
LEGISLATIVE TIPS WORKSHOP

Friday, January 19, 2007

Wilsonville Holiday Inn • 25425 S.W. 95th Avenue • Wilsonville, Oregon

Agenda

8:00 – 8:30 a.m. Registration, coffee and rolls

8:30 – 8:45 a.m. Welcome & Introduction

Albert Menashe, *Gevurtz Menashe et al, Oregon State Bar President*

Gerry Gaydos, *Gaydos, Churnside & Balthrop, Public Affairs Committee Chair*

Dave Barrows, *Dave Barrows & Associates, Program moderator*

8:45 – 10:00 a.m. Panel of Political Experts

- Judiciary Committee members:
 - Sen. Ginny Burdick
 - Rep. Greg Macpherson
 - Sen. Kate Brown
 - Rep. Wayne Krieger

Featuring information on:

- Who's who in the process
- How to get a legislator's attention
- Communicating with your legislator – what your legislator likes and doesn't like
- Making the most of your time with a legislator
- Possible annual sessions

10:00 – 11:00 a.m. Panel of Process Experts

William Taylor, *Judiciary Counsel*

Ann Boss, *Legislative Counsel*

Kenneth Rocco, *Legislative Fiscal Office*

Featuring information on:

- Tips for effective and successful lobbying
- Practical aspects of lawyer "lobbying"
- Oregon law on lobbying
- Role of staff
- How to monitor legislation
- Working with Legislative Counsel
- The drafting process

11:00 - 11:10 a.m. Break

11:10 - 11:30 a.m. How to Give Testimony

Paul Cosgrove, *Of Counsel, Lindsay Hart Neil & Weigler*

11:30 - 12:00 p.m. Panel of Bar Experts

Moderator: *Gerry Gaydos, Gaydos, Churnside & Balthrop, Public Affairs Committee Chair*

Panelists: Section/Committee legislative leaders

Mark Comstock, *Garrett Hemann Robertson PC;*

Gwen Dayton, *Oregon Association of Hospital and Health System*

Featuring information on:

- Role of the bar
- Legislative guidelines
- Section/committee legislative process
- Overview of 2007 session and bill tracking
- How do you move a bill through the process?
- Internet resources

2007 Board of Governors Public Affairs Committee

Gerry Gaydos, *Chair, Eugene*

Linda Eyerman, *Vice Chair, Portland*

Jonathan Hill, *Roseburg*

Richard Yugler, *Portland*

Robert Vieira, *Portland*

Robert Newell, *Portland*

Ann Fisher, *Portland*

Oregon State Bar – Public Affairs Department

Susan Grabe, *Public Affairs Director*

David Nebel, *Public Affairs Attorney*

Sally LaJoie, *Public Affairs Attorney*

Elizabeth Lisenby, *Administrative Assistant*

Tel: 503-620-0222, ext. 376

Tel: 800-452-8260, ext. 376

Fax: 503-598-6976

Email: pubaff@osbar.org

Legislative Process and Procedures

Public Affairs Department Background

- Overview 1
- Why Lawyers Should be Involved 1
- *Keller v. State Bar of California* 1
- OSB Public Affairs Program 2

Section/Committee Legislative Process 3

2007 Legislative Session 4

Public Affairs and Law Improvement Services 4

OSB Bylaws – Article 12 Legislation and Public Policy 5

OSB Priorities, Proposals, and Contacts

2007 Public Affairs Legislative Package With Bill Numbers 7

Public Affairs Committee General Guidelines 8

OSB Legislative Contacts – 2007 9

The Political Process: Roles and Responsibilities 10

2007 Legislature

Legally Trained Legislators 13

- State Elected Officials With Legal Training 13

2007 Legislative Committees 14

2007 Oregon Legislators 15

Lobbying

How to Testify Before a Legislative Committee 17

Communicating with Your Legislator 19

- What Your Legislator Likes 19
- What Your Legislator Does Not Like 19

Tips for Effective and Successful Lobbying 20

Practical Aspects of Lawyer “Lobbying” 20

Ethics Issues for Lobbyists 21

ORPC 1.11: Special Conflicts of Interest Rules for Government Officers and Employees 24

MCLE Credits for Legislative Service 24

ORS and AG Opinion

Oregon Lobbying Statute 25

Contact With Legislative Assembly 32

Attorney General Opinion on Agency Lobbying 33

Media Tips

Using the Media 49

Legislative Resources

Legislative Resources 51

Appendix

How an Idea Becomes a Law 53

Legislative Summary Format 54

Sample of Legislative Summary 55

Sample Letter to Legislator 56

Sample Legislation 57

Sample of Legislative Testimony Before House Judiciary Committee 58

Sample of Legislative Testimony Before Senate Judiciary Committee – Civil 59

Sample Letter Requesting a Hearing 60

Public Affairs Department Background

Overview

The Oregon State Bar is directed to advance the science of jurisprudence and to improve the administration of justice. As a consequence, it has an obligation to the citizens of Oregon to participate in the law improvement process. The knowledge and expertise of its members is an invaluable resource to our citizen legislators. If the bar ever withdraws from the legislative arena, other organizations representing special interest groups will attempt to step in to fill the void. Unfortunately, those groups do not have the same balanced approach engendered by bar groups. Nor would they achieve the same level of success when it comes to enacting important statutory revisions.

The Oregon State Bar's commitment to improving its relations with the legislature was initiated by the membership at the 1978 annual meeting. The resolution adopted at that time directed the bar to develop a full time public affairs position to coordinate an expanded government relations program. The public affairs committee of the BOG was created at the same time to act on issues and to determine the program's emphasis. Later, support staff was approved to provide legislative assistance during the session. In 1990, due to increasing demands caused by the growing number of lawyers in Oregon, the BOG expanded that temporary position into a law improvement coordinator position. Now the bar's government relations program includes the responsibility for lobbying activities, and a wide variety of special projects involving public policy and law improvement.

