit to legislative officials in this exchange is an opportunity to examine challenges and benefits in controlling carbon emissions and forms of pollution in the trucking transportation industry.

Under most circumstances when a public official is offered lodging expenses at no cost to the public official, it would be a gift as defined in ORS 244.020(7)(a). If the provider of a gift to a public official has a legislative or administrative interest in the votes or decisions of the public official, there are conditions and restrictions that apply to the acceptance of the gift. A legislative or administrative interest is defined in ORS 244.020(10) as an economic interest that is distinct from the economic interest held by members of the general public in votes or decisions of the public official. It would appear that OTA and its members have a legislative or administrative interest in bills, resolutions, regulations or proposals, acted upon by legislators that would be distinct from that of the general public. Therefore, the conditions and restrictions on paid expenses offered to any member of the Oregon Legislative Assembly and their relatives could apply.

Under specific circumstances set forth in ORS 244.020(7)(b), there are exceptions when a public official and their relatives may accept gifts, such as paid expenses for lodging or other items of value. ORS 244.020(7)(b)(H)(i) allows acceptance of the payment of reasonable expenses for food, travel or lodging provided to a public official and accompanying relative, or member of their household or staff, when the public official is representing state government on an officially sanctioned trade-promotion or fact-finding mission.

While public officials may be able to accept these paid expenses, ORS 244.020(7)(b)(H)(i) requires that they do so as a representative of state government and that the event be a "fact-finding mission or trade promotion" and be "officially sanctioned."

The Oregon Government Ethics Commission issued Oregon Administrative Rules (OARs) in which "trade promotion," "fact-finding mission or trip" and "officially sanctioned" were defined as follows:

"A fact-finding mission or trip" is any activity related to a cultural or educational purpose, or any activity aimed at providing intergovernmental assistance, such as for the purpose of international aid or sharing best

practices, or developing intergovernmental relationships directly related to the public official's duties. The sponsor of a fact-finding mission should be directly and immediately associated with the event or location being visited." [OAR 199-005-0001(2)]

"Trade promotion" means an activity for the purpose of encouraging or developing commerce or the buying and selling of goods and services." [OAR 199-005-0020(3)(c)]

"Officially sanctioned or officially designated" means written approval by a state or local public body or by a person authorized by the public body to provide that approval. When the activity is officially designated as negotiations or economic activity, the written notice will include approval for the public official to accept the payment of reasonable expenses. [OAR 199-005-0020(3)(b)]

Unless the public body determines otherwise, the written notice for a member of the legislative assembly must be approved by the President of the Senate, Speaker of the House, the designated majority or minority leaders of either chamber or appointed committees of the Legislative Assembly for any elected member. [OAR 199-005-0020(3)(b)(C)]

It should be understood that ORS 244.020(7)(b)(H) does not allow public officials to accept financial benefits outside of reasonable food, travel or lodging expenses. Under most circumstances, paid expenses for entertainment would likely meet the definition of a gift as defined in ORS 244.020(7)(a) unless they fall within a specific exception for entertainment under ORS 244.020(7)(b)(M) or (N).

Based on the information provided, it appears that ORS 244.020(7)(b)(H)(i) would allow you and other legislative officials to accept food, travel or lodging expenses for their representation as a legislative panel member at the 2019 Leadership Convention sponsored by OTA. In addition, these paid expenses may also be offered to and accepted by a public official's relative, members of the public official's household and members of the public official's staff who are accompanying a member of the Legislative Assembly at this event.

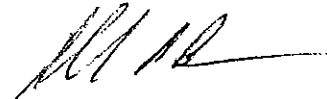
Because it is not clear that the aforementioned lunch invitation by the Director of Government Affairs of the OTA is associated with the meals offered as part of the conference dues, the following conservative analysis is that the value of the lunch meal will be analyzed as a gift. ORS 244.025 limits the value of a gift to \$50 from a single source in a calendar year to the public official, relative, or member of the public official's household. If the value exceeds \$50, the public official will need to use their personal expenses to pay for those costs.

Representative McKeown  
September 26, 2019  
Page 4

In addition, legislative officials are required by ORS 244.050 to file with the Oregon Government Ethics Commission an Annual Verified Statement of Economic Interest report. ORS 244.060(6) requires officials to identify all expenses with an aggregate value exceeding \$50 when participating in an event described in ORS 244.020(7)(b)(H)(i).

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

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/th

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

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

## HEDRICK Tammy R \* OGEC

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**From:** Rep McKeown <Rep.CaddyMcKeown@oregonlegislature.gov>  
**S** Tuesday, September 24, 2019 3:12 PM  
**To:** HEDRICK Tammy R \* OGEC  
**Cc:** SEKERAK Tim  
**Subject:** FW: OTA Convention Details  
**Attachments:** 2019 Convention Schedule 9.17.19.pdf; OTA Convention Panel Outline.docx; OTA Annual Convention

Ms. Hedrick,

Please find below and attached documentation for a conference that Representative McKeown is attending this week. I just spoke with Chief Clerk Sekerak who is at a conference himself this week, and he asked that I forward the information for your review.

Please accept my apologies for the short notice on this, for some reason the association was delayed in sending the details over to me.

I am working remotely this week and can be reached by email or at our district cell phone, (541)808-7596.

Best,

Mallorie Roberts

Legislative Director  
Representative Caddy McKeown  
Oregon House District 9  
(503)986-1409 (o)  
(541)808-7596 (m)

---

**From:** Rep McKeown <Rep.CaddyMcKeown@oregonlegislature.gov>  
**Date:** Tuesday, September 24, 2019 at 11:14 AM  
**To:** Sekerak Tim <Tim.Sekerak@oregonlegislature.gov>  
**Subject:** FW: OTA Convention Details

Hi Tim,

The Oregon Trucking Assn would like to pay for a room and a meal for Rep McKeown as part of her participation in a legislative panel (fact finding mission) at their convention this week. Attached and below are details for your review.

I'll be working remotely this week so email or the district cell phone, 541-808-7596, will be the way reach me if you've got questions.

Best,

Mallorie Roberts  
Legislative Director  
Representative Caddy McKeown  
Oregon House District 9

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**From:** Waylon Buchan <Waylon@otrucking.org>  
**Date:** Tuesday, September 24, 2019 at 9:29 AM  
**To:** Rep McKeown <Rep.CaddyMcKeown@oregonlegislature.gov>  
**Subject:** OTA Convention Details

Good morning Representative McKeown,

Thank you again for taking time out of your packed schedule to participate in our convention. I wanted to follow up with some additional information in advance of the event.

The confirmation number for your hotel reservation at Salishan is: 5237987

I asked about the amount in case you need to process anything through your office or your PAC. The room comes to \$159, and \$15 per night resort fee. This will be billed to OTA.

I'm attaching an outline for the legislator panel. I will be moderating this panel, so if you would like me to make any last minute adjustments I am happy to accommodate you. In other words, if there is a question you'd really like to be asked (or not asked) just let me know and I can adjust.

Finally, please see the attached convention schedule for your reference. Disregard the section about lunch. Jana and I would like to take you and the other legislator panelists to lunch directly after the panel, if your schedule allows.

Thank you again, we are all looking forward to seeing you!

**Waylon Buchan, J.D.**  
Director of Government Affairs

**Oregon Trucking Associations, Inc.**  
4005 SE Naef Road  
Portland, OR 97267  
Phone: 503.513.0005  
Cell: 503.707.5756  
waylon@otrucking.org



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# 2019 Leadership Convention Agenda

Wednesday, September 25, 2019			
10:00 am – Noon	Registration		
10:00 am – 11:00 am	Allied Committee	OTA In Action	10:00 am – Noon Employee Satisfaction Adam Williamson
11:15 am – 12:15 pm	Government Affairs	Membership Committee	
Noon – 1:00 pm	Buffet Lunch		
12:30 pm – 12:45 pm	Welcome & Opening Remarks Diane DeAutremont, OTA Chairman		
12:45 pm – 1:45 pm	<b>The Good, the Bad &amp; the Ugly</b> <b>2019 Legislative Happenings and What is coming in 2020</b> <i>Drews, Proctor, King, Hornum, Vargo, Anderson, Blanton, Blanton, Advertiser</i> <i>Shaw, Johnson, Johnson, Smith, Wright, Fisher, Ely, Van, Avramis, O'Brien, &amp; Associates</i>		
1:45 pm – 2:45 pm	<b>Under Attack: The Future of Independent Contractors</b> <i>Jeff Van Gien, Parker, Saporito, Gordon, Johnson, &amp; Berry, LLC</i>		
2:45 pm – 3:00 pm	Break		
3:00 pm – 4:00 pm	<b>What You Need to Know Today to Plan for Tomorrow – Economic Update</b> <i>Wynn, Kovic, Smith, Resch, &amp; Associates, Financial.com, Trucking Association</i>		
4:00 pm – 5:15 pm	<b>The Value of Training to Your Bottom Line</b> <i>Panel</i> <i>Woodruff, Adams, Williams, O'Brien, Healy, O'Connell, &amp; Evans, Inc.</i>		
5:15 pm – 6:30 pm	Allied Partner Cocktail Reception		
8:00 pm – 10:00 pm	Chairman's Reception		

**Thursday, September 26, 2019**

7:30 am – 9:00 am	Breakfast Buffet		
8:00 am – 9:00 am	Image Committee	Highway Policy Committee	Self-Audits <i>Adam Williamson, OTA</i>
9:15 am – 10:30 am	A Sneak Peek at the New ODOT Director		
10:30 am – 10:45 am	Break		
10:45 am – Noon	<p><b>The On-Going Saga of Carbon Policy in Oregon</b>  <i>Senator Cliff Bentz, Senator Betsy Johnson,                  Rep. Santina Brodwin, Rep. Representative Caddy Wickham                  Moderator: Waylon Buchan, OIA Director of Government Affairs</i></p>		
	Lunch on Own		
12:30 pm – 5:30 pm	Golf	Optional Activities <i>(Check with Adventurer Desk)</i>	1:00 pm – 2:00 pm <b>What's Next in ELDs and HOS Compliance?</b> <i>John Bartizal, Saurabh Chatterjee &amp; Erica Grogg, EROAD</i>
			2:30 pm – 3:30 pm <b>How Laws Are Made?</b> <i>Waylon Buchan, OTA</i>
			4:00 pm – 5:00 pm <b>History of Transportation</b> <i>Waylon Buchan, OTA</i>
7:30 pm	Truck PAC Dinner (Leadership Circle or ticket required)		



**Friday, September 27, 2019**

7:30 am – 8:30 am	OTA Board of Directors Meeting
8:30 am – 9:30 am	Breakfast Buffet
9:00 am – 9:15 am	Opening Remarks Andy Owens
9:15 am – 10:15 am	<i>What is Being Done to Improve Trucking's Image Elizabeth Barone, EVP, Industry Affairs &amp; Senior Advisor to the President &amp; CEO, AATA</i>
10:15 am – 10:30 am	Break
10:30 am – Noon	<i>Annual Meeting / OTA Board of Directors Elections</i>
Noon – 1:30 pm	Lunch Allied Partner Showcase
1:45 pm – 2:45 pm	<i>Understanding the Changes at FMSCA Ray Martinez - Invited</i>
2:45 pm – 3:30 pm	<i>Using Humor to Overcome Failure Greg Warren - Comedian</i>
3:30 pm – 3:45 pm	Closing Remarks
6:00 pm – 7:00 pm	Allied Partner Cocktail Reception
7:00 pm	Awards and Recognition Banquet with entertainment Comedian, Greg Warren

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## September 26<sup>th</sup> Legislator Panel Outline

*The On-Going Saga of Carbon Policy in Oregon*

*10:45 am – 12:00 noon*

*Senator Betsy Johnson - Senator Cliff Bentz - Representative Caddy McKeown - Representative Brad Witt*

Introduction by Moderator Waylon Buchan (followed by panelist introductions)

Panel Discussion - Questions from Moderator:

- Tell us a little about your perspective as carbon legislation unfolded in 2019. (Rep. McKeown, rest of panel)
- How has your district reacted to the proposed HB 2020 legislation from last session? (Sen. Bentz, rest of panel)
- Are there viable alternatives to the Cap and Trade program we saw in 2019? (Rep. Witt, rest of the panel)
- HB 2020 attempted to address a global climate issue. Should Oregon be exploring federal partnerships or federal funding options that go beyond our borders? (Sen. Johnson, rest of panel)
- How would Cap and Trade impact transportation in Oregon? Is there a way to price fossil fuels without disrupting transportation? (Rep. McKeown, rest of panel)
- If HB 2020 had passed, does the story stop there? Are there potential legal challenges to the legislation? (Sen. Bentz, rest of panel)
- Other than simply pricing away fossil fuels, what other mitigation or sequestration methods could Oregon explore if we truly want to reduce carbon? (Rep. Witt, rest of panel)
- Will #TimberUnity and other grassroots movements have an impact on carbon pricing going forward? (Sen. Johnson, all)
- In government, one size does not always fit all – does carbon pricing impact Ontario differently than Portland or Eugene? (Sen. Bentz)

Audience Questions

Closing Comments (Panelists and moderator, if time allows)

## HEDRICK Tammy R \* OGEC

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**From:** Waylon Buchan <Waylon@otrucking.org>  
**Sent:** Monday, August 19, 2019 11:23 AM  
**To:** REP McKeown  
**Subject:** OTA Annual Convention

Good morning Representative McKeown,

I hope your summer is treating you well and you are getting some rest after this last session. OTA's annual convention is coming up at the end of September. We'll be in Salishan from Wednesday the 25th through Friday the 27th. We are hosting a special legislator panel to discuss Cap and Trade on Thursday the 26th, at 8:00 am. Jana and I would like to invite you to participate in this legislator panel if your busy schedule allows. I am happy to follow up with additional details, but wanted to reach out and gauge your general availability first.

Let us know what you think, and thank you!

**Waylon Buchan, J.D.**  
Director of Government Affairs

**Oregon Trucking Associations, Inc.**  
4005 SE Naef Road  
Portland, OR 97267  
Phone: 503.513.0005  
Cell: 503.707.5756  
waylon@otrucking.org



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**HEDRICK Tammy R \* OGEC**

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**From:** Waylon Buchan <Waylon@otrucking.org>  
**Sent:** Wednesday, September 25, 2019 12:51 PM  
**To:** HEDRICK Tammy R \* OGEC  
**Subject:** Re: Oregon Government Ethics Commission RE: 68th Annual Convention

Good morning Tammy. I am told we reserved a table at the restaurant located here at Salishan Resort. I don't recall the name but can find out. I'm happy to provide any other information you may need.

Thank you,

Waylon  
503-707-5756

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**From:** HEDRICK Tammy R \* OGEC <Tammy.R.HEDRICK@oregon.gov>  
**Sent:** Wednesday, September 25, 2019 9:59:05 AM  
**To:** Waylon Buchan <Waylon@otrucking.org>  
**Subject:** Oregon Government Ethics Commission RE: 68th Annual Convention

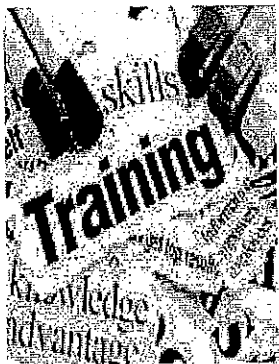
Good morning Mr. Buchan,

The Oregon Government Ethics Commission has been asked to provide written guidance for Representative Caddy Keown regarding the acceptance of paid expenses provided by the Oregon Trucking Associations Inc. to participate as a member of a legislative panel on carbon legislation.

