



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

May 15, 2019

Douglas Morten
484 Grey Cliffs Dr.
St. Helens OR 97051

Re: 2019 SEI late filing

Dear Mr. Morten:

The written explanation of why your 2019 Statement of Economic Interest report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, May 31, 2019 at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



SEI Activity

2019

SEI Code: 4599
User Name: dougmorten@comcast.net
Email: dougmorten@comcast.net

2019 Filing: 5/13/2019
2019 Penalty: \$80.00

Douglas Morten
484 Grey Cliffs Drive
St Helens, OR 97051

2019 Offices Held

No data to report.

Activity Log - 2019 to Date

05/06/19 01:30:12.070 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/07/19 01:30:09.720 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/08/19 01:30:09.227 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 01:30:09.560 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/10/19 01:30:08.760 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/11/19 01:30:08.580 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/12/19 01:30:09.930 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/13/19 01:30:08.297 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/13/19 08:45:47.700 - Admin User Reset Initiated - An admin user reset was initiated.
05/13/19 08:50:18.007 - Admin User Password Reset Completed - A user reset their password using an admin reset.
05/13/19 08:51:19.273 - User Successfully Authenticated -
05/13/19 09:10:58.453 - Late SEI Report Filed - SEI Report Filed Late for year 2019

PAST VIOLATIONS: 2017 Letter of Education

RECOMMENDATION:

Maximum \$50⁰⁰ for second violation

(10)

From: dougmorten dougmorten@comcast.net
Subject: Annual Verified Statement of Economic Interest
Date: May 13, 2019 at 9:48 AM
To: ogec.mail@oregon.gov

RECEIVED
MAY 15 2019
OREGON GOVERNMENT
ETHICS COMMISSION

Dear Commission Members

I am asking you waive my late fee as outlined in your e-mail dated May 11.

A similar circumstance occurred two years ago.

I am currently diagnosed with cancer and I went through 2 months of daily radiation during January and February. I am dealing with radiation effects to this date. My first knowledge of this report came to my attention on May 11.

Your e-mails did not register either on my phone or my I Pad. The same happened circumstance happened in 2017.

There was no communication posted in our council chambers or notices given to our council that I was aware of in the past month. In short, I Did Not receive the communication until May 11 on my I Mac computer in the junk file that I happened to check. I normally do not use that computer for city business. I average an enormous amount of emails daily...I scan them on my phone or I Pad.

This can't continue to happen-that your e-mails are missed. We need to be communicated to in alternative methods so THAT WE KNOW about these reports that are due to you.

I beg that you waive my late fees and consider my condition.

Thank you,

Doug Morten

Council President

City of St. Helens, Oregon

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Kate Brown, Governor

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3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

May 15, 2019

Ed Chesnut
812 Jacquelyn St.
Milton Freewater OR 97862

Re: 2019 SEI late filing

Dear Mr. Chesnut:

The written explanation of why your 2019 Statement of Economic Interest report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, May 31, 2019 at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



SEI Activity 2019

SEI Code: 2914
User Name: dicosmoecus
Email: bullfrog86n@gmail.com

2019 Filing: 5/9/2019
2019 Penalty: \$40.00

Ed Chesnut
812 Jacquelyn St
Milton Freewater, OR 97862

2019 Offices Held

No data to report.

Activity Log - 2019 to Date

04/16/19 03:19:07.403 - User Successfully Authenticated -
05/06/19 01:30:11.260 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/07/19 01:30:09.253 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/08/19 01:30:08.773 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 01:30:09.043 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 09:37:56.843 - Late SEI Report Filed - SEI Report Filed Late for year 2019

PAST VIOLATIONS: OWES \$100 FOR 2018

OWES \$40 FOR 2019

RECOMMENDATION:

No change, has not paid prior years

EP

SEI Activity

2018

Code: 2914
Name: dicosmoecus
Email: bullfrog86n@gmail.com

2018 Filing: 5/9/2019
2018 Penalty: \$100.00

Ed Chesnut
812 Jacquelyn St
Milton Freewater, OR 97862

2018 Offices Held

No data to report.

Activity Log - 2018 to Date

05/07/18 01:30:12.350 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/08/18 01:30:09.470 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/09/18 01:30:08.600 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/10/18 01:30:07.710 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/11/18 01:30:09.313 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/12/18 01:30:09.543 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/13/18 01:30:08.350 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/14/18 01:30:11.057 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/15/18 01:30:10.050 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/16/18 01:30:10.287 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2018
05/16/18 10:42:12.813 - User Successfully Authenticated -
05/16/18 10:46:16.353 - Late SEI Report Filed - SEI Report Filed Late for year 2018
04/16/19 03:19:07.403 - User Successfully Authenticated -
05/06/19 01:30:11.260 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/07/19 01:30:09.253 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/08/19 01:30:08.773 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 01:30:09.043 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 09:37:56.843 - Late SEI Report Filed - SEI Report Filed Late for year 2019

HUNTER David * OGEC

From: Ed and Judy <edjudy@charter.net>
Sent: Wednesday, May 15, 2019 2:26 PM
To: OGEC Mail * OGEC
Subject: Fines related to annual report

Sirs:

Please consider forgiving the fines which have been levied against me for failure to file forms on time. I have filed the forms (on time) electronically for at least two years, yet have been informed later that I have not filed the forms. By the nature of the on-line filing process, I have no documentation that I did indeed submit the forms/data. I also have only the fines to indicate that the filings didn't "go through". Please consider a modification to the process which would immediately inform the "filer" that his or her efforts have been completed successfully (or that they have failed).

Thank you,

Ed Chesnut, Councilor – City of Milton-Freewater
812 Jacquelyn St
Milton-Freewater, OR 97862



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Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

May 20, 2019

Julie Bettles
PO Box 196
Chiloquin OR 97624

Re: 2019 SEI late filing

Dear Ms. Bettles:

The written explanation of why your 2019 Statement of Economic Interest report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, May 31, 2019 at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



SEI Activity

2019

SEI Code: 6093
User Name: Avi6492
Email: jbettles.chicityhall@gmail.com

2019 Filing: 5/17/2019
2019 Penalty: \$120.00

Julie Bettles
PO Box 196
Chiloquin, OR 97624

2019 Offices Held

No data to report.

Activity Log - 2019 to Date

05/06/19 01:30:13.437 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/07/19 01:30:10.563 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/08/19 01:30:09.880 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 01:30:10.260 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/10/19 01:30:09.400 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/11/19 01:30:09.063 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/12/19 01:30:10.820 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/13/19 01:30:08.750 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/14/19 01:30:08.860 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/15/19 01:30:07.497 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/16/19 01:30:07.393 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/17/19 01:30:06.880 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/17/19 04:00:15.790 - Admin User Reset Initiated - An admin user reset was initiated.
05/17/19 04:01:03.670 - Admin User Password Reset Completed - A user reset their password using an admin reset.
05/17/19 04:01:27.560 - User Successfully Authenticated -
05/17/19 04:02:01.340 - User Profile Updated - User profile updated for Julie Bettles
05/17/19 04:02:01.763 - User Profile Updated - The user's main profile was updated.
05/17/19 04:02:33.607 - Admin User Reset Initiated - An admin user reset was initiated.
05/17/19 04:11:31.387 - Admin User Password Reset Completed - A user reset their password using an admin reset.
05/17/19 04:11:47.167 - User Successfully Authenticated -
05/17/19 04:15:51.330 - Late SEI Report Filed - SEI Report Filed Late for year 2019

PAST VIOLATIONS: 2018 Letter of Education waived \$560⁰⁰ penalty

RECOMMENDATION: \$50⁰⁰ DB

HUNTER David * OGEC

From: Julie Bettles <jbettles.chicityhall@gmail.com>
Sent: Friday, May 17, 2019 4:29 PM
To: OGEC Mail * OGEC
Subject: Waiver of SEI filing fees 2019

In review of the email received I am requesting a waiver or a reduction of the fees associated to the late filing penalty for the completion of the annual SEI; as the notification had been again been rerouted to an alternate email; as had to be done in order to access the account to file (2019).

Electronic notification to file impacted awareness; please take this into consideration,

Respectfully,
Julie F. Bettles
City of Chiloquin

Oregon law, pursuant to ORS 244.050, requires specified public officials who hold office on April 15 of each year to complete an Annual Verified Statement of Economic Interest (SEI) with the Oregon Government Ethics Commission (Commission). An email was sent to you on 3/15/2019 stating that your required report was due to be filed with the Commission no later than April 15, 2019. You were also reminded on 4/21/2019 that you had until no later than to submit your report without penalty.

Your late filing was received on 5/17/2019. Accordingly, you have accrued a penalty of \$120.00. Please remit full amount by check or money order to the Oregon Government Ethics Commission at the above address by 6/16/2019.

If you choose, you may submit a letter of explanation to the Commission regarding the late filing. Your correspondence will be presented to the Commission for their review at the next Commission meeting. The Commission may elect at that time to waive some, all, or none of the penalty based upon your explanation and your prior filing history.





Oregon

Kate Brown, Governor

Government Ethics Commission

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Salem, OR 97302-1544

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Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

May 20, 2019

Shirley Stevens
PO Box 2
Shaniko OR 97057

Re: 2019 SEI late filing

Dear Ms. Stevens:

The written explanation of why your 2019 Statement of Economic Interest report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, May 31, 2019 at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



SEI Activity

2019

SEI Code: 3964
User Name: 11councilmember@gmail.com
Email: 11councilmember@gmail.com

2019 Filing: 5/16/2019
2019 Penalty: \$110.00

Shirley Stevens
PO Box 2
Shaniko, OR 97057

2019 Offices Held

No data to report.

Activity Log - 2019 to Date

05/06/19 01:30:11.683 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/07/19 01:30:09.487 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/08/19 01:30:09.023 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/09/19 01:30:09.327 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/10/19 01:30:08.590 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/11/19 01:30:08.457 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/12/19 01:30:09.650 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/13/19 01:30:08.127 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/14/19 01:30:08.253 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/15/19 01:30:07.000 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/16/19 01:30:06.923 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/16/19 11:19:09.287 - Late SEI Report Filed - SEI Report Filed Late for year 2019

PAST VIOLATIONS: 2018 Letter of Education (\$110)

RECOMMENDATION: \$50⁰⁰ BB

RECEIVED

MAY 20 2019

OREGON GOVERNMENT
ETHICS COMMISSION

5-16-19

To whom it may concern,

I Shirley call & talk to Dave
in Ethics & file with them.
I do not have a computer,
I understand there is a
penalty. I would like it
to be waived.

Thank you

Shirley Stevens



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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

Website: www.oregon.gov/ogec

May 6, 2019

David Posalski
1659 Whispering Pines Dr.
Seaside OR 97138

Re: 2019 SEI late filing

Dear Mr. Posalski:

The written explanation of why your 2019 Statement of Economic Interest report was filed late has been received and will be submitted to the Oregon Government Ethics Commission (Commission) for consideration at a regular meeting. The next meeting will be held on Friday, May 31, 2019 at 9:00 a.m. The Commission will consider the matter at that time and then waive all, some, or no part of the penalty based on the explanation. Commission meetings are open to the public and you are welcome to attend. The meeting will be held in the Morrow Crane Building at 3218 Pringle Road, SE, Room 220, Salem, Oregon 97302.

You will be notified of the outcome and will be given additional instructions regarding the penalty, if any, in writing after the meeting. You may feel free to contact this office if you have any questions concerning this matter.

Sincerely,

Commission Staff



SEI Activity

2019

SEI Code: 5262
User Name: dposalski
Email: davidposalski@gmail.com

2019 Filing: 5/6/2019
2019 Penalty: \$10.00

David Posalski
1659 Whispering Pines Dr.
Seaside, OR 97138

2019 Offices Held

No data to report.

Activity Log - 2019 to Date

05/06/19 01:30:12.713 - Automated Late Fee Applied - Late fee of amount \$10.00 applied for reporting requirement 2019
05/06/19 01:47:39.617 - User Failed to Authenticate -
05/06/19 01:47:48.777 - User Failed to Authenticate -
05/06/19 01:47:56.170 - User Failed to Authenticate -
05/06/19 01:49:17.590 - User Successfully Authenticated -
05/06/19 01:52:53.070 - Late SEI Report Filed - SEI Report Filed Late for year 2019

No warning due to explanation

(Signature)

BAIER Kathy * OGEC

From: David Posalski <davidposalski@gmail.com>
To: BAIER Kathy * OGEC
Subject: Re: Penalties for late filing

Never mind. I will be sure to resign my volunteer position. It isnt enough to give my time and effort. Now the State of Oregon wants their piece of ass. No wonder people hesitate to get involved.

Best regards

David Posalski

On Mon, May 6, 2019, 3:08 PM BAIER Kathy * OGEC <Kathy.BAIER@oregon.gov> wrote:

Dear Mr. Posalski, Before I add this to our agenda for the next Oregon Government Ethics Commission meeting, can you please amend this request with an explanation as to why you didn't file timely and also sign your name. You've been receiving notices to file since March 15, 2019. Thank you,

Kathy Baier

3-378-2170

OR Government Ethics Commission

3218 Pringle Rd SE, Suite 220

Salem OR 97302-1680

From: David Posalski [<mailto:davidposalski@gmail.com>]
Sent: Monday, May 06, 2019 1:54 PM
To: OGEC Mail * OGEC <OGEC.Mail@oregon.gov>
Subject: Penalties for late filing

I am looking for a waiver of being 1 day late. I am on a cruise ship without access to the internet. As soon as we returned to land, my report was filed.



Oregon

Kate Brown, Governor

Government Ethics Commission

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Fax: 503-373-1456

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Website: www.oregon.gov/ogec

May 31, 2019

Honorable Kate Brown,
Commission Chair Tammy Baney, and Members
of the Oregon Transportation Commission
355 Capitol St. NE
Salem, Oregon 97301-3871

Re: Commission Advisory Opinion 19-119A

Dear Governor Brown and Oregon Transportation Commission members:

At its May 31, 2019 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion in response to the request set forth in your letter to the Commission dated April 3, 2019.

OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 19-119A

SYNOPSIS OF FACTS AS PRESENTED TO THE COMMISSION:

The following factual information is derived from your letter of April 3, 2019, along with the staff advice letters, 19-021I and 19-022I, which the Commission issued to Representative Greg Smith on February 19, 2019.

In connection with the Connect Oregon Dedicated Project Grants, the Oregon Transportation Commission (OTC) is vested with the authority to distribute funds from lottery-backed bonds to specific projects identified by the legislature. In 2017, the legislature enacted HB 2017, now codified in Section 71(f) of ORS 367.080. This legislation designates the following projects for Connect Oregon Grants:

Mid-Willamette Valley Intermodal Facility	\$25 million
Treasure Valley Intermodal Facility	\$26 million
Rail Expansion in East Beach Industrial Park at the Port of Morrow	\$6.55 million
Extend Brooks Rail Siding	\$2.6 million



In accordance with the legislation and the rules OTC adopted to administer the grant program, the OTC received two Project Plan Proposals to locate an intermodal facility in the Mid-Willamette Valley (one in Millersburg and one in Brooks) and one Project Plan Proposal to locate a transload facility in Treasure Valley. The sponsors of the proposed facilities in Treasure Valley and Millersburg have governing boards organized as not-for-profit groups; the sponsor of the proposed facility in Brooks has a governing board organized as a for-profit group.