Why Lawyers Should be Involved

The bar's law improvement program provides an important service to its members and the public by developing and maintaining a strong and effective presence in the legislature. Contrary to popular belief, most legislators are not lawyers. This means the intricacies of certain complex legal issues and the broad impact of legislative actions are not always understood by non-lawyers.

Moreover, many issues addressed by legislative bodies are of particular interest to lawyers, their clients and the public. Examples of these issues from the past include the legislature's attempt to regulate the legal profession by imposing mandatory pro bono requirements, eliminating the bar exam and imposing a

surcharge tax on professional services.

There are many reasons for lawyers to be involved in the legislative process: 1) lawyers have the legal training, education, experience and expertise to provide valuable assistance to legislative bodies; 2) lawyers can provide objective, well-reasoned and analytical responses to difficult and complex questions; and 3) lawyers can play the role of technical advisor rather than advocate, and can provide "white papers" on topics of interest to the legislature. Sections and committees frequently provide the best, and sometimes only, structure for delivery of these important services and a balanced perspective to the legislature.

Keller v. State Bar of California

In light of the U.S. Supreme Court opinion in *Keller v. State Bar of California*, (June 4, 1990), the Oregon State Bar BOG reevaluated its program planning and operations to ensure that the bar is operating within the broad guidelines set forth in that case. During this process the bar, as a member service organization, emphasized volunteer hours. The bar's success with its law improvement program and its growing influence as a valuable resource in the legislative community was recognized as a vital part of the bar's mission to further the administration of justice, ensure the provision of legal services and monitor the practice of law. The board was careful not to overreact to *Keller* and unduly restrict the range of activities in which it is involved. Sections and committees continue to have authority to act on relevant issues. On occasion, you may be asked to provide the board's Public Affairs Committee with the detailed reasons your group believes a particular request is within the scope of *Keller*.

During the past few years the public affairs program has drawn the line between 1) law improvement information and 2) aggressively pursued public affairs positions. Law improvement information services can be categorized as non-lobbying activities and the Public Affairs Committee minimizes interference with that process. The regulation and oversight of bar lobbying on public affairs positions (state bar positions), because it is where any major public policy influence would be exerted, should continue to be the focus of the Public Affairs Committee.

Although infrequent, section and committee activity that has a major political or policy impact must be endorsed by the Public Affairs Committee.

In the past, sections and committees have been cooperative and stayed within their prescribed jurisdictions. It is important that sections and committees represent the interests of their membership and are well balanced in their approach to issues in each substantive area of law.

In *Keller*, a member of the California bar contested the bar's use of compulsory bar dues to support and/or advocate "political or ideological" views in violation of his first Amendment rights. The U.S. Supreme Court held that the petitioner's rights were not violated if "the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal service available to the people of the state."

The court did not specifically elaborate on what constitutes permissible or impermissible dues-financed activities. However, it stated that the extreme ends of the spectrum were: endorsing or advancing gun control or a nuclear weapons freeze as unacceptable, on the one hand; and disciplining bar members or proposing the profession's ethics code as acceptable, on the other hand. The broad middle area of law improvement is appropriate if it is germane to the OSB's role in improving the quality of legal services to the people of the state of Oregon or relates to the regulation of the legal profession. As an example, we believe judicial administration issues constitute an appropriate activity under *Keller*.

Contrary to a few other integrated bars, the Oregon State Bar has operated in a reasonable, thoughtful manner in its program planning and operations, including its legislative program. The bar's track record during recent years suggests that it has been in compliance with the *Keller* principles. Moreover, the *Keller* case has improved the bar's ability to maintain an aggressive, effective law improvement program.

OSB Public Affairs Program

The law improvement program is responsible for improving the bar's liaison role with all levels of government on a year-round basis. This is intended to enhance the organization's credibility on issues of public policy that concern the practice of law, the administration of justice and quality of legal services. Staff duties include representing official bar positions; keeping abreast of legislation of interest to the bar; facilitating the exchange of information between governmental bodies and bar members involved in sections, committees or other related bar organizations; and responding to inquiries from lawyers, the public, and legislators and their staff.

Due to the joint effort of bar volunteers and bar staff, law improvement legislation sent to the legislature during recent sessions has fared well. The bar works for more law improvement legislation with more success than any other group.

The effectiveness of the law improvement program can be attributed to its organization. The Public Affairs Committee of the Board of Governors commits many hours to issue review and to direct interaction with decision-makers. In 1979, a bar ad hoc committee headed by now Chief Justice Wallace P. Carson, Jr. reviewed the structure and operations of the bar's legislative program. The ad hoc committee was formed as a result of controversy surrounding the bar's involvement in several high profile public policy issues in the 1979 session. The current public affairs program and the provisions of the *Bar Bylaws on Legislation and Public Policy, Article 12* are the product of that commission's findings and recommendations.

Section/Committee Legislative Process

Bar sections and committees are encouraged to have a legislative subcommittee that is involved in the legislative process. Some groups will be more active in the process than others, e.g., some will initiate legislation, and all sections and committees are requested to monitor legislative activity in their respective area of expertise and to provide objective technical assistance. For more information, see, *BOG Policies on Legislation and Public Policy, Article 12*.

Sections and committees should be prepared to provide technical analysis on key bills relating to their particular area of expertise. This type of assistance amounts to what the bar calls “law improvement.” This includes reviewing proposed legislation or amendments for internal consistency and consistency with existing law, suggesting technical changes to better address the intent of the drafters, and preparing summaries and commentaries. Assistance from bar groups is invaluable because it is often more objective than the comments of the proponents who testify on the merits of a proposal.

When a section or committee provides input or feedback on a request, either from the bar or from someone at the legislature, it is important that program staff is notified. This is particularly important if your section or committee wants to take a position for or against a bill. Also, if your group is interested in particular issues within your area of expertise, let us know so we can help you during the session.