In this request, you indicate that Representative McKeown would not be having lunch with the conference attendees, instead you and your colleague Jana would be taking the members of the legislative panel to lunch directly after the panel.

My question, where will this meal take place? As time is of the essence, I look forward to hearing from you as quickly as you can respond.

Have a good day.



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

**\*Disclaimer\***

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

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

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

October 10, 2019

Sent via e-mail and USPS

Matt J. Brown, Mayor  
City of Gearhart  
698 Pacific Way  
P.O. Box 2510  
Gearhart, Oregon 97138

Re: Advice Number 19-2261

Dear Mr. Brown:

This letter of advice is provided in response to your request received on October 2, 2019, which presents questions regarding potential ethical issues arising for you, as Mayor of Gearhart, if you were to accept the gift of a private flight to Ireland. The analysis and advice that follows is offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances presented.

### Facts as Presented

You are the elected Mayor of Gearhart and are privately employed as a golf professional. You lease the Highlands Golf Club just north of Gearhart and own a second golf course in Manzanita. A third golf course, Gearhart Golf Links, is located within the City of Gearhart. You are not directly associated with the Gearhart Golf Links, but are friends with its owner, as well as with its head pro and head greenskeeper. We understand that the owner of Gearhart Golf Links is also the president of a large national clothing manufacturer based in Oregon.

Your e-mail explains that at a recent dinner, these friends invited you to join them on a trip to Ireland in November to visit some golf courses. The owner of the Gearhart Golf Links then said he was taking his private jet on a business trip to Germany and would be making a stop in Dublin, Ireland on the way. He offered to convey you and the other two gentlemen to and from Ireland on his private jet. You would be paying for all of your own expenses on this trip, with the exception of the flight.

You explain that the trip to Ireland is a personal business trip and has nothing to do with your position as Mayor of Gearhart. You indicate that you are not aware of anything on the current agendas for the City Council or the Planning Commission that would pertain to any of these individuals or to the Gearhart Golf Links. The three gentlemen, however,



Matt Brown  
October 10, 2019  
Page 2

are all Gearhart constituents and may occasionally interact with City staff on various issues. The owner of Gearhart Golf Links, for example, is represented on the Clatsop County Elk Initiative Committee as a private property stakeholder. In 2017, the City Council approved a franchise agreement to install a cell tower on a hotel located on Gearhart Golf Links property. The owner of Gearhart Golf Links has also been solicited by the City for donations for a prospective new fire station. It is also foreseeable that the City could purchase items from the owner's clothing company.

Question: You have asked whether the owner of Gearhart Golf Links would have a legislative or administrative interest such that you could not accept the gift of a flight to/from Ireland on his private jet without violating the gift clause in Oregon's Ethics laws.

Answer: Because the value of the proposed gift exceeds the gift limit of \$50 and it appears the source of the gift could reasonably be known to have a legislative or administrative interest in your actions as the Mayor of Gearhart, you would be prohibited from accepting the gift of a private flight to and from Ireland.

As you know, public officials (defined at ORS 244.020(15)) are generally prohibited from soliciting or accepting, within a single calendar year, any gift(s) with an aggregate value in excess of \$50 from any single source that might reasonably be known to have a legislative or administrative interest in any matter subject to the public official's decision or vote. [ORS 244.025]. In order to determine whether you can accept something of economic value, you must determine if its value exceeds \$50 and if the source of the gift is reasonably likely to have an economic interest distinct from that of the general public in your official decision making.

A "gift" is defined as something of economic value given to a public official without valuable consideration of equivalent value and which is not extended to others on the same terms and conditions. [ORS 244.020(7)(a)]. The Commission interprets "others" in this context to indicate a significant portion of the general public. In this case, a private flight to Ireland is certainly something of significant economic value, and it is not something offered to others on the same terms and conditions.

ORS 244.020(7)(b)(O) excludes from the definition of gift items of economic value that are offered as part of the usual and customary practice of the person's private business and that bear no relationship to the public official's official position or office. While this gift does not appear to bear any relationship to your official position, it also does not appear that private flights to Europe are part of the usual and customary practice of your business. This gift does not appear to fall within any of the statutory exceptions to the gift clause.



Matt Brown  
October 10, 2019  
Page 3

A "legislative or administrative interest" is an economic interest, distinct from that of the general public, in any matter subject to the public official's decision or vote. [ORS 244.020(10)]. In this case, the source of the proposed gift is the owner of the Gearhart Golf Links and president of a major clothing manufacturer. The information you provided indicates that this source has previously had an economic interest in items before the Gearhart City Council, including but not limited to the Clatsop County Elk Initiative Committee and the cell tower. This source could reasonably be assumed to have such an economic interest in the future, as a private property owner, as the president of the clothing company from which the City could make purchases, and as a potential donor to City projects. Thus, the source of the gift appears to have a legislative or administrative interest in your decisions as a public official.

Because of the value of the private flight to/from Ireland and the fact that the source has a legislative or administrative interest, you are prohibited, as a public official, from accepting such a gift.

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/svm

**\*\*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.

## HUNTER David \* OGEC

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**From:** Matt J. Brown, PGA <mjbrown@pga.com>  
**Sent:** Wednesday, October 02, 2019 10:52 AM  
**To:** OGEC Mail \* OGEC  
**Subject:** Ethics question, Gearhart

Hi guys,

This is Matt Brown, I'm the mayor of Gearhart, and I had a specific ethics question/scenario I wanted to run by you all. Myself and some of our city councilors recently did an ethics training with Patty Muvilhill from LOC which was very helpful. I spoke with Patty on Monday about this specific scenario and she recommended I send you an email to get your thoughts in writing.

I'll give you some background first...I am a PGA golf professional by day and run two golf courses on the Oregon coast. I lease the Highlands Golf Club just north of Gearhart and I also own the Manzanita golf course in Manzanita. Throughout the year I usually go on golf trips to visit different facilities with friends, colleagues, and business associates. In the last few years I've had the opportunity to go to Ireland, Sand Vally Wisconsin, Pebble Beach and other places. These trips are very helpful in learning new ideas on how to run our facilities and are also very fun for me personally as I get to meet other peers in the golf industry and play some amazing courses along the way.

Two of my good friends and associates in the golf business are the folks that run the Gearhart Golf Links in Gearhart. The head pro and head greenskeeper and I work together on various tournaments and support each others golf courses. The head greenskeeper is also a paid consultant for us and helps us with our greens chemistry and fertilizer program at the Highlands and Manzanita. We all enjoy a great working relationship and are also good personal friends, we usually have dinner or drinks together at least once a week and share ideas on how to operate our facilities better and support the other golf courses in our area. Last year we got to all go on a trip to Ireland together with some of the local golf course members and visit a lot of great golf courses and meet some amazing golf industry associates and friends. I am also friends with the owner of the Gearhart Golf Links who is a great supporter of golf in our area and an experienced business professional. I enjoy spending time with all of them both in my business life and personal life.

This brings me to my question. The golf course owner, the head pro, and head greenskeeper and I were all having dinner and drinks together at another mutual friends house the other night. During dinner they invited me to come on a trip with them to Ireland in November. The golf course owner, who owns a private jet, is going on a business trip to Germany and is making a stop in Dublin on the way. He mentioned that he is flying by himself and would love company on the flight and can drop all of us off in Dublin, so we can go visit some golf courses and our friends/associates, and then he can pick us up on the way back through and we can ride back with him home. We will be paying for all of our own expenses but of course the flight on his jet would be free.

Now, this trip has nothing to do with me being the mayor, and we won't be discussing any city issues, but technically I would consider all three of them constituents of mine as they do live in or near Gearhart and own property and businesses in Gearhart. The question I have and Patty and I discussed is obviously I can't accept gifts over \$50 as mayor, but I wouldn't be acting as mayor on this trip, it would be personal/business, and what would constitute "administrative" interest. Patty suggested I make sure that I run this by you before accepting the trip/flight. Since I've been mayor the three of them have been involved in various normal city interactions. I

wanted to list some of the interactions for you that I know of in case it could affect anything ethics wise in this instance:

- All three have given the city feedback on the elk heard that frequents their golf course in person and over correspondence/email. The city has an online form on our website where anyone can give feedback on elk observations or interaction and we are able to forward them to the ODFW and state officials. Their golf course is also represented on the Oregon Solutions "Clatsop County Elk Initiative" committee as a private property stakeholder.
- The city council approved a franchise agreement in 2017 with LightSpeed Network to install fiber optics in a city of Gearhart right away. The installation was necessary for Pacific Crest Construction to install a Verizon cell tower on the top of a new hotel that was built on the golf course property near their clubhouse. The hotel is operated by McMenamins out of Portland.
- Our city fire station committee is exploring if folks would like to donate private funds to help support building a new fire station in the future that may go to a public vote for a city bond. The golf course owner was asked by our committee if they would be interested in donating if a decision to build a new station is made.
- Various every day interactions with our police department, fire department, city administrator, planning commission, planning department, and building department for building permits etc.
- I'm not aware of anything else on any current agenda as of now for city council or the planning commission that would involve a vote of any kind pertaining to their golf course or any of the individuals.

I think that's everything. Please let me know if you have any questions on anything specific and please let me know your thoughts on this particular instance, I appreciate your time very much!

...the best,

Matt

Matt J. Brown  
PGA Head Golf Professional/General Manager  
Highlands Golf Club ~ Downtown Golf Co.  
Gearhart, Oregon  
Shop 503.738.5248  
Cell 503.757.3644  
Twitter @downtowngolf





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

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October 15, 2019

Sent via e-mail and USPS

Michael Swanson, City Attorney  
City of Klamath Falls  
500 Klamath Avenue  
Klamath Falls, Oregon 97601

Re: Advice Number 19-2301

Dear Mr. Swanson:

This letter of advice is provided in response to your request received on October 8, 2019, which presented a question regarding whether three city councilors who may have actual conflicts of interest in a matter before the city council may vote on that matter either because of the existence of a class exception or by application of the minimum votes exception in ORS 244.120(2)(b)(B). The analysis and advice that follows is offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances presented.

According to the information provided, Klamath Falls currently has a downtown parking permit fee process that relies on self-reporting by businesses who pay to purchase parking permits. Not all of the approximately 220 businesses in the downtown area participate in the current program. The Klamath Falls City Council is looking at ways to revamp its downtown parking process and may adopt a new downtown parking fee plan ("new parking plan").

The new parking plan may require businesses to pay parking fees based on criteria such as the type of business (retail, restaurant, etc.) and the square footage of the business. For example, a retail business would need to pay for one parking spot for every 600 square feet of space in the business, while a restaurant would need to pay for one parking spot for every 200 square feet of space. Businesses that own their own parking lots or spaces would be given credit for those parking spaces. The specific fee charged for each space has yet to be determined, and may depend on whether the City chooses to subsidize the downtown parking costs. The new parking plan could lower the payments for 50-75% of the businesses who participate in the current self-report process, but could dramatically increase the fees for other businesses.



Michael Swanson  
Advice Letter No. 19-2301  
October 15, 2019  
Page 2

Adoption of the new parking plan requires a vote of the City Council; however, three of the five Klamath Falls City Councilors have conflicts of interest. Two Councilors own downtown businesses and currently pay the parking permit fees; the third Councilor and his/her family own a downtown building with private parking. These three Councilors would be financially impacted by the new parking plan.

Question: You have asked whether the three Councilors are permitted to vote on the new parking plan, either as part of a class of downtown business owners or through the minimum votes exception.

Answer: Yes. Notwithstanding their conflicts of interest, the minimum votes exception could apply to permit one or more of the Councilors to vote on the new parking plan.

Oregon Government Ethics law defines two types of statutory conflicts of interest: actual and potential. [ORS 244.020(1) and 244.020(13), respectively]. A conflict of interest occurs when a public official takes an action or makes a decision or recommendation that has or could have the effect of providing a financial benefit or detriment to that official or the official's relative or a business with which they are associated. A business with which the official or the official's relative is a director, officer, owner, or employee or for which they have or have had an equity interest during the preceding calendar year is a business with which the public official is associated. [ORS 244.020(2) and (3)]. The difference between an actual conflict of interest and a potential conflict of interest is determined by whether the personal financial effect would occur (actual) or could occur (potential).

In this case, because adoption of the new parking plan would financially impact all downtown businesses, all three Councilors would have actual conflicts of interest arising from their ownership of downtown businesses and buildings. The two Councilors who own downtown businesses and currently pay the parking permit fees would be financially impacted as the new parking plan would require them to pay either more or less than what they currently pay. The third Councilor who owns a downtown building with private parking would be financially impacted because the new parking plan would provide the Councilor with a credit for the private parking lot to offset the new downtown parking fees.

On each occasion when met with a statutory conflict of interest, an elected official must publicly announce, in a public meeting, the nature of the conflict of interest. After making the announcement, the official may proceed with the discussion and action if the conflict of interest is only potential. If the conflict of interest is actual, however, the public official must, after making the announcement, refrain from participating in any discussion, debate, or vote on the issue out of which the conflict arises. [ORS 244.120(2)].

Thus, public officials who have actual conflicts of interest, such as these three Councilors, must publicly announce the nature of their conflicts and refrain from any participation and vote on the issue giving rise to their conflicts, unless an exception applies.

#### Class Exception

ORS 244.020(13)(b) provides an exception to the conflict of interest provisions for any action, decision or recommendation by a public official that would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation, or other group which includes the public official, the official's relative, or a business with which either is associated. Only the Oregon Government Ethics Commission (Commission) may make the determination of whether a class exists.

Application of the class exception is very fact specific. In order to determine whether all 220 downtown business owners would be affected by the new parking plan to the same degree, we might examine any differences in the new parking plan's treatment of daytime businesses versus nighttime businesses; restaurants versus retail stores versus offices; businesses with separate parking versus businesses with no separate parking. We would also need to determine how many class members fall into the various categories, and how the new parking plan would or would not treat those class members differently.

As indicated above, a class determination can only be made by the Oregon Government Ethics Commission; it is initiated by requesting a formal Commission Advisory Opinion. [ORS 244.280]. Because this is an informal letter of advice and we have not gathered the additional facts necessary for such a determination, we are not opining on whether a class exception would apply in this case. Also, because the minimum votes exception would apply, it does not appear that a class determination is necessary.

#### Minimum Votes Exception

In this case, actual conflicts of interest would arise for three of the five Councilors when the City Council considers adoption of the new parking plan. ORS 244.120(2)(b)(B) provides that if a public official has an actual conflict of interest but the official's vote is necessary to meet a minimum number of votes required for the governing body to take action, that official is eligible to vote but may not participate in any discussion or debate on the issue out of which the official's conflict of interest arises.

We note that the Klamath Falls City Charter provides that three members of the City Council constitute a quorum (Charter §15), and the concurrence of a majority of the City Council present at a Council meeting is required to decide any question before the Council (Charter §20). Thus, if only three Councilors are present, a concurrence of two Councilors would satisfy the minimum votes requirement. If all five Councilors are present, a

Michael Swanson  
Advice Letter No. 19-2301  
October 15, 2019  
Page 4

concurrence of three Councilors would be required. In either event, the minimum votes exception in ORS 244.120(2)(b)(B) could allow one or more of the conflicted Councilors to vote, but not participate in the discussion or debate.

Assuming that all five Councilors are present when the new parking plan comes before the City Council, after the three conflicted Councilors publicly announce their conflicts of interest, the two non-conflicted Councilors could discuss and debate the new parking plan and one of them could make a motion to adopt or reject the new parking plan. The motion could go forward with a roll-call vote; after the non-conflicted Councilors vote, the conflicted Councilors could vote, one-by-one until a concurrence of the majority present (three votes aye or nay) is reached. Depending on the Councilors' votes, that may mean that only one of the conflicted Councilors would cast a vote, or it could mean that all three conflicted Councilors would vote.

