



Oregon

Tina Kotek, Governor

Government Ethics Commission

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July 9, 2024

Sent via email and USPS

Chris Warner
Chief of Staff
Office of the Governor
254 State Capitol
Salem, OR 97301-4047

Re: Advice No. 24-1701

Dear Mr. Warner:

As previously explained, the Oregon Government Ethics Commission (Commission) could not provide an advice letter in response to your April 5, 2024 request while there was a pending preliminary review case before the Commission relating to the same matters. That preliminary review case was resolved at the Commission's June 28, 2024 meeting. The Commission did not meet the minimum number of votes required to move the case to investigation; therefore, the case was administratively dismissed. Accordingly, the Commission can now provide this letter of advice.

Your questions and our advice and analysis are as follows:

To begin with, the Commission's jurisdiction is limited to application of the Government Ethics Laws in ORS Chapter 244. These laws -- conflicts of interest, prohibited use of office, gifts, nepotism, and statements of economic interest -- address decisions and actions by a public official, that have a financial impact on the public official, their relative or household member, or on a business with which they are associated. These laws do not apply to public bodies, and they do not address how a public body allocates its resources or administers its policies.

Question 1: ORS 244.020(6) defines the "First Partner" as "the spouse or domestic partner of the Governor" and encompasses alternative titles such as "First Lady," "First Husband" or "First Spouse." The "First Partner" is a "public official." ORS 244.020(15). May the First Partner, as a public official, participate in the development of, advise on, and/or promote the Governor's priorities, consistent with the ethical duties required of public officials in ORS Chapter 244?



Answer 1: It is possible for the First Partner, as a public official, to participate in the development of, advise on, and/or promote the Governor's priorities, consistent with the ethical duties required of public officials in ORS Chapter 244. It is not within the Commission's jurisdiction to opine on whether the Governor's Office can create an Office of the First Spouse or establish official duties for the First Partner.

Whether the Governor's Office creates an Office of the First Spouse or not, the Governor's spouse is the First Partner and is a public official as a matter of law, based on their relationship status to the Governor. [ORS 244.020(6); ORS 244.020(15)]. As a public official, the First Partner is subject to compliance with the laws in ORS Chapter 244. For the First Partner, this includes, but is not limited to:

- Conflicts of Interest: Any time the First Partner participates, as a public official, in making a decision or recommendation, or taking action on a matter, if that decision, recommendation, or action would or could have a financial impact, positive or negative, on the First Partner, on her relatives, or on any businesses with which she or her relatives are associated, then she would be met with a conflict of interest requiring compliance with ORS 244.120. [ORS 244.020(1) and (13); ORS 244.120].

As a volunteer working in the Governor's Office, the First Partner would be subject to the conflict of interest disclosure requirements in ORS 244.120(1)(c). When met with a conflict of interest, the First Partner would need to submit a written disclosure of the nature of the conflict of interest to her appointing authority. The appointing authority could then assign the matter to another employee or direct the First Partner to handle the matter in a specified manner. [ORS 244.120(1)(c)].

- Prohibited Use of Office: The First Partner may not use or attempt to use her position to obtain a financial gain or avoid a financial detriment, for herself, her relatives or household members, or any businesses with which she or they are associated, if that financial gain or avoidance of detriment would not otherwise be available but for holding her position as a public official. [ORS 244.040].

Both the conflicts of interest and prohibited use of office statutes use the term "business with which associated." Whether a business qualifies as a business with which a person is associated depends on the type of business (private business or closely held corporation versus publicly held corporation) and the person's connection to the business (owner, officer or director, versus employee or agent), as well as whether they own or have owned, in the preceding calendar year, stock, stock options, equity interests, or debt instruments in the business. [ORS 244.020(3)].

Additionally, for public officials, such as the First Partner, who are required to file an annual Statement of Economic Interest (SEI), any business listed as a source of income on their SEI qualifies as a business with which they are associated. [ORS 244.020(3)(d)].

- Gifts: The First Partner may not solicit or accept gifts in excess of \$50 in a calendar year from a source that has a legislative or administrative interest in her decisions or actions, or those of the Governor. [ORS 244.025].
- Nepotism: The First Partner may not engage in employment actions for a relative or household member and may not directly supervise a relative or household member. [ORS 244.177; ORS 244.179]. The Governor may appoint the First Partner and may supervise the First Partner only if the First Partner is appointed to a position as an unpaid volunteer. [ORS 244.177(3)(a); ORS 244.179(3)(a)].
- Statement of Economic Interest: The First Partner is required to file an Annual Certified Statement of Economic Interest (SEI). The SEI is filed every April 15 in the Commission's Electronic Filing System. [ORS 244.050(1)(i)].

None of the laws in ORS Chapter 244 authorize the First Partner to work in the Governor's Office or participate in developing, advising, and/or promoting the Governor's priorities. Such authorization would necessarily come from sources other than the Government Ethics Laws. ORS Chapter 244 does, however, regulate *how* and *if* the First Partner can use, apply, or benefit from their status as a public official. For example, ORS Chapter 244 prohibits any public official, including the First Partner, from making decisions or recommendations, or taking actions that have financial impacts on herself, her relatives or household members, or any of their associated businesses. Similarly, the First Partner is also prohibited from using or attempting to use her official position or office to obtain financial gain or avoid a financial detriment for herself, a relative, or member of her household.

Question 2: If the First Partner is performing official duties as a public official in the Governor's Office supporting the Governor's priorities, may the First Partner be supported by staff and provided other office resources necessary to perform such assigned official duties, consistent with Oregon's government ethics laws?

Answer 2: It does not violate the Government Ethics Laws for an employee, appointee, or volunteer, including the First Partner, to be provided with office space, materials, equipment, and/or staff support to enable them to perform official, authorized State duties. The Government Ethics Laws would, however, prohibit providing the First Partner with office space, materials, equipment, and/or

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staff to conduct non-State business, such as conducting a private consulting business. So long as the First Partner conducts official and authorized State business consistent with ORS Chapter 244, the First Partner's use of office space, materials, equipment, and/or staff is authorized under the Government Ethics Laws. Whether the Governor's Office provision of office space, materials, equipment, and staff support to the First Partner comports with other laws, outside of ORS Chapter 244, is beyond the scope of the Commission's authority and jurisdiction to determine.

Question 3: Many public officials are volunteers who serve Oregon without compensation, such as the thousands of individuals serving on state boards and commissions. The current First Partner is solely a volunteer. Given this set of facts, what other ethics considerations should we consider?

Answer 3: Generally, volunteers qualify as "public officials" under ORS Chapter 244. The First Partner, as a public official under ORS 244.020(6) and (15), should make herself aware of the requirements and restrictions in ORS Chapter 244. While these are briefly summarized above, the Oregon Government Ethics Commission has also published [A Guide for Public Officials](https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf), which may be helpful to the First Partner. It is available at the following link:

<https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf>.

If you need further information regarding application of the Government Ethics Laws or would like clarification on how those laws might apply to specific circumstances, please feel free to contact me directly.

Sincerely,



Susan V. Myers
Executive Director