Greg Smith has been a member of the Oregon House of Representatives since 2001, and was a Representative when HB 2017 was enacted. Mr. Smith is also the principal of Gregory Smith & Company, LLC, a for-profit economic development firm. Gregory Smith & Company holds the contract to serve as the project manager for the Millersburg project proposal for the Mid-Willamette Valley Intermodal Facility. Gregory Smith & Company also serves as the Economic Development Director for Malheur County. In that role, the Company is serving as the project manager for the project proposal for the Treasure Valley Intermodal Facility.

On February 19, 2019, the Commission's Executive Director issued two Letters of Advice, 19-0211 and 19-0221, to Representative Greg Smith. In Advice Letter 19-0211, we examined whether a statutory conflict of interest would arise as a result of Gregory Smith & Company being awarded a contract, through a public and competitive bidding process, to serve as the Reload Facility Project Manager for the proposed Millersburg project. In Advice Letter 19-0221, we examined whether a statutory conflict of interest would arise as a result of Gregory Smith & Company, acting as the Economic Development Director for Malheur County, serving as the project manager for the proposed Treasure Valley Reload Center and assisting Malheur County with the project proposal and presentation to the OTC. In both Letters of Advice, we advised that nothing in the information provided appeared to indicate that Gregory Smith & Company was awarded these private business opportunities as a result of Mr. Smith being a member of the Oregon Legislative Assembly or that Representative Smith used his public position to advance his private business interests.

Prior to the enactment of HB 2017, Kevin Mannix served in the Oregon Legislature from 1988 to 2001. Mr. Mannix is the Executive Director of the Oregon Port of Willamette. The Oregon Port of Willamette has submitted a project plan proposal for an intermodal facility located in Brooks in the Mid-Willamette Valley.

The OTC requested that each of the three project sponsor teams – the Linn Economic Development Group, the Malheur County Development Corporation, and the Oregon Port of Willamette – disclose members who serve on their governing boards. The membership lists include individuals involved in public and private enterprises, including many current and former public officials. The governing board for the Malheur County Development Corporation includes State Representatives Lynn Findley and Greg Smith. The governing board for the Oregon Port of Willamette includes former State Representative Kevin Mannix. The governing board for the Linn Economic Development Group includes former State Representative Andy Olson, Albany Mayor Sharon Kanopa, Millersburg Mayor Jim Lepin, Linn County Commissioners John Lindsey, Roger Nyquist, and Will Tucker, Albany City Councilor Mike Sykes, City Manager Peter Troedsson, and Economic Development Director Jorge Salinas, Millersburg City Manager Kevin Kreitman, and Linn-Benton Community College President Greg Hamann.

LEGAL BACKGROUND:

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

Conflict of Interest

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)].

A public official does not have a conflict of interest if the financial benefit or avoidance of detriment arises out of an interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding the public office or position, or from the public official's membership in or membership on the board of directors of a nonprofit 501(c) tax-exempt corporation. [ORS 244.020(13)(a) and (c)]. Also a class exception to the conflict of interest provision may apply if the financial benefit arises out of any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group in which the person or the business with which the person is associated, is a member or is engaged. [ORS 244.020(13)(b)].

ORS 244.020(16) defines "relative" as the spouse, parent, stepparent, child, sibling, stepsibling, son-in-law, or daughter-in-law of the public official. Relative also includes the parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official's spouse. Relative includes any individual for whom the public official has a legal support obligation. It also includes any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that person's employment.

Business is defined as "any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain. Business does not include any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity." [ORS 244.020(2)].

A business with which one is associated includes any private business or closely held corporation of which the person or their relative is a director, officer, owner or employee, or agent, or in which the person or their relative currently owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding year. [ORS 244.020(3)(a)]. It also includes any publicly held corporation in which the person or their relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding year, or a publicly held corporation of which the person or their relative is a director or officer. [ORS 244.020(3)(b) and (c)].

For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income under ORS 244.050(3) (a source producing ten percent or more of the total annual household income) is a business with which the official is associated. [ORS 244.020(3)(d)]. Members of the OTC are public officials required to file statements of economic interest. [ORS 244.050(1)(q)(T)].

Methods of Handling Conflicts

When a public official who is an elected or appointed member of a board or commission 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)]. If the public official's vote

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

QUESTION: Before the OTC considers the project proposals, each individual Commissioner will fully review the project sponsors and the full membership lists of each project sponsor's governing board to determine if that Commissioner has an actual or potential conflict of interest as defined in ORS 244.020(1) and (13). Each individual Commissioner will then disclose the nature of any actual or potential conflicts of interest. If a Commissioner has an actual conflict of interest, the Commissioner will disclose the nature of the conflict and abstain from participating in any discussion, debate or vote on the issue out of which the conflict arises.

You are requesting an opinion on whether the Commissioners' intended review and disclosure actions will comply with the letter and spirit of Oregon Government Ethics Laws and whether there is anything more that the individual Commissioners need to do to comply with Oregon Government Ethics Laws before they take action on these projects.

ANSWER: To comply with the conflict of interest disclosure and recusal requirements in Oregon Government Ethics Laws, each Commissioner must examine the project proposals, including but not limited to the project sponsors and their governing board membership lists, and determine whether the Commissioner has an actual or potential conflict of interest. Public officials are individually responsible for exercising their own good judgment in determining whether or not an action, decision or recommendation presents an actual or potential conflict of interest.

A conflict of interest, as defined in ORS 244.020(1) and (13), does not arise from a public official's personal familiarity or friendship with persons who might be interested in the public official's actions. Rather, a conflict of interest arises when the effect of the public official's action *would* or *could* have a direct financial effect on the public official, a relative or a business with which they are associated.

If a Commissioner determines that the OTC action would have a direct and specific financial benefit or detriment on the Commissioner, a relative or a business with which either is associated, then ORS 244.120(2)(b) requires the Commissioner to make a public announcement of the nature of the actual conflict of interest and then refrain from further participation in the matter giving rise to that actual conflict of interest. If the conflict of interest remains potential, meaning that the OTC's actions could possibly have a financial impact on the Commissioner, a relative or a business with which either is associated, then

ORS 244.120(2)(a) requires the Commissioner to make a public announcement of the nature of the conflict, but then the Commissioner may continue to participate on the matter.

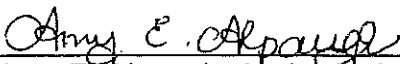
The Commissioners must publicly announce their conflicts of interest once in each meeting when the OTC is considering matters in which their conflicts arise. If a quorum of the Commissioners have actual conflicts of interest, ORS 244.120(2)(b)(B) provides that if their votes are necessary for the Commission to take action, they would be eligible to vote, but would still need to refrain from any discussion or debate on the matters giving rise to their conflicts.

When the OTC considers the project proposals, no conflict of interest would arise from the fact that the Commissioners may know some of the project sponsors' board members. Actual or potential conflicts of interest may arise, however, if the proposed projects would or could financially affect the Commissioners, their relatives, or any businesses with which they are associated. Because the possible financial effects of the proposed projects are unknown and the application of the conflict of interest provisions is very fact specific, we cannot speculate here as to whether any such conflicts exist. We would encourage the Commissioners, as more information becomes available, to call the Commission with questions on their specific situations.

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 May, 2019.

Richard P. Burke, Chairperson
Oregon Government Ethics Commission



Amy E. Alpaugh, Assistant Attorney General



Oregon

Kate Brown, Governor

Oregon Transportation Commission

Office of the Director, MS 11

355 Capitol St NE

Salem, OR 97301-3871

April 3, 2019

Mr. Ronald Bersin
Executive Director
Oregon Ethics Commission
3218 Pringle Road SE, Suite 220
Salem, OR 97302

Dear Mr. Bersin:

Governor Brown and members of the Oregon Transportation Commission (OTC) are requesting an opinion as to whether each commission member has taken all prudent and reasonable efforts to ensure that the commission's decision-making process to administer the Connect Oregon Dedicated Project Grants meet the letter and the spirit of the Oregon Government Ethics Laws in ORS chapter 244 and chapter 184 and their implementing rules.

Background

The OTC is vested with the authority to distribute funds from lottery-backed bonds to specific projects identified by the legislature. In fulfilling its statutory obligations, the OTC is dedicated to ensuring that the project selection process is both transparent and fully meets the expectations of the ethics laws of this state.

In 2017, the legislature enacted HB 2017 (Transportation Funding). Section 71(f) of that Act is now codified as a temporary provision of ORS 367.080. Additionally, the OTC adopted rules to administer this grant program at OAR 731-035-0065.

In accordance with these regulations, the OTC received two Project Plan Proposals to locate an intermodal facility in the Mid-Willamette Valley (one in Millersburg and one in Brooks) and one Project Plan Proposal to locate a transload facility in Treasure Valley. The governing boards for the sponsors of the proposed facilities in Treasure Valley and Millersburg have been organized as not-for-profit groups. The governing board for the proposed intermodal facility in Brooks is organized as a for profit group.

Review of Potential Conflicts of Interest

Mr. Greg Smith has served as a member of the Oregon House of Representatives continuously since 2001 through the present. He was a member of the House of Representatives when HB 2017 was enacted. Mr. Smith is also the principal member of Gregory Smith & Company, LLC, a for-profit economic development firm. Gregory Smith & Company holds the contract to serve as the project manager for the Millersburg project proposed in the Mid-Willamette Valley and serves as the

Economic Development Director for Malheur County, and in that role is acting as the project manager for the proposal for an intermodal facility in Treasure Valley.

At the behest of the director of the Oregon Department of Transportation, we understand that Mr. Smith requested a review from you of whether there are any potential conflicts with his participation and involvement in these projects. We have read your Letters of Advice 19-0211, dated February 19, 2019 in which you concluded that Mr. Smith does not have a statutory conflict of interest.

Mr. Kevin Mannix also served in the Oregon Legislature between 1988 and 2001 and ran for several statewide offices and for the U.S. House of Representatives, between 2000 and 2008, all activities that predate the enactment of HB 2017. Mr. Mannix is the Executive Director of the Oregon Port of Willamette. The Oregon Port of Willamette has also submitted a Project Plan Proposal for an intermodal facility in the Mid-Willamette Valley located in Brooks.

The OTC requested that each of the three project sponsor teams also disclose the members who serve on the governing boards of the project sponsor teams. The membership lists for each project sponsor includes an expansive cross section of individuals involved in public and private enterprises. These lists are included as attachments to this letter. Membership on the board for the intermodal facility proposed in Treasure Valley includes State Representative Lynn Findley. Membership on the board for the Mid-Willamette Valley intermodal proposal in Millersburg includes former State Representative Andy Olson (ex-officio member), the mayor of the City of Albany Sharon Kanopa, the mayor of Millersburg Jim Lepin, Linn County Commissioners John Lindsey and Roger Nyquist (ex-officio), Will Tucker (ex officio), Albany City Counselor Mike Sykes, Albany City Manager Peter Troedsson (ex officio), Millersburg Interim City Manager Kevin Kreitman, and Economic Development Director Jorge Salinas.

Prior to any action by the OTC, each individual commissioner of the OTC will fully review the project sponsors and the full membership list of the respective project sponsor boards to determine if that commissioner has an actual or potential conflict of interest as defined by ORS 244.020. Upon this review, each individual OTC commissioner will disclose the nature of any actual or potential conflict. If the commissioner identifies an actual conflict, they will disclose the nature of the conflict and abstain from participating in any discussion, debate or vote on the issue out of which the conflict arises.

We request an opinion from the Executive Director under ORS 244.282 addressing whether the actions the OTC commissioners intend to take comply with both the letter and spirit of the Oregon Government Ethics Law and whether there is anything more that the individual commission members need to do to comply before taking action on these projects.

Sincerely,



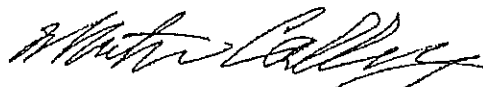
Kate Brown, Governor
State of Oregon



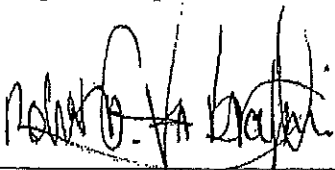
Alando Simpson, Member
Oregon Transportation Commission



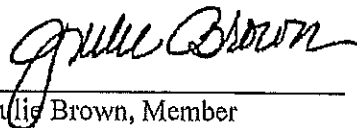
Tammy Baney, Chair
Oregon Transportation Commission



Martin Callery, Member
Oregon Transportation Commission



Robert Van Brocklin, Vice-chair
Oregon Transportation Commission



Julie Brown, Member
Oregon Transportation Commission

Attachments:

- Membership List – Oregon Port of Willamette
- Membership List – Malheur County Development Corporation
- Membership List – Linn Economic Development Group

Board of Directors

Floyd Collins	Retired Public Works Director, City of Albany
Guy DeLude	CEO, Viper Northwest
George Dooley III, PHD	Retired, Albany NETL Research Lab
Jim Dunning	Owner, Tangent Business Park
Max Frederick	Project Manager, Evergreen Engineering
Greg Goracke	President, Greenberry Construction
Greg Hamann	President, Linn-Benton Community College
Chris Hanson	Realtor, Former HP Property Manager
Dave Harms	Owner, S&S-Millersburg Appointment
Rick Kenyon	CEO, Selmet
Jon Kloor	Northwest Natural Gas
Sharon Konopa	Mayor, City of Albany
Stacy Koos	VP & Branch Manager, Citizens Bank
Celeste Krueger	Regional Business Representative, Pacific Power
Jim Lepin	Mayor, City of Millersburg
John Lindsey	Commissioner, Linn County
Bill MacHugh	Realtor/Developer, Keller Williams
Jim Merryman	CEO, OFD Foods
John Pascone	President/CEO, AMEDC
Cordell Post	Attorney
James Ramseyer	Director of Member Services, Consumers Power Inc.
Mark Raum	VP, Umpqua Bank
David Reece	Owner, Reece & Associates
Janet Steele	President/CEO, Albany Chamber of Commerce
Mike Sykes	Council, City of Albany/ Owner, Mike's Heating
Dan Watson	Owner, K&D Engineering
<i>Ex-Officio</i> , David Beckham	Attorney at Law
<i>Ex-Officio</i> , Kevin Kreitman	Interim City Manager, City of Millersburg
<i>Ex-Officio</i> , Roger Nyquist	Commissioner, Linn County
<i>Ex-Officio</i> , Andy Olson	Representative, Oregon State Legislature
<i>Ex-Officio</i> , Jorge Salinas	Economic Development Manager, City of Albany
<i>Ex-Officio</i> , Peter Troedsson	City Manager, City of Albany
<i>Ex-Officio</i> , Will Tucker	Commissioner, Linn County

Project Sponsor

Organizational Structure

MCDC is a 501(c)4 non-profit economic development corporation and will be the project sponsor for the proposal TVRC. MCDC was created by the Malheur County Court (Board of Commissioners) in 2017 after the passage of Keep Oregon Moving (HB 2017-A) and appointed nine individuals to serve as the MCDC Board of Directors. Each member was chosen for their professional background and experience as it relates to the region, sectors of agriculture, business, land use, logistics, finance, and industrial development.