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/svm

**\*\*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.



## HUNTER David \* OGEC

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**From:** HUNTER David \* OGEC  
**Sent:** Tuesday, October 15, 2019 1:12 PM  
**To:** MYERS Susan \* OGEC  
**Subject:** FW: Question on Class declaration

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**From:** Michael Swanson [<mailto:MSwanson@klamathfalls.city>]  
**Sent:** Tuesday, October 08, 2019 4:26 PM  
**To:** OGEC Mail \* OGEC <[OGEC.Mail@oregon.gov](mailto:OGEC.Mail@oregon.gov)>  
**Subject:** Question on Class declaration

Good afternoon. My name is Michael Swanson and I am the City Attorney for Klamath Falls. So, depending upon to whom this email goes- Lisa thank you for your time earlier. Susan- I was up in Sunriver for your presentation so thank you for your time then and for making me aware of this resource. Your presentation has helped me a lot already.

We are currently looking at ways to revamp and modify our downtown parking process. Our current plan (which has been in place forever) relies on self-reporting by businesses for the purchase of permits. We have approximately 220 business in our downtown area. Not all businesses participate in this program. We plan to increase our enforcement which will require better participation and better reporting by all businesses. I am not worried about that part. No Council action is needed to enforce what we already have on the books therefore none of our Council members have any conflicts.

My concern is the direction any revamp may take. Currently, the plans being put forth will lessen the payments of 50-75% of the businesses who currently participate and could dramatically increase the fees for the others. Any revamp would require a vote by the Council. Two members are owners of downtown businesses and a third has an ownership share in a building with family members. The two who own businesses will have an actual conflict because both currently pay and both will be impacted by any change. (I suspect that their payments will decrease.) The third Council member has private parking for his building and may not be impacted regardless of the direction any change takes.

Do the downtown business owners constitute a class, and would the Councilors be a part of that class? I recognize that my question is similar to Question 3 in Advice Number 19-0551 dated April 26, 2019. As I read that decision, it seemed that you needed more information to see how the property owners would be impacted to determine class status. In our situation, the City is looking at basing the parking impact fee upon two criteria- the type of business and the size. For example, a retail business would need one parking spot for every 600 sq. ft. of space whereas a restaurant would need one parking space for every 200 sq. ft. We used the standards in our Community Development Code to determine the correlation of size and parking space numbers. (The numbers used are from memory and only used to help illustrate the situation. I cannot guarantee the measurements are those that will actually be proposed.) Those who own their own lots or spaces would be given credit for any spaces that they already have. The specific fee charged for each space has yet to be determined. Much of that discuss rests upon if the City chooses to subsidize the downtown parking costs or make the district self-sustaining. I recognize that this does raise the question regarding class members being "affected to the same degree". My response would be that for each retail business- there is the same measure applied. Likewise, each restaurant, professional office, etc., would face the same assessment criteria. The ultimate amount of money paid by each business may differ, but the determination of that amount would be by way of the same process.

Thanks in advance for any guidance you can provide. Do feel free to contact me if you have any questions or need any clarification. Have a nice evening.  
Mike

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

October 14, 2019

Weyerhaeuser  
ATTN: Betsy Earls, Manager, Oregon Public Affairs  
698 12<sup>th</sup> Street SE  
Salem, Oregon 97301

RE: Advice Number 19-2371

Sent via USPS and email

Dear Ms. Earls:

This letter of advice is provided in response to your request received on October 10, 2019, which inquired as to the application of Oregon Government Ethics law with regard to state legislators accepting reasonable food and travel related expenses, educational materials and lightweight ponchos in the event of rain paid for by Weyerhaeuser to attend two (2) educational tours scheduled for October 30, 2019, and November 1, 2019.

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 information provided in the initial request, Weyerhaeuser is planning on extending an invitation to legislative officials to participate in two proposed educational tours on October 30, 2019, and November 1, 2019. The purpose of these educational tours is to educate and inform state legislators about every stage of the forest growing and harvest cycles. The tours will visit Weyerhaeuser harvest operations, different aged stands of timber, stream buffers and riparian management areas. These visits will provide state legislators with a visual on how Oregon timberlands can be managed so as to protect natural resources and support the economy.

Weyerhaeuser will be paying for food and transportation. In addition, Weyerhaeuser will provide participants with various educational materials and ponchos for use in case of rain. The estimated total cost to Weyerhaeuser per state legislator participation, for this fact-finding event, is \$30 to \$50.

Under most circumstances when a public official is offered food and travel expenses at no cost, it would be a gift as defined in ORS 244.020(7)(a). If the provider of a gift to a public official has a legislative or administrative interest in the votes or decisions of the public official, there are conditions and restrictions that apply to the acceptance of the gift. A legislative or administrative interest is defined in ORS 244.020(10) as an economic interest that is distinct from the economic interest held by members of the general public in votes or decisions of the public official. It would appear that Weyerhaeuser has a





legislative or administrative interest in bills, resolutions, regulations or proposals, acted upon by legislators that would be distinct from that of the general public. Therefore, the conditions and restrictions on paid expenses offered to any member of the Oregon Legislative Assembly and their relatives could apply.

However, ORS 244.020(7)(b), excludes several items from the statutory definition of "gift", including reasonable food, travel and lodging expenses. ORS 244.020(7)(b)(H)(i) allows acceptance of the payment of reasonable expenses for food, travel or lodging provided to a public official, a relative or household member accompanying the public official or a staff member accompanying the public official, when the public official is representing their governing body on an officially sanctioned trade-promotion or fact-finding mission.

While public officials may be able to accept these paid expenses, ORS 244.020(7)(b)(H)(i) requires that they do so as a representative of state government and that the event be a "fact-finding mission or trade promotion" and be "officially sanctioned."

The Oregon Government Ethics Commission issued Oregon Administrative Rules (OARs) in which "trade promotion," "fact-finding mission or trip" and "officially sanctioned" were defined as follows:

"A fact-finding mission or trip" is any activity related to a cultural or educational purpose, or any activity aimed at providing intergovernmental assistance, such as for the purpose of international aid or sharing best practices, or developing intergovernmental relationships directly related to the public official's duties. The sponsor of a fact-finding mission should be directly and immediately associated with the event or location being visited." [OAR 199-005-0001(2)]

"Trade promotion" means an activity for the purpose of encouraging or developing commerce or the buying and selling of goods and services." [OAR 199-005-0020(3)(c)]

"Officially sanctioned or officially designated" means written approval by a state or local public body or by a person authorized by the public body to provide that approval. When the activity is officially designated as negotiations or economic activity, the written notice will include approval for the public official to accept the payment of reasonable expenses. [OAR 199-005-0020(3)(b)]

Unless the public body determines otherwise, the written notice for a member of the legislative assembly must be approved by the President of the Senate, Speaker of the House, the designated majority or minority leaders of either chamber or appointed committees of the Legislative Assembly for any elected member. [OAR 199-005-0020(3)(b)(C)]

Based on the information provided, it appears that ORS 244.020(7)(b)(H)(i) would allow legislative officials to accept food, travel or lodging expenses for their participation/attendance at the two proposed educational tours offered by Weyerhaeuser

Weyerhaeuser  
ATTN: Betsy Earls, Manager, Oregon Public Affairs  
October 14, 2019  
Page 3

on October 30, 2019 and November 1, 2019, which appears to meet the definition of a fact-finding mission, as defined in OAR 199-005-0001(2). Additionally, these paid expenses may also be offered to and accepted by a public official's relative, members of the public official's household and members of the public official's staff who are accompanying a member of the Legislative Assembly at this event.

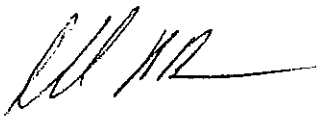
As far as providing participants with educational materials, such as the Oregon Forest Resources Institute (OFRI) manual and the OFRI Forest Facts booklet, these items would likely fall within a specific exception for informational or program material listed under ORS 244.020(7)(b)(D).

Lastly, because it is not clear whether the lightweight plastic ponchos will be provided on loan or as a gift, the following will be a conservative analysis that the value of the ponchos will be analyzed as a gift. ORS 244.025 limits the value of a gift to \$50 from a single source in a calendar year to the public official, relative or member of the public official's household. As the aggregate value of the ponchos will be less than that allowed under ORS 244.025, participants will only need to note the amount of gift received from Weyerhaeuser to ensure the limitation is not exceeded within the calendar year.

In addition, legislative officials are required by ORS 244.050 to file with the Oregon Government Ethics Commission an Annual Verified Statement of Economic Interest report. Legislator's participating in an event described in ORS 244.020(7)(b)(H)(i) would be required to report the aggregate value of any expenses that exceed \$50 pursuant to ORS 244.060(6). The required reporting would include the name and address of the source paying the expenses, the nature of the event/fact-finding mission and the date and amount of the expenditure.

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.

Oregon Government Affairs • 698 12<sup>th</sup> St SE, Suite 220 • Salem, OR, 97304

October 10, 2019

Ron Bersin  
Oregon Government Ethics Commission  
3218 Pringle DR SE, Ste. 220  
Salem, OR 97302

Dear Mr. Bersin,

This letter serves as a request for a written opinion on two proposed educational tours that Weyerhaeuser is planning for October 30 and November 1, 2019.

The objective of the tours is to educate and inform state legislators about every stage of the forest growing and harvest cycles. Participants will discuss forest management, sustainability, safety, and protection of natural resources including water and wildlife. The tours will visit Weyerhaeuser harvest operations, different aged stands of timber, stream buffers, and riparian management areas. These visits allow participants to visualize how Oregon timberlands are managed while protecting natural resources and supporting the economy.

Food and transportation will be provided and paid for by Weyerhaeuser. Food and beverages will include box lunches, drinks, and snacks. We will also provide participants with educational materials including the Oregon Forest Resources Institute (OFRI) manual *Oregon's Forest Protection Laws*, and their *Forest Facts* booklet. Both OFRI publications are available to the public free of charge. Finally, because this is Oregon, we will provide lightweight plastic ponchos for use in case of rain.

We estimate the total cost per participant to be approximately \$30.00-\$50.00. Since this is a fact-finding event, elected officials will attend at no cost. A written response clarifying that this is a fact-finding tour and that it meets the statutory requirements for such a tour would be greatly appreciated.

Thank you for your assistance. Please do not hesitate to contact me for additional information.

Sincerely,

/s/ Betsy Earls

Betsy Earls  
Manager, Oregon Public Affairs  
Weyerhaeuser  
698 12<sup>th</sup> St SE, Salem, OR 97301  
c: 503.508.0330  
betsyearls@weyerhaeuser.com

**2019 Weyerhaeuser Timberlands Tour**  
October 30, 2019  
Clackamas, Oregon

**Agenda**

**Description:** Weyerhaeuser's 2019 timberlands tours are designed to be fact finding events, providing legislators with information about every stage of the forest growing and harvest cycles. Participants will discuss forest management, sustainability, safety, and protection of natural resources including water and wildlife.

**Wednesday, October 30**

9:00-9:30      **Gather at Weyerhaeuser Clackamas office, safety briefing**

9:30            **Travel to stop 1**

10:15          **Stop 1: Viewpoint**

Weyerhaeuser foresters discuss forest management objectives, forest evolution, natural resources present in healthy forests, and brief overview of Oregon Forest Practices Act.

11:30          **Stop 2: Harvest operation**

Weyerhaeuser foresters discuss stages of logging operation, technology and equipment, planning for a timber harvest, safety during harvest, engineering and road building to support harvest.

12:30          **Stop 3: Early stage replanting – box lunches**

Discussion of Weyerhaeuser forest management philosophy, forest management cycle, forest certification, thinning and fertilizing,

1:30            **Stop 4: Water Quality management**

Explanation of research cooperatives, internal research, site monitoring, buffers, positioning of wildlife trees, other water quality protections.

**For information, contact:**

Betsy Earls, manager, Oregon Public Affairs  
Betsy.earls@weyerhaeuser.com – 503.508.0330





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

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

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

October 15, 2019

City of Salem, Legal Department  
**ATTN:** Dan Atchison, City Attorney  
555 Liberty Street SE, Suite 205  
Salem, Oregon 97301

RE: Advice Number 19-238I

Dear Mr. Atchison:

This letter of advice is provided in response to your request received on October 14, 2019, which presented a question regarding whether or not Mr. Daren Rice, City of Salem employee, may accept a plaque and cash benefit as part of an achievement award, i.e. Oregon Technologist of the Year award, being offered to him by the Association of Public Safety Communications Officials (APCO). 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.

You indicated that Mr. Rice was honored by the APCO with an award denoting recognition of his professional achievement as the Oregon Technologist of the Year. This award included a plaque and check for \$200. In addition, you indicate in your correspondence that the APCO is a non-profit, international membership association for communications professionals that has no administrative or legislative interest in Mr. Rice's or the City of Salem's decision making, i.e. actions, recommendations, decisions or votes.

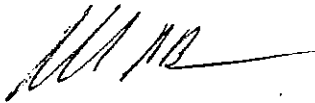
Mr. Rice, as an employee of the City of Salem, is a public official as defined in ORS 244.020(15) and therefore must comply with the provisions of Oregon ethics laws. A public official is prohibited from using or attempting to use his official position or office to obtain financial gain if the financial gain is only available due to the holding of the official position or office [ORS 244.040(1)]. However, unsolicited awards for professional achievement are specifically excluded from this prohibition on use of office [ORS 244.040(2)(d)]. Therefore, although the award is being given to Mr. Rice based on his career in public service, it appears to be an unsolicited award for professional achievement.



Based on the circumstances described in your letter, Mr. Rice may accept the plaque and check for \$200 offered by the APCO for the Oregon Technologist of the Year award because it is an unsolicited award for professional achievement and therefore allowed under Oregon ethics laws.

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.

**WALKER Monica \* OGEC**

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**From:** HUNTER David \* OGEC on behalf of OGEC Mail \* OGEC  
**Sent:** Monday, October 14, 2019 11:15 AM  
**To:** WALKER Monica \* OGEC  
**Subject:** FW: Request for informal ethics opinion

David R Hunter  
Oregon Government Ethics Commission  
3218 Pringle Rd SE STE 220  
Salem OR 97302-1680  
Direct 503-378-5105  
Fax 503-373-1456

---

**From:** Dan Atchison [mailto:DAtchison@cityofsalem.net]  
**Sent:** Monday, October 14, 2019 10:29 AM  
**To:** OGEC Mail \* OGEC <OGEC.Mail@oregon.gov>  
**Cc:** Darren Rice <DRice@cityofsalem.net>  
**Subject:** Request for informal ethics opinion

I am requesting an informal ethics opinion on behalf of City of Salem employee Daren Rice. Mr. Rice was awarded the Oregon Technologist of the Year by the Association of Public Safety Communications Officials (APOC) in September. The APOC (<https://www.apointl.org/>) is a non-profit, international membership association for communications professionals, and has no administrative or legislative interest in Mr. Rice's or the City's decision making. Mr. Rice received a plaque and check for \$200. Mr. Rice is asking whether Oregon public official ethics laws prohibit or restrict his acceptance of the plaque or money.

