



Trisha Maxfield <councilormaxfield@gmail.com>

Seeking Advice

2 messages

Trisha Maxfield <councilormaxfield@gmail.com>
To: susan.myers@oregon.gov

Fri, Jul 12, 2019 at 10:16 AM

Good morning Susan,

I know I've touched base with you a couple of times regarding my business, Trisha Maxfield, LLC, and potential conflicts while voting on council - realizing now I should have gotten everything in writing. I've had to declare a potential conflict a couple of times now, specifically because my business has been subcontracted by Good Company before. The meeting minutes are not posted online, but I've included the agendas.

6/8/19

Good Company gave a presentation on the work they had been doing over the last year on woodsmoke mitigation (Oakridge has struggled to meet EPA requirements). This was only an informational presentation, no motion included. I ensured to declare a potential conflict of interest before talking on the subject - something along the lines of "I need to declare a potential conflict of interest because in the past my business has been subcontracted by Good Company. There is potential for Good Company to subcontract my services in the future." Again, there was no motion on this agenda item.

6/20/19

The coordinator for the Southern Willamette Forest Collaborative (SWFC) came and gave a presentation on the Community Firewood Program (CFP). The CFP is an official public-private partnership between Inbound LLC and the City of Oakridge, however there are many other partners involved, to include SWFC. This last year I was subcontracted by Good Company under a DEQ grant to act as the CFP coordinator during the woodsmoke season. For that reason I declared a potential conflict of interest, stating that my business, Trisha Maxfield LLC, had been subcontracted by Good Company to coordinate the CFP and that there is potential in the future for Good Company to contract my services. There was a motion on the floor to modify the MOU between Inbound and the City to allow for the CFP to move from the old Public Works building over to the Industrial Park. I voted in favor of this MOU being adapted.

7/11/19

At last night's meeting (unable to find the agenda online) the agenda item for Good Company seeking Gap Funding was listed. I declared a potential conflict of interest along the lines of, my business, Trisha Maxfield LLC, has been subcontracted by Good Company in the past and there is potential in the future for my business to be subcontracted by them again in the future. There was a motion on the floor and I voted in favor of the gap funding. After the meeting I had a conversation on Facebook attempting to address the concerns of a constituent on the optics of my vote. They brought a good perspective in that they believe I should not have voted because they feel it will persuade Good Company to subcontract my business in the future. With that, I want to ensure that the votes I've made were not of error. If I did make an error it was out of ignorance and not malicious intent. If you do see any issues, is there a way for me to self-report to the ethics commission? I want to make sure I handle this in the best way possible so as not to diminish public trust.

I appreciate any guidance on this and I appreciate your time on issues like these! Please let me know if you need anything else from me.

Best,
-Trish

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2 attachments **6.8.pdf**
61K **6.20.pdf**
52K

MYERS Susan * OGEC <Susan.MYERS@oregon.gov>
To: Trisha Maxfield <councilormaxfield@gmail.com>

Mon, Jul 15, 2019 at 2:47 PM

Trisha –

Thank you for your e-mail inquiry. As you note, we have spoken with you previously over the telephone regarding conflicts of interest. I need to clarify that while we can provide information regarding the statutes and advice on hypothetical or future scenarios, we cannot opine on events that have already happened. With respect to the three City Council meetings you discuss in your e-mail, we cannot opine on whether your disclosures were sufficient under ORS 244.120. We can, however, provide further information/analysis on what the applicable statutes require, so that you can make your own determinations.

To begin with, actual and potential conflicts of interest are defined in ORS 244.020(1) and (13), respectively, as arising when a public official, acting in his or her official capacity, participates in any action, decision, or recommendation, the effect of which would be (actual) or could be (potential) to the private financial benefit or avoidance of detriment of the public official, a relative, or any business with which the public official or relative is associated. So the question you would ask yourself is whether the proposed action that you would be taking as a City Councilor – whether that action be a vote, a discussion or a recommendation – could have a financial effect on you or a business with which you or a relative are associated (potential conflict of interest) or would have a certain financial effect on you or a business with which you or a relative are associated (actual conflict of interest).

The difference between the actual and potential conflicts of interest lie in whether the effect is possible but uncertain (potential) or distinct and certain (actual). For example, a discussion of awarding a contract to a company (123 LLC) that employs one's spouse would give rise to an actual conflict of interest because that action would result in a distinct and certain financial effect on a business with which the public official's relative is associated. A discussion of awarding a contract to a company (ABC Corp.) that sometimes buys widgets from the company (123 LLC) that employs one's spouse would give rise to a potential conflict of interest because the certain financial effect is on the ABC Corp, and not on the business with which the public official's relative is associated, and the financial effect of the public official's action on the 123 LLC, the business with which the public official's relative is associated, is possible, but uncertain; therefore it is only a potential conflict of interest.

