



July 5, 2023

Via First Class Mail and Email: Hillary.murrieta@ogec.oregon.gov

Hillary Murrieta
Oregon Government Ethics Commission
3218 Pringle Rd. SE, Ste 220
Salem, OR 97302

RE: Response on Case No. 23-231EHM

Dear Investigatory Murrieta:

Our firm represents Klamath County Sheriff Chris Kaber in Case No. 23-231EHM. Thank you for your invitation to provide a response.

Sheriff Kaber acted only based on what he believed is in the best interest of public safety for his community, consistent with his legal responsibilities as sheriff. He did not intentionally act in conflict with any ethics laws.

Sheriff Kaber is continuing to dialogue with the complainant and other county commissioners on these matters and welcomes the Ethics Commission's full review of this situation. If the Ethics Commission determines that Sheriff Kaber made a mistake, then Sheriff Kaber asks the Ethics Commission to advise whether his subsequent actions have fully resolved the matter or if additional action is needed.

Sheriff Kaber will take full responsibility for his actions, and he appreciates the opportunity to learn through this process to ensure there is no doubt that he is acting in full compliance with ethics laws going forward.

I. Factual Background

Sheriff Chris Kaber was first elected in 2016 and took office as Sheriff in January 2017. Previously, he was a detective and detective supervisor for the Oregon State Police. Upon taking office, Sheriff Kaber has emphasized the importance of a relevant detective division based on his experience of the frequency and severity of major crime investigations in Klamath County for the safety of the community.

Ryan Kaber is Sheriff Chris Kaber's son. Ryan Kaber joined the Klamath County Sheriff's Office (KCSO) as a patrol deputy in 2008.

When Sheriff Kaber took office, Ryan Kaber had already served with KCSO for nearly a decade. KCSO has 105 employees, but only 30 sworn deputies and supervisors in the Patrol Division (which includes detectives).

In November 2017, Ryan Kaber was promoted to the position of Patrol Sergeant. The promotion process was conducted by Lieutenant Randy Swan who then supervised the Patrol Division at the KCSO. Lieutenant Swan and Lieutenant Bryan Bryson (Jail Commander) were directly involved in the selection due to precautions being taken to ensure Sheriff Kaber was not involved in the promotion process, including interviews.

In 2020, Randy Swan—who was now Captain Swan—led a reassignment process, and Sergeant Ryan Kaber was reassigned to the Detective Division in 2020 as the supervisor. This was not a promotion but a lateral reassignment. The KCSO Detective Division is integral to the effective investigations of crimes against children, homicide, sexual abuse, elder abuse, burglaries, robberies, and sensitive criminal investigations for other jurisdictions upon request.

Sergeant Ryan Kaber later applied and was interviewed for a vacated Patrol Lieutenant position, which was awarded to *another individual* by Captain Swan without Sheriff Kaber's involvement.

In early 2023, the KCSO K-9 Division needed to be reconstituted and solicitation of letters of interest from sworn Patrol Division personnel was sought. Sergeant Ryan Kaber applied, and Sheriff Kaber removed himself from any involvement in the interview and reassignment process. Sheriff Kaber followed the management plan outlined in County Resolution 2018-016, even though he was concerned about a decline in supervision of the Detective Division if Sergeant Kaber was awarded the K-9 position; which is exactly what happened. There were no additional "sergeant" FTE's available and with Sergeant Kaber now assigned to patrol duties, Bryan Bryson—now Captain Bryson—assigned supervision of detectives to the Patrol Lieutenant who had prior experience in his former agency.

The Patrol Lieutenant supervised the Detective Division to the best of his ability; however, Sheriff Kaber felt the capabilities of the division were deteriorating over time in both morale and effectiveness. Additionally, one of the senior detectives was then promoted and moved to the Patrol Division due to his performance in the interview and selection process, leaving a gap in experience that Sheriff Kaber was becoming increasingly uncomfortable with. A younger patrol deputy was due to be assigned in the near future to the Detective Division with little prior division experience and another deputy was due to be assigned for the summer to an Illegal Manufacturing Marijuana Enforcement Grant Program position with little prior division experience. This occurred just after the Patrol Lieutenant resigned his position and left the Sheriff's Office.

Supervision of the Detective Division was then temporarily assigned by Captain Bryson to himself in the period of time when nobody occupied the Patrol Lieutenant position. The position remained unfilled for several weeks due to deliberations of eligibility of applicants between the Human Resources Director, Captain Bryson, Commissioner Dave Henslee of the Board of County Commissioners (BOCC), and the Sheriff. During that time Sheriff Kaber requested that Resolution 2018-016 be updated to properly reflect the position(s) directly supervising his family members in accordance with Policy 022 and ORS 244. At this time, it was

stated by Captain Bryson that it seemed as if he had to “almost interrogate” the detectives to get up-to-date information from them concerning their investigations; this also troubled Sheriff Kaber.

