

Date: December 4, 2018

To: Linn County Transportation Advisory Committee
From: Mark Volmert, Special/Rural Transportation Coordinator
Subject: Government Standards and Practices Provisions

I have researched provisions of Oregon law related to potential conflicts of interest involving public decisions, as well as informal assessments prepared by the Oregon Government Standards and Practices Commission staff. It is a complex matter and this memo attempts to provide general information; but it is certainly not a legal opinion or specific guidance. Members who have additional questions are encouraged to discuss the matter with their legal counsel.

General provisions

Several sections of Oregon Revised Statutes apply, in a broad manner, to issues related to STF advisory committees. The Executive Director of the Oregon Government Standards and Practices Commission has considered the complex and broad provisions of ORS and developed informal, personal assessments. One ORS provision related to exemptions, when coupled with specific advisory committee requirements related to providers of transportation services to seniors and persons with disabilities, appears to specifically apply to some members of the Linn County Transportation Advisory Committee.

Specific items

1. An actual conflict of interest means “any action or any decision or recommendation by a person acting in a capacity as a public official, the effect which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative is associated”. [ORS 244.020 (1)] There is, however, an exemption if an interest or membership is “required by law as a prerequisite to the holding by the person of the office or position”. [ORS 244.020 (14)(a)]

2. A potential conflict of interest means “any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative” [ORS 244.020 (7)] There is, however, an exemption if an interest or membership is “required by law as a prerequisite to the holding by the person of the office or position”. [ORS 244.020 (14)(a)]

3. ORS, in determining whether a conflict may occur, defines the relationship with a business in terms of a person’s employment, ownership, directorship or stock ownership of \$1,000 or more. [ORS 244.020(3)]. A person associated with a not-for-profit corporation in an unpaid capacity is excluded from the definition of business. A person associated with a not-for-profit organization in a paid capacity must comply with disclosure requirements. [ORS 244.020(2)]. Public officials are also included in the definition, irrespective of whether the person is compensated. [ORS 244.020(15)].

4. Government Standards and Practices laws apply to advisory committees, irrespective of whether a person is compensated for such service. [ORS 244.020 (15)].

5. In the event of an actual conflict of interest, a person shall announce publicly the nature of the actual conflict and refrain from participating in discussion or debate on the issue or voting on the issue. [ORS 244.120(2)(b)(A)]. However, if the person's vote is necessary to meet a requirement of a minimum number of votes to take an official action, the person is eligible to vote but not participate in any discussion or debate. [ORS 244.120(2)(b)(B)]

6. In the event of a potential conflict of interest, a person shall announce publicly the nature of the potential conflict prior to taking any action thereon. [ORS 244.120(2)(a)].

7. Perceived conflicts of interest are not addressed by the provisions of ORS Chapter 244. Oregon Government Standards and Practices Commission staff believes that public disclosure, even when not specifically required by law, helps to enhance public trust.

8. Exemptions. There is an exemption to potential and actual conflicts of interest if an interest or membership is "required by law as a prerequisite to the holding by the person of the office or position". [ORS 244.020 (14)(a)]

Your attention is drawn to this exemption. One state eligibility requirement for serving on an STF advisory committee is "providing transportation services to the elderly or disabled". [ORS 391.820 (2)(c)] Oregon Administrative Rules related to STF specifically list representatives of a provider of transportation services to the elderly or persons with disabilities as a qualification of serving on an STF advisory committee. [OAR 732-005-0031(11) (E)].

One state requirement for serving on a STIF advisory committee is "Public Transportation Service Providers or non-profit entities which provide public transportation services". [OAR 732-040-0035 (6) (c)]

The By-Laws of the Linn County TAC, prepared under the authority of the Linn County Code, specifically provides that TAC membership include public and private transportation providers. [Article III, Section 1]

The Government Standards and Practices Commission staff indicates that advisory committee members whose membership or occupation related to the delivery of STF transportation services are a prerequisite to their appointment on the STF advisory committee are "clearly exempt from the actual or potential conflict of interest definition and are not required to declare conflicts of interest". [Letter dated August 23, 2000 from L. Patrick Hearn, Executive Director of Oregon Government Standards and Practices Commission]

Prior to the start of presentations by applicants for STF, STIF and federal funding, TAC members should indicate whether he/she has an actual or potential

conflict of interest. It appears that some TAC members may be exempt by the nature of their TAC membership and office or position. Members may, however, wish to consider the “perception of conflict”; and determine whether they wish to abstain from discussion and votes related to their programs.