Board Membership

- Grant Kitamura, Board President
 - Lynn Findley, Board Vice-President
 - Greg Smith, Officer of the Board
 - Jim Farmer, Member
 - Jeremy Leathers, Member
 - Corey Maag, Member
 - Toni Parish, Member
 - John Qualls, Member
 - Kay Riley, Member
-

Grant Kitamura

CEO

Baker & Murakami Produce

Grant Kitamura was raised on a family farm in Ontario, the grandson of Japanese immigrants who have been involved in vegetable production in the Pacific Northwest since the early 1920's. Grant's late parents continued farming, and his siblings currently operate one of the largest local row-crop farms in Malheur County. Shortly they will be celebrating the family's 100-year anniversary.



Grant joined Murakami Produce Company in Ontario in 1980 and along with its founder, Sig Murakami, developed one of the region's largest volume onion packing and shipping operations. Kitamura has served on several industry boards including the National Onion Association, Idaho-Oregon Fruit & Vegetable Association, and the Idaho-Eastern Oregon Onion Committee which administers Federal Marketing Order 958. He has served on the local hospital board, his church board, as well as city and county advisory boards.



OREGON PORT OF
WILLAMETTE

Membership List -- Updated March 13, 2019

Kevin L. Mannix
Frank Salerno
Eagle Eye Investments
Oregon Shipping Group
Connor J. Harrington
Duane & Karen Vaubel
Michael J. Kelly
Airport Drayage Co., Inc.
Quality Trading Co., LLC
Northwest Onion Co.
Ryan LeCompte
Beilke Family Farm
Ramirez, Zachary
Farmers Direct, Inc.
Spring Lake Farm
Jim and Kerstin Ilg
DeConinck Living Trust
Richard & Sibylle Beck
Glenn Edward Woodry
Woodburn Ornaments, Inc.
Jonathan Lafevers
Weathers Living Trust



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

April 26, 2019

Kristina Schmunk Kraaz
Assistant City Attorney
City of Springfield
225 Fifth Street
Springfield, Oregon 97477

Re: Advice Number 19-0551

Dear Ms. Kraaz:

This letter of advice is provided in response to your request received on March 29, 2019, which present questions regarding how Oregon Government Ethics laws would apply to actual and potential conflicts of interest that might arise during the City of Springfield's pending Development Code Update Project. 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.

Background

According to the information provided, the City of Springfield has recently begun the process to revise and readopt its land use regulations through a Development Code Update Project (the "Project"). Phase I of the Project will update regulations relating to housing and residential land use. It will include new residential development standards for all types of housing and may expand the uses allowed in residential zones. Phase I is anticipated to culminate in the adoption of a single ordinance adopting the new housing-related code. Phase II (addressing commercial and industrial uses) and Phase III (addressing miscellaneous code sections) will also culminate in the adoption of additional ordinances.

In the initial advice and input stages of Phase I, a community Technical Advisory Committee, with members appointed by the Springfield Planning Commission, will provide analysis of the existing code and new code concepts and technical advice on proposed changes, but will not provide formal recommendations. There will also be a Governance Committee, comprised of two City Councilors and two Planning Commissioners, which will identify key issues and provide direction on areas of focus and opportunities at a policy level. City staff will also hold quarterly meetings with the Planning Commission and City Council to discuss topics and proposed changes; these discussions will initially be broad but eventually will include discussion of specific proposed changes.



Amendments to land use regulations require a public hearing and formal recommendation by the Planning Commission, followed by another public hearing and adoption by the City Council. Following the advice and input phase, the formal package of proposed code amendments for public hearing will be presented to the Planning Commission and City staff will send the required notice to the Oregon Department of Land Conservation and Development (DLCD) as required by OAR 660-018-0020. The Planning Commission's recommendation, in the form of a final order, will then be forwarded to the City Council, which will hold its own public hearing(s) on the proposed code amendments. Finally, the City Council will vote to adopt/not adopt the final ordinance.

All members of the City Council and most members of the Planning Commission own residential property in Springfield. It is likely that the Project will change development standards for all residential properties in Springfield, though the extent of those changes is not yet known. The changes may expand allowable uses within residential zones or increase buildable areas of residential lots, which could have an impact on property values, affect the ability of property owners to partition their property, or allow construction of improvements not previously allowed.

Conflicts of Interest

ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. A public official is met with either an actual or a potential conflict of interest when participating in an official capacity in any action, decision, or recommendation, if the effect would or could be to the private pecuniary benefit or detriment of the public official, the public official's relative, or any business with which either is associated. An actual conflict of interest occurs when a public official participates in an official action that would have a direct financial impact on that official, the official's relative or any business with which either is associated. A potential conflict of interest occurs when a public official's action, decision or recommendation could have a financial impact on the official, the official's relative or any business with which either is associated.

A business with which one is associated includes any private business or closely held corporation of which the person or their relative is a director, officer, owner or employee, or agent, or in which the person or their relative currently owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding year. [ORS 244.020(3)(a)]. For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income under ORS 244.060(3) (a source producing ten percent or more of the total annual household income) is a business with which the official is associated. [ORS 244.020(3)(d)]. City Councilors and Planning Commissioners are public officials required to file statements of economic interest. [ORS 244.050(j) and 244.050(k)].

Elected officials or those appointed to a board or commission, when met with a conflict of interest, whether it is an actual or a potential conflict of interest, must on each occasion where the issue arises, publicly announce the nature of their conflict. Then, if the conflict is actual, they must also refrain from any discussion, debate or vote on the issue giving rise to the conflict. If the conflict is potential, they may participate in official actions following their public disclosure. [ORS 244.120(2)]. If the public official has an actual conflict of interest, but the public official's vote is necessary to meet quorum requirements, then the public official is eligible to vote, but must not participate in any discussion or debate on the issue from which the conflict of interest arises. [ORS 244.120(2)(b)(B)]:

There is a class exception to the conflict of interest provisions which applies to any action a public official may take in their 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 which includes the public official, their relative, or a business with which either is associated. [ORS 244.020(1) and (13)(b)]. Only the Oregon Government Ethics Commission may make the determination of whether a class exists.

Question 1: Would members of the Governance Committee have only potential conflicts of interest, even though the Governance Committee includes City Councilors who will eventually make final decisions?

You have indicated that the Governance Committee, comprised of two Planning Commission members and two City Councilors, will identify key issues and provide direction in the advice and input phases, but will not be making any final decisions regarding code amendments. When at a Governance Committee meeting, a Planning Commissioner or City Councilor would be acting as a Governance Committee member and not as a Planning Commissioner or City Councilor.

Because the Governance Committee is an advisory committee and not the ultimate decision maker on the Project, when the City Councilors and Planning Commissioners sit as Governance Committee members, they would only be met with potential conflicts of interest. When met with a potential conflict of interest, a Governance Committee member must publicly announce the nature of the member's conflict of interest prior to participating in taking any action on the matter giving rise to the conflict. The official must make the public announcement once on each occasion that the matter arises.

For the City Councilors, the conflicts of interest could ripen to actual conflicts of interest when they sit as the City Council to make final decisions and act upon the recommendations of the Planning Commission. Public officials are individually responsible for exercising their own good judgment in determining whether or not an

action, decision or recommendation presents an actual or potential conflict of interest. If a City Councilor determines that the City Council's actions would have a direct and specific financial benefit or detriment on the City Councilor, a relative or a business with which either is associated, the City Councilor must make a public announcement of the nature of the conflict and refrain from further participation in the matter giving rise to that conflict. If the conflict of interest remains potential, meaning that the City Council's actions could possibly have a financial impact on the City Councilor, a relative or a business with which either is associated, then the City Councilor must once again make a public announcement of the nature of the conflict, but may continue to participate on the matter.

Question 2: Does the fact that a City Councilor owns residential property in Springfield, by itself, constitute an actual conflict of interest if the code changes would affect all property owners' abilities to further build onto existing dwellings or establish new uses on existing properties? Does it matter whether a specific City Councilor has current plans to further develop their property in the future?

The fact that a City Councilor owns residential property in Springfield means that the City Councilor would have at least a potential conflict of interest and quite possibly an actual conflict of interest in the code amendments when they come before the City Council. Based on the facts as presented, it is not clear whether or not for any particular property the financial impact of the proposed amendments would be certain and specific, meaning that it gives rise to an actual, rather than a potential, conflict of interest. That determination must be made by each City Councilor, and may depend in whole or in part on the specific code amendments, the type of property, the property location, and the use of the property.

If a City Councilor has current plans to develop their property in the future, and the specific code amendments being considered would impact that future development, the City Councilor would have an actual conflict of interest. The City Councilor may have an actual conflict of interest even without any current development plans if it can be determined, at the time the matter is before the City Council, that the specific code amendments would affect the value of the City Councilor's property. If the City Councilor cannot determine whether the specific code amendments would have a certain financial impact, however, then the conflict of interest would remain potential. As owners of property within the City, each City Councilor must make a careful consideration of whether the specific code amendments being considered would or could have a financial impact on their own property or the properties of their relatives or businesses with which they are associated.

Question 3: If owning residential property in Springfield gives rise to an actual conflict of interest, does it qualify for a class exemption under ORS 244.020(13)(b)? Because not all properties are identical within the City, the development code would not cause the exact same effect on each owner of residential property, although all similarly situated property owners would be affected the same way.

ORS 244.020(13)(b) provides an exception to compliance with the conflict of interest provisions of ORS 244.120 if an official action would financially impact the public official, a relative, or any business with which either is associated to the same degree as a broader class of individuals. If a significant number of other persons or entities are also "affected to the same degree" by the action, then the public official may be exempt from conflict of interest provisions on the basis of a class exception. Only the Commission may determine what groups constitute such a class.

Whether a class exists depends on the number of property owners affected and if the code amendments would affect those property owners to the same degree. Because of the variations in property size, type, location, and usage, the code amendments may not affect all property owners to the same degree. For the Commission to determine whether the class exception in ORS 244.020(13)(b) applied to an action by the City Councilors, it would need to know the specific code amendments at issue, and the number and type of properties affected by those specific code amendments. Such a determination cannot be made without that information at this stage in the process.

Question 4: The City Council will be engaged in a long process of providing direction and guidance to City staff on proposed code amendments, long before the City submits its formal 35-day notice to DLCD. At what point in the process would a City Councilor have an actual as opposed to a potential conflict of interest? For example, during the first phases of quarterly check-in meetings where the Council provides direction and guidance as to high-level topics but not specific code language? Only when the Council is providing specific input on the language of proposed code changes? Only after the City submits the formal 35-day notice of post-acknowledgement plan to DLCD?

According to the information provided, the City Council cannot take any formal action on the Code Amendments until the City submits its notice to the DLCD; thus any discussions by the City Council before that DLCD notice take the form of recommendations to City staff for the Project, rather than formal, binding decisions. The DLCD notice is submitted prior to the Planning Commission's public hearing; once the DLCD notice is submitted, a City Councilor would not participate any further in the process until the Planning Commission submits its recommendation and final order to the City Council.

As explained above, a City Councilor would have a potential conflict of interest when sitting as a Governance Committee member because the nature of that role is preliminary and advisory in nature. Similarly, a City Councilor participating in a discussion or making a recommendation during the advice and input stages, in the quarterly check-in meetings, or in other forums before the formal DLCD notice would also have a potential conflict of interest, even if the discussion or recommendation were on specific code language, because the code amendments are still preliminary and have not been integrated into a final order for the City Council to review and act upon.

The nature of the conflicts of interest could change once the DLCD notice is submitted and the Planning Commission's recommendations and final order are presented to the City Council. At that point, the City Councilors sit as members of the City Council to hold a formal public hearing on the code amendments and vote to adopt or not adopt the code amendments. The City Councilors' conflicts of interest, which were only potential during the preliminary, informal stages, could ripen to become actual conflicts of interest.

Question 5: If a quorum of Councilors have an actual conflict of interest in the final housing ordinance, does ORS 244.120(2)(B) require the affected City Councilors to abstain from *all* discussion on the proposed housing ordinance, or only from discussing the aspects of the ordinance for which they have an actual conflict? For example, if a Councilor has no actual conflict of interest with multifamily housing standards, could they participate in deliberations on that aspect of the ordinance?

A City Councilor may have an actual conflict of interest arising from some sections of the final code amendments, but have no conflict of interest in other sections. In that case, if the final code amendments are presented to the City Council in sections for the formal public hearing and vote, the City Councilor may participate in deliberations and vote on those sections of the code amendments that do not give rise to an actual conflict of interest for the City Councilor. For those sections that do give rise to an actual conflict of interest, the City Councilor would need to make a public announcement of the nature of the conflict and refrain from further participation in those sections.

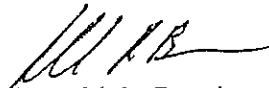
If the City Council is required to vote on the entirety of the code amendments or final ordinance, City Councilors with actual conflicts of interest would be required to publicly announce their conflicts and refrain from further participation. If a quorum of the City Councilors have actual conflicts of interest, ORS 244.120(2)(b)(B) provides that if their votes are necessary for a quorum, they would be eligible to vote, but would still need to refrain from any discussion or debate on the matters giving rise to their conflicts.

Kristina Schmunk Kraaz
April 26, 2019
Page 7

This general advice is limited to the application of ORS 244.020 and 244.120 to the situations presented in your request. As the Project continues and more specific information becomes available, we encourage the City Councilors and any other public officials involved in the Project to call the Commission.

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.



March 29, 2019

Susan Myers, Investigator
Oregon Government Ethics Commission
Via Email: susan.myers@oregon.gov

Dear Ms. Myers:

Pursuant to our telephone conversation on February 15, 2019 and follow up email on February 20, 2019, the City of Springfield is resubmitting a letter previously provided on February 20, 2019 to include background information on its pending Development Code Update Project and submit our specific questions regarding conflicts of interest. We are also providing additional explanation of our understanding of how the Oregon Government Ethics laws would apply. We are asking for a written response from Commission staff that confirms or corrects our current understanding of how the ethics laws apply to the City of Springfield Development Code Update Project.

Background Information

The Springfield Development Code Update Project recently began and will completely revise/readopt the land use regulations for the City of Springfield. The project will be divided into three phases – first, updating all regulations related to housing and residential land use; next, addressing regulations for commercial and industrial uses; and finally, updating miscellaneous code sections such as land hazard overlay districts.

In Phase I, the Code Update will include new residential development standards for all types of housing (e.g. design standards, setbacks, and lot size requirements for single family detached, multifamily, cluster subdivisions, etc.) and may expand the uses allowed in residential zones (e.g. allowing duplexes on more lots in the low density residential zone). Phase I is anticipated to culminate in the adoption of a single ordinance adopting the new housing-related code. The later phases will also culminate in the adoption of additional ordinances.

While seeking initial advice and input for the proposed housing standards, the Development Code Update Project will solicit feedback from a community Technical Advisory Committee (TAC), whose members are appointed by the Springfield Planning Commission. The TAC will not make any formal recommendations, but will provide analysis of the existing code and new code concepts and provide technical advice on how changes could be made and the reasoning behind the proposed changes based on the Project Objectives. There will also be a Governance Committee comprised of two City Councilors and two Planning Commissioners. The Governance Committee will identify key issues and provide direction on areas of focus and opportunities at a policy level, primarily during this earlier input phase.