Sheriff Kaber promoted Lieutenant Steve Lewis to the Patrol Lieutenant position. Knowing the uphill learning curve of the new lieutenant, Sheriff Kaber struggled with what to do with the supervision of the detectives. On June 8, 2023 Sheriff Kaber spoke to Captain Bryson about his belief that the detectives needed direct supervision. Captain Bryson expressed concern over the effectiveness of the K-9 program if Sergeant Kaber transferred back, which was of near equal concern to the Sheriff.

On Monday, June 12, 2023, Sheriff Kaber decided to take decisive and necessary action to provide immediate and needed supervision of the Detective Division. This occurred due to a conversation he had with one of the two remaining detectives who was considering leaving the Detective Division and even considering leaving the KCSO. The detective stated, “things work better in detectives with a sergeant.”

The KCSO as a whole has a limited number of experienced deputies, supervisors, and detectives in a community in dire need of criminal investigative experience due to the quantity and severity of crimes committed within the jurisdiction of Sheriff Kaber, and within his mandated responsibilities. Other challenges exist in the community including a severely understaffed District Attorney’s Office requiring the best of investigative reports to be presented to ensure just prosecutorial decisions are able to be made. It is also believed the Criminal Investigative Division of Oregon State Police, a partnering agency, is due to have major changes within their supervisory and investigative structure potentially leaving the county in dire need of investigative resources.

On June 12, 2023 Klamath County HR was asked to send a “Change of Status” form to the Sheriff to document the date Sergeant Kaber was returned to his previously held position as Detective Sergeant. The form was never sent and the Sheriff received an email from HR Department Director. The email asked several questions about the decision and stated it was outside the current county agreement because it financially impacted the Sheriff’s son, Sergeant Ryan Kaber, and specifically mentioning a clothing allowance.

Sheriff Kaber responded with a follow-up email the same date answering all HR’s questions and stating the Sheriff’s Office Lexipol Policy (#1002.3.3, concerning special assignments) could be waived indicating, “The selection process for special assignment positions may be waived for temporary assignments, emergency situations, training, and at the discretion of the Sheriff.” For additional clarification the Sheriff wrote that Sergeant Kaber was being returned to his prior assignment and stressed the lack of experience currently in the Division and the need for direct supervision as new detectives were coming into the Division. Sheriff Kaber also clarified that he did not intend to violate any agreement and that he did not make any financial commitment related to this decision, rather, the proven success of Sergeant Kaber as a supervisor in the Division and the need for such supervision were the only motivating factors.

Relating to the financial concern of a clothing allowance that HR was concerned with, Sheriff Kaber left all financial decisions up to the HR Department and indicated such in his email.

Also on June 12, 2023, Sheriff Kaber called and had a phone conversation with his liaison on the County Commission, Commissioner Dave Henslee. Sheriff Kaber explained to the Commissioner that HR was concerned about a decision he'd made and explained to the Commissioner the reasoning behind it for the purposes of keeping the Commissioner informed, which was his practice. Commissioner Henslee told the Sheriff that for all of the reasons given he agreed with the decision, but he also asked the Sheriff to consider the effects of it on several other matters.

On June 15, 2023, Commissioner Derrick DeGroot asked the Sheriff to meet him in his office. He told the Sheriff that he believed the decision regarding his son was against policy and that HR felt an ethics violation had occurred and insisted it was required to be reported. He indicated that a phone call had been made to the Ethics Commission and the County had been told it was a violation and reporting was required. Not sure why he hadn't been contacted about this earlier, the Sheriff advised the Commissioner that he didn't see it as a violation but since others did, he would not continue down a path that was called into question and would speak to Captain Bryson and allow him to determine whether or not Sergeant Kaber remained in supervision of the detectives until the pending complaint was made.

After the meeting, Sheriff Kaber returned to his office and informed Captain Bryson that he would need to determine whether Sergeant Kaber remained as the supervisor of the detectives in the near future. Captain Bryson informed him a few days later that he was going to leave it where it was.

On June 20, 2023, Commissioner DeGroot filed the complaint in this case.

II. No Actual Conflict of Interest

As relevant here, an actual conflict of interest requires an action by Sheriff Kaber that certainly *would* provide a "private pecuniary benefit" for his relative. ORS 244.020(1). There is no certain pecuniary interest here because Sheriff Kaber did not authorize any raise or other financial benefit to his son. All financial decisions regarding his son are up to others. Further, since Sheriff Kaber only directed that Sergeant Kaber take on responsibilities that he had handled previously and since there was no promotion, Sheriff Kaber believed that there would be no reason or need for HR to approve any financial benefit.

III. No Potential Conflict of Interest

The complaint did not allege a potential conflict of interest. However, in the interest of full transparency, Sheriff Kaber asks the Ethics Commission to evaluate this also.

