



Oregon

Kate Brown, Governor

Government Ethics Commission

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via email and USPS

Kurt Tackman
Workforce Investment Division
WorkSource Oregon – CCWD/HEC
255 Capitol St NE, Third Floor
Salem, OR 97310

Dear Mr. Tackman,

Thank you for contacting the Oregon Government Ethics Commission (OGEC). Your letter asked whether there would be a conflict of interest for members of Workforce Boards who also hold other positions as elected officials or on the boards of other public or private entities. 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 to the Oregon Government Ethics Commission:

Under the federal Workforce Innovation and Opportunity Act and ORS 660.300-364, local Workforce Boards receive and oversee state and federal funds for workforce development. City and county governments form consortia to appoint Workforce Boards, account for funds, and approve plans, budgets, and financial decisions.

There are nine Workforce boards in Oregon. These boards are composed of unpaid members who are appointed by local elected officials. Some of the board members are themselves elected officials. The Workforce Boards hold competitive procurements to choose local service providers.

The questions you asked the OGEC are:

1. If an Oregon local elected official (LEO) sits on the Workforce Board or one of its committees and also sits on the board of a public or nonprofit entity that is competing for workforce funding, must that LEO declare a conflict of interest and refrain from participating in the procurement process?



2. If an Oregon local elected official sits on the Workforce Board or any of its committees, panels, boards, etc., and also sits on the board of a public or private entity that has been conditionally awarded a contract by the Workforce Board, must that LEO declare a conflict of interest and refrain from participating in review and approval of that contract award by the committee, panel, board, etc.?

Analysis:

Who is a Public Official?

Under Oregon Government Ethics law, any person who serves the State of Oregon, any of its subdivisions, or any other public body as an elected official, appointed official, employee or agent is a public official, regardless of whether the person is compensated for the services. ORS 244.020(15) (2015).

Among other entities, public bodies include such special government bodies as intergovernmental organizations and entities created by statute, ordinance, or resolution that is not a part of state government or local government. See ORS 174.108 and ORS 174.117. It appears that the Workforce Boards are public bodies for the purposes of Oregon Government Ethics law.

Because the Workforce Boards are public bodies created under the Workforce Innovation and Opportunity Act and ORS 660.300-364, any person sitting on a Workforce Board as an appointed member or working for a Board is a public official under Oregon ethics law. Each public official must comply with the conflict of interest provisions of ORS Chapter 244. This is true whether or not the person is an elected official in another capacity.

When Does a Public Official have a Conflict of Interest?

The mere fact that a public official holds more than one role does not in itself create a conflict of interest. A public official has a potential or an actual conflict of interest that must be declared when the public official is called upon to take an action or make a decision or recommendation in their capacity as a public official, if the effect of that action, decision or recommendation could or would be to the private pecuniary interest of the public official, the public official's relative, or a business with which the public official or the public official's relative is associated. ORS 244.020(1),(15).

In the context of the Workforce Boards, conflicts of interest are likely to arise when a member of a Workforce Board participates in the procurement process if the outcome of the procurement process could affect his or her personal financial interest, that of a relative, or that of a business with which the board member or a relative are associated. Conflicts of interest are also likely to arise when a member of a Workforce Board participates in reviewing or approving a contract, if the contract being considered is one

that could or would create a financial benefit for the public official, a relative, or a business with which the board member or a relative is associated. For example, the funding being awarded may directly benefit a public official or a relative (e.g. by funding a salary) or the entity that is seeking the funding or contract may be a business with which the member of the Workforce Board or a relative is associated.

A. What is a Business with which a Public Official is Associated?

ORS 244.020(3) defines a business with which a person is associated. It includes:

- (a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
- (b) Any publicly held corporation in which the person or the person's 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 calendar year;
- (c) Any publicly held corporation of which the person or the person's relative is a director or officer; or
- (d) For public officials required to file a statement of economic interest under ORS 244.050, any business listed as a source of income as required under ORS 244.060(3).

ORS 244.020(2) specifically excludes from the definition of business any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code, if the public official or relative of the public official is associated with that entity only as a member or board director or in another unpaid capacity. A non-profit for which a public official or a relative works in a compensated position is a business with which the public official or the relative is associated; actions, decisions, or recommendations by the public official in his or her official capacity that might affect the financial interest of that non-profit would constitute a conflict of interest under Oregon Government Ethics law.

A public body which a public official serves as an elected or appointed official or as an employee is not a business with which a public official is associated. (Note that a Workforce Board member may still have a conflict of interest based on a personal pecuniary benefit or that of a relative if, for example, they are called upon to make a decision about a project that would fund their relative's salary or bonus.)

B. Types of Conflicts of Interest

Absent a specific set of circumstances in which a member of a Workforce Board is called upon to participate in an official action, it is difficult to determine whether conflicts of interest faced by Workforce Board members would be actual or potential.

Whether the conflict of interest is actual or potential is determined by the certainty of the financial impact. An actual conflict of interest occurs when a public official participates in an official action that would have a direct and specific financial impact on that official, the official's relative or any business with which the official or a relative is associated. ORS 244.020(1). 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 the official or a relative is associated. ORS 244.020(13).

A public official such as a Workforce Board member, might, for example, have a potential conflict of interest when making a decision to open a procurement process when it is possible that a business with which he or a relative is associated may apply. Similarly, he might have a potential or actual conflict, depending on the process, when participating in the scoring and evaluation of a response to an RFP when one of the submissions comes from an entity that is a business with which he is associated. He would have an actual conflict when called upon to participate in a final vote on whether to award a contract to that entity or even a final vote on whether to award the contract to another entity.

C. Methods of Handling Conflicts

When a public official – in this case, any member of a Workforce Board – is met with a conflict of interest, the public official must follow the methods for handling conflicts set out in ORS 244.120(2). This provision of Oregon Government Ethics law applies to elected public officials as well as appointed public officials serving on a board or commission.

When met with a potential conflict of interest, a public official shall “announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official.” ORS 244.120(2)(a).

When met with an actual conflict of interest, a public official shall “announce publicly the nature of the actual conflict and... refrain from participating as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.” ORS 244.120(2)(b). There is an exception to this in ORS 244.020(2)(b)(B) if the public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, in which case the public official, after declaring the nature of the actual conflict of interest, is eligible to vote on the matter, but may not participate as a public official in any discussion or debate on the issue.

Note that the declaration of the nature of the conflict should be made prior to any discussion on that matter, on each occasion that the matter arises.

Public officials may choose, in the interest of transparency, to announce their various interests even when not required to declare a conflict of interest under Oregon Government Ethics law. For example, a Workforce Board member participating in awarding a contract to a non-profit on whose board he sits might choose to announce that involvement and, additionally, recuse himself from the decision-making process. Policies of the Workforce Investment Division, local government or consortia, or individual Workforce Boards might also require that type of announcement or recusal.

Conclusion:

Every public official is individually responsible to comply with Oregon Government Ethics law. Each member of a Workforce Board will have to determine whether they have a conflict of interest when a decision comes before the board and how to handle that conflict of interest. Any member of a Workforce Board who is concerned about whether he or she is met with a conflict of interest and what actions to take when met with a conflict of interest is welcome to contact the Oregon Government Ethics Commission to ask for advice on the specific situation.

This analysis does not address any policies that the Workforce Investment Division, local government or consortia, or individual Workforce Boards may have in place, which may be more restrictive than Oregon Government Ethics law.

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

Sincerely,



Ronald A. Bersin
Executive Director

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*****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.