During the advice and input phases, City staff will also hold quarterly check-in meetings with the Planning Commission and City Council to discuss topics and proposed changes. Initially, these meetings will be broad discussions that do not include specific code changes. Later in the process, it is anticipated that the quarterly check-ins will include discussion of specific proposed changes.

As required under Springfield's current development code, amendments to land use regulations require a public hearing and formal recommendation by the Planning Commission, and then another public hearing and adoption by the City Council. Following the advice and input phases, the formal package of proposed code amendments for public hearing will be presented to the Planning Commission. Staff will send the 35-day notice required for all post-acknowledgement plan amendments (OAR 660-018-0020) to the Department of Land Conservation and Development prior to the Planning Commission public hearing, but after the advice and input phases. The Planning Commission's recommendation is reduced to a final order and then forwarded to the City Council. The City Council will hold its own public hearing(s) on the proposed amendments – either the version as recommended by the Planning Commission or with additional changes at the direction of the Council. Finally, the Council will vote to adopt/not adopt the final ordinance.

To our knowledge, all of the members of Springfield City Council and most of the members of the Planning Commission own residential property in Springfield. It is highly likely that the Code Update Project will change development standards for all residential properties in Springfield, but it is not yet known to what extent. The proposed changes could expand the uses allowed within residential zones or increase the buildable areas of residential lots, for example, which could have an impact on property values, could affect the ability of residential property owners to further partition their property, or allow construction of residential improvements not previously allowed.

A copy of the Community Engagement Plan and other information describing the Development Code Update Project is available at <http://www.springfield-or.gov/city/development-public-works/springfield-development-code-update-project>.

Question 1: When we spoke by phone on 2/15/19, you confirmed that the TAC and Planning Commission would have only potential conflicts of interest, because they are not making any final decisions on code amendments. Is this also the case for the Governance Committee, even though there are City Councilors who serve on this committee who will make final decisions?

Explanation: When attending a Governance Committee meeting, members of that committee are acting in their status as Governance Committee members and not as City Councilors or Planning Commissioners, respectively. Like the TAC and Planning Commission, the Governance Committee does not make any final decisions regarding development code amendments. Therefore, while attending Governance Committee meetings, those members would have potential conflicts of interest if their official actions at that meeting could result in financial benefit or detriment. Because the Governance Committee does not make any final decisions on code amendments, there are no actual conflicts of interest.

Question 2: Does the fact that a Councilor owns residential property in Springfield, by itself, constitute an actual conflict of interest if the code changes would affect all property owners'?

abilities to further build onto existing dwellings or establish new uses on existing properties? Does it matter whether a specific Councilor has current plans to further develop their property in the future?

Explanation: If a City Councilor owns property in Springfield, but has no current or future plans to further develop that property, then development code amendments that change the uses allowed on residential properties or the extent of permitted development would give rise only to a potential conflict of interest, because the different regulations *could* affect a Councilor's financial interest in further development of their property at a later date. The effect is not certain if a Councilor has no plans for such development, and hence would not be an actual conflict of interest.

Question 3: If owning residential property in Springfield gives rise to an actual conflict of interest, does it qualify for a class exemption under ORS 244.020(13)(ii)? Because not all properties are identical within the City, the development code would not cause the exact same effect on each owner of residential property, although all similarly situated property owners would be affected the same way.

Explanation: A class can only be identified by the Commission, but we believe that one is appropriate in this case. The Public Official Guide (page 23) gives the following example under the description of the class exemption:

"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. The number of persons affected to the same degree as the public official will help to determine whether this exception applies."

Like the County Commissioners identified in the above example, all owners of the same type of residential property in the City (low density residential, for example) would be benefited to the same degree by the proposed code amendments. In the above road improvement example, different property owners may drive on the road for different amounts of time, or have a different amount of frontage along the road, but they are still benefitted by the road improvements to the same degree. Similarly, while not all residential properties in the City are identical, the code amendments themselves would apply uniformly to all like-zoned property. Unlike the short term rental licensing at issue in the Commission's Advisory Opinion 16A-1001 (dated May 20, 2016), the Council would not be differentiating among the owners of like-zoned residential property who would fall under the new standards and those who would not.

Question 4: The City Council will be engaged in a long process of providing direction and guidance to City staff on proposed code amendments, long before the City submits its formal 35-day notice to DLCD. At what point in the code update process would a Councilor have an actual conflict of interest, as opposed to a potential conflict of interest? For example, during the first phases of quarterly check-in meetings where the Council provides direction and guidance as to high-level topics but not specific code language? Only when the Council is

providing specific input on the language of proposed code changes? Only after the City submits the formal 35-day notice of post-acknowledgement plan amendment to DLCD?


Explanation: The City is required under state law to provide a formal notice of post-acknowledgement plan amendment (PAPA) to DLCD. The development code update project qualifies as a PAPA. With limited exceptions, the City Council cannot take formal action on a PAPA without providing such notice. Therefore, any discussions by the City Council before the City submits the PAPA notice take the form of recommendations to City staff for the project, rather than actual decisions that would affect any Councilor's financial interests. For that reason, we think that, before the formal land use process is underway, the City Councilors may only have potential conflicts of interest, because there are no binding decisions made at that point in the process. Later on, during the formal decision-making process, Councilors would have actual conflicts of interest only if their decisions would result in a financial benefit or detriment to the Councilor or his/her business.

Question 5: If a quorum of Councilors have an actual conflict of interest in the final housing ordinance, does ORS 244.120(2)(B) require the affected Councilors to abstain from *all* discussion on the proposed housing ordinance, or only from discussing the aspects of the ordinance for which they have an actual conflict? For example, if a Councilor has no actual conflict of interest with multifamily housing standards, could they participate in deliberations on that aspect of the ordinance?

Explanation: ORS 244.120(2)(b)(A) states that, if a public official has an actual conflict of interest, they must refrain from further discussion "on the issue that gave rise to the conflict of interest." We believe that "issue" does not mean the entire agenda item/ordinance for discussion, but only the specific subject matter giving rise to the conflict. If a Councilor had a conflict of interest arising only from the multifamily housing standards, they could participate in the deliberations on the ordinance as to other matters. We do note that the Councilor in this example could only vote on the final ordinance adoption if required to meet a quorum.

Thank you for your consideration of our questions and explanations.

Sincerely,



Kristina Schmunk Kraaz
Assistant City Attorney
KSK:ljc



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

E-mail: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

April 12, 2019

Eugene Water & Electric Board (EWEB)
C/o Sarah Creighton
4200 Roosevelt Blvd
Eugene, Oregon 97402

Re: Advice Number 19-0701

Dear Ms. Creighton:

This letter of advice is provided in response to your request received on April 9, 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 Eugene Water & Electric Board's McKenzie River watershed tour scheduled for May 23, 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 Eugene Water & Electric Board (EWEB) wants to host an educational tour for public officials. The purpose of the tour is to educate and inform state and local government officials on the current strategic priorities regarding water quality and source protection, particularly focused on the McKenzie River watershed as the sole source of the area's drinking water. The tour will highlight a variety of locations that will allow participants to witness the river's impact, including the location of the 2018 oil spill, to discuss proactive measures being taken to mitigate future risks. Following the river tour, attendees will tour EWEB's Hayden Bridge water filtration plant.

During these tours, EWEB will provide and pay for food, and travel expenses. Your question concerns what restrictions or requirements Oregon Government Ethics law may impose on public officials who wish to participate in this tour.

Under most circumstances when a public official is offered food, lodging and travel at no cost to the public official, it would be a gift as defined in ORS 244.020(7)(a). ORS 244.020(7)(b) excludes several items from the statutory definition of "gift",



Eugene Water & Electric Board (EWEB)
C/o Sarah Creighton
April 12, 2019
Page 2

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

Based on the information you provided it appears that ORS 244.020(7)(b)(F) would allow public officials to accept meals and transportation expenses to participate in the Eugene Water & Electric Board's McKenzie River watershed tour, which appears to meet the definition of a fact-finding mission, as defined in OAR 199-005-0001(2).

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

Sincerely,



Ronald A. Bersin
Executive Director

RAB/th

*****DISCLAIMER*****

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

HEDRICK Tammy R * OGEC

From: KAH Anne <Anne.Kah@EWEB.ORG>
Sent: Thursday, April 11, 2019 8:45 AM
To: HEDRICK Tammy R * OGEC
Cc: CREIGHTON Sarah; LAWSON Frank; KAH Anne
Subject: FW: Oregon Government Ethics Commission FW: Inquiry re: Gifts - DRAFT Response

Good morning Tammy,

We appreciate your guidance, here is some additional information to assist with your evaluation.

- Date of the event: *Thursday, May 23*
- Purpose of the event: Your email talks about strategic priorities around water source protections...could you provide something more specific. In other words, what is the educational component consist of? *The McKenzie River tour will include several locations of interest, such as salmon diversion facilities, a potential EWEB property acquisition at the Cedar Creek confluence to develop a "conservation easement", and the location of the 2018 oil spill from International Paper Mill's operations where we'll talk about proactive measures being taken to mitigate future risk.*
- *Also from the river, participants will witness the river impacts of EWEB's Walterville Generating Project, including diversion chevrons and fish mitigation efforts such as screens and return channels.*
- *Following the river tour, attendees will tour EWEB's Hayden Bridge water filtration plant. All attendees will benefit from discussions around water quality and source protection. Additionally, EWEB shares water resources with a neighboring utility and we want to understand the impacts of each other's operations to our respective water rights, watersheds, and water quality.*
- Will there be any transportation to and from the event provided? *Attendees will meet at EWEB's water filtration plant. The river guide will provide transportation to the boat launch location.*
- In regards to the "government officials" could you be more specific as to who these officials are for the purposes of offering this advice *Utility board members and General Manager; Water District board members; County Commissioners; representatives from Oregon Dept. of Fish & Wildlife, McKenzie River Trust, McKenzie Watershed Council, and staff from EWEB's Environmental department. All of these participants work together in partnership to maintain a safe watershed and to protect fish and wildlife.*

Please let me know if you need any additional information.

Thank you,

Anne Kah
Executive Assistant to General Manager/Board
Eugene Water & Electric Board
Phone/Fax 541-685-7191

From: CREIGHTON Sarah
Sent: Wednesday, April 10, 2019 1:00 PM
To: LAWSON Frank <Frank.Lawson@EWEB.ORG>; KAH Anne <Anne.Kah@EWEB.ORG>
Subject: FW: Oregon Government Ethics Commission FW: Inquiry re: Gifts

Frank/Anne,

From: CREIGHTON Sarah [mailto:Sarah.Creighton@EWEB.ORG]
Sent: Tuesday, April 09, 2019 2:38 PM
To: OGEC Mail * OGEC <OGEC.Mail@oregon.gov>
Subject: Inquiry re: Gifts

Hello,

The Eugene Water & Electric Board (EWEB) is a governmental body, providing power and water to the citizens of Eugene and surrounding areas. One of our current strategic priorities is around water source protection, particularly focused on the McKenzie River watershed as the sole source of our drinking water.

EWEB would like to invite some other government officials on an educational tour of the watershed. The tour would include lunch, and part of the tour would be in drift boats. Overall, it may cost between \$4000-6000 for 20 people. The purpose of the tour is educational, not recreational.

Our review of the applicable ORS and OAR suggests that the proposed event may likely fall within a "fact finding mission or trip", as the event is planned to primarily serve an educational purpose to government officials representing their entity in an official capacity. Further, we believe the food and drift boat transportation may likely be food and incidental entertainment which are exempt from the definition of "gift".

We would like to know if receipt of this trip may allowable under Ethics laws. As the trip is being planned for May, might we be able to receive a response within the next week or two?

Thanks in advance,

Sarah Creighton, CPCU, ARM-E
Enterprise Risk Supervisor
Eugene Water & Electric Board (EWEB)
4200 Roosevelt Blvd, Eugene OR 97402
Phone/fax 541-685-7630



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

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Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

April 15, 2019

Ben Cannon, Executive Director
Oregon Higher Education Coordinating Commission
255 Capitol St NE, 3rd Floor
Salem, OR 97310

Advice 19-0741

Dear Ben Cannon:

This letter of advice is provided in response to your request received on 4/15/19 which presented a question regarding the application of the conflict of interest provisions of Oregon Government Ethics law to the circumstances you describe. 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.

Summary of Facts as Presented:

The Higher Education Coordinating Commission (HECC) consists of 9 voting and 5 non-voting members. Among the 9 voting members of the Commission, one member must be from each of the five congressional districts in the state and the other four are members of the general public. While current law reserves the 5 non-voting Commissioner positions for higher education students, staff, and faculty, there is no limitations on who could be appointed to the voting positions.

HB 3280, now under consideration during this legislative session, would convert the non-voting Commissioner positions to voting ones.

The Higher Education Coordinating Commission (HECC) is responsible for determining whether undergraduate, resident (in-state) tuition increases greater than 5% at Oregon public universities are permitted to go into effect.

Question One: Would a voting Commissioner who is also a student attending a public university that requests the tuition increase, have a conflict of interest on this issue?

Answer: No, because an exception to the conflict of interest provision would apply. ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. In relevant part, a public official is met with either an actual or potential conflict of interest when participating in an official capacity, in



any action, decision, or recommendation, if the effect would (actual) or could (potential) be to the private pecuniary benefit or detriment of the public official, the public official's relative, or any business with which either are associated, *unless the pecuniary benefit 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 is associated. [ORS 244.020(1) and (13)(a) and (b)]

If the student is appointed to a Commission position that is required by law to be filled by a student, then that student would not be met with a conflict of interest when taking official action as a Commissioner on a proposal to alter the amount of tuition the student would be subject to pay, because the financial benefit arises out of their membership in the class of "student" which is a prerequisite to holding their position as a HECC Commissioner.

If the student is appointed to one of the Commission positions for which no student requirement exists, provided that the student's official action concerning a change in tuition would affect all similarly situated students to the same degree, then the "class" exception to the conflict of interest would apply because the financial benefit arises from their membership in a group of students who would be affected by the tuition change to the same degree. [ORS 244.020(13)(b)]

The Ethics Commission has the authority to identify a group or class and determine the minimum size of that "class." The number of persons affected to the same degree as the public official will help to determine whether this exception applies. [ORS 244.290(3)(a)]

Question Two: Would a voting Commissioner who is also a higher education faculty or staff member be met with a conflict of interest when taking official action on altering tuition?

Answer: Faculty or staff members appointed to a Commission position, regardless of whether that position is required by law to be filled by a faculty/staff member, would not be met with a conflict of interest when taking official action as a Commissioner on a proposal to alter the amount of tuition charged by the university they work for, for several reasons.

- First, the effect of their official action would be to the financial benefit or detriment of their public university/employer and not themselves as faculty/staff members and public universities (and other government entities) are not operated for profit and thus are not "businesses with which a person is associated" as defined in ORS 244.020(2) and (3).
- Secondly, if any member of the HECC Commission is themselves a student or has a relative that would be financially affected by an alteration to tuition, the conflict of interest "class" exception would apply to their situation, as described above.
- Thirdly, if the faculty or staff member receives, as part of their official compensation, a reduced staff tuition rate for themselves or their relative, their official action would affect all faculty/staff members to the same degree, which would also be a "class" exception to the conflict of interest statute.

I have attached Commission Advisory Opinion 17A-001 to this letter, as many of the same issues are addressed in that opinion.