**Dan Atchison**  
*City Attorney*  
City of Salem | Legal Department  
555 Liberty St SE, Suite 205, Salem OR 97301  
[datchison@cityofsalem.net](mailto:datchison@cityofsalem.net) | 503-588-6003  
[Facebook](#) | [Twitter](#) | [YouTube](#) | [CityofSalem.net](http://CityofSalem.net)

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

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

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

October 25, 2019

Sent via e-mail and USPS

Patrick Farrell, Mayor  
PO Box 175  
Mitchell, Oregon 97750

RE: Advice Number 19-2421

Dear Mayor Farrell:

This letter of advice is provided in response to your request received on October 16, 2019 which presented a question regarding the application of Oregon Government Ethics law to potential conflicts of interest arising when the Mitchell City Council engages in matters involving telecommunication services. 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 in your email request and subsequent telephone conversation, the City of Mitchell has been contacted by representatives of Wheeler County regarding expansion of Mitchell's broadband options. Wheeler along with Sherman and Gilliam counties have an Intergovernmental Agreement (IGA) with Frontier TeleNet (Frontier), described in your advice request as company "B". Frontier is an independent intergovernmental entity created under ORS Chapter 190, authorized by the Oregon Public Utility Commission to provide telecommunications service in Oregon. Frontier TeleNet network brings broadband access to many remote rural communities.

Currently in Mitchell there is only one telecommunications service provider described in your advice request as company "A." A member of the council is an independent contractor/technician that installs internet services for this provider.

To benefit from the advanced broadband technology offered through Frontier, Mitchell City Councilors will be required to take action on whether the city wants to enter into the Frontier IGA with Wheeler, Sherman and Gilliam counties.

**QUESTION:** Does our council member, who is an independent contractor for, but not an employee of, Company "A", need to recuse himself from any discussion and voting on this topic?

**ANSWER:** Yes. Oregon Government Ethics law defines two types of statutory conflicts of interest: actual and potential. [ORS 244.020(1) and 244.020(13), respectively].

A conflict of interest is defined as any action, decision, or recommendation that a public official makes in his or her official capacity, the effect of which would be or could be to the private financial benefit or detriment of the public official, a relative, or a business with

which the public official or his or her relative is associated. The difference between an actual conflict of interest and a potential conflict of interest is determined by whether the personal financial impact would occur (actual) or could occur (potential). [ORS 244.020(1) and (13)].

On each occasion when met with a statutory conflict of interest, an elected official must publicly announce, in a public meeting, the nature of the conflict of interest. After making the announcement, the official may proceed with the discussion and action if the conflict of interest is only potential. If the conflict of interest is actual, however, the public official must, after making the announcement, refrain from participating in any discussion, debate, or vote on the issue out of which the conflict arises. [ORS 244.120(2)].

In relevant part, "business" includes any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain. A "business with which the person is associated" includes any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent.

In addition, for city councilors, who are required to file a statement of economic interest (SEI) under ORS 244.050, any business listed as a source of income as required under ORS 244.060(3) is a business with which they are associated for purposes of application of the conflict of interest and use of office provisions of ORS Chapter 244. Because the city council member listed Company "A", Rural Technology Group, as a source of income on his SEI, it is a business with which he is associated. [ORS 244.020(2) and (3)]

On each occasion matters involving telecommunication services come before the Council, the Council member who is a self-employed individual in the telecommunication industry must:

1. Determine what the exact official action he would be taking is, and what financial effect, if any that action would or could have on him as a self-employed individual.
2. Determine whether the Rural Technology Group, for which Council member is a paid contractor and which is a business with which he is associated, , would or could be financially affected by any action he would take in his official capacity.
3. If the city councilor is met with a conflict of interest when taking a specific official action, what would his responsibility be to disclose and dispose of the conflict?

From the information provided, there are one or more actions regarding telecommunication services, specifically regarding Frontier, being considered that will require action by the city council, including taking action on entering into a franchise agreement.

An "actual" conflict of interest will arise anytime the result of the council member's action would financially affect the council member personally or the Rural Technology Group, which is a business with which he is associated. It is not necessary to know the extent or exact amount of financial impact for a matter to constitute an "actual" conflict; rather, it's

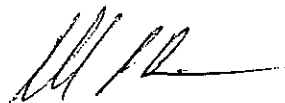
enough to know with a certainty that there will be some kind of financial or economic impact. When taking official action on allowing a telecommunications business such as Frontier to engage in business in Mitchell, it appears the city council member would be met with an "actual" conflict of interest.

On each occasion when met with an "actual" conflict of interest, the councilor is required to announce publicly the nature of the actual conflict and refrain from participating as a public official in any discussion, debate or vote on the issue.

In relevant part, ORS 244.040(1) prohibits a public official from using or attempting to use their official position to obtain a financial benefit for themselves, or a business with which they are associated, if the financial benefit would not be otherwise available to them "but for" holding their official position. Even if a public official complies with the conflict of interest provision, they may still be in violation of ORS 244.040. [ORS 244.040(7)].

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.

## HUNTER David \* OGEC

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**From:** Spoke'n Hostel <contact@spokenhostel.org>  
**Sent:** Wednesday, October 16, 2019 9:28 PM  
**To:** OGEC Mail \* OGEC; Glenn Raber  
**Subject:** Conflict of Interest Question

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good evening,

In our city council meeting last night, we came upon a potential conflict of interest that we need clarification on.

A member of our council is an independent contractor/technician that installs internet service in our town. There is only one internet service provider in our town, we will call Company A, that provides internet via radio antennas.

The county has chosen another ISP (Company B) to provide service in our county, and our town, via fiber.

Before Company B can do any work in our town (because the county doesn't have sovereignty inside the city limits), the council needs to either; disagree to letting Company B serve the community or, agree to entertain a franchise agreement from Company B.

The question is, does our council member, who is an independent contractor for but not an employee of Company A, need to recuse himself from any discussion and voting on this topic?

I'm hesitant to do anything that removes one of our council members from this process if theres no need to do so.

Can you provide some clarity on what the law says about this matter?

Respectfully,

Patrick Farrell  
Mayor, Mitchell, Oregon





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

November 1, 2019

VIA E-MAIL AND USPS

Stacey Guise  
C/o Oregon Department of Education  
255 Capitol Street  
Salem, Oregon 97310

Re: Advice Number 19-2511

Dear Ms. Guise:

This letter of advice is provided in response to your request received on October 28, 2019, which presented a question regarding whether you would have a conflict of interest as an appeals coordinator with the Oregon Department of Education when reviewing an appeal or complaint relating to a school district where your relative is employed. 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.

Background information: The Oregon Department of Education (ODE) provides a complaint and appeal resolution process for several areas of Federal and State laws, Division 22 standards, discrimination, restraint and seclusion, retaliation, religious entanglement and special education as they pertain to the 197 Oregon Public School Districts. ODE is required to investigate written appeals pertaining to school districts requirements to comply with these federal and state laws.

From the information provided in your emails and telephone conversation, your spouse's sister, a relative as defined in ORS 244.020(16), is employed with the Hillsboro Public School District (District). The District operates 32 schools, including four high schools, four middle schools, and 26 elementary schools. Your sister-in-law is currently the principal for Century High School, and you are employed with ODE as an appeals coordinator. As an appeals coordinator with ODE, a complaint or appeal involving the Hillsboro School District could be filed with your agency.

You indicated that you have informed your employer, ODE, in writing that you have a potential conflict of interest because your sister-in-law is employed within a



school district that could come before you as an appeals coordinator and have requested that you be screened from any complaints that arise from her particular school.

It is important to note that conflicts of interest arise as a result of taking official actions, not from the existence of circumstances or situations. A public official is met with a conflict of interest anytime he/she does something while acting in an official capacity (i.e., investigating a complaint or reviewing a request for an appeal), which "would" (an "actual" conflict) or "could" (a "potential" conflict) financially affect the official personally, the official's relative, or any business with which the official or a relative is associated (ORS 244.020(1), (13)).

The mere fact that your sister-in-law is a high school principal and you work at ODE as an appeals coordinator does not create a conflict of interest for you. Rather, a conflict of interest would only arise in this situation if you must take an action in your official capacity that would or could financially impact your sister-in-law or a business with which she is associated. Government entities, however, are not "businesses with which a person is associated" for purposes of application of Oregon Government Ethics law.

Therefore, you must determine whether the effect of any official action you take in your position at ODE would or could have a financial impact on your sister-in-law personally. For example, if you made a decision as an appeals coordinator that would or could financially affect your sister-in-law's government employer that would not be a conflict of interest for you. It is not apparent based on the facts whether your actions would ever personally financially impact your sister-in-law.

You would be met with a statutory conflict of interest on each occasion matters requiring any official action you would take as an appeals coordinator, if the effect of that action would or could result in a personal financial benefit or detriment to your relative. Because conflicts of interest are so fact specific, it is difficult to know to what extent the impact would be to the district as a whole in comparison to the individual schools within that district.

If met with a conflict of interest, you must dispose of the conflict. A public official such as yourself, who obtained their public position as a result of being hired (as opposed to being elected), when met with a conflict of interest, would have to notify in writing the person that appointed them to their position of the nature of their conflict, and request that their appointing authority dispose of the conflict. The appointing authority (i.e. supervisor or manager) is then to designate someone else to take care of the issue or direct the public official in how to handle it. [ORS 244.120(1)(c)]

It appears that you have already disclosed to your appointing authority, in writing, that your sister-in-law is employed as the principal of Century High School, which is in the Hillsboro School District. Because of your written disclosure, ODE has screened you from acting on appeals that concern Hillsboro School District. Thus, you may never be met with taking an official action that would give rise to a conflict of interest. If circumstances change, however, and a conflict of interest arises in the future, you must make a written disclosure of your conflict on each occasion you are faced with taking an official action that would or could financially impact your sister-in-law.

Commission staff recommends that public officials retain copies of any written declarations provided to their appointing authorities. Although such record keeping is not required by statute, public officials may find it beneficial if a complaint were ever filed with the Commission.

In summary, you should continue to be diligent to evaluate all circumstances that come before you requiring your official action, and exercise your own judgment as to whether a conflict of interest could exist, and to address those conflicts through a written disclosure as described above.

If you have any further questions regarding the application of Oregon Government Ethics law, please contact our office by phone at 503-378-5105 or by email at [ogecmail@oregon.gov](mailto:ogecmail@oregon.gov). The trainers and investigators in our office are always available to answer your questions.

Sincerely,



Ronald A. Bersin  
Executive Director

RAB/th

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

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

## HEDRICK Tammy R \* OGEC

---

To: GOULD Diane \* OGEC  
Subject: RE: Ethics question - conflicts of interest

From: BERSIN Ron A \* OGEC [<mailto:Ron.A.Bersin@oregon.gov>]  
Sent: Monday, October 28, 2019 12:59 PM  
To: GOULD Diane \* OGEC <[diane.gould@state.or.us](mailto:diane.gould@state.or.us)>  
Subject: FW: Ethics question - conflicts of interest

Please assign this to someone to answer with a letter under my signature. Thanks

*Ronald A. Bersin*

Executive Director  
Oregon Government Ethics Commission  
(503) 378-5105

\*\*\*The Oregon Government Ethics Commission believes your comments are important to our success. We would appreciate you taking a few minutes to participate in a brief survey. [Click here to access customer survey.](#)

---

From: GUISE Stacey - ODE <[stacey.guise@state.or.us](mailto:stacey.guise@state.or.us)>  
Sent: Monday, October 28, 2019 11:24 AM  
To: BERSIN Ron A \* OGEC <[Ron.A.Bersin@state.or.us](mailto:Ron.A.Bersin@state.or.us)>  
Subject: Ethics question - conflicts of interest

Hi there,

My question is about conflicts of interest.

A little background: I work for the Oregon Department of Education. I am one of the individuals responsible for handling complaints against school districts that are filed with the department. We take the complaints on an appeal basis. That means that, in order for the department to accept the appeal (rather than issue a notice of denial), the individual filing the complaint would need to have already gone through the local complaint process (raising their complaint at the school level and then at the district level) before coming to us.

My sister-in-law is the principal at one of the high schools in Hillsboro, Oregon. I already have informed my employer in writing that I have a potential conflict of interest re: that family member and have requested that I be screened from any complaints that arise from her particular high school.

**My question:** Is that sufficient to address this conflict, or should I also be screened from any complaints arising from the Hillsboro School District (even if the complaint originates at a different school where my sister-in-law wouldn't have been involved in any decision making at the local level)?

In other words, would my conflict extend **only** to her school, or would it extend to the **entire** Hillsboro School District, because her school is part of that district?

Thank you for any thoughts you have on this matter. I want to make sure that I am treating this situation appropriately under the ethics rules.

## HEDRICK Tammy R \* OGEC

---

**From:** GUISE Stacey - ODE <stacey.guise@state.or.us>  
**To:** HEDRICK Tammy R \* OGEC  
**Subject:** RE: Oregon Government Ethics Commission RE: Ethics question - conflicts of interest

One more piece of information.

Hillsboro School District operates 34 different public schools. They have 26 elementary schools, four middle schools, and four high schools. As the district is fairly large in size, there is the potential for a lot of requests for appeals from decisions made at any of the 34 different schools in the district. So, it is likely that the majority of appeal requests we receive from that district will not involve the school where my sister-in-law serves as principal.

Thank you,  
Stacey

---

**From:** GUISE Stacey - ODE  
**Sent:** Wednesday, October 30, 2019 11:44 AM  
**To:** HEDRICK Tammy R \* OGEC <Tammy.R.HEDRICK@oregon.gov>  
**Subject:** RE: Oregon Government Ethics Commission RE: Ethics question - conflicts of interest

Hi there,

It's difficult to explain the decisions that I make in my role as Appeals Coordinator or what effect those decisions have on a school or district without describing the process of how we handle appeals. So, I've described that process below (with citations to the pertinent administrative rules, in case that is helpful).

When a person has a complaint about something that has occurred at an individual school, the person may only appeal to our department if the person has received a "final decision" from a school district. What it means to have a "final decision" from a school district is somewhat complicated and depends on the circumstances. Under our administrative rules, there are three ways a person can have a final decision by the district. The first method is that the person has exhausted the district's complaint process (for example, a person filed a complaint with the individual school and then, if unhappy with the result at the school level, filed a complaint with the district. A person would have exhausted the process by receiving a final written decision at the district level and then could appeal to our department). Another way to have a "final decision" is if the person files a complaint (this can be at any level – either a complaint with the school, or a complaint with the district) and 90 days go by without a decision. Under that second set of circumstances where 90 days have passed without a decision, a complainant would be able to appeal to our department before a district has weighed in with a final decision. Finally, under a third set of circumstances, a person can appeal to our department if the district's complaint process is a multi-step process (for example, the person has to raise their complaint at the school level, then at the district level, and then before the school board under the local complaint process), and no written decision is issued within 30 days at any of the steps in the process. Here is a link to the administrative rule that sets out when a district decision is a "final decision" such that it is appealable to our department (see subsection (1)(a) of the rule for that information): <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256770>.

In my role, when an appeal request from an individual comes into our office, the first thing I (as an appeals coordinator) need to do is decide whether we can take the appeal. That determination involves two questions. First, the allegations raised on appeal have to involve one or more of the topic areas that the legislature has given the department the ability to regulate (for example, complaints of discrimination in public education). This link will take you to the administrative

rule that governs what types of appeals our department may consider: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256769>. If that condition is satisfied, then I also have to decide whether the complainant is appealing a "final decision" (as explained in the paragraph above, by receiving a final decision by the district, or having 90 days go by without a decision on the complaint, or, in a multi-step process, having 30 days go by without a decision at any step in the process).