If a section or committee decides to take a position on a bill, it must make a written request to the Public Affairs Committee setting forth its position and how it is appropriate under the legislative guidelines established by the Board of Governors. See, *BOG Policies Section Article 12, Section 12.4*. The section or committee is then responsible for monitoring and presenting its position and testimony on that bill.

Department staff lobbies only on positions that are designated as bar priorities by the Public Affairs Committee. Bar priorities include major public policy and political issues and must receive the BOG's Public Affairs Committee approval.

The public affairs program is available to assist with fine-tuning section proposals. We appreciate being informed of executive committee or legislative subcommittee meetings dealing with legislative issues. This allows us to stay current on the status of individual projects. It also allows us to share information with you and various interest groups affected by the legislation.

Most of the legislation from bar groups go through the judiciary committees of the legislature. Please encourage members of your group to maintain contact with their own legislators and any lawyer legislators with whom they are acquainted.

2007 Legislative Session

The legislative session that convened on January 8, 2007 will look different in at least three significant respects from the last few. The most obvious change will be that the Democrats will be in control of both chambers of the legislature – and the Governor's office as well – for the first time since 1989. Another significant difference will be the state's financial situation: for the first time since 2001 the legislature will be working with positive revenue forecasts that will support some expansion of state services. Finally, the legislature will be setting about its business with a new framework for completing its work by June 30 at the latest.

In light of the Democratic control of both the executive and legislative branches and the strong financial circumstances in which the state finds itself, many advocates for state services will be asking for more state support. The Chief Justice, as one example, submitted a general fund budget for the Judicial Department that is 38 percent more than the legislatively approved general fund budget for the

2005-07 biennium. While agencies will probably not be facing cuts to maintenance level budgets, they may find it difficult to increase funding to levels that their advocates want.

Legally trained legislators continue in short supply. On the Senate Judiciary Committee only one member of the five is legally trained; in the House Judiciary Committee two in seven are. Another crucial committee for the justice system is the Ways and Means Subcommittee on Public Safety: two of ten members are legally trained.

All in all, the legal community can expect a receptive legislature, operating on strict timelines and within budget constraints that will preclude meeting all the needs of the justice system. The Public Affairs Committee of the Board of Governors will continue to work to improve bar relations with legislators, and we encourage you to do likewise. We look forward to working with you during the 2007 session.

Public Affairs and Law Improvement Services

The department provides the following services:

1. Advice on legislation and related communications – participation in strategy sessions.
2. Assistance in obtaining board or BOG-PAC ratification of proposed positions and consideration of requests for bar lobbying assistance on major bills or positions.
3. Coordinate written dissemination of issues and legislative information within the bar through the *Bulletin* and the *Capitol Insider* newsletter, and the program website, <http://www.osbar.org/pubaffairs/publicaffairs.html>.
4. Forward legislative information, circulate key bills and respond to questions from bar groups.
5. Provide general liaison services between sections and government agencies, legislators and their staff, bar related organizations and the public.
6. Assist in coordination among sections and committees on legislative bills.
7. Assist in identification of and prioritization of appropriate legislation and issues as they develop.
8. Respond to public policy or government related requests from bar groups.

OSB Bylaws (Effective Nov. 20 2004)

Article 12 Legislation and Public Policy

Section 12.1 Guidelines

Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Section 12.2 Initiation of Legislation

Subsection 12.200 House of Delegates and Membership

The Bar must sponsor legislative proposals approved by the House of Delegates or through a membership initiative to the Legislative Assembly directly following the House or membership action. Legislation not enacted may not be sponsored in the following session unless resubmitted by one of the methods set forth above or by action of the Board.

Subsection 12.201 Board of Governors

The Board may sponsor legislative proposals to the Legislative Assembly on its own initiative. The Board and its Public Affairs Committee has the authority between meetings of the House of Delegates to act on legislative and public policy matters pursuant to the guidelines established.

Section 12.3 Legislative Process

Because of the nature of the legislative process, the Board or its Public Affairs Committee retains the right to set priorities regarding the enactment of legislation, to propose amendments or consent to amendments to legislation and to sponsor or take positions on appropriate legislation. In so doing, the Board will make a reasonable effort to do the following:

Encourage as wide a participation of the membership as possible in formulating positions on legislative issues; inform members, especially sections and committees, of the Bar's legislative positions; respect divergent opinions of subgroups within the legal profession; provide assistance to bar sections and committees; avoid committing bar funds to issues that are divisive or result in creating factions within the profession; present major issues to the House of Delegates for approval; ensure that the Public Affairs Committee encompasses a balance of interest within the Bar and ensure that the Public Affairs Committee consults frequently with the Board.

Section 12.4 Committees and Sections

Any committee or section wishing to sponsor legislation or take a position on any rule or public policy issue will inform the Public Affairs Program, and through that office, the Board, of the exact nature of the legislation proposed. A copy of the bill, proposed rule or policy will be presented for consideration and approval of the Board. A committee or section of the Bar may not represent to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of that committee or section of the Bar without the majority approval of the members of that committee or, in the case of a section, the executive committee and the prior approval of the Board, except as follows. During a legislative session or during the interim, a bar committee or the executive committee of any section must contact the Bar's Public Affairs Program before taking any position on a bill, rule or public policy issue within its general subject area. The chair of the Board's Public Affairs Committee will determine, within 72 hours of notice of the issue, whether it is appropriate for the Bar to take an official position or to allow the section or committee to take a position as requested. The full Public Affairs Committee or the full Board may be consulted before a final decision is made. Bar staff and the Public Affairs Committee of the Board will make every effort to accommodate committees and sections that wish to express positions on relevant issues. The Public Affairs Program shall be kept informed about the status of such positions and related activities.