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

Enclosure

*****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/dg

HUNTER David * OGEC

From: CANNON Ben <Ben.Cannon@state.or.us>
Sent: Sunday, April 14, 2019 9:57 PM
To: OGEC Mail * OGEC
Subject: requesting guidance

To Whom It May Concern,

The Oregon Higher Education Coordinating Commission, for which I am Executive Director, is responsible under ORS 350.075(3)(h)(B) and ORS 352.102(4)(a)(B) for determining whether undergraduate, resident (in-state) tuition increases greater than 5% at Oregon public universities are permitted to go into effect.

A question has arisen about whether a voting Commissioner who is also a student attending a public university that requests the increase, and who would be subject to paying it, has a conflict of interest on this issue. Likewise a faculty or staff member who, while not subject to paying the tuition, could be affected by budget decisions that are made in light of the HECC's decision (for example, position and/or salary cuts that a HECC decision to disapprove the tuition increase could trigger).

Please note that while current law reserves five non-voting HECC Commissioner positions for students, staff, and faculty, there are no limitations on who could be appointed to the voting positions. Moreover, HB 3280 under consideration this session would convert our non-voting positions to voting ones.

Thank you in advance for your advice.



Ben Cannon
Executive Director

OREGON HIGHER EDUCATION COORDINATING COMMISSION
www.oregon.gov/highered
Office 503-947-5948

POLICY #2

MEMBERSHIP

A. Number & Terms of Office

The Higher Education Coordinating Commission consists of 9 voting members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, and 5 nonvoting members.

The term of office for each member shall be four years, and the term of office for each nonvoting member is two years. A person appointed under this paragraph is eligible for reappointment.

Members serve at the Governor's pleasure and may be removed at any time for cause after notice and public hearing. Not more than three members shall be removed within a period of four years, unless it is for corrupt conduct in office (ORS 350.050).

B. Eligibility for Commission Membership

The Governor shall appoint the following to voting positions on the Commission:

- One member from each of the five congressional districts in the state; and
- Four members of the general public.

The Governor shall appoint the following to nonvoting positions on the Commission:

- One student at a public university listed in ORS 352.002;
- One faculty member at a public university listed in ORS 352.002;
- One student at a community college in this state;
- One faculty member at a community college in this state; and
- One nonfaculty member of the staff from either a public university listed in ORS 352.002 or a community college.

The members of the Commission must be residents of Oregon who are well informed on the principles of higher education (ORS 350.055).

C. Vacancies

The Governor fills vacancies by appointment; nominations to voting positions must be confirmed by the Senate. Appointments made to fill vacancies occurring prior to the expiration of a term are for the remainder of the unexpired term (ORS 350.050).

D. Chair & Vice Chair

The Higher Education Coordinating Commission shall select one of its members as chairperson and another as vice chairperson. Terms shall be for one year and members are eligible for re-election.

The duties of the chair include the following:

- Setting meeting dates
- Setting agendas



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Email: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

Sent via Email and USPS

May 6, 2019

Representative Dan Rayfield
State Rep District 16
Legislative Assembly
900 Court St. NE
Salem, Oregon 97301

Advice 19-114I

Dear Representative Rayfield:

This letter of advice is provided in response to your request received on 5/3/19 which presented a question regarding accepting sponsorship for a Starlight parade float.

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.

Facts as Presented

You are a member of an amateur polka band. The band has five members, including yourself, your spouse, and your father. The other two bandmates are not your relatives or household members.

Your band applied to appear in the 2019 Portland Starlight Parade and were approved to participate as a volunteer hobby band. Your band's participation in the parade would be sponsored to provide money to purchase necessities such as lights, lumber to build the float and the rental of a flatbed truck, as well as labor to help build and construct the float. The sponsors would display their logo on the float as advertisement for their sponsorship. One of the potential sponsors has a "legislative interest" in matters subject to the decisions or votes you could make as a state representative.

Question: As a member of a band that is participating in the 2019 Portland Starlight Parade, would you be limited or restricted by Oregon Government Ethics law from accepting financial sponsorship of your band's float?

As a public official, you (and your relatives and household members) are limited in accepting "gifts" in excess of \$50 annually from a source with a financial interest distinct from that of the general public in any matter subject to your votes or decisions as a state representative (legislative interest).



Representative Dan Rayfield

May 6, 2019

Page 2

A "gift" means something of economic value given to a public official, a 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.

Answer:

Due to the fact that the sponsors of the band's float will be advertising their contributions through the display of their business or organization's logo, it does not appear that this would be a statutorily defined gift. Rather, it seems that the sponsor would receive equivalent value in advertising space. It appears from the information provided, that you, as a member of the band, would not be prohibited from accepting parade sponsorship in these circumstances.

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/dg



DAN RAYFIELD
STATE REPRESENTATIVE
DISTRICT 16

May 3, 2019

SENT VIA EMAIL ONLY

Ron Bersin, Executive Director
Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1680

RE: Oregon Ethics Question

Dear Mr. Bersin:

This letter is in follow-up to our phone call on May 2, 2019, regarding the activity of a band I participate in and any possible ethical concerns that may or may not be present due to the band's activities.

In summary, I play tuba in a polka band. This band consists of 5 regular members. Two of these members are my wife (employed at DHS) and father (retired). The other two members are friends (a law student and an AFSCME employee). I am the fifth member. Additionally, for the one performance we have had and for future performances we solicit the help of other musicians to make us seem better than we really are.

We consider ourselves to be a hobby band and have not taken money to play at an event. In theory, if someone wanted to book our band for a sold-out crowd at the MODA center, it wouldn't be out of the realm of possibility that we would say yes. It may be out of the realm of possibility, however, to think someone would pay us to play as we practice out of my garage most nights. Here's to big dreams and sold-out stadiums...

In March of 2019 our band applied to participate in the Portland Starlight Parade. At the end of April, we were approved to participate as a non-paid volunteer/hobby band. Our band would like to have sponsors for our parade. The sponsors would take the form of money contributions to purchase or subsidize parade necessities such as lights, lumber to build the usual parade Bavarian façade, and the rental of a flatbed truck. Sponsors would also take the form of labor to help build and construct the float. Specifically, one of the potential monetary sponsors has a "legislative interest" as defined for Oregon's statement of economic interest forms. Despite this being a not-for-profit activity, I wanted to request an opinion on whether or not any of this activity raises ethical concerns under Oregon law.

Our plan would be for these sponsors to provide their labor and money for the float and then display their logo on the float as advertisement for their sponsorship. If there is any other information you need to better assess the situation, please let me know.

Thanks again for the help in the matter and I look forward to hearing from you soon.

Very truly yours,

Representative Dan Rayfield

900 Court St. NE, Salem, OR 97301 - rep.danrayfield@state.or.us
Capitol - 503-986-1416 District - 503-740-7744



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MEMORANDUM

DATE: May 20, 2019

TO: Ronald A. Bersin
Executive Director

FROM: Susan Myers *SM*
Investigator

SUBJECT: Respondent: Thomas Wayne Morgan, Jr.
Case No.: 12-170EDT

This memorandum recommends that the Commission dismiss the above-referenced complaint against Thomas Wayne Morgan, Jr.

Thomas Morgan was a custodian at the University of Oregon from 2004 to 2012. In July 2012, the Commission, on its own motion, opened a preliminary review based on news reports that Mr. Morgan had been arrested for theft, primarily of small electronics, at the University. In July 2012, Mr. Morgan pled guilty. He was sentenced to 13 months in prison, followed by probation, and was also ordered to pay restitution.

In October 2012, the Commission considered the preliminary review report and opened an investigation. That investigation was completed in April 2013, when the Commission made preliminary findings of violation. Mr. Morgan had been released from prison at the end of March 2013. When Commission staff attempted to locate him, we learned he was living in a homeless shelter. Commission staff sent notice of the Commission action to the homeless shelter; the certified mail receipt was signed by a Debra Hertel. It is unknown whether Mr. Morgan ever received actual notice of the preliminary findings or of his right to request a contested case hearing. Commission staff never received a response or heard from Mr. Morgan.

Because the evidence in this matter is stale and we were unable to effect actual notice on Thomas Morgan, we recommend that this matter be dismissed.

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Steven G. Liday
steven.liday@millernash.com
direct line

March 21, 2019

VIA E-MAIL
RON.A.BERSIN@OREGON.GOV
OGEC.MAIL@OREGON.GOV

Oregon Government Ethics Commission
c/o Mr. Ronald A. Bersin
Executive Director/Commission Secretary
3218 Pringle Road S.E., Suite 220
Salem, Oregon 97302-1680

Subject: Matter of Craig Horrell (Case No. 18-107EMT): Request to Expand
Preliminary Findings; Comment on Appropriate Penalty; New Complaint

Dear Commissioners:

This letter constitutes a request by complainant, Aleta Warren, for the Commission to make new or amended preliminary findings that there is sufficient evidence for additional ethics violations by respondent Craig Horrell.

This request is made in part because there is compelling evidence that Mr. Horrell's use of public money for his stay at a spa and resort outside Phoenix in January 2016 was not for business purposes, but rather a personal vacation. This evidence directly contradicts respondent's statements about this trip, and calls into questions the accuracy of representations on other expenses at issue.

Further, there are many other travel and food expenses incurred by Mr. Horrell and paid for by the Central Oregon Irrigation District ("COID") that qualify as improper financial gains under ORS 244.040 because they do not meet the definition of official compensation or reimbursements. Unfortunately, the final investigation

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report did not include these expenses as ethics violations because it accepted legal and factual errors that were advanced by respondent and COID's attorney.¹

As set forth fully below, the Commission has broad authority to correct these legal errors and continue prosecution of additional violations, which is warranted because:

- The COID board's approval of Mr. Horrell's financial gain that does not qualify as compensation or reimbursement is irrelevant—the board does not have the power to excuse an ethical violation by its director.
- OGEC was not required to disprove a work purpose for the undocumented expenses to qualify them as ethical violations; Mr. Horrell has the burden of proof to show a work connection to avoid the noncompliant gains being treated as separate violations.
- COID's new informal practice of reimbursing expenses through a company credit card did not negate the other basic requirements of COID's policy, which Mr. Horrell clearly violated.
- Mr. Horrell's receipt of pay advances, and benefit of delaying repayment for months at a time, is an obvious financial gain that violates ORS 224.040.

These issues are also relevant to the appropriate penalty for the current preliminary findings of Mr. Horrell's violations. Accordingly, a comment on the appropriate penalty for these violations is also provided below.

Finally, the representation of respondent by COID's attorney in this matter appears itself to be a prohibited financial gain, which the Commission should investigate, along with the possible misrepresentations during this investigation related to the Firesky Resort & Spa. Please consider this letter a complaint and request for a new investigation into these matters.

1. Background and Current Posture of the Horrell Matter.

¹ Matthew Singer represents COID, but his communications with OGEC call into question whether he is also directly representing Mr. Horrell.

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On April 13, 2018, Ms. Warren's legal counsel filed an ethics complaint² to initiate this matter. The complaint outlined evidence showing that Mr. Horrell appeared to have violated state ethics law in several respects during 2015 and 2016 by (1) receiving reimbursement pay without demonstrating the business nature of the expenses; (2) violating his employment contract and COID policy concerning the process for reimbursement of work expenses; (3) wasting public money through unauthorized and/or extravagant purchases; (4) diverting COID funds for personal expenses; (5) taking pay advances not allowed by his official compensation package; and (6) receiving compensation time and vacation pay despite being a salaried employee.

Matthew Singer of the law firm Holland & Knight responded to the complaint on behalf of Mr. Horrell on May 2, 2018.³ Mr. Singer continued to act as Mr. Horrell's representative during the preliminary and regular investigation despite being legal counsel for COID.

Following the preliminary investigation stage, the preliminary review report dated May 10, 2018, by OGEIC Investigator Michael Thornicroft recommended that the Commission initiate a full investigation.⁴ During an executive session on June 29, 2018, the Commission adopted this recommendation and opened a full investigation into the allegations against Mr. Horrell.

Immediately thereafter, in July 2018, investigator Haley Weedn replaced Mr. Thornicroft as the staff investigator (following his departure from the agency). Ms. Weedn first contacted Mr. Horrell and Mr. Singer on November 8, 2018, to request information on eight specific issues.⁵ Mr. Singer provided Mr. Horrell's response on November 27, 2018.⁶ During the next week, Ms. Weedn exchanged a few follow-up e-mails with Mr. Singer and Mr. Horrell.⁷ These letters and email exchanges apparently constitute the entire body of written communication and documentation provided by Mr. Horrell and COID during the investigation.

² Ex. 1.

³ See Ex. 2.

⁴ See Ex. 3.

⁵ See Ex. 4.

⁶ See Ex. 5.

⁷ The e-mail addressed whether COID had a credit card policy during the relevant years and the repayment of airfare purchased on COID credit cards for Mr. Horrell's spouse. See Ex. 6.

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The final investigation report, dated December 5, 2018, recommended that the Commission make a preliminary finding that Mr. Horrell violated state ethics law in two respects, by (1) accepting overtime pay that was not provided for in his official compensation package, and (2) using the COID credit card to make personal purchases and failing to make timely repayment.⁸ On December 14, 2018, the Commission adopted the staff recommendation and made a preliminary finding that there was sufficient evidence that Mr. Horrell had violated Oregon ethics law.

Please note that the points and authorities provided herein would have been presented before the Commission's consideration of the case on December 14, 2018, but complainant was not able to obtain a copy of the documents collected in the investigation until after the deadline for submitting comment.⁹

2. Compelling Evidence Seems to Rebut Respondent's Claim That His Stay at Firesky Resort & Spa Was for Business Purposes.

During December 2015 to February 2016, respondent made four charges at the Firesky Resort & Spa, located in Scottsdale, Arizona, which totaled approximately \$1,950.¹⁰ The February 2016 credit card statement shows that these charges were for respondent's four-night stay at the resort and spa from January 27 to January 31, 2016. Ex. 8 at 6. In December 2015, respondent also purchased flights to Phoenix for himself and his wife, each costing \$468.20. Ex. 8 at 1.

⁸ See Ex. 7.

⁹ On November 19, 2018, Ms. Warren requested all records collected during the investigation, but OGECE was not able to provide an acknowledgement and request for payment until December 11, 2018, which was only three days before the Commission meeting. Even if Ms. Warren's counsel could have prepared a response in two days, it would not have been timely for consideration by the Commission. See OAR 199-0010(3)(v) (providing that a complainant may provide information to the Commission but that such comment must be received by the Director "no less than eight business days before any meeting of the Commission * * *").

¹⁰ See Ex. 8 (pages from credit card statements showing the following charges: December 12, 2015, for \$1,350.45 and \$295.22; January 31, 2016, for \$288.23; and February 1, 2016, for \$12.99). These pages were originally produced as part of the full statements enclosed with the complaint as Exhibits 8 and 9.

