

May 31, 2002

Jerry Spegman  
American Cancer Society  
Northwest Division Advocacy Director  
0330 SW Curry Street  
Portland, Oregon 97201

Dear Mr. Spegman:

On May 31, 2002 the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION  
ADVISORY OPINION NO. 02A-1006**

**STATED FACTS:** The American Cancer Society and its tobacco control allies are considering employing a particular lobbyist to advocate on behalf of increased funding for the state's Tobacco Prevention and Education Program (TPEP) that is operated by the Oregon Department of Human Services (DHS).

The firm owned by this lobbyist is currently a vendor for TPEP providing media and communications services to the program. It is quite likely that any increased funding that may be secured for TPEP will have the effect of increasing the already considerable size of the lobbyist's existing vendor contract with the program.

**RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the issues addressed herein:

171.725(8) "'Lobbying' means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials."

171.725(9) "'Lobbyist' means: (a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying."

QUESTION: Is it permissible for this lobbyist to advocate on behalf of the cancer society and other anti-smoking organizations for increased funding from the legislature for a state program that contracts with the lobbyist for professional services when such increased funding would likely increase the size of the contract?

OPINION: The lobbyist described in the stated facts does not appear to be a public official in relation to being a vendor to TPEP. According to the stated facts the lobbying would be completely separate and apart from contractor responsibilities with TPEP. The provisions of ORS Chapter 244, Oregon Government Standards and Practices laws, do not, therefore, appear to apply to the issues to be addressed in this opinion.

Many organizations or interest groups receive a direct financial benefit from successful lobbying efforts. Some examples are the tobacco industry lobbying for lower taxes on cigarettes or the insurance industry lobbying for tort claim reform in order to reduce the dollar amount of awards for damages they must pay.

ORS 171.756 proscribes the following conduct that is prohibited for lobbyists:

- (1) A lobbyist may not instigate the introduction of any legislative action for the purpose of obtaining employment to lobby in opposition to the legislative action.
- (2) A lobbyist may not attempt to influence the vote of any member of the Legislative Assembly by the promise of financial support of the candidacy of the member, or by treat of financing opposition to the candidacy of the member, at any future election.
- (3) A person may not lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity.
- (4) A legislative or executive official may not receive consideration other than from the State of Oregon for acting as a lobbyist in Oregon.

Receiving financial benefit as a direct result of lobbying activities has not been identified by the Legislature as prohibited conduct. Accordingly, it appears that the lobbyist may advocate for increased funding from the legislature for a state program that contracts with the lobbyist and would be likely to increase the contract should additional funding be secured.

**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION PURSUANT TO ORS 171.776. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE**

Jerry Spegman  
May 31, 2002  
Page 3

**LIABLE UNDER ORS CHAPTER 171.725 to ORS 171.785 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN.**

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 31<sup>st</sup> day of May, 2002.

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Katherine E. Tennyson, Chairperson

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Lynn Rosik  
Assistant Attorney General

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Date

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