Section 12.5 Professional Liability Fund

Legislation

The Professional Liability Fund (“PLF”) may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of the Board of Governors, except as is provided in Section 12.4 of the Bar’s Bylaws.

Section 12.6 Objections to Use of Bar Dues

Subsection 12.600 Submission

A member of the Bar who objects to the use of any portion of the member’s bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member’s concerns to determine if the Board agrees with the member’s objections. Member objections must be in writing and filed with the Executive Director of the Bar. The Board will review each written objection received by the Executive Director at its next scheduled board meeting following receipt of the objection. The Board will respond through the Executive Director in writing to each objection. The Board’s response will include an explanation of the Board’s reasoning in agreeing or disagreeing with each objection.

Subsection 12.601 Refund

If the Board agrees with the member’s objection, it will immediately refund the portion of the member’s dues that are attributable to the activity, with interest paid on that sum of money from the date that the member’s fees were received to the date of the Bar’s refund. The statutory rate of interest will be used. If the Board disagrees with the member’s objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. The Executive Director and the member must sign an arbitration agreement approved as to form by the Board.

Subsection 12.602 Arbitration

If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association (“OSJA”) for the designation of three active-status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The Bar and the objecting member will have one preemptory challenge to the list of arbitrators. The Bar and the object-

ing member must notify one another of a preemptory challenge within seven days after receiving the list of proposed arbitrators. If there are no challenges or only one challenge, the OSJA will designate the arbitrator. The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Oregon State Bar Center or at another location in Oregon that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting member. The arbitrator will not be bound by rules of evidence. The presentation of witnesses will not be a part of the hearing process, although the arbitrator may ask the state bar representative and the objecting member and his or her lawyer, if any, questions. The hearing may be reported, but the expense of reporting must be borne by the party requesting it. The Bar and the objecting member may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties. The arbitrator will promptly decide the matter, applying the standard set forth in *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), to the expenditures to which the member objected. The scope of the arbitrator’s review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator must file a written decision with the Executive Director within 14 days after the hearing. The arbitrator’s decision is final and binding on the parties. If the arbitrator agrees with the member’s objection, the Bar will immediately refund the portion of the member’s dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the date that the member’s fees were received to the date of the Bar’s refund. If the arbitrator agrees with the Bar, the member’s objection is denied and the file in the matter closed. Similar or related objections, by agreement of the parties, may be consolidated for hearing before one arbitrator.

2007 Oregon State Bar Legislative Proposals

OSB PUBLIC AFFAIRS COMMITTEE

BOG Governance Provisions

HB 2355

- Client Security Fund amends ORS 9.655

HB 2356

- INS technical changes to conform to federal statutory name changes

HB 2357

- E-filing committee clarify Chief Judge is authorized to designate electronic documents as the official record – Co-sponsored with OJD

HB 2358

- Allows OSB employees to participate in Oregon Savings Growth Plan

OSB SECTIONS

Consumer Law

SB 300

Amends ORS Ch. 18 to allow exemption for Additional Child Tax Credit (SB 274 from 2005 Session)

Debtor/Creditor

SB 301

Allows service on occupant by mail and posting in trust deed sales, under certain circumstances and allow publication of sale in newspaper of general circulation

SB 302

Allows normal secured property foreclosure process to proceed against debtor's estate

SB 303

Amends ORS 18.625 to render writ of garnishment ineffective when served on employer after payroll instructions have been issued to 3d party payroll company

SB 304

Corrects inadvertent omission of definitional cross-reference of "security account" in Ch. 79

Elder Law

HB 2359

Amends statute to require a waiting period for a person to claim a bank account by affidavit

HB 2360

Amends Ch. 125 to allow termination of conservatorship by creation of a supplemental needs trust

Estate Planning

SB 305

Technical changes to the Uniform Trust Code

HB 2361

Technical changes to the Uniform Principal Income Act

HB 2362

Amends Uniform Probate Code to allow declarations rather than affidavits in probate court

Family Law

SB 306

Clarifies court discretion regarding reinstatement of spousal support

SB 307

Technical changes to ORS 107.730 and 109.020 to conform language use. Includes change to ORS 18.180 (7) re expiration of judgments in domestic relations context

HB 2363

Standing Committee on Adoption: Repeals sunset on Oregon Adoption Tax Credit (SB 892 from 2005 Session)

Indian Law

HB 2364

Clarifies Oregon Evidence Code to ensure consistent treatment of documents provided by tribal governments

Real Estate & Land Use

SB 308

Removes state and local road authorities from list of property owners whose consent is necessary for annexation under ORS 222.125 (SB 282 from 2005 Session)

SB 310

Allows counties to clear away old and outdated land use applications (where applicant did not supply additional requested information) by amending ORS 215.427 to give counties authority to determine a land use application “expired” after 180 days

SB 311

Amends current statute (ORS 275.225(1)) so counties may sell excess property unsuited for construction under county and city zoning ordinances and building codes, currently only covers county codes

HB 2365

Amends ORS 93.180 to clarify that a deed to a husband and wife defaults to a tenancy by the entirety

OSB COMMITTEES**Procedure and Practice Committee***HB 2366*

Amends ORS 12.160 to extend statute of limitations for minors’ injuries to medical expenses

HB 2367

Amends ORS 1.730 regarding voting quorum requirements on Council On Court Procedures

HB 2368

Amends ORS 19.270 to reduce delay and costs to litigants and conserve trial and appellate court resources

Public Affairs Committee General Legislation Guidelines

The bar is committed to promoting legislation that serves one or more of the following goals and to opposing legislation that conflicts with one or more of them:

1. To provide access to justice for all Oregonians, including ensuring adequate support for low-income legal services and adequately funding indigent defense services.
2. To improve the efficiency and effectiveness of the judicial system, including adequate funding and facilities for the courts.
3. To increase the consistency and uniformity of laws, including statutes of limitation.
4. To support and improve the ability of attorneys to serve the interests of the citizens of the state competently and to advise the legislature of problems proposed legislation might present to competent representation.
5. To ensure a fair and effective system of criminal justice.
6. To monitor tort reform proposals.
7. To promote access to public records generally and to professional licensing and discipline records in particular.
8. To improve regulation of the legal profession and the lawyer discipline system.
9. To improve the juvenile justice system and encourage better coordination between the different components of the system.

