

# City of Lafayette

*"Third Oldest City in Oregon"*

Phone: (503) 864-2451

Fax: (503) 864-4501



486 Third Street --- PO Box 55 — Lafayette, Oregon 97127-0055

August 1, 2008

Carla Corbin  
Compliance Specialist  
State Elections Division  
141 State Capitol  
Salem, OR 97310

Re: City of Lafayette- 2008 Initiative submitted by Darrell Flood, Case #08-2978

Dear Carla:

I am the City Elections Official for the City of Lafayette, and this responds to your letter of July 28, 2008 regarding alleged election law violations.

Question 1. Please provide the date and time Darrell W. Flood submitted his prospective petition in the City of Lafayette office.

I received a Prospective Petition for Local Measure from Darrell Flood on July 15, 2008 at 10:01 a.m. at Lafayette City Hall.

Question 2. Please provide the date and time you notified Mr. Flood whether his prospective petition met the Constitutional one subject requirement. If you did not, why?

I did not notify Mr. Flood whether his prospective petition met the Constitutional one subject requirement. On July 22, with the assistance of the City Attorney, we determined that I had a conflict of interest (along with the City Attorney and City Administrator) in processing this prospective petition because it altered my compensation. On July 23, I sent out a letter to Mr. Flood explaining that I could not make a decision either way on this petition because of this conflict of interest. I also sent a letter (along with the City Attorney and City Administrator) to the City Council asking them to meet and consider how to dispose of this matter. The Council met on Sunday, July 27, which was the earliest that a quorum could be gathered for a meeting, and appointed Candace Haines, City Attorney of McMinnville, as Acting Elections Officer and Acting City Attorney to handle the responsibilities prescribed by ORS 250.270 and 250.275. On July 31, 2008, Ms. Haines determined that portions of the proposed measure are administrative and denied the petition. Since the petition was denied, no ballot title was necessary.

BILL BRADBURY  
SECRETARY OF THE STATE

2008 AUG -4 AM 11:19

RECEIVED

Question 3. Please provide the date and time you submitted the text of Mr. Flood's prospective petition to the Lafayette legal counsel to complete a draft ballot title. If you did not, why?

ORS 250.275 (2) states that the measure is to be forwarded to the City Attorney for preparation of the ballot title "...if the measure to be initiated has been determined to be in compliance with section 1 (2) (d) and (5), Article IV of the Oregon Constitution, as provided in ORS 250.270".

I did not submit Mr. Flood's prospective petition to the Lafayette legal counsel to complete a draft ballot title. Because of the conflict of interest that I declared regarding this matter, I could not make a determination if the petition met the Constitutional one subject requirement AS WELL AS determining if the petition pertained to legislative and not administrative matters. Since I could not ethically make either of those determinations, I certainly could not move forward with the process and submit this prospective petition to the City Attorney to prepare a draft ballot title.

Question 4. Please provide the date and time you received a draft ballot title from the Lafayette legal counsel for Mr. Flood's prospective petition.

I did not receive a draft ballot title from the Lafayette legal counsel for Mr. Flood's prospective petition. The reasons why have already been explained in my response to question 3.

Question 5. Please provide the date and time you supplied Mr. Flood with a copy of the draft ballot title. If you did not, why?

I did not provide Mr. Flood with a copy of the draft ballot title. A draft ballot title was not prepared as explained in my response to question 3.

I would also like to state that review of this prospective petition was extensive as it included a 33 page charter and I was out of the office for 2 ½ of the 5 days (previously scheduled vacation and ½ day of training) allowed to make the determination. That, combined with the complexity of the measure, contributed to the delay in identifying the potential conflicts.

I fully understand that the election deadline of completing the (constitutional requirements) review of the prospective initiative petition was not met. However, I did not feel that I had a choice because of the conflict of interest that I had to declare in this matter.

Sincerely,



Trena McManus  
Elections Official/Assistant to the City Administrator

# City of Lafayette

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486 Third Street --- PO Box 55 — Lafayette, Oregon 97127-0055

August 1, 2008

Carla Corbin, Compliance Specialist  
Office of the Secretary of State  
Elections Division  
141 State Capitol  
Salem Oregon 97310-0722

Re: Elections Division Case # 08-2978

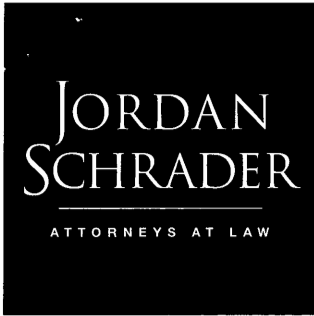
Dear Ms. Corbin:

I am in receipt of your letter dated July 28, 2008 notifying me of a complaint that has been filed against me for possible election law violations. Obviously, that complaint has no merit since I do not have any authority to process prospective initiatives filed with the City of Lafayette. That responsibility lies with our Elections Official. She will be supplying you with the information requested in your letter.