If I decide that either of those conditions are not met (i.e., the appeal doesn't involve an allegation over which we have jurisdiction *or* the person has not received a "final decision" as described above), I will issue an order denying the appeal on jurisdictional grounds. That denial is issued *only* to the individual who filed the request for appeal (the school district is not involved in the appeal at that point). If, however, both of those conditions are met, I will issue a notice that the department is accepting the appeal (that notice goes to both the individual and the school district that is involved in the complaint and the district then becomes a party to the appeal). Here is a link to the rule which discusses the acceptance/denial process for appeals: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256771>.

As mentioned above, the parties to the appeal are the complainant and the school district. If the department has accepted the appeal, as part of the notice, we request a response to the complaint from the school district. Once the district's response comes in to our office, we assign the case to an investigator (we have external, contracted investigators who handle the investigations). After the investigation is complete, the investigator submits a report to us with the investigator's findings. Once we have that report, the appeal is assigned to one of our appeals coordinators (me, for example). If the appeal is assigned to me, at that point, I would review both parties materials and the investigator's report. I then would prepare an order. In that order, I would include the departments findings of fact and conclusions of law as to whether the evidence substantiates the allegations raised in the appeal. If the department determines that no violation of law occurred, then the order issued would be a final order finding no violation. If, however, the department determines that the evidence substantiates that a violation did occur, then the department issues a preliminary order with the department's findings of fact and conclusions of law. Again, I would be responsible for the preparation of either of those orders and for the determination of whether a violation of law has occurred. Here is a link to the rule that describes that process: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256772>.

If no violation is found and the department issues the final order, at that point the appeal is over (unless the individual requests either reconsideration or judicial review of the order). If, however, the department issues a preliminary order which finds that the evidence substantiates that a violation occurred, then the parties (the person filing the appeal and the school district) proceed to conciliation (which is essentially a mediation period), during which the parties attempt to reach an agreement to resolve the appeal. If the parties reach agreement, the settlement agreement between the parties would govern the resolution of the appeal. If, however, the parties fail to reach agreement during conciliation, then the department would proceed with the appeal and would issue its final order. Here is a link to the rule describing that process: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256773>.

If the department has found that the evidence substantiates that a violation of law occurred, the department's final order will also indicate that the district must engage in appropriate corrective action. Here is a link to a rule describing that process (subsection (2) of the rule specifies the information required in the final order): <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256774>. The district often works with the department to devise an appropriate corrective action plan. Corrective action generally is designed to bring a school district back into compliance with the law, so corrective action would be designed to address the particular violation that was found. So, for example, if a school district is determined to have discriminated against a student on the basis of gender, an appropriate corrective action plan might include gender discrimination training (such as Title IX training) for the school and/or the district, to help ensure that similar discriminatory decisions/actions are not made/taken in the future.

Finally, if a district does not comply with the final order and implement the corrective action by the beginning of the following school year, then the department can order remedies against the district. The primary remedy that the department is authorized to order is withholding a portion of the State School Fund that would otherwise be given to

the district. Here is a link to the rule that discusses that process: <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=256775>

at is a general description of the appeal process. Because our process requires a person to go through the local complaint process first (at least to some extent – depending on whether there are significant delays in decision making at the local level), it often is the case that the individual school and the district will both have already weighed in on the complaint by the time it reaches us on appeal. But, that is not always the case. Because the school district (and not the individual school) is the party on appeal, our interactions during the course of the appeal are with the district, not the school and our orders are directed to the district, not the school. Ultimately, however, the decisions I make on appeals can affect *both* the school and the district. We do have more than one person serving in my same role, so sometimes the initial decision whether to take an appeal is decided by one of the appeal coordinators and the appeal is later assigned to a different appeals coordinator for order preparation.

I hope that helps answer your questions about the process and the decisions that someone in my position makes during the process. Please let me know if you need additional information or clarification.

Thank you,  
Stacey

---

**From:** HEDRICK Tammy R \* OGECEC <[Tammy.R.HEDRICK@oregon.gov](mailto:Tammy.R.HEDRICK@oregon.gov)>  
**Sent:** Wednesday, October 30, 2019 8:28 AM  
**To:** GUISE Stacey - ODE <[stacey.guise@state.or.us](mailto:stacey.guise@state.or.us)>  
**Subject:** Oregon Government Ethics Commission RE: Ethics question - conflicts of interest

Good morning Ms. Guise,

I am in the process of providing guidance to you regarding your recent inquiry. I am struggling with understanding the effect of what you do in your position as an appeals coordinator. In your inquiry you have asked if your conflict extends only to your sister-in-laws school, or would it extend to the entire district her school is part of in that district.

In general, do appeals requests affect the individual school or the individual district or both? What is the effect of the actions you take when assigned a matter?

I appreciate any additional information you provide.



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

**\*Disclaimer\***

\*\*\*\*\*

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

From: GUISE Stacey - ODE <[stacey.guise@state.or.us](mailto:stacey.guise@state.or.us)>  
Sent: Monday, October 28, 2019 11:24 AM  
To: BERSIN Ron A \* OGEC <[Ron.A.Bersin@state.or.us](mailto:Ron.A.Bersin@state.or.us)>  
Subject: Ethics question - conflicts of interest

Hi there,

My question is about conflicts of interest.

A little background: I work for the Oregon Department of Education. I am one of the individuals responsible for handling complaints against school districts that are filed with the department. We take the complaints on an appeal basis. That means that, in order for the department to accept the appeal (rather than issue a notice of denial), the individual filing the complaint would need to have already gone through the local complaint process (raising their complaint at the school level and then at the district level) before coming to us.

My sister-in-law is the principal at one of the high schools in Hillsboro, Oregon. I already have informed my employer in writing that I have a potential conflict of interest re: that family member and have requested that I be screened from any complaints that arise from her particular high school.

**My question:** Is that sufficient to address this conflict, or should I also be screened from any complaints arising from the Hillsboro School District (even if the complaint originates at a different school where my sister-in-law wouldn't have been involved in any decision making at the local level)?

In other words, would my conflict extend only to her school, or would it extend to the entire Hillsboro School District, because her school is part of that district?

Thank you for any thoughts you have on this matter. I want to make sure that I am treating this situation appropriately under the ethics rules.

Thank you,  
Stacey



*Oregon achieves . . . together!*

**OREGON**  
**DEPARTMENT OF**  
**EDUCATION**

Stacey Guise  
Appeals Coordinator  
Government and Legal Affairs | Office of the Deputy Superintendent  
503-947-5628  
[stacey.guise@state.or.us](mailto:stacey.guise@state.or.us) | [www.oregon.gov/ode](http://www.oregon.gov/ode)





# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

October 31, 2019

Crystal Inners  
City Recorder/Human Resources  
City of Hermiston  
180 NE 2<sup>nd</sup> Street  
Hermiston, Oregon 97838

Re: Advice Number 19-2541

Dear Ms. Inners:

This letter of advice is provided in response to your request received on October 28, 2019, which presented a question regarding application of Oregon Government Ethics laws to a T-Mobile program offering discounted cell phone plans and services to City of Hermiston employees. The analysis and advice that follows is offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances presented.

According to your e-mail, T-Mobile contacted the City of Hermiston (City) to encourage the City to enroll in T-Mobile's Amplified program, which would offer City employees access to specific T-Mobile discounts (T-Mobile Amplified). T-Mobile Amplified is a program that offers up to a 33% discount on mobile phone service lines, as well as other discounts on hardware, to employees of qualified companies. Qualified companies are private companies with at least 1,000 employees and that either have a T-Mobile line of service or a waiver, or public employers (defined as governmental entities or non-profit organizations covered under the NASPO contract). T-Mobile Amplified is offered to employees of eligible private or public employers on the same terms and conditions.

In a follow-up e-mail to the City, T-Mobile also explained they would soon be offering a separate discount program for first responders (T-Mobile Magenta First Responder). T-Mobile Magenta First Responder will extend its current military discount program, offering a discount on mobile phone plans of up to 50%, to eligible emergency medical service (EMS) workers. According to information provided by T-Mobile, eligible first responders include state and local law enforcement personnel, firefighters, rescue, ambulance and emergency response personnel, correctional officers, dispatchers, emergency medical services employees, pensioned retirees, as well as parents, children, or spouses of first responders killed in the line of duty. Eligible first responders may work for governmental entities or private companies, such as private hospitals, prisons or ambulance companies.

**Question:** You have asked whether City employees would violate any ethics laws in ORS Chapter 244 by availing themselves of the T-Mobile Amplified or the T-Mobile Magenta First Responder discount programs.



**Answer:** No.

City employees are public officials, as defined in ORS 244.020(15), and are subject to compliance with the Oregon Government Ethics laws in ORS Chapter 244.

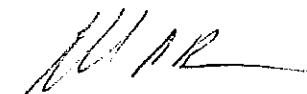
Public officials (or their relatives or household members) are limited in the gifts they can receive. [ORS 244.020(7)(a), ORS 244.020(10), ORS 244.025]. A "gift" is something of economic value given to a public official (or their relative or household member) without valuable consideration of equivalent value, which is not extended to others who are not public officials on the same terms and conditions, or for valuable consideration less than that required from others who are not public officials. [ORS 244.020(7)(a)].

ORS 244.040 also prohibits public officials from using their official positions to obtain a private financial benefit for themselves (or their relatives or household members) if the financial benefit would not otherwise be available but for the public officials' holding of their official positions.

The T-Mobile Amplified and T-Mobile Magenta First Responder discount programs offered to public officials are not "gifts" under the statutory definition because these discount programs are offered on the same terms and conditions to eligible persons who are not public officials, including employees of private companies who qualify under the T-Mobile Amplified program or under the T-Mobile Magenta First Responder program to first responders working for private employers. Because they would receive the same discounted service plans at the same cost whether they are public employees or private employees, city employees who avail themselves of these discount programs are not receiving a private financial benefit that would not be available but for their positions as public officials.

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/svm

**\*\*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.

## HUNTER David \* OGEC

---

**From:** Crystal Inners <cinnners@hermiston.or.us>  
**Date:** Monday, October 28, 2019 9:38 AM  
**To:** OGEC Mail \* OGEC  
**Subject:** Question  
**Attachments:** RE: Employee Discount Enrollment

Good Morning,

I just had a quick question. T-mobile has contact me wanting to provide discounted services to our employees. Before I respond, I would like to make sure this does not violate any ethics rules. See attached email.

**Crystal Inners**  
HR Specialist  
541-667-5008  
[cinnners@hermiston.or.us](mailto:cinnners@hermiston.or.us)  
[www.hermiston.or.us](http://www.hermiston.or.us)



*Where Life is Sweet*

**HUNTER David \* OGEC**

---

**From:** Nixon, Blaine <Blaine.Nixon@T-Mobile.com>  
**Sent:** Monday, October 28, 2019 8:03 AM  
**To:** Crystal Inners  
**Subject:** RE: Employee Discount Enrollment  
**Attachments:** City of Estacada Amplified.pdf; 10-18 Employee Promotions.pdf

~~STOP and VERIFY - This message came from outside of the City of Hermiston.~~

---

Good Morning Crystal,

I wanted to reach out about T-Mobile's employee discount program, including an additional discount also launching Nov 1<sup>st</sup> for EMS/Police. T-Mobile's employee discount requires no cost to the city, no line requirement, and is a one-time verification.

I have attached a flier I did recently for Estacada, detailing the program. Would you be available to distribute it along with our promotions document?

J. Blaine Nixon  
Enterprise Programs Specialist, Public Sector



19807 North Creek Pkwy | Bothell, WA 98011

Direct: 206.636.3373 | [Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)

[t-mobile.com](http://t-mobile.com) | Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#)

*In the event I am unavailable, and immediate account assistance is necessary, please call: 1.888.256.5541*

---

**From:** Byron Smith <bsmith@hermiston.or.us>  
**Sent:** Friday, October 25, 2019 4:43 PM  
**To:** Nixon, Blaine <Blaine.Nixon@T-Mobile.com>  
**Cc:** Crystal Inners <cinners@hermiston.or.us>  
**Subject:** RE: Employee Discount Enrollment

**External:**

Blaine,

Please contact Crystal Inners about this possible employee discount program.

Byron

Byron D. Smith  
City Manager  
180 NE 2<sup>nd</sup> Street  
Hermiston, OR 97838  
(541) 567-5521  
[www.hermiston.or.us](http://www.hermiston.or.us)



Where Life is Sweet

---

**From:** Nixon, Blaine [<mailto:Blaine.Nixon@T-Mobile.com>]  
**Sent:** Monday, October 21, 2019 10:31 AM  
**To:** Byron Smith <[bsmith@hermiston.or.us](mailto:bsmith@hermiston.or.us)>  
**Subject:** RE: Employee Discount Enrollment

~~STOP and VERIFY: This message came from outside of the City of Hermiston~~

---

Hello Byron,

I wanted to follow up on my email from two weeks ago regarding T-Mobile's employee discount program. If you missed my initial email, below is the information.

T-Mobile wanted to ensure that you were aware that your employees were eligible for an employee discount at T-Mobile. This discount is eligible for current customers and new customers.

More Information on our amplified discount [here](#)

With your permission, we would like to enroll your City into the Amplified discount program, and create a custom promo code, flyer, and support any benefits events. Would you be the right person to approve this?

Please contact Jim Satre for any information regarding City based plans: [James.Satre1@T-Mobile.com](mailto:James.Satre1@T-Mobile.com)

Thanks,

J. Blaine Nixon  
Enterprise Programs Specialist, Public Sector



19807 North Creek Pkwy | Bothell, WA 98011  
Direct: 206.636.3373 | [Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)

[t-mobile.com](http://t-mobile.com) | Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#)

*if the event I am unavailable, and immediate account assistance is necessary, please call: 1.888.256.5541*

# EXCLUSIVE EMPLOYEE SAVINGS



## Take 33% off with T-Mobile Amplified

Employees get special savings with T-Mobile\*. Enjoy up to 33% off 4 lines (with AutoPay) for you and your friends or family.

### More unlimited for everyone

	Magenta®	T-Mobile Amplified®
Talk, text, and 4G LTE data on your smartphone	Unlimited	Unlimited
Mobile hotspot	Up to 3GB 4G LTE (then unlimited at 3G)	Up to 20GB 4G LTE (then unlimited at 3G)
Video streaming	Unlimited 480p	Unlimited 1080p
Name ID/Scam ID	Add-on available with purchase	Included
FREE Gogo® In-flight Wi-Fi	1 hour per flight (unlimited flights)	Unlimited
International coverage in 210+ countries and destinations	2G data speeds 128kbps	2X faster data speeds up to 256kbps
Voice mail to text	Add-on available with purchase	Included
No-cost DIGITS® number with each line	Add-on available with purchase	Included

### More lines. More savings.

Number of lines	Your Cost with AutoPay
1	\$70 (26% off)
2	\$120 (25% off)
3	\$140 (30% off)
4	\$160 (33% off)

## Get T-Mobile Amplified today

Call 888-256-5541 and use promo code: 37368TMOFAV  
Or if you have any questions, contact me directly:

\*Not Available In Retail\*

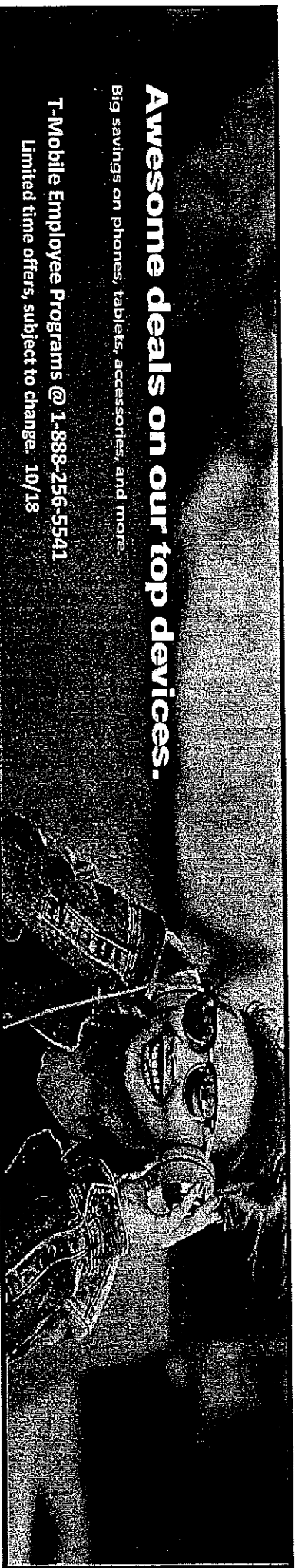
J. Blaine Nixon

Employee Programs Specialist

Questions? Please Email: [Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)

During congestion, the small fraction of customers using >50GB/mo. may notice reduced speeds until next bill cycle due to data prioritization, Video typically streams on smartphone/tablet at DVD quality (480p). Not available in retail. Unlimited while on our network.

