



Oregon

Kate Brown, Governor

Government Ethics Commission

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April 19, 2019

Damien R. Hall
Ball Janik LLP
101 SW Main Street
Suite 1100
Portland, Oregon 97204

Re: Commission Advisory Opinion 19-050A

Dear Mr. Hall:

At its April 19, 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 March 15, 2019.

OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 19-050A

SYNOPSIS OF FACTS AS PRESENTED TO THE COMMISSION:

The following factual information is derived from a letter, e-mails and documents provided to the Commission by attorney Damien Hall.

Following voter approval of Ballot Measure 26-201 in November 2018, the City of Portland (City) created the Clean Energy Community Benefits Fund (Fund) in February 2019. The purpose of the Fund is to provide a long-term funding source to support implementation of the City's Climate Action Plan. Ordinance 189390 establishes the Portland Clean Energy Community Benefits Committee (Committee) to make funding recommendations (grant recommendations) and evaluate the effectiveness of the Fund in achieving its goals.

Committee members will be appointed by the City Council; however, no one has been appointed yet. Mr. Hall reports that once its members are appointed, the Committee will be adopting bylaws which will define "actual conflict of interest" and "potential conflict of interest" consistent with the definitions in ORS 244.020(1) and 244.020(13), respectively. He indicates, however, that the proposed bylaws will not include the exception for nonprofit board membership set forth in ORS 244.020(13)(c).



According to Mr. Hall, the disclosure and recusal requirements in the proposed bylaws will be stricter than those in ORS Chapter 244. They will require:

Committee members with an actual or potential conflict of interest (as defined in the bylaws) relating to a grant application shall, (1) announce publicly the nature of the conflict of interest or potential conflict of interest prior to taking any action thereon ("Disclosure"), and (2) refrain from participating in any discussion, debate or recommendation on the grant application out of which the conflict of interest or potential conflict of interest arises ("Recusal").

Before the Committee reviews, discusses or takes any action on a grant application, committee members with conflicts of interest will be required to disclose their conflicts of interest and, regardless of whether those conflicts are actual or potential, refrain from any participation in the matter.

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 the definition of public official in ORS 244.040(15).

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)].

Methods of Handling Conflicts

When a public official who is an 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)].

QUESTION: Does compliance with the disclosure and recusal requirements in the bylaws shield commissioners from violation of ORS 244.120?

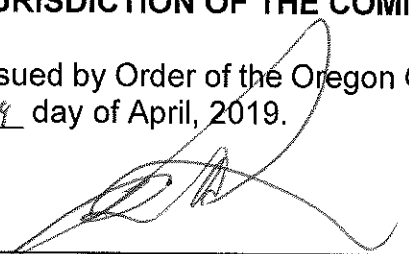
ANSWER: In general, public bodies may adopt policies that are stricter or more restrictive than the requirements in ORS Chapter 244. So long as the policies satisfy and do not alter the minimum requirements set forth in our statutes, compliance with the stricter policies would be deemed compliance with the requirements in ORS Chapter 244.

With respect to conflict of interest disclosure and recusal, the Committee's policies must be at least as restrictive as the requirements in ORS 244.120 and must contain definitions that are consistent with those in ORS 244.020(1) and 244.020(13). The policies may omit exceptions available under ORS 244 so long as doing so imposes stricter, and not more lenient, ethical requirements. Based on the information provided, it appears that the Committee may adopt a definition of potential conflict of interest that is stricter than that in ORS 244.020(13), in that it does not allow for the non-profit board membership exception in ORS 244.020(13)(c). Additionally, the Committee may adopt a recusal requirement that is stricter than that in ORS 244.020(2)(a), in that it requires the public official to refrain from participation after disclosing a potential conflict of interest.

As the Committee has not yet been appointed and the proposed bylaws have not been approved, the Commission cannot opine on whether the Committee's specific bylaws will satisfy the requirements of ORS Chapter 244. The Commission encourages the Committee to submit its bylaws for review once they are adopted.

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 19 day of April, 2019.



Richard P. Burke, Chairperson
Oregon Government Ethics Commission



Amy E. Alpaugh, Assistant Attorney General