OSB Legislative Contacts — 2007

Below is a list of bar legislative contacts. If you have particular questions or comments regarding legislation we encourage you to contact the appropriate person. Please contact Elizabeth Lisenby at 431.6376 or elisenby@osbar.org if a contact assignment changes. (* indicates person is also the section/committee chair)

Administrative Law	Steve Rissberger*	Government Law	Steven Lounsbury
Admiralty	Craig Murphy*	Health Law	Gwen Dayton
Affirmative Action	Stella Manabe (OSB)	Indian Law	Christopher Burford
Agriculture	David Smiley*	Intellectual Properties	Anne W. Glazer
Alternative Dispute Resolution	Elaine Hallmark, Stanley Sitnick	International Law	Patchen M. Haggerty
Anti-Trust	R. Scott Seidman	Judicial Administration and Funding	Michael Bloom
Appellate Law	Marc Brown, Keith M. Garza	Juvenile Law	Angela Sherbo, Ingrid Swenson
Aviation	Rich Vial	Labor & Employment	Adam Morrison
Bar Act and Bar Priorities	Albert Menashe, Susan Grabe(OSB)	Law Practice Management	David L. Carlson
Business Law	Chris Hall	Legal Ethics	Sylvia Stevens (OSB)
Business Litigation	Christopher T. Carson	Legal Services	Judith Baker (OSB)
Civil Rights	Jeff Jones	Litigation	Nancie Potter*
Computer and Internet Law	Paula Holm Jensen	Pro Bono	Bealisa Sydlik*, Debbie Maryanov
Constitutional Law	Les Swanson*	Procedure and Practice	John Schwimmer, Scott Pratt*
Construction Law	Jason Alexander	Product Liability	Meagan Flynn*
Consumer Law	Pamela Yee*, Bret Knewton	Professional Liability	Barbara Fishleder, Ira Zarov
Corporate Counsel	Dan Field	Public Service & Information	Youlee You*, Kay Pulju (OSB)
Criminal Law	Lindsay Partridge	Quality of Life	Elizabeth Semler*
Debtor/Creditor	David Hercher*	Real Estate and Land Use	
Disability Law	Neisha Saxena	Real Estate	Greg Nelson, Dina Alexander
Diversity	David Simon	Land Use	Chris Crean
Elder Law	Ryan Gibb	Securities Regulation	Sherrill Corbett, Timothy DeJong
Energy, Telecom & Utility	Larry Reichman	Sole and Small Firm Practitioners	Donna G. Goldian*
Environmental Law	David Ashton, Anita Winkler	Taxation	Mark Huglin
Estate Planning	Bill Brewer, Tim Wachter*		
Family Law	David Gannett, Lauren Saucy		
Adoption Law Subcommittee	Robin Pope		

Unlawful Practice & Independent Paralegals	Defense of Indigent Accused	Michael Bloom, Ann Christian
Noel Snyder*, Helen Hierschbiel (OSB)		
Workers' Compensation	Election Law	Margaret Olney
Linh T. Vu*		
LAW IMPROVEMENT QUESTIONS	Judgeships and Judicial Efficiency	Tim Willis
David Nebel (OSB)		
Sally LaJoie (OSB)	Medical Profession	Doug Schaeffer*
OTHER INTEREST GROUPS	New Lawyers Division	Josh Newton*
Access to Justice	Uniform State Laws	Carl Bjerre, Martha Walters, Joe Willis, Henry Drummonds
Judith Baker (OSB)		
Bar, Press and Broadcasters		
Duane Bosworth*		

The Political Process: Roles and Responsibilities

1.0 Introduction

In the public policy arena, the bar plays a significant role in the evaluation and consideration of administration of justice issues in the legislative and political processes. The board encourages bar groups to be involved in legislative activities within their jurisdiction subject to the bar's legislative guidelines and relevant election laws. There is a long tradition of lawyers working through the bar process to improve the quality of laws in the state of Oregon and the bar's law improvement program has served to raise the credibility of lawyers as an resource for expertise in a wide variety of areas.

The Oregon State Bar Board of Governors guidelines for legislative and political activity are set forth in BOG Bylaws Article 12. The guidelines are drawn from the bar's statutory purposes, constitutional limits on the use of mandatory membership fees, and election law limits on the activities of public employees. They also reflect the recognition that the Oregon State Bar has a diverse membership with differing views on many subjects.

1.1 Statutory Authority

By way of background, the Oregon State Bar is a “public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon...” ORS 9.010(1). Although the board has statutory authority to “at all times direct its power to the administration of the science of jurisprudence and the improvement of the administration of justice” (see ORS 9.080(1)), its actions are still constrained by other applicable law, including *Keller v. State Bar of California*, 496 U.S. 1 (1990). As a state entity, the bar's funds are subject to audit by the Secretary of State pursuant to ORS 297.210 and, for purposes of the expenditure of bar resources, bar “funds” are considered “public funds” and board members may be subject to the restrictions on the expenditure of public funds under ORS 294.100 as public officials.

As a mandatory membership organization, the Oregon State Bar cannot engage in the wide-range of activities allowed voluntary organizations. Even though the bar is partially funded by membership fees as opposed to state general fund revenues, its unique statutory composition makes it subject to various laws. Thus, in pursuing any activity, the expenditure of public funds by the board must be related to the purposes for which the bar exists. If it is not, the public officials who permit the unauthorized expenditure may be subject to personal liability under ORS 294.100 if the expenditure constitutes malfeasance or wanton neglect of duty.