Limited time offers; subject to change. Amplified: Participating locations. Qualifying Business account and individual liable plan required. May not be combined with some offers or discounts. Up to 12 lines. Magenta General Terms: Credit approval, deposit, and \$25 SIM starter kit or, in stores & on customer service calls, \$20 upgrade support charge may be required. Sales taxes and regulatory fees included in monthly service price; see in-store materials for specifics in your state. Capable device required for some features. U.S. roaming and on-network data allotments differ. Includes 200MB roaming, Unlimited talk & text features for direct communications between 2 people; others (e.g., conference & chat lines, etc.) may cost extra. Unlimited high-speed data US only. In Canada/Mexico, up to 5GB high-speed data then unlimited at up to 128kbps. Magenta not available for hotspots and some other data-first devices. Video streaming: Activation required to deliver video streams at speeds that provide HD video capability (max 1080p); some content providers may not stream their services in HD. May affect speed of video downloads; does not apply to video uploads. For best performance, leave any video streaming applications at their default automatic resolution setting. Tethering: Up to 20GB 4G LTE tethering with 3G speeds after. For the small fraction of customers using over 50GB per month, primary data usage must be on smartphone or tablet. AutoPay Pricing for lines 1-8. Without AutoPay, \$5 more/line. May not be reflected on 1st bill. Int'l Service: Additional charges apply in excluded destinations e.g. Canada & Mexico; see [www.t-mobile.com](http://www.t-mobile.com) for included destinations (subject to change at T-Mobile's discretion). Taxes additional; usage taxed in some countries. Calls from Simple Global countries, including over Wi-Fi, are \$.25/min (no charge for Wi-Fi calls to US, Mexico and Canada). Coverage not available in some areas; we are not responsible for our partners' networks. Standard speeds approx. 256 Kbps. Not for extended international use; you must reside in the U.S. and primary usage must occur on our U.S. network. Device must register on our U.S. network before international use. Service may be terminated or restricted for excessive roaming. Name ID: Capable device required; information for some unknown numbers not available. Gogo: Free Wi-Fi & texting on GoGo-equipped flights to, from and within the U.S. requires a capable smartphone, Wi-Fi Calling functionality, valid e911 address, & 1 prior Wi-Fi call w/ current SIM card required for SMS/MMS/VVM. DIGITS: Compatible device & qualifying service required. App download may be required. Up to 5 numbers per device. DIGITS supports 911 but calls & texts to 911 work best from your landline or primary cell phone/number & without using Wi-Fi; always provide your actual location & callback number to 911 operator; callback may be answered by others sharing your DIGITS line. See DIGITS Terms of Use for additional 911 information. Network Management: Service may be slowed, suspended, terminated, or restricted for misuse, abnormal use, interference with our network or ability to provide quality service to other users, or significant roaming. See [T-Mobile.com/OnlineTerms](http://T-Mobile.com/OnlineTerms) for data management details. Not for extended international use; you must reside in the U.S. and primary usage must occur on our network. Device must register on our network before international use. See Terms and Conditions (including arbitration provision) at [www.T-Mobile.com](http://www.T-Mobile.com) for additional information. T-Mobile and the magenta color are registered trademarks of Deutsche Telekom AG. ©2019 T-Mobile USA, Inc.



# Awesome deals on our top devices.

Big savings on phones, tablets, accessories, and more.

**T-Mobile Employee Programs @ 1-888-256-5541**

Limited time offers, subject to change. 10/18

## Offer/Promo

## T-Mobile Employee Programs @ 1-888-256-5541

Handsets	<ul style="list-style-type: none"> <li>Up to \$300 off (via trade-in credit &amp; rebate card) buy a new Google Pixel 4 or Pixel 4 XL and trade in a qualifying phone.</li> <li>Google Pixel 4 on us or up to \$799.99 off the Pixel 4 XL (via trade-in credit &amp; monthly credits) when you trade in a qualifying phone, activate a new line, &amp; port in number.</li> <li>\$700 or \$1,000 Off (via monthly credits) iPhone XR, XS, XS Max, 11, 11 Pro, or 11 Pro Max when you activate a new line, Port-in number, &amp; Trade In a qualifying device.</li> <li>\$750 Off Galaxy S10 series BOGO Purchase two new Samsung Galaxy S10e, S10, S10+, S10 5G, Note10, or Note10+ devices on EIP and receive \$750 off (via monthly Device Credits) a second S10, S10+, S10 5G, Note10, or Note10+ when you activate a new line of service.</li> <li>Up to \$400 off (via trade-in credit &amp; rebate card) buy a Samsung Galaxy S10e, S10, S10+, S10 5G, Note10, or Note10+ on monthly payments &amp; trade in a qualifying device.</li> <li>Save \$390 (via monthly payments) when you purchase an LG G8 ThinQ and activate a new voice line on any voice rate plan.</li> </ul>
Service	<ul style="list-style-type: none"> <li>3rd Line FREE New customers activating 3 or more lines and single line customers adding 2 or more lines will receive one line free (via monthly bill credits) when they choose a qualifying Magenta Plus plan. Offer is not available for existing customers with more than 1 paid Voice line.</li> </ul>
Tablets	<ul style="list-style-type: none"> <li>Get an Alcatel 3T or A30 on us (via monthly Device Credits) &amp; activate or add a new line on a qualifying 2 GB or higher Mobile Internet plan.</li> </ul>
Wearables	<ul style="list-style-type: none"> <li>Buy an Apple Watch Series 3 or 4 on monthly payments and save \$200 on a second Apple Watch Series 3 or 4 purchased.</li> <li>Timex Family Connect Kids Watch. Live location, safe zones, calls, messages, and more.</li> </ul>
New Devices	<ul style="list-style-type: none"> <li>The OnePlus 7T is exclusively joining the T-Mobile device lineup on October 18!</li> <li>The new Samsung Galaxy Watch Active2 smartwatch launching October 18!</li> <li>Ready for another incredible tablet? Meet the Samsung Galaxy Tab S6 that makes multitasking easier than ever. Launching October 18!</li> <li>Google Pixel 4 and 4 XL launching October 24th, check out preorder promotions.</li> </ul>

For all the T-Mobile offers, please call T-Mobile Employee Programs @ 1-888-256-5541 or visit T-Mobile.com/Amplified

Employee Discount Programs – NOT AVAILABLE IN RETAIL STORES. Rules and Regulations may apply, call Amplified phone line 1-888-256-5541 for additional details.  
 Early termination fees or financed devices can be fulfilled (up to \$650 each line).

**MYERS Susan \* OGEC**

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**From:** Nixon, Blaine <Blaine.Nixon@T-Mobile.com>  
**Sent:** Wednesday, October 30, 2019 11:08 AM  
**To:** MYERS Susan \* OGEC  
**Subject:** Re: Question regarding T-Mobile Amplified

Susan,

It was the NASPO contract.

Thanks,

J. Blaine Nixon  
Enterprise Programs Specialist, Public Sector  
19807 North Creek Pkwy | Bothell, WA 98011  
Direct: 206.636.3373 | Blaine.Nixon@T-Mobile.com  
In the event I am unavailable, and immediate account assistance is necessary, please call: 1.888.256.5541

---

**From:** MYERS Susan \* OGEC <Susan.MYERS@oregon.gov>  
**Sent:** Wednesday, October 30, 2019 11:04:45 AM  
**To:** Nixon, Blaine <Blaine.Nixon@T-Mobile.com>  
**Subject:** RE: Question regarding T-Mobile Amplified

**[External]**

Blaine –

One more question. The government/non-profit group/contract you mentioned ... was that NASBO or NASPO (or another acronym altogether)?

- Susan

---

**From:** Nixon, Blaine <Blaine.Nixon@T-Mobile.com>  
**Sent:** Wednesday, October 30, 2019 10:12 AM  
**To:** MYERS Susan \* OGEC <Susan.MYERS@oregon.gov>  
**Subject:** Re: Question regarding T-Mobile Amplified

Susan,

The EMS discount is available to other private emergency workers as well, including ambulance tech's. Private prison officers are in scope as well.

I hope I was able to answer all your questions,

J. Blaine Nixon  
Enterprise Programs Specialist, Public Sector  
19807 North Creek Pkwy | Bothell, WA 98011



Direct: 206.636.3373 | [Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)

In the event I am unavailable, and immediate account assistance is necessary, please call: 1.888.256.5541

---

**From:** MYERS Susan \* OGEC <[Susan.MYERS@oregon.gov](mailto:Susan.MYERS@oregon.gov)>

**Sent:** Wednesday, October 30, 2019 10:07:59 AM

**To:** Nixon, Blaine <[Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)>

**Subject:** RE: Question regarding T-Mobile Amplified

External

Blaine –

On the EMS discount, other than the two private ambulance companies listed (AMR and Tri-Med), is the discount available to other private emergency service workers? For example, employees at private hospital emergency rooms or private prison companies?

- Susan

Susan Myers  
Investigator  
Oregon Government Ethics Commission  
3218 Pringle Rd SE, Suite 220  
Salem, OR 97302  
503-378-6808

**\*\*Disclaimer\*\***

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

---

**From:** Nixon, Blaine <[Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)>

**Sent:** Tuesday, October 29, 2019 11:58 AM

**To:** MYERS Susan \* OGEC <[Susan.MYERS@oregon.gov](mailto:Susan.MYERS@oregon.gov)>

**Subject:** RE: Question regarding T-Mobile Amplified

Susan,

Thank you again for speaking with me today. Below is the information on our new discount offering for Emergency services on who is eligible. If you need any more information on this plan, or the amplified rate plan let me know.

The plans kick in on Nov. 1 and apply to eligible state and local law enforcement, firefighters, emergency response personnel, pensioned retirees, as well as parents, children, or spouses of first responders killed in the line of duty. Federal employees are not eligible.

- **State or local firefighter or volunteer firefighter**
  - Career / Volunteer Fire Fighters
  - Wilderness Fire Fighters
- **Local law enforcement professional**
  - State and Local

- State Troopers
  - Correctional Officers
  - State Game Warden
  - Detective / Investigator
  - Transit and railroad police
- **Certified EMS**
  - **Ambulance driver, paramedic, or other emergency medical personnel first on the scene of an accident or natural disaster**
    - Paramedic
    - Ambulance driver
    - Tri-Med employee
    - American Medical Response employee
    - State ambulance services employee
    - EMS
  - **Search and Rescue**
    - City/State/County Search & Rescue
    - Mountain Rescue
    - 911 operations center employee
  - **Employed by a state or local first responder agency in a role that directly supports first responders**
    - Dispatchers
    - Local law enforcement employee
    - Fire protection employee
    - Emergency medical services employee

Thank you,

J. Blaine Nixon  
Enterprise Programs Specialist, Public Sector



19807 North Creek Pkwy | Bothell, WA 98011

Direct: 206.636.3373 | [Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)

[t-mobile.com](http://t-mobile.com) | Follow us on [Twitter](#), [Facebook](#) and [LinkedIn](#)

*In the event I am unavailable, and immediate account assistance is necessary, please call: 1.888.256.5541*

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**From:** MYERS Susan \* OGEC <[Susan.MYERS@oregon.gov](mailto:Susan.MYERS@oregon.gov)>

**Sent:** Tuesday, October 29, 2019 12:42 PM

**To:** Nixon, Blaine <[Blaine.Nixon@T-Mobile.com](mailto:Blaine.Nixon@T-Mobile.com)>

**Subject:** Question regarding T-Mobile Amplified



Mr. Nixon –

The Oregon Government Ethics Commission has been asked for advice regarding whether an Oregon city offering its employees T-Mobile discounts through the T-Mobile Amplified program accords with Oregon Government Ethics laws. In order to make this determination, I need some additional information regarding this T-Mobile discount program.

Could you either call me at the number listed below, or provide me with a phone number at which I can reach you?

Thank you,

- Susan

Susan Myers  
Investigator  
Oregon Government Ethics Commission  
3218 Pringle Rd SE, Suite 220  
Salem, OR 97302  
503-378-6808

**\*\*Disclaimer\*\***

This electronic message may contain information that is privileged, confidential, or otherwise protected from disclosure to anyone other than its intended recipient(s). Any dissemination or use of this electronic message or its contents by persons other than the intended recipient(s) is strictly prohibited, and may be unlawful. If you have received this electronic transmission in error, please reply immediately to the sender so that we may correct our internal records, and then delete the original message.

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

November 7, 2019

VIA E-MAIL AND USPS

Bruce Anderson, Chief of Staff  
Oregon House Republican Caucus  
900 Court St NE, H-395  
Salem, Oregon 97301

RE: Advice Number 19-2561

Dear Mr. Anderson:

This letter of advice is provided in response to your request received on November 6, 2019 which presented a question regarding the application of Oregon Government Ethics law and how the law may apply to public officials who may wish to participate in the Leadership Alliance for a More Perfect Union (LAMP) Forum which is planned for November 12, 2019. This analysis and advice is being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

From the information provided, it appears that the Joseph Rainey Center for Public Policy (Rainey Center) a 501(c) 3, is hosting a Forum for state policy makers for leadership development and energy innovation policy idea exchange which will include educational tours for public officials. The purpose of the event is to educate state government officials on the future of energy innovation and to help them as policymakers make informed choices.

During this event, the Rainey Center will provide and pay for food, lodging and travel expenses at no cost to the public official. In this request, the question asked is what restrictions or requirements Oregon Government Ethics law may impose on public officials who may wish to participate in this event.

Under most circumstances when a public official is offered food, lodging and travel expenses at no cost to the public official, it would be a gift as defined in ORS 244.020(7)(a). Under specific circumstances set forth in ORS 244.020(7)(b), there are exceptions when a public official may accept gifts, such as paid expenses for food, lodging and travel.



ORS 244.020(7)(b)(F) allows acceptance of the payment of reasonable expenses for food, lodging and transportation paid by a not-for-profit 501(c)3 for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is representing state government.

The Oregon Government Ethics Commission (Commission) has adopted an administrative rule OAR 199-005-0001(2) to provide clarification to the term "fact-finding mission or trip," which includes events aimed at providing education.

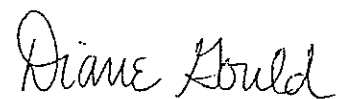
Based on the information provided it appears that ORS 244.020(7)(b)(F) would allow public officials to accept meals, lodging and travel expenses to participate in the LAMP Forum, which appears to meet the definition of a fact-finding mission, as defined in OAR 199-005-0001(2).