As relevant here, a potential conflict of interest requires an action by Sheriff Kaber that *could* provide a “private pecuniary benefit” for his relative. ORS 244.020(13). Sheriff Kaber’s decision to restore duties to Sergeant Kaber that were previously Sergeant Kaber’s responsibility should not result in any financial benefit to his son. If HR chooses to extend financial benefits despite Sheriff Kaber stating that they are not necessary, then that is a separate decision by HR for which Sheriff Kaber is not responsible. However, Sheriff Kaber recognizes that reasonable people might disagree in this situation, so if the Ethics Commission disagrees, then Sheriff Kaber will accept responsibility and follow Ethics Commission advice going forward.

IV. No Issue Regarding Methods of Handling Conflicts

As explained above, Sheriff Kaber did not have an actual conflict of interest. Thus, there was nothing to disclose.

As explained above, Sheriff Kaber does not believe that he had a potential conflict of interest. However, if the Ethics Commission disagrees, Sheriff Kaber still satisfied the requirements for handling potential conflicts under ORS 244.120(2) since he publicly disclosed the entire situation via his notification to the County Commission.

V. No Issue with Recording Notice of Conflicts

Sheriff Kaber could not have violated ORS 244.130’s requirements for recording notice of conflict as the complaint alleges, because the requirements in that statute apply to the public body the official serves (here Klamath County), not to Sheriff Kaber personally.

VI. No Prohibited Use of Position

As relevant here, Sheriff Kaber may not use or attempt to use his official position *to obtain financial gain or avoidance of financial detriment* for his relative. ORS 244.040(1). For the same reasons discussed above regarding why he had no actual conflict of interest, Sheriff Kaber did not use or attempt to use his office for financial gain of his relative. If the Ethics Commission disagrees, it should evaluate whether one or both of the exceptions in ORS 244.040(2)(a) or (c) may apply.

VII. No Improper Employment of a Relative

As relevant here, Sheriff Kaber “may not appoint, employ or promote a relative” to a position over which he “exercises jurisdiction or control, unless the public official complies with the conflict of interest requirements of this chapter.” ORS 244.177(1)(a). Similarly, Sheriff Kaber “may not participate as a public official in any interview, discussion or debate regarding the appointment, employment or promotion of a relative” to a position over which he “exercises jurisdiction or control,” that participation “does not include serving as a reference [or] providing a recommendation.” ORS 244.177(1)(b). These prohibitions do not apply to the specific situation here of *reassigning* duties when there is no appointment/hiring or promotion. Ryan Kaber was a

Sergeant long before the action subject to this complaint, and he was still a Sergeant after the action subject to this complaint.

VIII. No Improper Supervision of a Relative

As relevant here, Sheriff Kaber “acting in an official capacity may not directly supervise a person who is a relative” unless it is consistent with a policy adopted by Klamath County. ORS 244.179(1), (4). The Ethics Commission’s own Guide for Public Officials states on page 36 that “[d]irect supervision of a paid relative or household member includes official actions that *would* financially impact their relative or household member.” (emphasis added). Here, as explained in the analysis of actual conflict of interest, Sheriff Kaber did not take any action that “would” financially impact his relative. Thus, under the Ethics Commission’s own guidelines, Sheriff Kaber did not act inconsistently with ORS 244.179(1).

If the Ethics Commission disagrees, then it must next consider whether Sheriff Kaber’s actions were exempt from ORS 244.179(1) based on the exception for a county policy in ORS 244.179(4). Such a policy must be “in writing” and “formally adopted.” OAR 199-008-0008(2).

Here, Klamath County had adopted Policy 022, which has several key provisions:

- “Close family relatives may only be hired into the same department by the County with the advance written approval of the Director of Human Resources.”
 - Here, Sergeant Kaber was a member of the KCSO long before Sheriff Kaber was elected, so there was no issue.
- “Close family relatives may not be hired, promoted, demoted or transferred into a position where they directly or indirectly supervise or are supervised by a family member.”
 - Here, Sergeant Kaber is not, and was not previously, in a position where he is directly supervised by Sheriff Kaber. Likewise, Sergeant Kaber currently is, as he was before, in a position that is arguably indirectly supervised by Sheriff Kaber. Thus, there was no change that resulted in a violation for this provision.
- Where “reorganization” creates an issue, “a period of 90 days will be provided to resolve the matter.”
 - Here, the alleged issue was due to reorganization. A complaint was filed prior to the 90-period allowed for resolution. Even before the complaint was filed, Sheriff Kaber resolved the situation by delegating the situation to Captain Bryson. Thus, there is no violation of Policy 022.

For the reasons set out above, Sheriff Kaber does not believe he acted inconsistent with his legal duties to the citizens of Klamath County. If there was a mistake, Sheriff Kaber asks the Ethics Commission to provide him a letter of education and advise whether his delegation of responsibility to Captain Bryson upon learning of ethics concerns has fully resolved any issue or if additional steps are needed to ensure full legal compliance.

Thank you in advance for your consideration. Please don't hesitate to contact us if you have any questions.

Very truly yours,

SHERMAN, SHERMAN, JOHNNIE & HOYT, LLP

s/ Steve Elzinga

Steve Elzinga | Partner