1.2 Keller Standard

The U.S. Supreme Court's decision in *Keller v. State Bar of California* set the parameters for what a mandatory state bar can do under the First Amendment. In *Keller*, a member of the California bar contested the bar's use of compulsory dues to support and/or advocate "political or ideological" views in violation of his First Amendment rights. The U.S. Supreme Court held that a mandatory state bar's use of compulsory dues to finance political and ideological activities violates the First Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

The court did not establish a particularly clear standard on what constitutes permissible or impermissible dues-financed activities. However, it stated that the extreme ends of the spectrum were endorsing or advancing gun control or a nuclear weapons freeze which were prohibited on the one hand and disciplining bar members or adopting changes to the profession's ethics code as acceptable on the other hand. We believe the broad middle area of law improvement is appropriate if it is germane to the bar's role in improving the quality of legal services to the people of the State of Oregon or relates to the regulation of the legal profession. The Board of Governors has set the scope of OSB permitted activities under *Keller* in BOG Bylaws Article 12.

Additionally, the bar's guidelines for legislative and policy activities require that the Board of Governors "endeavor to respect the divergent opinions of subgroups within the profession" and make reasonable efforts to "avoid committing bar funds to issues which are divisive or result in creating factions within the profession." See BOG Bylaws Article 12.

1.3 Oregon Election Law

Bar employees are not public employees within the meaning of ORS 260.432. Therefore, bar staff may participate in advocacy efforts on behalf of the bar.

1.4 OSB Board Member ("Elected Official") Roles and Responsibilities

The board may do the following:

- 1) Advocate support or opposition to a measure or candidate. A board member may use staff-prepared informational and advocacy materials.
- 2) Use public resources and staff to develop and distribute objective material on the effects of an initiative measure on the bar and the justice system.
- 3) Take a position on an initiative measure. Public announcement of the board's position by way of a press release is permissible.
- 4) Provide, at bar expense, a content neutral forum at which proponents and opponents of an initiative measure may present their views.
- 5) Personally campaign for or against a measure.

1.5 Recent bar activities

In 2006 the Board of Governors reviewed its policy on involvement in the initiative and electoral process and substantially expanded the scope of its activities. In the 2006 election campaign the bar took a relatively active role in successful efforts to defeat Constitutional Amendment 40. This measure would have required the election of appellate judges by district. Both the Board of Governors and the House of Delegates passed resolutions opposing the measure. Staff worked closely with the Board of Governors in developing materials to disseminate to the public in opposition to the measure's passage. Arguments against the measure were posted on the OSB website and placed in the Voter's Pamphlet. Staff also worked on a draft letter that bar members could send to clients urging their opposition to the measure; this was sent to the membership with a cover letter from individual BOG members.

1.6 OSB Section/Committee Roles and Responsibilities

Sections and committees of the bar operate under the umbrella of the bar and thus are subject to the same legal constraints as the board. In light of the political restrictions outlined above, here are some examples of activities that are permitted and some that are restricted:

- 1) Bar groups may propose legislation within their area of jurisdiction subject to BOG approval.
- 2) Bar groups may take positions or respond to public policy activities on legislation. OSB Section/Committee leaders cannot use bar funds to advocate a position on a ballot measure. This means money, staff time during working hours, travel allowances, facilities or equipment. Section/committee members or officers cannot ask staff to research or write a speech designed to support or oppose a ballot measure or charge travel expenses for attending a meeting at which such a position is advocated.
- 3) Bar groups may coordinate or liaison with any group to engage in information gathering on issues involving the bar, the judicial system, the judicial department budget and issues relating to the administration of justice. Meetings to develop strategies to pass or defeat any measure or candidate are not permitted.
- 4) Bar groups can develop legislation for sponsorship to be included in the bar's legislative package or take positions on legislation that fall within *Keller* and legislative guidelines subject to OSB Public Affairs Committee approval.
- 5) Bar groups may not advocate a political position for or against an initiative or referendum or candidate.

Legally Trained Legislators

Despite what many people may assume, there are relatively few lawyers in the Oregon legislature. Only 10 of the 90 members of the 74th Legislative Assembly have any formal legal education, and only 8 are members of the Oregon State Bar.

State Elected Officials with Legal Training 10 Legislators with Legal Training in the 2007 Session

** Indicates that the designated people have law degrees, but are not licensed to practice in Oregon.*

Oregon Senate:

Floyd Prozanski (D)
Senate District 4, Eugene

Peter Courtney (D)
Senate District 11, Salem

Elizabeth “Betsy” Johnson (D)
Senate District 16, N. Coast*

Brad Avakian (D)
Senate District 17, Beaverton

Kate Brown (D)
Senate District 21, Clackamas and
Multnomah County

David Nelson, (R)
Senate District 29, Morrow, Union,
Wallowa County*

Oregon House of Representatives:

Dennis Richardson (R)
House District 4, Medford

Phil Barnhart (D)
House District 11, Eugene

Suzanne Bonamici (D)
House District 34, Beaverton

Greg Macpherson (D)
House District 38, SW Portland, Lake Oswego

Statewide Office

Ted Kulongoski (D) Governor
Hardy Myers (D) State Attorney General

Information Numbers

Legislative Committees
(503) 986-1813

House Democratic Office
(503) 986-1900

House Republican Office
(503) 986-1400

Senate Republican Office
(503) 986-1950

Senate Democratic Office
(503) 986-1700

Legislative Counsel
(503) 986-1243

Distribution Center (for copy of legislative bills)
(503) 986-1180, www.leg.state.or.us

Oregon State Bar, Public Affairs
(503) 620-0222 ext. 376

Governor’s Legal Counsel
David Reese
(503) 378-6246

2007 Legislative Committees

Senate Judiciary Committee

Ginny Burdick (D. Portland), Chair
Roger Beyer (R. Molalla), Vice-Chair
Jeff Kruse (R. Roseburg)
Floyd Prozanski (D. Eugene)
Vicki Walker (D. Eugene)