The public officials who participate in the event and who must file an Annual Verified Statement of Economic Interest (SEI) report with the Oregon Government Ethics Commission would be required to report the aggregate value of these paid expenses pursuant to ORS 244.060(5) if the value received exceeds \$50 on their 2020 SEI report.

In addition, it is required that the Rainey Center, as the source of the paid expenses, provide in writing a detailed cost analysis of the value of what was received by the public official. This notice should be provided within 10 days after the date the expenses are incurred. [ORS 244.100(1)]

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

Sincerely,



Diane Gould  
Compliance & Education Coordinator

DG/th

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

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

## HEDRICK Tammy R \* OGEC

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**From:** GOULD Diane \* OGEC  
**To:** HEDRICK Tammy R \* OGEC  
**Subject:** FW: Hitting you up already -- invite to LAMP Forum  
**Attachments:** LAMP LA Agenda and Activities.pdf

---

**From:** Anderson Bruce [mailto:[Bruce.Anderson@oregonlegislature.gov](mailto:Bruce.Anderson@oregonlegislature.gov)]  
**Sent:** Wednesday, November 06, 2019 4:58 PM  
**To:** GOULD Diane \* OGEC <[Diane.GOULD@state.or.us](mailto:Diane.GOULD@state.or.us)>  
**Subject:** FW: Hitting you up already -- invite to LAMP Forum

Diane:  
This is the conference I was inquiring about. The Rainey Center is a 501c3 organization based in the Washington DC area. Given the timing of this conference (it's next week), could you please expedite your review and opinion of our members accepting their lodging and travel payment?

Thanks,  
**Bruce Anderson, Chief of Staff**  
House Republican Office  
Oregon State Capitol H395  
O) 503/986-1544  
( ) 503/931-6196

**From:** Sarah Hunt <[sarah.hunt@raineycenter.org](mailto:sarah.hunt@raineycenter.org)>  
**Sent:** Monday, October 21, 2019 10:29 AM  
**To:** Anderson Bruce <[Bruce.Anderson@oregonlegislature.gov](mailto:Bruce.Anderson@oregonlegislature.gov)>  
**Subject:** Hitting you up already -- invite to LAMP Forum

Hi Bruce,

We'd love to have you – and any Oregon R's you recommend –attend our first LAMP Forum next month in Los Angeles.

The topic of the Forum is energy innovation economic development. We have a great line-up of speakers from the Department of Energy and private equity. I've attached a flyer that has more details -- we do cover all travel costs for legislators and policymakers who attend, ie your airfare and hotel are covered to the extent allowed by your ethics laws. We are a 501c3 public policy research and leadership development community.

Rep. Jason Saine from North Carolina, ALEC's national board chair last year, is our legislator host for this program. Our goal is to help policymakers find conservative approaches to the challenges of clean energy transition and climate.

Fingers crossed that you can join us!

Warmly,



**Sarah E. Hunt**

*Co-Founder and CEO*

**Joseph Rainey Center for Public Policy**

80 M Street SE

Washington, DC 20003

+1 202.695.0563

[sarah.hunt@raineycenter.org](mailto:sarah.hunt@raineycenter.org)



## AGENDA

- 12**  
**TUE**
- ALL DAY: CHECK-IN LOS ANGELES ATHLETIC CLUB (LAAC)**  
431 West Seventh Street, Los Angeles
- 7:00 PM: LAMP WELCOME RECEPTION**  
Representative Jason Saine (NC) and Assemblyman Chad Mayes (CA) will welcome you to Los Angeles and LAMP forum with a cocktail reception at the exclusive Blue Room. We will be joined for networking by family offices and next-generation philanthropists investing in the energy innovation space.
- 13**  
**WED**
- 8:30 AM: INTRODUCTIONS AND OPENING CIRCLE**
- 9:30 AM: MAKE YOUR STATE A MAGNET FOR CLEAN TECH ECONOMIC DEVELOPMENT**  
Ryan Kushner, Global Lead, Programs and Curriculum, California Clean Energy Fund
- 10:00 AM: THE ALL-OF-THE-ABOVE FUTURE OF ENERGY INNOVATION**  
Justin Ong, Program Director, ClearPath
- 10:30 AM: POLICYMAKER IDEA EXCHANGE AND REFLECTION**
- 12:00 PM: LUNCHEON**  
Connor Prochaska, Chief Commercialization Officer, United States Dept. of Energy
- 1:00 PM: PERSONAL LEADERSHIP DEVELOPMENT SESSION  
FUNDAMENTALS OF PERSONAL BRANDING FOR PUBLIC OFFICIALS**  
Molly Lynn Westrate, Strategic Communications Consultant
- 2:30 PM: AFTERNOON BREAK**
- 5:00 PM: EVENING COCKTAIL RECEPTION**
- 6:00 PM: KEYNOTE DINNER**  
Giffen Ott, Clean Tech Venture Capitalist and Managing Director, FullCycle LLC
- 14**  
**THU**
- 9:30 AM: TESLA MODEL X TRANSPORT TO LA CLEANTECH INCUBATOR (LACI) – MEET IN HOTEL LOBBY.**
- 10:30 AM: TOUR LA CLEANTECH INCUBATOR (LACI)**
- 11:45 AM: LUNCH AT LA CLEANTECH INCUBATOR (LACI)**
- 1:00 PM: BRIEFING AT THE USC SCHWARZENEGGER INSTITUTE**
- 3:00 PM: PERSONAL LEADERSHIP DEVELOPMENT SESSION  
FUNDAMENTALS OF MEDIA RELATIONS FOR PUBLIC OFFICIALS**  
Molly Lynn Westrate, Strategic Communications Consultant
- 4:30 PM: CLOSING ROUNDTABLE DISCUSSION AND REFLECTION**
- 5:00 PM: FAREWELL COCKTAIL RECEPTION**  
Allow us to bid you a fond “see you later” at our closing reception, where you can take time to mingle with the attendees and speakers from the past two days events. Private small group dinners will also be led by Rainey Center Staff for anyone interested in continuing their conversations into the evening.
- 15**  
**FRI**
- Optional Activities**  
Please RSVP for optional activities with Kelsey Callahan, [kelsey.callahan@raineycenter.org](mailto:kelsey.callahan@raineycenter.org).
- LAMP Day at Universal Studios**  
LAMP policymaker participants may request complimentary passes to Universal Studios for themselves and their families.
- Individual Personal Communications Training and Branding Consultation with Molly Lynn Westrate**  
Five policymakers will receive a one hour individual communications coaching session. *Subject to availability on a first come, first serve basis.*

# KNOW BEFORE YOU GO



80 M Street SE Washington DC 20003  
lamp@raineycenter.org  
@LAMPLeadership  
<https://www.ourlamp.org>

This November, join the Leadership Alliance for a More Perfect Union (LAMP) for three all-inclusive nights at the historic Los Angeles Athletic Club while we convene state policymakers for leadership development and energy innovation policy idea exchange. This exclusive, invitation-only event is meant for legislative leaders like you and limited to fifteen participants.

LAMP is a leadership development community for state policymakers who are emerging leaders on cutting-edge issues. The LAMP energy innovation forum is structured for two-and-a-half days of interactive dialogue between state policymakers and a diverse group of experts from a wide variety of disciplines, including industry, government, and academia. During the forum, participants will work together to offer insights, provide feedback, and analyze solutions. LAMP will also offer you a firsthand look at clean-tech startups.



## WHERE YOU'LL STAY

The Los Angeles Athletic Club (LAAC) was founded on September 8, 1880. The twelve-story Beaux-Arts style clubhouse was designed for the LAAC by John Parkinson and George Bergstrom, and is a Los Angeles Historic-Cultural Monument. Due to its position in the growth and development of Los Angeles, the LAAC had significant success during its first 60 years, with membership reflecting its position in Los Angeles society and early Hollywood culture. Athletes from the LAAC have earned numerous medals in the Summer Olympics, with a particularly high number during the 1932 Los Angeles Olympiad. The total Olympic medal tally for the LAAC is 97 medals, including 47 gold.

## OFF SITE ACTIVITIES

### LOS ANGELES CLEANTECH INCUBATOR

The Los Angeles Kretz Innovation Campus is a hub for incubating clean tech startups and transforming markets. Participants will tour the facility, engage with the energy innovators, see new technology up close, and learn how markets and regulatory relief can spur the energy innovation economy in their own cities and states.

### TRANSPORTATION VIA TESLA MODEL X

Policymakers will be transported during the forum via Tesla Model X, the flagship SUV of this iconic, all-American automotive industry leader.

### USC SCHWARZENEGGER INSTITUTE FOR STATE AND GLOBAL POLICY

The USC Schwarzenegger Institute for State and Global Policy is committed to advancing post-partisanship, where leaders put people over political parties and work together to find the best ideas and solutions to benefit the people they serve.

### UNIVERSAL STUDIOS HOLLYWOOD

Enjoy an optional full day of action-packed entertainment all in one place: thrilling Theme Park rides and shows, a real working movie studio, and Los Angeles' best shops, restaurants and cinemas at CityWalk. Universal Studios Hollywood is a unique experience that's fun for the whole family. Participation policymakers may request complimentary passes for themselves and their entire family.



# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

October 25, 2019

Dan Shanahan  
ODOT Central Oregon Fleet Repair Manager  
63055 N Highway 97  
Bend, OR 97701

RE: Letter of Advice 19-2471

Dear Mr. Shanahan:

This letter of advice is provided in response to your requests received on September 26, 2019, and October 14, 2019, which presented a question regarding the application of Oregon Government Ethics law to a situation regarding the ability of certain state employees to accept a discount from a tool vendor. Specifically, you have written to the Oregon Government Ethics Commission (OGEC) in your capacity as a manager with the Oregon Department of Transportation (ODOT), regarding a proposed discount to be made available to ODOT heavy equipment technicians. The discount would be offered to technicians who, pursuant to a collective bargaining agreement (CBA), receive a \$700 biennial (every two years) stipend to purchase or repair the tools they use to maintain the central Oregon motor fleet. Also pursuant to the CBA, these employees retain ownership of these tools after their employment with ODOT ends. The discount is offered through Snap On Industrial tools franchisees (Snap On) and offers these employees a "30-40%" discount "if they use their tool allowance" to purchase these tools. Although NASPO, which already has negotiated a discount between the state of Oregon and Snap On, is able to leverage buying power for all 50 states, allowing state governments to get discounts similar to those received by private corporations, the specific discount at issue being offered to your employees does not appear to be of a type offered to private companies; it is specifically tied to the state employee stipend of \$700 per biennium.

Use of Official Position: The employees at issue are "public officials" as defined in ORS 244.020(15) and thus subject to the Oregon Government Ethics laws. The first analysis considers whether the acceptance of the proposed discount would represent a prohibited "use of official position" for financial gain: "a public official may not use or attempt to use official position or office to obtain financial gain . . . if the financial gain . . . would not otherwise be available but for the public official's holding of the official position or office." While the language of ORS 244.040(1) could generally apply to prohibit a public official from accepting any financial benefit that would not be available "but for" holding a public position, one of the exceptions to that provision is ORS 244.040(2)(a): "[s]ubsection (1) of this section does not apply to. . . [a]ny part of an official compensation package as determined by the public body that the public official serves." In addition, section (2)(c) of ORS 244.040(1) makes "reimbursement of expenses" another exception to ORS 244.040(1). As such, what you've described does not present a prohibited "use" of their position, as the mechanics would not be using their access as an ODOT employee to take advantage of ODOT's buying power; rather, Snap On is offering them a discount on purchases



they make with their stipend, the stipend being a benefit they lawfully receive as part of their compensation package and which, as structured, also represents reimbursement for expenses incurred.

Gifts: When public officials are offered things of value from persons or entities other than the public entity they represent, the "gift" analysis is applied to determine whether accepting would constitute a violation of Government Ethics law. The first step of the gift analysis—the definition of "gift" under ORS 244.020(7)(a)(A)—is interpreted to read that OGE only exercises jurisdiction over the kinds of gifts that are not extended to "others" who are not public officials on the "same terms and conditions." The conditions of the discount require the recipients to be public employees and in receipt of a \$700 biennial stipend to qualify for this discount. As such, this same discount is not extended to "others" outside of public officials. To analyze the Snap On discount being offered to ODOT technicians under the language of ORS 244.025, which limits the amount of "gifts" a public official may receive, it is also necessary to consider whether or not the source "could reasonably be known to have a legislative or administrative interest" in decisions of the recipients. This "administrative interest" is defined at ORS 244.020(10)(a) as an "economic interest . . . in any matter subject to the decision . . . of the public official acting in the public official's capacity as a public official". Here, the technicians can choose to purchase the tools to be used at ODOT and do possess the requisite "decision making" authority which would create an administrative interest from the source, Snap On. This limits the amount of any "gift" to \$50.00 from the source per calendar year, per ORS 244.025(1). What, if any, part of the discount offered by Snap On to the mechanics is a "gift," and subject to the \$50.00 annual limitation? The mechanics are allotted, as part of their official compensation, \$700 every other year for purchase of and repair of tools for their work, which will become their personal property when they leave state employment. Because this stipend, a negotiated part of their CBA, represents official compensation or reimbursement of expenses, the "gift" analysis would only concern any amount of value received by the technicians from Snap On after the technicians have spent their allotted \$700 stipend. As such, pursuant to ORS 244.025(1), each employee who purchases discounted tools from Snap On, beyond the \$700 biennial stipend, would be limited to accepting \$50.00 of discount that is not offered to others, per calendar year, from Snap On, the source of the gift.

I hope this answer addresses the questions you've raised. 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

\*\*\*\*\*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.

RAB/lc

**HUNTER David \* OGEC**

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**From:** SHANAHAN Dan T <Dan.T.SHANAHAN@odot.state.or.us>  
**Sent:** Monday, October 14, 2019 3:01 PM  
**To:** OGEC Mail \* OGEC  
**Cc:** TOWNE Erin R  
**Subject:** RE: Snap On Industrial

Good Afternoon,

Is there an update on when this will be reviewed?

Thank you,



**Dan Shanahan**  
ODOT – Central Oregon Fleet Repair  
Central Oregon Fleet Repair Manager  
Office: (541) 388.6227  
Cell: (503) 881.0582

**From:** SHANAHAN Dan T  
**Sent:** Thursday, September 26, 2019 6:06 AM  
**To:** 'ogec.mail@oregon.gov' <ogec.mail@oregon.gov>  
**Cc:** TOWNE Erin R <Erin.R.TOWNE@odot.state.or.us>  
**Subject:** Snap On Industrial

Greetings,

Our heavy equipment technicians currently get a \$700 tool allowance to buy or repair tools for their job per the SEIU CBA. Typically they get tools from the tool trucks such as MAC, Snap On etc. Once the technician leaves state service they are allowed to take the tools with them. Typically the \$700 allowance is not enough to supply our technicians with the tooling to keep up with the trade and they purchase additional tooling with their own money.

Snap On Industrial, is a Snap On branch that typically sells to entities such as the state and offers significant discounts for purchases. The Snap On Industrial dealer has approached our shop and offered to sell our technicians tools at the discounted rate that the state receives.

The ethics question I have is: Can our employees purchase tools from Snap On Industrial at the discounted rate if the tools will be used to work on state equipment even though the tools do not belong to the state? If so does the tool allowance affect whether the discount can be utilized?

Let me know if you need any more information.

