

March 13, 2009

At its March 13, 2009 meeting, the Oregon Government Ethics Commission (Commission) rescinded Commission Advisory Opinion No. 09A-1001 and adopted the following advisory opinion:

OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 09A-1002

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 Secretary of State, State Treasurer and 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 Secretary of State, State Treasurer and 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.

ORS 171.735(5) exempts certain statewide elected officials, as well as certain staff members of their agencies, from the registration and reporting requirements in ORS 171.740 and 171.745. These exemptions apply to the elected positions discussed in this advisory opinion. The Commission views the registration and reporting exemptions for these officials as recognition by the Legislative Assembly that these officials, and their deputies, will be engaged in lobbying as an integral part of their positions. The exemption is consistent with the interpretation of ORS 244.045(6) discussed above.

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

THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN. OTHER LAWS OR REGULATIONS NOT WITHIN THE JURISDICTION OF THE COMMISSION MAY ALSO APPLY.

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Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 13th day of March 2009.

Delna Jones, Vice-Chairperson

Lynn Rosik, Assistant Attorney General

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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.

171.735(5) The Governor, chief of staff for the Governor, deputy chief of staff for the Governor, legal counsel to the Governor, deputy legal counsel to the Governor, Secretary of State, Deputy Secretary of State appointed pursuant to ORS 177.040, State Treasurer, Chief Deputy State Treasurer appointed pursuant to ORS 178.060, chief of staff for the office of the State Treasurer, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries, members and staff of the Oregon Law Commission who conduct the law revision program of the commission or any judge.

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.