House Judiciary Committee

Greg Macpherson (D. Lake Oswego), Chair
Jeff Barker (D. Beaverton), Vice Chair
Gene Whisnant (R. Sunriver), Vice Chair
Suzanne Bonamici (D. Beaverton)
Kevin Cameron (R. Salem)
Linda Flores (R. Clackamas)
Betty Komp (D. Woodburn)
Wayne Krieger (R. Gold Beach)
Tobias Read (D. Beaverton)

2007 Joint Ways & Means

Public Safety Sub-Committee

Rep. Chip Shields (D. North Portland), Chair
Sen. Ben Westlund (D. Tumalo), Vice-Chair
Sen. Kate Brown (D. Portland)
Sen. Ginny Burdick (D. Portland)
Sen. Dave Nelson (R. Pendleton)
Sen. Jackie Winters (R. Salem)
Rep. Jeff Barker (D. Beaverton)
Rep. Kevin Cameron (R. Salem)
Rep. Bruce Hanna (R. Roseburg)
Rep. Nancy Nathanson (D. Eugene)

2007 Oregon Legislators

SENATE DISTRICT#	REGION	SENATE LEGISLATORS (18D - 11R - 11)	
SD1	S. Coast, Roseburg	Jeff Kruse	R
SD2	Grants Pass	<i>Jason Atkinson</i>	R
SD3	Ashland, Medford	Alan Bates	D
SD4	Lane, Douglas County	Floyd Prozanski*	D
SD5	Central Coast	<i>Joanne Verger</i>	D
SD6	Springfield	Bill Morrisette	D
SD7	Eugene	Vicki Walker	D
SD8	Albany, Corvallis	Frank Morse	R
SD9	Rural Willamette Valley	Roger Beyer	R
SD10	Salem	Jackie Winters	R
SD11	Salem	Peter Courtney*	D
SD12	McMinnville	<i>Gary George</i>	R
SD13	S Washington Co., Keizer	Larry George	R
SD14	Beaverton	<i>Ryan Deckert</i>	D
SD15	Hillsboro	Bruce Starr	R
SD16	N. Coast, St. Helens	Betsy Johnson*	D
SD17	Beaverton	Brad Avakian*	D
SD18	SW Portland, Tigard	<i>Ginny Burdick</i>	D
SD19	Lake Oswego	Richard Devlin	D
SD20	Oregon City, Canby	Kurt Schrader	D
SD21	SE Portland, Milwaukie	<i>Kate Brown*</i>	D
SD22	N, NE Portland	<i>Margaret Carter</i>	D
SD23	SE, NE Portland	<i>Avel Gordly</i>	I
SD24	SE, NE Portland	Rod Monroe	D
SD25	Gresham	<i>Laurie Monnes-Anderson</i>	D
SD26	Clackamas, Hood River	Rick Metsger	D
SD27	Deschutes County	<i>Ben Westlund</i>	D
SD28	Klamath Falls	<i>Doug Whitsett</i>	R
SD29	NE Oregon	<i>Dave Nelson*</i>	R
SD30	Wasco to Malheur County	<i>Ted Ferrioli</i>	R

* indicates law school graduate. Italics indicates election in 2008.

HOUSE DISTRICT#	REGION	HOUSE LEGISLATORS (29R - 31D)	
HD1	South Coast	Wayne Krieger	R
HD2	Roseburg	Susan Morgan	R
HD3	Grants Pass	Ron Maurer	R
HD4	Rogue River	Dennis Richardson*	R
HD5	Ashland	Peter Buckley	D
HD6	Medford	Sal Esquivel	R
HD7	Lane, Douglas	Bruce Hanna	R
HD8	Central Lane	Paul Holvey	D
HD9	Florence, Coos Bay	Arnie Roblan	D
HD10	Central Coast	Jean Cowan	D
HD11	Lane, Linn	Phil Barnhart*	D

HD12	Springfield	Terry Beyer	D
HD13	Eugene	Nancy Nathanson	D
HD14	Eugene, Junction City	Chris Edwards	D
HD15	Albany	Andy Olson	R
HD16	Corvallis	Sara Gelser	D
HD17	Linn, Marion	Fred Girod	R
HD18	S. Clackamas	Vic Gilliam	R
HD19	Salem	Kevin Cameron	R
HD20	W. Salem	Vicki Berger	R
HD21	E. Salem	Brian Clem	D
HD22	Salem, Woodburn	Betty Komp	D
HD23	Polk, Benton	Brian Boquist	R
HD24	McMinnville	Donna Nelson	R
HD25	Keizer	Kim Thatcher	R
HD26	S. Washington	Jerry Krummel	R
HD27	Raleigh Hills	Tobias Read	D
HD28	Beaverton	Jeff Barker	D
HD29	Forest Grove	Chuck Riley	D
HD30	Hillsboro	David Edwards	D
HD31	Astoria	Brad Witt	D
HD32	North Coast	Deborah Boone	D
HD33	NW Portland	Mitch Greenlick	D
HD34	Beaverton	Suzanne Bonamici	* D
HD35	Tigard	Larry Galizio	D
HD36	SW Portland	Mary Nolan	D
HD37	West Linn	Scott Bruun	R
HD38	Lake Oswego	Greg Macpherson	* D
HD39	Oregon City	Wayne Scott	R
HD40	Gladstone	Dave Hunt	D
HD41	Milwaukie	Carolyn Tomei	D
HD42	SE Portland	Diane Rosenbaum	D
HD43	N, NE Portland	Chip Shields	D
HD44	N, NE Portland	Tina Kotek	D
HD45	NE Portland	Jackie Dingfelder	D
HD46	SE, NE Portland	Ben Cannon	D
HD47	SE, NE Portland	Jeff Merkley	D
HD48	Outer SE Pdx	Mike Schaufler	D
HD49	Gresham	Karen Minnis	R
HD50	Gresham	John Lim	R
HD51	Central Clackamas	Linda Flores	R
HD52	Mount Hood	Patty Smith	R
HD53	Deschutes	Gene Whisnant	R
HD54	Bend	Chuck Burley	R
HD55	South-central Oregon	George Gilman	R
HD56	Klamath Falls	Bill Garrard	R
HD57	NE Oregon	Greg Smith	R
HD58	Pendleton	Bob Jenson	R
HD59	N-central Oregon	John Dallum	R
HD60	SE Oregon	Tom Butler	R

* indicates law school graduate.