Sincerely,

Diane J. Rinks  
City Administrator

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2008 AUG -4 AM 11:19  
BILL BRADBURY  
SECRETARY OF THE STATE



JORDAN SCHRADER RAMIS PC

RECEIVED

2008 AUG -7 AM 10:42

BILL BRADBURY  
SECRETARY OF THE STATE

August 6, 2008

Carla Corbin  
Compliance Specialist  
Office of the Secretary of State – Elections Division  
141 State Capitol  
Salem OR 97310-0722

Re: **Election Division Case #08-2978**  
Our File No. 47514-37559

Dear Ms. Corbin:

E. ANDREW JORDAN

Admitted In:  
Oregon

I am the City Attorney of Lafayette, and this responds to your letter of July 28, 2008 regarding alleged election law violations.

Answering your two questions, the City of Lafayette forwarded the prospective petition to my office on July 15, 2008 at 10:44 a.m., and for the reasons explained below, I did not submit a ballot title to the City.

The measure in question was a proposed charter, 33 pages long. The proposal, among other things, alters the compensation of the City Administrator and the Assistant to the City Administrator (who is also the Elections Officer). The proposal also alters the manner of compensating the City Attorney. On July 22, after reviewing the proposal, I determined that:

- a. The Election's Officer, Trena McManus, had a conflict of interest under ORS 244.120(1)(c), precluding her from performing the functions required by ORS 250.270;
- b. The City Administrator, Diane Rinks, had a conflict of interest under ORS 244.120(1)(c), precluding her from appointing an alternate Elections Officer; however, after further review, it was determined that the City Council, not the Administrator, is the appointing authority of the Elections Officer; and
- c. I had a conflict of interest under ORS 244.120(1)(c), precluding me from either advising the Elections Officer on her responsibilities or preparing a ballot title.

Direct Dial  
(503) 598-5511

E-mail  
andy.jordan@jordanschradler.com



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Carla Corbin  
August 6, 2008  
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I confirmed the above conflicts of interest with the staff of the Ethics Commission (Don Crabtree) on July 23.

ORS 244.120(1)(c), requires that when an appointed official has a conflict of interest in carrying out a function, the official must notify the appointing authority of the conflict, and request that the appointing authority (in this case the Lafayette City Council) to either appoint an alternate official within a reasonable time, or otherwise dispose of the matter. All three officials wrote such letters to the Council on July 23, 2008, and copies are attached. It is my opinion that upon determination of the existence of conflicts of interest, the Elections Officer, City Administrator and City Attorney could not lawfully perform the duties otherwise required of their offices with respect to the initiative measure at issue. By notifying the City Council of the conflicts, these officials had done all they could lawfully do. In addition, since Ms. Rinks is neither the Elections Officer nor the City Attorney, she had no responsibilities under ORS 250.270 or 250.275, and therefore could not have violated either law.

The Council met on Sunday, July 27, which was the earliest that a quorum could be gathered for a meeting, and appointed Candace Haines, City Attorney of McMinnville, as Acting Elections Officer and Acting City Attorney to handle the responsibilities prescribed by ORS 250.270 and 250.275. On July 31, 2008, Ms. Haines determined that portions of the proposed measure are administrative and denied the petition. Since the petition was denied, no ballot title was necessary.

Arguably, had I determined the existence of the three conflicts a few days earlier, the City Council might have been able to meet earlier, and might have been able to select an alternate official who might have been able to perform the functions of ORS 250.270 and 250.275 before the deadlines prescribed by those statutes. All that is purely speculative. The fact is that all three officials determined the existence of the conflicts prior to expiration of their respective deadlines, and were precluded by law from acting.

Based on the above, none of the three Lafayette officials violated any election law because Oregon ethics law prevented the officials from performing their responsibilities. Had the officials performed their respective election law functions, they would have subjected themselves to ethics complaints and fines of up to \$5,000. It is my opinion that no public official can be found guilty of failing to comply with one state law when another state law prohibits such compliance.

JORDAN SCHRADER<sup>PC</sup>  
ATTORNEYS AT LAW

Carla Corbin

August 6, 2008

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In addition, of course, since Ms. Haines determined that the proposed initiative was not eligible for submission to an election, no ballot title was necessary. Therefore, I could not be in violation of ORS 250.275.

If you have further questions regarding this matter, I will be happy to respond.

Sincerely,

JORDAN SCHRADER RAMIS PC



E. Andrew Jordan

Enclosures

cc: City of Lafayette