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In response to an inquiry by the OGEC investigator, respondent claimed that these charges were business expenses—specifically for the "Irrigation Leader conference in Phoenix, Firesky Resort."¹¹

Documents readily available online, however, call this explanation into serious doubt. An advertisement in the October 2015 edition of Irrigation Leader magazine shows that the 2016 conference was for only two days—January 27 and 28.¹² The 2016 Irrigation Leader conference calendar, published in the November/December 2015 edition of Irrigation Leader magazine, shows that there were no Irrigation Leader events from January 29-31, 2016.¹³

Equally important, the conference was not held at the Firesky Resort & Spa in Scottsdale, but at the Crowne Plaza Phoenix Airport.¹⁴ The conference organizers reserved a block of rooms at the Crowne Plaza for a special price of \$139, plus tax. Respondent actually purchased two nights at this hotel at the special rate on December 26, 2015.¹⁵ In-flight purchases and other expenses show that respondent flew to Phoenix on January 26, 2016, and did indeed check into the Crowne Plaza where the conference was being held.¹⁶

But on January 27, respondent checked out of the Crowne Plaza a day early, which is evidenced by the credit he received from the hotel for the second night he

¹¹ See Ex. 9 at 2 (pages from letter from Mr. Singer to Ms. Weedn dated November 27, 2018, addressing Ms. Weedn's questions on behalf of Mr. Horrell, as well as Exhibit 2 providing further explanation about the Firesky Resort & Spa charges).

¹² See Ex. 10 (advertisement for 2016 Irrigation Leader Operation and Management Workshop (Irrigation Leader (Oct. 2015, Vol. 6, Issue 9, at 2)); full publication available online at: https://issuu.com/waterstrategies/docs/il_oct_15, at 39.)

¹³ See Ex. 11 (2016 conference schedule (Irrigation Leader (Nov./Dec. 2015, Vol. 6, Issue 10, at 3)); full publication available online at: <http://irrigationleadermagazine.com/vol-6-iss-10/>, at 40).

¹⁴ See Ex. 10 (advertisement for 2016 Irrigation Leader Operation and Management Workshop (Irrigation Leader (Oct. 2015, Vol. 6, Issue 9, at 39-40)); full publication available online at: https://issuu.com/waterstrategies/docs/il_oct_15; Irrigation Leader (Nov./Dec. 2015, Vol. 6, Issue 10), available at: <http://irrigationleadermagazine.com/vol-6-iss-10/>).

¹⁵ See Ex. 8 at 4 (charge for Crowne Plaza Phoenix for \$303.13).

¹⁶ See Ex. 8 at 4, 6 (charges for Gogo Air, Barrio café in Phoenix, Alaska Air in-flight purchase, and Gringo Star Street Bar).

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did not use.¹⁷ The credit card statement then shows that respondent parked briefly at the Phoenix airport, where he presumably picked up his wife, who flew in that day.¹⁸

The credit card statement shows that Mr. and Mrs. Horrell checked into the Firesky Resort & Spa on January 27 and did not check out until January 31, when an additional charge of \$288.23 was added to the card. This is possibly for the extra night that respondent did not use at the Crowne Plaza. Although Mr. Horrell claims that this resort stay was for business purposes, there is no more than \$21 charged to the card for food and drink corresponding with the dates after the conference (which is significant, because meal expenses would be expected if he was traveling for work). *Id.*

Respondent did provide some documentation that he reimbursed COID for the cost of his wife's flight and \$450 for "an extra night after his business trip with Laura."¹⁹ But even with this limited reimbursement, respondent's stay at the resort was a substantial financial gain—and misuse of public money. A comparison of the business-related costs and the nonbusiness expenses show that respondent realized a gain of \$1,648 towards the cost of a personal vacation. Even if respondent could claim that another night at the Crowne Plaza following the conference and part of the rental car expense were justified, he still recognized a gain of over \$1,000.

<u>Expenses</u>	<u>Legitimate Expenses</u>	<u>Actual Expenses</u>	<u>Financial Gain</u>
Crowne Plaza v. Firesky Resort & Spa	\$303.13	\$1,933.90	\$1,630.77
Crowne Plaza Shuttle v. Rental Car	\$0.00	\$408.44	\$408.44
Fuel	\$0.00	\$29.08	\$29.08
Parking at Redmond Airport	\$30.00	\$60.00	\$30.00
Reimbursement by Respondent	\$0.00	-\$450.00	-\$450.00

¹⁷ See Ex. 8 at 6 (Crowne Plaza Phoenix credit for \$125.06).

¹⁸ See Ex. 8 at 6 (charge for "Sky Harbor Parking T2 Phoenix Az" for \$4).

¹⁹ See Ex. 9 at 7.

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Total Cost/Additional Cost	\$333.13	\$1,981.42	\$1,648.29
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As explained in detail below, respondent had the burden to explain this undocumented use of public money during the investigation and failed to do so. Accordingly, the Commission should make an additional preliminary finding that this use of money constitutes an ethics violation. At a minimum, the Commission should reopen the investigation and demand that respondent provide further evidence to show the claimed business purpose for these expenses.

3. Respondent Failed to Establish a Business Purpose for Numerous Other Undocumented Charges—Which Should Also Be Deemed Ethics Violations.

In addition to the Firesky Resort & Spa, there are numerous other expenses for which respondent did not even attempt to show a related business purpose. In fact, of the 24 credit card charges specifically identified in the complaint as suspicious, respondent provided a specific business purpose for only a few flights and couple of other expenses.²⁰ The other charges were either discussed in general terms (e.g., why golfing, baseball stadium, and lavish hotel charges were acceptable), or not at all. *Id.*

For instance, no written explanation or documentation was provided for—and the final investigation report did not even mention—a purported business reason for many of the most suspicious expenses that were highlighted in the complaint, such as purchases for hundreds of dollars in gift cards, trips to Napa and Sonoma—with numerous expenses for several hotels in Calistoga, limousine service, wineries, etc.—four purchases on a single day at Hotel Lucia, each for \$504.14, totaling more than \$2,000, membership in the Alaska Air Lounge for \$325 (specifically prohibited as a reimbursable expense in IRS regulations), and many golfing excursions. There are many other travel expenses within the statements that appear suspicious on their face, including trips to the Inn at Spanish Head in Lincoln City (many times), Lodge

²⁰ See Ex. 2 at 4 (discussion of Nordstrom charge for \$99 in letter from Mr. Singer to Ronald Bersin, OGE Executive Director); Ex. 5 at 2-3 (discussion of Firesky Resort & Spa and Darcelle's "team building" charges in letter from Mr. Singer to Ms. Weedn).

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Joseph/Wallowa Lake, San Diego, and a charge to Travelocity for \$729.54 (with no further detail).

All of these expenses, incurred by respondent and paid for by COID, are financial gain directly attributable to Mr. Horrell's position as a public official. Because the payment of these expenses by COID was not pursuant to an official compensation package nor in line with COID's reimbursement policies, each expense is a prohibited financial gain that violates ORS 244.040.

Unfortunately, the OGEC staff report failed to identify these expenses as violations because the report adopted several incorrect legal arguments and representations made by respondent and his counsel. Each of these is rebutted below.

a. The COID Board of Directors Has No Power to Excuse Mr. Horrell's Violations of Oregon Ethics Law—and Their "Approval" of the Expenses at Issue Is Irrelevant.

The primary statute at issue in this case is ORS 244.040, which states that a public official, such as respondent:

"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 * * * 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."
ORS 244.040(1).

This prohibition on financial gain does not apply to "an official compensation package as determined by the public body that the public official serves" or "[r]eimbursement of expenses." ORS 244.040(2)(a), (c).

There are very specific requirements for financial gain to be considered part of an official compensation package. An official compensation package must be wages or benefits that "**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." OAR 199-005-0035(3)²¹ (emphasis added). In other words, to be permitted compensation, the

²¹ OAR 199-005-0035(3), full text: "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',

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financial gain must be part of an official and formal (e.g., written and properly approved) compensation package that was in existence *before* the gain. A governing board has no authority to excuse an ethical violation by approving a gain as "compensation" in post-hoc fashion. Further, compensation under an existing *informal* (i.e., unwritten) policy is not permitted. See Public Official Guide at 11.²² Obviously, there is no basis for claiming that Mr. Horrell's use of public money for travel expenses qualifies as compensation (i.e., there is no written contract, official policy, or other formal writing that was in existence prior to the expenditures).

Likewise, there are specific requirements for a gain to be allowed as a reimbursement of expenses: (1) the expense "must have been incurred in the conduct of official duties on behalf of the public body[,]" and (2) the repayment of such an expense "must comply with any applicable laws and policies governing the eligibility of such repayment." OAR 199-005-0035(4).²³ If a purported reimbursement does not comply with either of these requirements, it is an unlawful gain. Mr. Horrell clearly did not follow COID policy (restated in his employment contract) or applicable law to qualify his travel and food expenses as allowable "reimbursement."

Conspicuously missing from the list of statutory exceptions to the prohibitions in ORS 224.040 is a category of financial gain not in compliance with the above definitions but approved by a governing board in post-hoc fashion. Yet, respondent repeatedly claims that he could not possibly have committed an ethics violation because his actions were approved by the COID board:

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."

²² "Some respondents to complaints that involve the use of a public body's resources will defend their use as being consistent with an informal longstanding practice. The financial benefit to a public official, from the use of a public body's resources, from what may be understood as an informal and longstanding practice does not meet the definition of part of an 'official compensation package.' This is because the practice has not been specifically approved by the public body in a formal manner."

²³ OAR 199-005-0035(4), full text: "As used in ORS 244.040(2)(c), 'reimbursement of expenses' means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.060." OAR 199-005-0035(3)-(4).

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- "The board is ultimately responsible for all payroll and expenditures."²⁴
- "To be clear, COID, through its board of directors, has authorized Mr. Horrell to incur business-related charges on a district-owned credit card[, take advances, and receive Comp Time]. * * * These things are all within the authority of the COID board. To the degree any of these items are considered compensation, they are part of Mr. Horrell's compensation package as determined by the public entity, and thus his receipt of these benefits is entirely lawful under ORS 244.040(2)(a)." Ex. 2 at 7.
- "The basic allegation of Mr. Liday's complaint is that Mr. Horrell has made unauthorized expenditures. This is false. Every expenditure and all payroll—every single penny—is presented to the board for its review and approval on a monthly basis. *Id.* at 2.
- "Because this is compensation authorized by the public entity, there is no conceivable violation of ORS 244.040. Again, all payroll is reviewed and approved by the board on a monthly basis." *Id.* at 3.

These statements/arguments are nonsequitur to the allegations in the complaint. Board approval is often required for the creation of an "official compensation package" or approval of expenses as part of, and in compliance with, applicable reimbursement policy. But such board approval is not at issue here, and the board is entirely powerless to permit financial gain outside the specifically allowed and narrowly defined "compensation package" and "reimbursement."

To the extent that respondent's repeated claims of board approval is an attempt to shift blame to the board for his violations, such an excuse is also irrelevant and a meritless argument. As recognized in the Commission's Guide for Public Officials:

"Public officials must know that they are held personally responsible for complying with the provisions in Oregon Government Ethics law. This means that each public official must make a personal judgment in deciding such matters as the use of official position for financial gain, what gifts are appropriate to accept, or when to disclose the nature of conflicts of interest. If a public official fails to comply with the operative statutes, a violation cannot be dismissed by placing the blame on the public official's

²⁴ See Ex. 2 at 1.

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government employer or the governing body represented by the public official."²⁵

This personal responsibility is echoed in COID's employee reimbursement policies: "All employees of the District are expected to spend District funds prudently. Both the person who incurs the expense and the person who approves reimbursement of the expense are responsible for ensuring maximum practical economy in the expenditure of funds."²⁶

Likewise, the Oregon Supreme Court has explicitly held that a public employee cannot rely on the advice or approval of an employer—or even the agency's legal counsel—because the Commission has been designated by the legislature as the exclusive arbiter and authority on matters of government ethics. *Davidson v. Oregon Government Ethics Comm.*, 300 Or 415, 423, 712 P2d 87, 93 (1985).

Mr. Horrell's attempted shift of responsibility to the board for the approval of disallowed financial gain and the noncompliance with applicable and formal COID reimbursement policy is especially unfounded in light of the fact that he is the *managing director* of COID, the top official, ultimately responsible for all its operations, and directly in control of the scope of board review and activity.

b. Respondent Had the Burden of Proof to Demonstrate Compliance With COID Policy for Undocumented Expenses.

Respondent's communications with OGEAC during the investigation take the position that the complainant or OGEAC was required to *disprove* the business nature of the expenses at issue in order to establish a violation of ethics law. Unfortunately, the OGEAC staff report adopts respondent's incorrect view.²⁷

But this position is a patent distortion of the applicable law on two counts. First, the prohibition in ORS 244.040(1) does not require that there was no relationship

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https://www.oregon.gov/OGEC/docs/Public_Official_Guide/2010%20Guide%20for%20Public%20Officials.pdf.

²⁶ See Ex. 7 at 12 (quoting COID Policy 11.4, Employee Business Expense Reimbursement, Section A, General Expectations).

²⁷ See Ex. 8 at 27.

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between the expense and official duties. Rather, the rule simply requires the showing of (1) a financial gain or avoidance of detriment, and (2) that the gain does not meet the *specific* exceptions in ORS 244.040(2) (e.g., qualifying reimbursement or official compensation).

In this matter, a violation was easily established by the evidence gathered during the investigation. The payment of respondent's expenses for travel and dining is clearly a financial gain. These payments did not qualify as being part of an official compensation package or reimbursement of expenses, as defined in OAR 199-005-0035(2)-(3). Thus, respondent appears to be guilty of violating ethical rules numerous times.

The question of whether there was no connection between the expenses and respondent's official duties—which is what Mr. Horrell urges should be the proper standard—only goes to the question of the number of violations and appropriate sanctions (e.g., whether the misconduct was simply failing to follow procedure or actually theft of public resources). See OAR 199-001-0014, 0015.

Even on this point, it is Mr. Horrell who has the burden of proof to show that there was a connection between his undocumented reimbursements and his work duties. ORS 183.450 ("The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position."); See also *McDowell v. Employment Dept.*, 348 Or 605, 610, 236 P3d 722, 726 (2010) ("The general rule for allocating the burden of proof in administrative cases is that the burden falls on the proponent of a fact or position, the party who would be unsuccessful if no evidence were introduced on either side.") (Quotation omitted.)

Yet respondent produced virtually *no* evidence about these matters, instead relying on naked representations by Mr. Singer—which are simply argument when not contained in a sworn and otherwise valid declaration. Mr. Horrell failed to produce even the most basic evidence to show a business connection, as well as the purported board review and approval of the expenses, such as:

- Conference materials;
- Meeting minutes, memos, or other official correspondence related to purported business trips;
- Travel documents and itineraries;

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- E-mails or texts with persons who were purportedly present at local meals regarding scheduling or follow-up on discussions;
- Invitations or other correspondence with affiliated groups regarding golfing and other entertainment;
- COID board minutes, packets, and evidence of mailing showing review and approval of expenses at issue.

Accordingly, all of the undocumented, noncompliant expenses should have been treated as individual violations of ethics law—at least until Mr. Horrell is able to come forward with evidence showing some business purpose that could render the expense only a violation of policy (which could then possibly be treated as aggregate violations under OAR 199-001-0014 and 0015).

c. Noncompliance With COID Policy for the Method of Reimbursement of Expenses Did Not Negate the Other Requirements of COID Policy.

The final investigation report adopts the strange argument by respondent that because he and the COID board so blatantly disregarded COID's official reimbursement policies—which were also restated in his employment contract—the policies ceased to exist and thus COID had no policies on reimbursement or expenses.

