

OGEC Advice

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To: Mayor Talent <Mayor@cityoftalent.org>; Councilor Ana Byers <Councilor2@cityoftalent.org>

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Mayor Ayers-Flood and Councilor Pare-Miller –

Thank you for your inquiry and the call this morning. The advice and analysis that follows is offered under the authority provided in ORS 244.284 as guidance on how the current provisions in Oregon Government Ethics Law may apply to the circumstances presented.

You have explained that the City of Talent may seek to apply for some wildfire recovery funds. Other cities and other nonprofit entities may also apply for those funds, including the Talent Business Alliance (TBA) and the Micro Enterprise Services of Oregon (MESO). The applications will be submitted to and funding determined by a third-party entity (not by the City of Talent). In addition to serving as the Mayor and Councilor for the City of Talent, Mayor Ayers-Flood serves on the Board of the TBA and is a paid employee of MESO, and Councilor Pare-Miller is a paid employee of the TBA. You have asked whether, when the City Council deliberates and votes on whether the City should submit an application for the wildfire recovery funds, either of you would be met with a conflict of interest.

A public official is met with a conflict of interest any time they participate in making a decision or recommendation, or taking action, that would (actual conflict of interest) or could (potential conflict of interest) have a financial impact (positive or negative) on the public official, their relative, or any business with which they or their relative is associated. [ORS 244.020(1) and (13)].

In order to evaluate whether you would be met with a conflict of interest, we would need to determine whether the action being taken (voting to approve having the City submit the application) would or could result in a financial impact on you, your relatives, or businesses with which you are associated. To begin with, we look to the definition of business in ORS 244.020(2). A business is a legal entity operated for economic gain. The definition excludes non-profit 501(c) corporations if your association with them is only as a member, on the board, or in an unpaid capacity.

Government entities are not legal entities operated for economic gain, and therefore do not qualify as a business. Thus, they cannot be a business with which you are associated. So when the City Council considers and then votes on whether the City should submit an application for the wildfire recovery funds, you would not be met with a conflict of interest because the City is not a business with which you are associated.

For each of you, the non-profit entities (the TBA for Councilor Pare-Miller and MESO for Mayor Ayers-Flood) would qualify as a business, because you are paid employees. They would be businesses, under ORS 244.020(2), and would qualify as businesses with which you are associated, under ORS 244.020(3). But it does not appear that the action being taken by the City Council would have a financial impact on these businesses with which you are associated. The City Council is not voting on awarding recovery funds to these businesses. Rather, it is only voting to have the City submit an application to this third-party entity.

Based on the information provided, it does not appear that Mayor Ayers-Flood or Councilor Pare-Miller would be met with a conflict of interest in the circumstances described.

- Susan
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