A "business with which the person is associated" includes any private business or closely held corporation of which the person or their relative is a director, officers, 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. A "business with which the person is associated" also includes, for a public official required to file a statement of economic interest under ORS 244.050, any business listed as a source of income. [ORS 244.020(2) and (3)].

In the above hypothetical, a business with which the public official or his relative is associated would be the 123 LLC, not the ABC Corp. The fact that the business with whom a public official is employed contracts with or does business with other companies does not automatically make those other companies "businesses with which the public official is associated." In order for those other companies to be businesses with which the public official is associated, the public official would have to be a "director, officer, owner, employee or agent" of those other companies, or would have to own stock or have an equity interest in those other companies. Also, as a city councilor, you are a public official required to file a statement of economic interest under ORS 244.050; thus, any business listed as a source of income on your statement of economic interest would be a "business with which you are associated." In looking at your 2019 statement of economic interest, it lists two businesses as your sources of income: the USDA Forest Service and Trisha

Maxfield, LLC. The USDA Forest Service, even though it is a source of income, is not a business as defined in ORS 244.020(2); Trisha Maxfield, LLC, is a business and is a business with which you are associated.

Elected officials, when met with a conflict of interest, must on each occasion, publicly announce, at a public meeting, the nature of their actual or potential conflict of interest. Then, if the conflict of interest is actual, they must refrain from any discussion, debate or vote on the issue giving rise to the conflict of interest. If the conflict of interest is potential, they may participate in official actions following their public disclosure. [ORS 244.120(2)]. So, whenever a public official is faced with something that could give rise to a conflict of interest, whether actual or potential, the public official must determine whether the conflict is actual or potential. The public official must then make an announcement in a public meeting, on each occasion when the conflict arises. That announcement must disclose the nature of the public official's conflict of interest. If the conflict of interest is actual, then after making the disclosure, the public official must refrain from further participation in the matter. If the conflict of interest is potential, then after making the disclosure, the public official may participate in the discussion, debate or vote on the matter.

In the hypothetical set forth above, for example, the public official has a potential conflict of interest, because the official is voting on a contract with the ABC Corp., which sometimes buys widgets from the 123 LLC, which employs the public official's spouse. Therefore, in the meeting where the governing body discusses and votes on the contract with the ABC Corp., the public official should, when the matter arises, make a public announcement that he or she has a potential conflict of interest, describing the nature of that conflict, and then may continue to participate in the discussion and may vote on the contract.

There is one additional statute to bring to your attention. ORS 244.040 prohibits public officials from using or attempting to use their official positions to obtain a personal financial gain or avoid a personal financial detriment for themselves, their relatives or household members, or any businesses with which they are associated, if that financial gain or avoidance of financial detriment would not otherwise be available but for holding their official positions. The definitions of "business with which they are associated" is the same as that explained above in the conflict of interest analysis. If a public official determines that a proposed action could constitute a prohibited use of office, the official should refrain from any participation in that action.

Oregon Government Ethics laws do not prohibit public officials from owning private businesses or working for private employers while continuing employment with or holding a position with a public body. This statute, referred to as the "prohibited use of office" statute, simply means that public officials cannot use their position to create new business opportunities for themselves, or use the benefits of their position (equipment, vehicles, resources, etc.) to benefit their private businesses. One should examine whether the public official is directing or trying to direct business or contracts to his or her employer. For example, in the hypothetical scenario above, the public official is voting on a contract with ABC Corp., which may or may not buy widgets from 123 LLC. Such a possibility, by itself, is likely too attenuated to give rise to a prohibited use of office violation. On the other hand, if 123 LLC is the only widget producer in the state and the public body's contract with the ABC Corp requires it to buy all of its widgets from a producer within the state, then the likelihood of a prohibited use of office violation would be much higher. One should also examine whether the public official would obtain the financial gain or avoid the financial detriment if the official did not hold that public position. Would the ABC Corp still buy widgets from 123 LLC even if none of the public officials were associated with 123 LLC?

I realize that this is a lot of information, but I wanted to give you as thorough an analysis as possible, even though I cannot specifically address the events in the three meetings you mention. In terms of self-reporting, the Government Ethics Commission does not have a self-reporting mechanism, other than to file a complaint against yourself. When that occurs, the complaint is treated like any other complaint that we receive.

7/15/2019

Gmail - Seeking Advice

If you have any questions regarding the statutes or the information set forth above, or would like more information about our complaint process, please feel free to call me (503-378-6808) or e-mail me (susan.myers@oregon.gov).

- Susan

Susan Myers

Investigator

Oregon Government Ethics Commission

3218 Pringle Rd SE, Suite 220

Salem, OR 97302

503-378-6808

****Disclaimer****

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

[Quoted text hidden]