This should be rejected outright for the same reason that informal policies are not an exception to ORS 244.040(1). If an informal practice cannot create a new policy, then the nonpolicy practice cannot displace the existing policy, either.

But even if COID's limited policy change—to pay expenses through a company credit card rather than through reimbursement checks—was valid, respondent's communications and the final investigation report fail to explain how that logistical change nullified all the other substantive reimbursement policies—e.g., requiring reasonableness, maximum economy, documentation, etc.²⁸

4. The Commission Should Make Preliminary Findings That There Is Sufficient Evidence That Respondent Committed Additional Ethical Violations.

²⁸ See Ex. 7 at 12 (quoting applicable policies).

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The Commission has the statutory authority to make additional preliminary findings at this time. Following the investigatory phase, the Commission may take several actions, including continuation of the investigation, moving to a

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contested-case proceeding, or entering into negotiated settlement. ORS 244.260(d).²⁹ Regardless of the action taken after the investigation, there is no requirement that the Commission conclusively determine (once and for all) which ethics violations will continue to be considered. If the Commission finds that there is sufficient evidence to make a preliminary finding of at least one violation, the Commission has broad authority to direct the manner of subsequent proceeding.³⁰

And even if the Commission was required to identify all violations subject to further proceedings, it has broad authority to amend those preliminary findings. ORS 244.260(d) expressly provides that the list of post-investigation alternatives is not exclusive ("[t]he action *may* include"), which is further reinforced by the catch-all option under subsection (E), expressly stating that the Commission may take any other action that is justified. Further, an amendment of preliminary findings is not subject to the 180-day limit in ORS 244.260(6)(a), which applies only to the investigatory phase. In fact, if the Commission determines that its process or earlier order was in error, it must correct that issue regardless of when the error is discovered. *See Fadeley v. Ethics Comm.*, 30 Or App 795, 801-02, 568 P2d 687 (1977) (reversing order of ethics commission dismissing complaint because it did not follow administrative rules concerning preparation of findings and mandatory notice to complainant).

Accordingly, the Commission should amend or make new preliminary findings of additional ethics violations by respondent, which should be included within the scope of the contested case or settlement in this matter. This is warranted because the information contained in the complaint and further confirmed in the investigation shows that respondent obtained financial gain in the form of paid meals and travel that did not qualify as part of an official compensation package, and did not qualify as reimbursements under COID policy.

²⁹ "At the end of the Investigatory Phase, the commission shall take action by order. The action may include:

"(A) Dismissal, with or without comment;

"(B) Continuation of the investigation for a period not to exceed 30 days for the purpose of additional fact-finding;

"(C) Moving to a contested case proceeding;

"(D) Entering into a negotiated settlement; or

"(E) Taking other appropriate action if justified by the findings."

³⁰ For instance—unlike the preliminary review phase (ORS 244.260(4)(a)) and the investigatory phase (ORS 244.260(6)(a))—there is no statutory time limit on when the post-investigation action(s) must occur. This provides both the Commission and respondent with time to negotiate a settlement before potentially moving on to a contested case.

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Further, the new preliminary findings should also include the pay advances as ethical violations by respondent. The final investigation report correctly concluded that Mr. Horrell's avoidance of interest costs because of delayed reimbursement of personal expenses was an improper financial gain. The same logic applies to the factual findings that "Mr. Horrell accepted pay advances for personal reasons 11 times during 2015-2016" and "COID did not maintain any policies governing such advances for personal reasons (only as to business-related purposes) at the time."³¹

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³¹ See Ex. 7 at 2.

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6. Comment on Penalty for Current Violations.

Contrary to Mr. Horrell's comments during the December 14, 2018, hearing on this matter, we do not believe that COID or Mr. Horrell has acted in good faith responding to these allegations. We are at a loss to understand Mr. Horrell's comments that COID was taking the allegations very seriously. All written communications by Mr. Singer displayed just the opposite—attacking Ms. Warren and her counsel for making a complaint³³, and characterizing the subject matter as baseless, and even reckless:

- "Ms. Warren is upset about COID's conservation projects because she enjoys having a water feature behind her house. She filed a frivolous lawsuit in federal court, [see Exhibit A] has made baseless accusations in county proceedings, **and now has filed a misguided, erroneous, and unfair complaint with your office.** We trust you will take this context into account as you evaluate this matter."³⁴
- **"Mr. Liday's letter is a reckless, politically-motivated attack on a public servant. The assertions are based on erroneous conclusions, conspiracy thinking, and mistaken impressions."**
Ex. 2 at 2.

³³ Unfortunately, this is standard practice for COID. Under the direction of Mr. Horrell, as guided by Mr. Singer, COID has paid hundreds of thousands of dollars to marketing firms, branding companies, and attorneys concocting and carrying out a campaign to gain public support and public money in order to install more than ten hydroelectric power plants on its canals. As part of its misinformation campaign, COID derisively attacks all opponents (e.g., see quotes above) and falsely claims that these individuals only care about protection of their "water features" at the cost of "water conservation" that COID is trying to advance. Nothing could be further from the truth. Unbiased and publicly funded studies show that COID is the most wasteful water district in Oregon—using twice the water as its neighbor district, which produces substantially more agricultural products—and that the piping of its canals will have virtually no impact on the Deschutes River because of the unique and total hydraulic connection between the river and the aquifer below the canals. If anything, the piping could result in greater seasonal distortion of river flow.

³⁴ See Ex. 2 at 1.

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- **"Mr. Liday makes a number of reckless accusations about legal violations by Mr. Horrell**, claiming, for example, that Mr. Horrell violated federal and state rules for reimbursement of work expenses. Mr. Liday fails to explain these allegations, and they appear to be baseless." *Id.* at 7.
- **"We hope that you will recognize this complaint for what it is: an improper, politically motivated attack on a public servant.** Mr. Liday's conspiracy theories and misperceptions aside, there is nothing nefarious in the routine business expenses incurred at COID." *Id.*

The Commission, thankfully, seemed to disagree with Mr. Singer's characterizations, and we agree with the Commission chair's statements made during the December meeting about Mr. Horrell's and COID's use of public funds:

"I am rather shocked at it actually. * * this is public money * * * but it does not seem to be treated as public money. * * * It seems that the past practices of your district are to treat public funds as sort of a personal account. I'm frankly shocked that public funds are used to go to Darcelle shows, to go to all sorts of activities that maybe in a private business for profit that's up to the business to decide but it's seems to me that this is used as a personal credit card. * * * I think something should have said to you "This is not the right use of public funds." Especially all of the ways that you did benefit that were not provided for in your contract. I've never heard of a salaried employee receiving overtime. * * * There are just so many instances here that the public's money was just played fast and loose with and you don't get to use public money to wine and dine people. That's not the purpose for public funds * * *."

We also agree with the Commission Chair's response to Mr. Horrell's excuse that "all of those charges are approved by my board on a monthly basis":

"I hear that and that's what's shocking to me. I think that you all should've known that that's not the proper use of public funds and it's not in keeping with best practices or even regular practices among public, public agencies. * * * I think it's a real lesson in how public funds should not be spent."

Oregon Government Ethics Commission
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Contrary to Mr. Singer's assessment, it is Ms. Warren that is the true public servant. She has invested substantial time and financial resources advocating for the protection of historic resources in the state of Oregon (including the century-old canals), and for public involvement in COID actions that will greatly impact the local community (e.g., impact on the flow of the Deschutes River, destruction of wetlands, loss of water for wildlife, lowering of well tables, etc.).³⁵ Ms. Warren's primary motivation is for the public good, not to protect a "water feature."

Further evidence of COID and respondent's lack of good faith is their overstatement of the investigation and corrective action they took in response to the complaint. Mr. Singer wrote in his second letter on behalf of Mr. Horrell:

"I requested that the forensic auditor examine whether any other employees, including the Manager, had engaged in any impropriety. The auditor concluded and advised that the Finance Director had acted alone. Attached as Exhibit 1 is the auditor's investigative report."³⁶

But in fact, the scope of the audit by the accounting firm Geffen Mesher was narrow and did not examine any financial activities outside of the allegations against Danielle Phillips. The letter from the firm clearly stated:

"Our procedures **focused on** possible misappropriations of Central Oregon Irrigation District ("COID" or "the District") assets **by Ms. Danielle Phillips** ("Subject" or "Ms. Phillips"). This investigation **was predicated upon your identification** of possible misuse of COID issued credit cards and unauthorized payroll related expenditures for personal gain."³⁷ (Emphasis added.)

* * *

³⁵ See Ex. 12, letter request for audit to Oregon Secretary of State, with list of Ms. Warren's legal and political activities in support of historic protection. This investment would be nonsensical if Ms. Warren was concerned only about a "water feature."

³⁶ Ex. 5 at 1.

³⁷ Ex. 5, Geffen Mesher letter to COID Board of Directors re Danielle Phillips, "Alleged Asset Misappropriations Claim #T1811486," at 1.

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"Following is the background, as we understand it, **surrounding the allegations against Phillips:**" Ex. 5, Geffen Mesher letter at 2 (emphasis added).

* * *

"There is no evidence that any other employees of the District knew, knowingly participated or benefited **from the activities of Ms. Phillips.** *Id.* at 4 (emphasis added).

Mr. Horrell and Mr. Singer also seemed to treat the embezzlement as an opportunity to blame the deceased Ms. Phillips for their lack of production of COID documents³⁸—which is a hollow claim when Mr. Singer and Mr. Horrell had declared many months earlier to Ms. Warren and me that they had produced all germane records. Further, most of the "missing" documentation could have been produced from Mr. Horrell's own personal e-mail and financial records.

Respondent's statements and actions—attacking Ms. Warren, shifting blame to the COID board, attributing all missing documents to Ms. Phillips, failing to even attempt to produce independent verification of expenses, and apparently misleading OGE in regard to the Firesky Resort & Spa expenditures—demonstrate anything but remorse or taking responsibility. Hopefully, the Commission will consider these actions when considering a potential penalty for or settlement with Mr. Horrell.

7. Conclusion.

We greatly appreciate your valuable time in reviewing this lengthy correspondence.

In sum, we request that (1) the Commission make additional preliminary findings that enough evidence exists for pursuing additional violations by Mr. Horrell related to his undocumented expenses on the COID credit card and pay advances not allowed under COID policies; (2) the Commission open a new preliminary investigation

³⁸ "In the course of the forensic audit, it became clear that the Finance Director destroyed a substantial number of files containing financial records. These include past expense receipts, accounts payable, cash book, and credit card statements. * * * [T]here are gaps in the records as a result of the actions of the now-deceased Finance Director. * * * We believe this receipt may have been destroyed when the Finance Director destroyed files earlier this year, and in any event are not able to locate any further documentation." Ex. 5 at 2-3.

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into Mr. Horrell's use of COID's attorney for representation in this matter, and his potential misrepresentations during the investigation; and (3) consider these issues, and the other actions showing Mr. Horrell's lack of accountability or remorse, in deciding the appropriate punishment for the current findings of violations.

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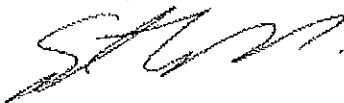
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If you have any questions concerning the legal or factual issues above,
please do not hesitate to contact me for assistance.

Very truly yours,



Steven G. Liday

cc (via e-mail):

Commissioners (copy included in bound packet)
Ms. Hayley Weedn (via e-mail)
Ms. Aleta Warren (via e-mail)

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List of Enclosures

- Exhibit 1: April 13, 2018, letter from Mr. Liday to OGEC re complaint against Mr. Horrell (without enclosures)
- Exhibit 2: May 2, 2018, letter from Mr. Singer to OGEC responding to complaint (without enclosures)
- Exhibit 3: May 10, 2018, Preliminary Review Report
- Exhibit 4: November 8, 2018, e-mail from Ms. Weedn to Mr. Horrell and Mr. Singer
- Exhibit 5: November 27, 2018, letter from Mr. Singer to Ms. Weedn (with enclosures)
- Exhibit 6: November and December 2018 e-mails between Ms. Weedn and Mr. Horrell and Mr. Singer
- Exhibit 7: December 5, 2018, OGEC Investigation Report and Recommendation
- Exhibit 8: Credit card statements for December 2015, January 2016, and February 2016
- Exhibit 9: Excerpts from November 27, 2018, letter to Ms. Weedn regarding Firesky Resort & Spa charges
- Exhibit 10: Irrigation Leader magazine, October 2015, Volume 6, Issue 9
- Exhibit 11: Irrigation Leader magazine, November/December 2015, Volume 6, Issue 10
- Exhibit 12: April 13, 2018, letter from Mr. Liday to Oregon Secretary of State re audit request (without enclosures)

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MEMORANDUM

DATE: May 16, 2019

TO: Ronald A. Bersin
Executive Director

FROM: Susan Myers *SM*
Investigator

SUBJECT: Respondent: Darrin Phillips
Case No. 19-091ESM

The purpose of this memorandum is to request that the investigative phase of the case against Darrin Phillips, Case No. 19-091ESM, be suspended, as allowed by statute.

The preliminary review in this matter was opened by the Commission on its own motion on April 19, 2019, based on a news report that Mr. Phillips had been charged with 25 criminal counts, including felony counts for first degree theft. The preliminary review report on this matter is being presented to the Commission at its meeting on May 31, 2019, and the Commission is expected to vote on whether or not to initiate an investigation of the matter.

ORS 244.260(6)(c)(A) provides that the time limit imposed on the Commission's investigation may be suspended if there is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the Commission and the Commission determines that it cannot adequately complete its investigation until the pending criminal investigation is complete.

Materials upon which the preliminary review was initiated indicate that there is a pending criminal matter against Darrin Phillips in the Marion County Circuit Court. The conduct at issue in the Commission's preliminary review is the same conduct that forms part of the basis for the pending criminal prosecution.

Darrin Phillips is represented by attorney Christine Mascal. Ms. Mascal, in a 5/7/19 e-mail, has requested that the Commission's investigation be suspended pending resolution of the current criminal case against Mr. Phillips pertaining to the same circumstances.

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Trainers' Report May 31, 2019

This report covers the time period of April 22, 2019, through May 31, 2019.