Thank you,

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# Oregon

Kate Brown, Governor

## Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1680

Telephone: 503-378-5105

Fax: 503-373-1456

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

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

10/29/2019

David Moon  
c/o Oregon Judicial Department  
1178 Chemeketa Street NE  
Salem, Oregon 97301

RE: Letter of Advice 19-2481

Dear David Moon:

This letter of advice is provided in response to your request received on Friday, October 18, 2019. Your inquiry presented a question regarding the application of Oregon Government Ethics law to a situation in which public employees would like to take home certain pieces of government property from an older building when they move to a new building. 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.

Specifically, you have written to the Oregon Government Ethics Commission (OGEC) in your capacity as a Division Director of the Oregon Judicial Department (OJD) in the Business & Fiscal Services Division. You supervise staff in your department who are about to move to a new building and indicated that the staff is interested in taking home what you term "surplus property" that will be "left behind or sent to scrap or to the trash" when the staff moves to the new building. You have described this property as "furniture, fixtures and equipment" of the older, "decommissioned" facility. In a subsequent email, you indicated that the property at issue is a mix of property owned by both the Oregon Judicial Department and "the county" who apparently owns the current building. You also clarify, in that email, that the items are not being disposed of per existing OJD processes for handling such property—such as an auction-- as the ownership is unclear. It also appears from this email that if the employees do not take the property that you believe it will be discarded, sent to surplus, or remain behind for "the new owner(s)".

You and your staff are public officials as defined in Oregon Revised Statutes (ORS) 244.020(15). ORS 244.040(1) applies to the actions of public officials and provides as follows: "[e]xcept as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain . . . if the financial gain . . . would not otherwise be available but for the public official's holding of the official position or office."

The property at issue was purchased, originally, by a government entity, either the county or the state. Disposal of the property would be determined by those agencies as the original purchasers who utilized public funds to purchase the property. Any decisions

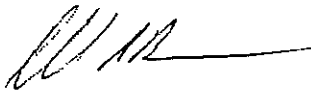


about disposal of the property would properly be made according to state policy. The Oregon Administrative Rules (OAR) provide guidance on how a government agency may properly dispose of surplus property. See, for example, OAR 125.050.0200, OAR 125-050-0100, and OAR 125-050-0400. As OGEC does not have jurisdiction over those administrative rules, we cannot comment on these policies or rules.

What is relevant under ORS 244.040 is whether or not the public official would gain a "financial benefit" not available to others who are not public officials. As outlined above, the property has value to the State as surplus and is a financial gain to staff who take the property. If OJD staff were to simply take the property, it would be a violation of ORS 244.040(1). The property would represent a "financial gain" to the public officials, as the items, originally purchased with public funds, contain "surplus" value and should correctly be subject to the surplus rules referenced above. The staff are public officials, and the retention of the surplus personal property is the type of gain that would not otherwise be available to the staff "but for" the staff's holding of their official positions and not available to others who are not public officials.

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

\*\*\*\*\*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.

RAB/lc



## HUNTER David \* OGEC

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**From:** David T. Moon <David.T.Moon@ojd.state.or.us>  
**Sent:** Friday, October 18, 2019 9:23 AM  
**To:** OGEC Mail \* OGEC  
**Subject:** question about surplus property

Could you help direct me to an opinion or advise dealing with surplus property. We have staff in a facility that is nearly 100 years old that is about to be decommissioned. Staff will be moved to a new building with all new furniture, fixtures and equipment (FF&E), but many of them have grown attached to the FF&E of the old building, and would like to take it home as it will be left behind or sent to scrap or to the trash. I imagine something similar has come up before?

Thank you,

David T. Moon, CPA  
Division Director  
Business & Fiscal Services Division  
Oregon Judicial Department  
Phone: (503) 986-5150


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
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MEMORANDUM

DATE: November 12, 2019

TO: Ronald A. Bersin   
Executive Director

FROM: Susan Myers   
Investigator

SUBJECT: Motion to Expand Investigation [Motion 5]  
Respondent: Frankie Petrick  
Case No.: 19-044ESM

This memorandum requests that the Commission expand the scope of the investigation in the above-referenced matter.

Frankie Petrick works for the Yachats Rural Fire District (District) as its District Administrator and its volunteer Fire Chief. In April, we received a complaint alleging that Ms. Petrick had received a gift (a tractor) in violation of ORS 244.025 and that she had used District equipment and personnel for her personal business (to help move cows at her farm) and for her relative (to move her son's furniture). At its meeting on May 31, 2019, the Commission voted unanimously to open an investigation.

During the course of the investigation, Commission staff discovered information suggesting a separate violation of ORS 244.025. The South Lincoln Ambulance Company (SLA) is a 501(c)(3) corporation that provides ambulance services to a designated area in and around Yachats. SLA has a written agreement with the District to house its ambulance vehicles in the District's main station. Frankie Petrick serves on SLA's Board of Directors and on behalf of the SLA, she signs the written agreements with the District. It came to our attention that every December, the SLA provides cash awards to District employees and volunteers. It appears that Frankie Petrick makes or participates in making the determination of the amounts of the cash awards given to each District employee/volunteer, including to herself. From 2015 to 2018, it appears that Ms. Petrick, as the District Administrator, has received cash awards of at least \$500 per year. Because SLA has a legislative or administrative interest in Frankie Petrick's decisions as the Fire District Administrator, she is prohibited under ORS 244.025 from accepting any gift from SLA in excess of \$50 per calendar year.

ORS 244.260(5)(b) authorizes the Commission to expand the scope of an investigation. In this case, we are recommending that the existing investigation into Frankie Petrick be expanded to include the new and separate allegations of a gift clause violation.

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## Trainers' Report November 22<sup>nd</sup>, 2019

This report covers the time period of October 4, 2019, through November 22, 2019.

### Completion of training:

- Oregon Code Enforcement – ORS 244 (Florence)
- Eastern Oregon Border Economic Development Region Board– ORS 244 (Ontario)
- Ontario Recreation District – ORS 244 (Ontario)
- Oregon School Facilities Management – ORS 244 (Wilsonville)
- Oregon Association for Court Administrators – ORS 244 (Springfield)
- Oregon Health Authority – ORS 244 (Salem)
- Oregon Heritage / Oregon State Historic Preservation Office – ORS 244 (Salem)
- Oregon Corrections Enterprises Advisory Council – ORS 244 (Salem)
- Oregon Fire Service Conference – ORS 244 (Seaside)
- Oregon Health Authority – ORS 244 (Salem)
- Medford Water Commission (Hosted) – ORS 244 (Medford)
- Rogue Valley Society of Human Resource Management – ORS 244 (Medford)
- Office of Public Defense Services – ORS 244 & ORS 192 (Salem)

### Upcoming Trainings:

<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
12/2/19	11:00 – 1:00	Oregon Real Estate Agency Board (ORS 244)	Oregon Real Estate Agency 530 Center Street NE, Suite 100 Salem, Oregon 97302
12/9/19	9:00 – 11:00	Oregon Dept. of Aviation (ORS 244)	Oregon Department of Aviation 3040 25 <sup>th</sup> Street SE Salem, Oregon 97302
12/18/19	11:00 – 12:00	Oregon Health Authority – New Employee Orientation (ORS 244)	Human Services Building 500 Summer St. NE Room 166 Salem, Oregon 97301

12/19/19	9:00 – 11:00	Portland Metro (ORS 244)	Portland Metro Headquarters 600 NE Grand Avenue, Room 401 Portland, Oregon
1/9/20	TBD	Oregon Dept. of Agriculture (ORS 244)	Oregon Department of Agriculture 635 Capitol Street Salem, Oregon 97301-2532
2/19/20	TBD	Oregon Construction Contractors Board (ORS 244)	OR Construction Contractors Brd. 201 High Street SE, Suite 600 Salem, Oregon 97301

**Upcoming Conferences:**

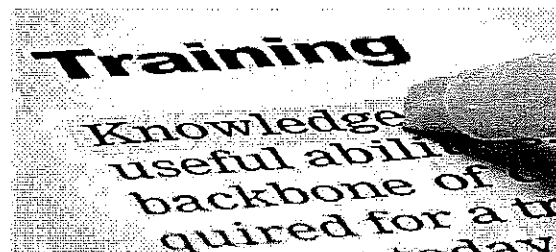
3/4/20	<i>Tentatively Set for:</i> 10:00 – 11:15 am	Oregon Dept. of Administrative Services – Procurement Convention (ORS 244)	Salem Convention Center 200 Commercial Street SE Salem, Oregon 97301 Room: TBD
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Training Staff:

Tammy Hedrick  
Monica Walker

503-378-6802  
503-378-2011

[tammy.r.hedrick@oregon.gov](mailto:tammy.r.hedrick@oregon.gov)  
[monica.walker@oregon.gov](mailto:monica.walker@oregon.gov)



# November 2019

## Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
			1	2
Email <a href="mailto:ogrec.training@oregon.gov">ogrec.training@oregon.gov</a> to register for a webinar.				
4	5	6	7	8
	New Employees: you're a public official, now what! 10:00 – 11:00 AM			
11	12	13	14	15
OFFICE CLOSED: VETERAN'S DAY		U/O & Conflicts of Interest 9:00 – 10:00 AM		
18	19	20	21	22
Executive Session 10:00 – 11:00 AM		Gifts 2:00 – 3:00 PM		COMMISSION MEETING
25	26	27	28	29
	Lobby Law 2:00 – 3:00 PM		OFFICE CLOSED: THANKSGIVING DAY	OFFICE CLOSED: THANKSGIVING OBSERVED

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# DECEMBER 2019

## Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
2	3 New Employees: you're a public official, now what! 10:00 – 11:00 AM	4	5 Lobby Law 2:00 – 3:00 PM	6
9	10	11 Gifts 2:00 – 3:00 PM	12	13
16	17 U/O & Conflicts of Interest 2:00 – 3:00 PM	18	19 Executive Session 10:00 – 11:00 AM	20
23	24	25 OFFICE CLOSED: CHRISTMAS DAY	26	27
30	31	Email <a href="mailto:ogec.training@oregon.gov">ogec.training@oregon.gov</a> to register for a webinar.		

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## Executive Director's Report

November 22, 2019

- Budget
  - 2019-21 biennial budget
    - Completed Legislatively Approved Budget
    - Finalizing biennial financial plan
    - Published assessment plan
    - DAS sending assessment invoices
- SEI
  - Continuing to work on SEI non-filers from previous years
  - Current year SEI all filed
- Audit
  - Performance Audit continues for the agency
  - Interviews continue
- Other
  - Continuing to learn "Workday", the new HR system.
  - Lobbyist filings due for 1st quarter of 2019, 1 clients, 3 lobbyists. Filings due for 2<sup>nd</sup> quarter, 1 client, 2 lobbyists. 3<sup>rd</sup> quarter, 1 client, all lobbyists filed
  - Presented at the Public Law Conference October 23<sup>rd</sup> with Amy



**OREGON GOVERNMENT ETHICS COMMISSION  
Fund 0050 - AGENCY REVENUE TO GENERAL FUND  
For the Month of SEPTEMBER 2019**

Budget Obj	Budget Obj Title	Monthly Activity	Biennium to Date Activity	Financial Plan	Unobligated Plan	Monthly Avg to Date	Monthly Avg to Spend
0505	FINES AND FORFEITS	370.00	3,925.75	0.00	-3,925.75	1,308.58	-186.94
		<b>370.00</b>	<b>3,925.75</b>	<b>0.00</b>	<b>-3,925.75</b>	<b>1,308.58</b>	<b>-186.94</b>

**SUMMARY TOTALS**

REVENUES	REVENUE
	Total

**0050  
AGENCY REVENUE TO GENERAL FUND**

Month Activity	Biennium Activity
370.00	3,925.75
370.00	3,925.75



**OREGON GOVERNMENT ETHICS COMMISSION**  
**Fund 4150 - OF LIMIT - ADMIN**  
**For the Month of SEPTEMBER 2019**

**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	574,553.24	1,314,219.24	0.00	-1,314,219.24	438,073.08	-62,581.87
		<b>574,553.24</b>	<b>1,314,219.24</b>	<b>0.00</b>	<b>-1,314,219.24</b>	<b>438,073.08</b>	<b>-62,581.87</b>

**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/JUNCLASS SALARY & PER DIEM	48,681.29	141,193.23	0.00	-141,193.23	47,064.41	-6,723.49
3210	ERB ASSESSMENT	16.38	51.48	0.00	-51.48	17.16	-2.45
3220	PUBLIC EMPLOYEES' RETIREMENT SYSTEM	9,431.68	27,252.16	0.00	-27,252.16	9,084.05	-1,297.72
3221	PENSION BOND CONTRIBUTION	3,018.22	8,739.09	0.00	-8,739.09	2,913.03	-416.15
3230	SOCIAL SECURITY TAX	3,753.15	10,888.39	0.00	-10,888.39	3,629.46	-518.49
3250	WORKERS' COMPENSATION ASSESSMENT	12.26	42.41	0.00	-42.41	14.14	-2.02
3260	MASS TRANSIT	320.42	874.76	0.00	-874.76	291.59	-41.66
3270	FLEXIBLE BENEFITS	9,778.40	29,335.20	0.00	-29,335.20	9,778.40	-1,396.91
		<b>75,011.80</b>	<b>218,376.72</b>	<b>0.00</b>	<b>-218,376.72</b>	<b>72,792.24</b>	<b>-10,398.89</b>

**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	59.42	811.23	0.00	-811.23	270.41	-38.63
4150	EMPLOYEE TRAINING	0.00	440.00	0.00	-440.00	146.67	-20.95
4175	OFFICE EXPENSES	444.32	690.34	0.00	-690.34	196.78	-28.11
4200	TELECOMM/TECH SVC AND SUPPLIES	-6,340.18	-4,812.10	0.00	4,812.10	-1,604.03	229.15
4225	STATE GOVERNMENT SERVICE CHARGES	179.44	1,013.70	0.00	-1,013.70	337.90	-48.27
4250	DATA PROCESSING	22.50	22.50	0.00	-22.50	7.50	-1.07
4300	PROFESSIONAL SERVICES	0.00	112.32	0.00	-112.32	37.44	-5.35
4315	IT PROFESSIONAL SERVICES	7,350.00	85,550.00	0.00	-85,550.00	28,516.67	-4,073.81
4325	ATTORNEY GENERAL LEGAL FEES	0.00	31,251.06	0.00	-31,251.06	10,417.02	-1,488.15
4400	DUES AND SUBSCRIPTIONS	190.00	190.00	0.00	-190.00	63.33	-9.05
4425	FACILITIES RENT & TAXES	3,762.35	11,287.05	0.00	-11,287.05	3,762.35	-537.48
4575	AGENCY PROGRAM RELATED SVCS & SUPP	158.45	264.65	0.00	-264.65	88.22	-12.60
4650	OTHER SERVICES AND SUPPLIES	37,456.00	37,471.00	0.00	-37,471.00	12,490.33	-1,784.33
4700	EXPENDABLE PROPERTY \$250-\$5000	447.13	447.13	0.00	-447.13	149.04	-21.29
		<b>43,729.43</b>	<b>164,638.88</b>	<b>0.00</b>	<b>-164,638.88</b>	<b>54,879.63</b>	<b>-7,839.95</b>

**SUMMARY TOTALS**

**SUMMARY TOTALS**

4150  
 OF FIMT ADMIN

	Month Activity	Biennium Activity
REVENUES	574,553.24	1,314,219.24
Total	574,553.24	1,314,219.24
EXPENDITURES	75,011.80	218,376.72
PERSONAL SERVICES	43,729.43	164,638.88
SERVICES AND SUPPLIES	31,282.37	53,737.84
Total	118,741.23	383,015.60