

January 8, 2009

OREGON GOVERNMENT ETHICS COMMISSION STAFF ADVISORY OPINION NO. 08S-007

STATED FACTS: Three public officials who served in the Oregon Legislative Assembly during the most recent legislative session have been elected to statewide office. They now serve as the Oregon Secretary of State, Oregon State Treasurer and Oregon Commissioner of the Bureau of Labor and Industries. ORS 244.045(6), adopted in 2007, forbids former legislators from receiving money or any other consideration for lobbying from the period of time immediately following their legislative service through the date of adjournment of the next regular session of the Legislative Assembly.

QUESTION: Does ORS 244.045(6) prohibit former members of the Oregon Legislative Assembly who have been elected to the statewide offices of Oregon Secretary of State, Oregon State Treasurer and Oregon Commissioner of the Bureau of Labor and Industries from lobbying on behalf of their state agencies?

ANSWER: ORS 244.045(6) prohibits former members of the Legislative Assembly from receiving money or any other consideration for lobbying performed during the period beginning when the person ceases to be a member of the Legislative Assembly until adjournment sine die of the next regular session of the Legislative Assembly that begins after the date the former member leaves the Legislative Assembly. For 2008 and 2010 only, the first special session held during those years is considered to be a regular session of the Legislative Assembly [Section 15b, chapter 877, Oregon Laws 2007].

ORS 171.725(8) defines lobbying as influencing or attempting to influence legislative action through communication with legislative and executive officials. Lobbying also includes the solicitation of others to influence or attempt to influence legislative action, as well as efforts to obtain the goodwill of legislative officials.

The definition of lobbyist includes three categories of persons. ORS 171.725(9)(a) includes individuals who agree “to provide personal services for money or any other consideration for the purpose of lobbying.” ORS 171.725(9)(b) includes persons who are otherwise not subject to paragraph (a) who provide personal services “as a representative of a corporation, association or other group, for the purpose of lobbying.” ORS 171.725(9)(c) includes any “public official who lobbies.”

It appears that any lobbying conducted by the statewide elected officials would be conducted as public officials on behalf of their position and the state agency they supervise. Thus the lobbying conducted by these officials would cause these officials to come within the definition of lobbyist only through ORS 171.725(9)(c), as a "public official who lobbies."

ORS 244.045(6) prohibits former legislators from lobbying only if they receive "money or any other consideration for lobbying". This prohibition applies only to those who are lobbyists as defined in ORS 171.725(9)(a). If the three statewide elected officials conduct only lobbying that falls within ORS 171.725(9)(c), by lobbying on behalf of their state agency, ORS 244.045(6) does not apply to lobbying performed by these public officials.

The statutes cited in this opinion are provided as an addendum to this Commission Staff Advisory Opinion.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS 244 TO THE FACTS STATED HEREIN. ANY RELEVANT INFORMATION, WHICH WAS NOT INCLUDED BY THE REQUESTER OF THIS OPINION IN THE STATED FACTS, COULD COMPLETELY CHANGE THE OUTCOME OF THIS OPINION. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280 or ORS 171.776. THIS OPINION DOES NOT EXEMPT A PUBLIC OFFICIAL FROM LIABILITY UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS ONLY MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT ETHICS COMMISSION.

Please contact this office again if you would like this opinion submitted to the Oregon Government Ethics Commission for adoption as a formal advisory opinion pursuant to ORS 244.280.

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ADDENDUM

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS) are applicable to the issues that are addressed in this opinion:

171.725(8) "Lobbying" means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.

171.725(9) "Lobbyist" means:

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

171.725(9)(b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.

171.725(9)(c) Any public official who lobbies.

171.725(10) "Public agency" means a commission, board, agency or other governmental body.

171.725(11) "Public official" means any member or member-elect of any public agency and any member of the staff or an employee of the public agency.

244.020(13) "Public official" means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee, agent or otherwise, irrespective of whether the person is compensated for the services.

244.045 Regulation of subsequent employment of public officials; lobbying by former members of Legislative Assembly.

244.045(6) A person who has been a member of the Legislative Assembly may not receive money or any other consideration for lobbying as defined in ORS 171.725 performed during the period beginning on the date the person ceases to be a member of the Legislative Assembly and ending on the date of adjournment sine die of the next regular session of the Legislative Assembly that begins after the date the person ceases to be a member of the Legislative Assembly.

Note: Section 15b, chapter 877, Oregon Laws 2007, provides:

Sec. 15b. (1) For purposes of ORS 244.045 (6), if a special session of the Legislative Assembly is held in calendar year 2008 or 2010, the first special session held in that calendar year is considered a regular session of the Legislative Assembly.

(2) This section is repealed January 1, 2011.