Completion of training:

- City of Gaston – ORS 244 (Gaston)
- Oregon Health Authority – ORS 244 (Salem)
- City of West Linn – ORS 244 & 192 (West Linn)
- Oregon Savings Growth Plan Advisory Council – ORS 244 (Salem)
- Oregon Health Authority – ORS 244 (Salem)

Upcoming Trainings:

<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
6/4/2019	9:00 – 11:00 AM	Oregon Real Estate Agency (ORS 244)	Oregon Real Estate Agency 530 Center Street NE, Suite 100 Salem, Oregon 97301
6/18/2019	9:00 – 10:30 AM 2:00 – 3:30 PM	Jefferson County Public Health – Hosted (ORS 244)	City of Madras City Hall 125 SW E Street Madras, Oregon 97741
6/20/2019	11:00 – 12:00 PM	Oregon Health Authority New Employee Orientation (ORS 244)	Human Services Building 500 Summer St. NE Room 166 Salem, Oregon 97301
7/16/2019	1:30 – 3:00 PM	Multnomah County Drainage District (ORS 244)	Multnomah County Drainage Dist. 1880 NE Elrod Drive Portland, Oregon 97211
7/17/2019	11:00 – 12:00 PM	Oregon Health Authority New Employee Orientation (ORS 244)	Human Services Building 500 Summer St. NE Room 166 Salem, Oregon 97301

7/25/2019	1:30 – 3:30 PM	Portland Metro (ORS 244)	Portland Metro Headquarters 600 NE Grand Avenue, Room 401 Portland, Oregon
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Upcoming Conferences:

7/25/2019	TBD	Oregon Association of School Business Officials 2019 Annual Summer Conference (ORS 244)	Riverhouse Conference Center 3075 N Hwy 97 Room TBD Bend, OR 97703
8/1/2019	TBD	Oregon County Counsel Association (ORS 244, 192.660)	Mount Bachelor Village Resort 19717 Mt. Bachelor Dr. Bend, OR 97702

Training Staff:

Tammy Hedrick
Monica Walker

503-378-6802
503-378-2011

tammy.r.hedrick@oregon.gov
monica.walker@oregon.gov



June 2019

Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
3	4	5	6	7
	<div style="border: 1px solid black; padding: 5px; width: fit-content;"> Email ogec.training@oregon.gov to register for a webinar. </div>			
10	11	12	13	14
	U/O & Conflicts of Interest 10:00 – 11:00 AM		Gifts 2:00 – 3:00 PM	
17	18	19	20	21
		Executive Session 2:00 – 3:00 AM		
24	25	26	27	28
	New Employees: you're a public official, now what! 2:00 – 3:00 AM		Lobby Law 10:00 – 11:00 AM	
July 1	2	3	4	5

Executive Director's Report

May 31, 2019

- Budget
 - 2017-19 biennial budget
 - Currently projected with a \$164,506.65 surplus.
 - Expenditures through March, \$108,034.99 spent per month; \$145,504.06 average to spend per month.
 - General Fund Revenues have exceeded predictions, forecasted; \$30,000 for biennium; moneys collected to date, \$56,175.75.
 - Using current surplus budget to buy computers, software, paper and letterhead, to reduce costs in the 2019-21 biennium.
 - 2019-21 biennial budget
 - HB 5020 budget bill signed by Governor.
- 2019 Legislative Bills
 - HB 2096 (Attorney Fees), Governor signed 5/14/2019.
 - Continue working on 2277 in House Rules.
 - Several other bills have effect on agency (see handout).
- SEI
 - Continue to work previous year's non-filers to submit SEIs due.
 - SEI not filed as of 5/21/2019 = 21.
- Other
 - Susan and Tammy honored for their service to the State by Governor Brown.
 - Presented to NASCIO on May 15, 2019 for Case Management System consideration of award.
 - Lobbyist filings due for first quarter of 2019, 2 Clients, 4 Lobbyists.



OREGON GOVERNMENT ETHICS COMMISSION
Fund 0050 AGENCY REVENUE TO GENERAL FUND
For the Month of APRIL 2019

Agv Obj	Agv Obj Title	Monthly Activity	Biennium to Date		Monthly Avg to		spend
			Activity	Financial Plan	Unobligated Plan	Date	
1810	PENALTY GENERAL FUND REVENUE - GF	2,285.00	58,460.75	30,000.00	-28,460.75	2,657.31	-14,230.38
		2,285.00	58,460.75	30,000.00	-28,460.75	2,657.31	-14,230.38

SUMMARY TOTALS

REVENUES	REVENUE	Month Activity	Biennium Activity
	Total	2,285.00	58,460.75



OREGON GOVERNMENT ETHICS COMMISSION
Fund 4150 OF LIMIT - ADMIN
For the Month of APRIL 2019

REVENUES

Agv Obj	Agv Obj Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg to Date	Date	Monthly Avg to	Monthly Avg to	spend
0401	LOCAL GOVT ASSESSMENT CHARGES	0.00	1,257,188.79	1,262,477.00	5,288.21	57,144.95		2,644.10		
0402	AGENCY GOVT ASSESSMENT CHARGES	0.00	1,262,472.34	1,262,477.00	4.66	57,385.11		2.33		
1800	OTHER REVENUE	0.00	307.25	2,000.00	1,692.75	13.97		846.38		
1810	PENALTY GENERAL FUND REVENUE - GF	0.00	0.00	0.00	0.00	0.00		0.00		
		0.00	2,519,968.38	2,526,954.00	6,985.62	114,544.02		3,492.81		

TRANSFERS OUT

Agv Obj	Agv Obj Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg to Date	Date	Monthly Avg to	Monthly Avg to	spend
2010	TRANSFER OUT TO AGENCY 999	0.00	10,000.00	0.00	-10,000.00	454.55		-5,000.00		
		0.00	10,000.00	0.00	-10,000.00	454.55		-5,000.00		

PERSONAL SERVICES

Agv Obj	Agv Obj Title	Monthly Activity	Biennium to Date	Financial Plan	Unobligated Plan	Monthly Avg to Date	Date	Monthly Avg to	Monthly Avg to	spend
3111	REGULAR EMPLOYEES	49,966.53	984,302.18	1,081,008.00	96,705.82	44,741.01		48,352.91		
3120	BOARD MEMBER STIPENDS	150.00	2,760.00	0.00	-2,760.00	125.45		-1,380.00		
3121	TEMPORARY EMPLOYEES	0.00	0.00	466.00	466.00	0.00		233.00		
3194	O/CLAS, LEADWORK, SP QUAL	0.00	1,514.98	0.00	-1,514.98	68.86		-757.49		
3210	PUBLIC EMPLOYEES' RETIREMENT	7,001.90	135,779.27	202,950.00	67,170.73	6,171.79		33,585.37		
3212	PENSION BOND ASSESSMENT	2,960.06	59,049.14	61,151.00	2,101.86	2,684.05		1,050.93		
3215	PERS CONTRIBUTION - RHIA	227.96	4,499.82	0.00	-4,499.82	204.54		-2,249.91		
3216	PERS CONTRIBUTION - RHIA	217.55	4,271.62	0.00	-4,271.62	194.16		-2,135.81		
3217	PERS CONTRIBUTION - PICK-UP	0.00	48,946.76	0.00	-48,946.76	2,224.85		-24,473.38		
3221	SOCIAL SECURITY TAXES	3,880.88	76,403.83	82,741.00	6,337.17	3,472.90		3,168.59		
3241	WORKERS' COMPENSATION	16.67	373.10	621.00	247.90	16.96		123.95		
3262	SEBB HEALTH CARE CASH	232.15	5,105.60	0.00	-5,105.60	232.07		-2,552.80		
3263	MEDICAL, DENTAL, LIFE INSURANCE	11,248.99	206,700.44	300,024.00	93,323.56	9,395.47		46,661.78		
3281	MASS TRANSIT TAX	302.09	5,961.92	6,490.00	528.08	271.00		264.04		
3291	EMPLOYMENT RELATIONS BOARD	17.12	357.76	456.00	98.24	16.26		49.12		
		76,221.90	1,536,026.42	1,735,907.00	199,880.58	69,819.38		99,940.29		

SERVICES and SUPPLIES

<u>Agv Obj</u>	<u>Agv Obj Title</u>	<u>Monthly Activity</u>	<u>Activity</u>	<u>Financial Plan</u>	<u>Unobligated Plan</u>	<u>Monthly Avg to Date</u>	<u>Date</u>	<u>Monthly Avg to</u>	<u>Monthly Avg to</u>
								<u>spend</u>	
4101	INSTATE MEALS WITH OVERNIGHT STAY	0.00	1,010.75	19,004.00	17,993.25	45.94	8,996.63		
4106	INSTATE LODGING AND TAX	0.00	1,648.91	0.00	-1,648.91	74.95	-824.46		
4108	INSTATE GROUND TRANSPORTATION	378.35	3,788.20	0.00	-3,788.20	172.19	-1,894.10		
4113	INSTATE MILEAGE REIMBURSMT-	385.70	7,189.14	0.00	-7,189.14	326.78	-3,594.57		
4129	INSTATE MILEAGE REIMBURSEMENT-FULL	0.00	19.84	0.00	-19.84	0.90	-9.92		
4200	OFFICE SUPPLIES	508.25	3,410.12	21,557.00	18,146.88	155.01	9,073.44		
4205	SPOTS DEFAULT	0.00	0.00	0.00	0.00	0.00	0.00		
4206	CATERING SERVICES	184.85	2,695.29	0.00	-2,695.29	122.51	-1,347.65		
4250	OFFICE SERVICES	0.00	313.29	0.00	-313.29	14.24	-156.65		
4251	POSTAGE	66.40	926.60	0.00	-926.60	42.12	-463.30		
4252	MAIL SERVICES	186.75	2,192.17	0.00	-2,192.17	99.64	-1,096.09		
4302	RENTAL OF OFFICE EQUIPMENT	215.64	4,141.58	0.00	-4,141.58	188.25	-2,070.79		
4352	SUBSCRIPTIONS AND PUBLICATIONS	0.00	0.00	450.00	450.00	0.00	225.00		
4365	COMPUTER TECHNOLOGY PC	2,336.44	10,952.44	0.00	-10,952.44	497.84	-5,476.22		
4366	COMPUTER TECHNOLOGY PC	500.00	2,750.00	0.00	-2,750.00	125.00	-1,375.00		
4367	COMPUTER TECHNOLOGY PC SUPPORT	71.28	473.84	0.00	-473.84	21.54	-236.92		
4372	COMPUTER TECHNOLOGY PERIPHERAL	0.00	667.69	0.00	-667.69	30.35	-333.85		
4375	COMPUTER TECHNOLOGY COMPUTER	79.31	31,456.87	98,254.00	66,797.13	1,429.86	33,398.57		
4402	PUBLISH_PRINT & PHOTO SRVS	0.00	480.02	1,023.00	542.98	21.82	271.49		
4406	PROF DEV INSTATE TUITION/	0.00	2,324.00	7,080.00	4,756.00	105.64	2,378.00		
4430	EMPLOYEE RECRUIT, WELLNESS &	0.00	199.99	0.00	-199.99	9.09	-100.00		
4433	PROF DEV INSTATE LODGING	104.15	104.15	0.00	-104.15	4.73	-52.08		
4439	PROF DEV INSTATE GROUND	4.00	4.00	0.00	-4.00	0.18	-2.00		
4445	EMPLOYEE RECRUITMENT GROUND	0.00	0.00	2,484.00	2,484.00	0.00	1,242.00		
4531	TELECOM/VOICE USAGE	389.13	7,976.80	18,723.00	10,746.20	362.58	5,373.10		
4534	TELECOM/VOICE EQUIPMENT<\$5K	45.68	45.68	0.00	-45.68	2.08	-22.84		
4535	TELECOM/NETWORK SERVICES	788.86	5,858.21	0.00	-5,858.21	266.28	-2,929.11		
4614	PROFESSIONAL SVS APPLICATION MODIFY	0.00	70.00	0.00	-70.00	3.18	-36.00		
4615	PROFESSIONAL SERVICES APPLICATION	7,350.00	271,198.00	310,552.00	39,354.00	12,327.18	19,677.00		
4977	INDIVIDUAL REIMB-MTG MEALS/	0.00	85.75	0.00	-85.75	3.90	-42.88		
5000	PROFESSIONAL SERVICES NON-IT	0.00	11,304.10	9,469.00	-1,835.10	513.82	-917.55		
5003	EMPLOYEE ASSISTANCE PROGRAM	0.00	224.64	0.00	-224.64	10.21	-112.32		
5005	HEARINGS OFFICER PANEL/ADMIN	65.49	1,006.83	0.00	-1,006.83	45.77	-503.42		
5050	ATTORNEY GENERAL LEGAL FEES	22,924.50	183,544.21	161,995.00	-21,549.21	8,342.92	-10,774.61		
5101	DAS-EGS-RISK ASSESSMENT	0.00	3,432.00	0.00	-3,432.00	156.00	-1,716.00		
5105	CENTRAL GOVERNMENT SERVICE	0.00	9,120.00	52,557.00	43,437.00	414.55	21,718.50		
5106	OREGON STATE LIBRARY ASSESSMENT	0.00	1,222.00	0.00	-1,222.00	55.55	-611.00		
5107	STATE TREASURERS CHARGES	10.00	232.85	0.00	-232.85	10.58	-116.43		
5108	SECRETARY OF STATE CHARGES	294.00	5,715.32	0.00	-5,715.32	259.79	-2,857.66		
5112	DAS-CHRO-ASSESSMENT	0.00	7,721.00	0.00	-7,721.00	350.95	-3,860.50		
5113	DAS-COO-ASSESSMENT	0.00	1,667.00	0.00	-1,667.00	75.77	-833.50		

Agy Obj	Agy Obj Title	Monthly Activity		Financial Plan		Monthly Avg to		Monthly Avg to	
		Activity	Activity	Unobligated Plan	Date	spend	Monthly Avg to	Monthly Avg to	
5114	DAS-CFO-ASSESSMENT	0.00	5,000.00	0.00	227.27	-2,500.00			
5115	DAS-OSCIO-ASSESSMENT	0.00	11,710.00	0.00	532.27	-5,855.00			
5116	DAS-EAM-ASSESSMENT	0.00	149.00	0.00	6.77	-74.50			
5117	DAS-EGS-PROCUREMENT ASSESSMENT	0.00	421.00	0.00	19.14	-210.50			
5118	DAS-STATE DATA CENTER-ASSESSMENT	0.00	4,444.00	0.00	202.00	-2,222.00			
5119	COBID - CERT OFC BUS INCLUSION/	0.00	445.00	0.00	20.23	-222.50			
5122	STATE OF OREGON LAW LIBRARY	0.00	567.00	0.00	25.77	-283.50			
5200	OTHER SERVICES	0.00	80.00	0.00	3.64	-40.00			
5204	PRIZES & AWARDS	0.00	268.48	0.00	12.20	-134.24			
5230	DAS-EGS-PAYROLL SERVICES AND	482.61	3,300.83	0.00	150.04	-1,650.42			
5232	DAS-EGS-FINANCIAL BUSINESS SYS	0.00	1,574.33	0.00	71.56	-787.17			
5234	DAS-EGS-SFS-SHARED ACCOUNTING	0.00	152,218.00	164,091.00	6,919.00	5,936.50			
5235	DAS-EGS-SHUTTLE MAIL	738.09	5,166.63	0.00	234.85	-2,583.32			
5236	DAS-EHRS-CLIENT SERVICES	0.00	2,387.00	0.00	108.50	-1,193.50			
5300	OTHER SUPPLIES	0.00	0.00	0.00	0.00	0.00			
5400	FACILITIES RENT	3,652.77	75,076.25	94,494.00	3,412.56	9,708.88			
5800	AGENCY PROGRAM RELATED SERVICES	0.00	20.25	0.00	0.92	-10.13			
5901	OFFICE FURNITURE & NON-IT	0.00	691.50	7,607.00	314.3	3,457.75			
		41,762.26	850,692.55	969,340.00	118,647.45	38,667.84	59,323.72		

SUMMARY TOTALS

	REVENUES	EXPENDITURES	TRANSFERS OUT	Total
REVENUE	0.00			
PERSONAL SERVICES	76,221.90			
SERVICES AND SUPPLIES	41,762.26			
TRANSFER OUT			117,984.16	
Total	117,984.16		0.00	10,000.00
Total	10,000.00		10,000.00	