How To Testify Before a Legislative Committee

Committees are the heart of Oregon's legislative process. The committee process provides legislators more opportunity to closely study a measure than would be possible in a floor debate. Committees may hear from many people who support or oppose the measure.

Giving public testimony before a legislative committee can be an exciting and fulfilling experience if you are prepared.

Your testimony may influence the committee's action. It also becomes part of the permanent record and may be used in future research.

Listed below are suggestions to help make your presentation successful.

■ Know Your Audience

The members of the committee are "citizen legislators." They care that you have taken time out of your day to come and testify before them.

- Be respectful.
- Don't accuse committee members of causing your particular problem.
- Resist the temptation to scold, put down, or insult the decision makers or other witnesses. This tactic will likely alienate them from your cause.

■ Know the Issue

Support your personal opinions with as many facts as possible. Be knowledgeable of the "other side of the story." You may be asked to discuss the differences. Draw from your own knowledge and experience.

■ Be Familiar with the Committee Process

- Know the location of the building, the meeting room, and the meeting time.
- Agendas will be posted outside the meeting room. Check to make sure the measure you are interested in has not been removed from the agenda. The measures may not be heard in the printed order.

- If possible, attend a committee meeting before you testify to become familiar with the process and room layout.
- When you arrive at the meeting, sign the witness registration sheet. Witnesses are not necessarily called in chronological order.

■ Presenting Your Written Testimony

1. When you are called to testify, give copies of your testimony to committee staff before you begin your presentation. The number of copies requested is printed on the bottom of the committee meeting agenda.
2. Begin your presentation by addressing the chair person first, then members of the committee. "Chair____, members of the committee . . ."
3. For the record, state your name, address, and the organization or group you represent.
4. State whether you support or oppose the legislative measure being heard and briefly explain. Do not read your testimony to the committee word for word. Prepare an outline.
5. Keep in mind you may have a ten minute version of your testimony – be prepared to summarize it in one minute – that may be all the time you are allowed!
6. Thank the committee members and offer to answer any questions. "Thank you for the opportunity to testify before you today. I would be happy to answer any questions."
7. When a member asks you a question respond: "Chair _____, Senator/Representative (state name), the answer to your question is . . ."
8. Relax! The members understand that this can be an intimidating experience--they don't expect a perfect presentation.

■ Group Testimony

- Select several people to cover different topics so the testimony is not repetitive.
- Address the problem, possible solutions, and your group's best solution.

Special Needs

If you require special accommodation in order to testify before a committee, please contact the committee administrator or support staff 24 hours BEFORE the meeting with your request.

Contact Numbers:

(503) 986-1813 or (503) 986-1187

TDD (503) 986-1467 (inside Salem)

1-800-332-2313 (outside Salem)

If you need information regarding the legislative process, email the Legislative Liaison, or call 503-986-1000.

Communicating With Your Legislator

What your Legislator Likes

1. Your legislator likes to hear opinions from home and wants to be kept informed of conditions in the district. Base your letter on your own pertinent experiences and observations.
2. Write about a specific bill; describe it by number or its popular name. Your legislator reviews hundreds of bills in the course of a six-month period. Write only about one subject in your letter.
3. Your legislator likes intelligent, well thought-out letters that present a definite position, even if your legislator does not agree with it.
4. Even more important and valuable is a concise statement of the reasons for your position, particularly if you are writing about a field in which you have specialized knowledge. Your legislator has to vote on many matters with which he has little or no first-hand experience. Some of the most valuable help comes from facts presented in letters from persons who really know what they're talking about. (However, if you are not sure about the specifics of the bill, it is better to just indicate that you support it because you feel it is important legislation rather than indicating a number of reasons which are not sound ones.)
5. Short letters are always best. Members of the Legislature receive many letters each day, and a long one may not get as prompt a reading as a brief statement.
6. Letters should be timed to arrive while the issue is still alive. If your legislator is a committee member, he will appreciate having your views while the bill is before him for study and action.
7. A legislator likes to know when he has done something of which you approve. Do not hesitate to write if your legislator has supported and voted for legislation in which you are interested.

What Your Legislator Does Not Like

1. Your legislator does not like letters that merely demand or insist that he vote for or against a certain bill or that tell him what you want him to vote for but not why. Your legislator has no way of knowing whether your reasons are good or bad, and is not greatly influenced.
2. Your legislator does not like to be threatened with promises of defeat at the next election.
3. Your legislator does not like to be told how influential the writer is in his own locality.
4. Your legislator does not like to be asked to commit on a particular bill until the committee in charge of the subject has had a chance to hear evidence and dig out all of the pros and cons.
5. Your legislator does not like form letters, or letters that include excerpts from other peoples' letters on the same subject.
6. Your legislator does not like to be deluged by letters from the same person on the same subject. Quality, not quantity, is what counts.

Tips for Effective and Successful Lobbying

Follow a few common-sense guidelines when lobbying for state bar positions and your efforts will be more productive and less frustrating.

Be prepared. Legislators rely heavily on correspondence and committee hearings for information to make decisions. Take extra copies of written testimony with you.

Know the players. Develop and maintain relationships with key players who may have an interest in your issues or who represent a part of your community. They can often provide guidance or important entrees in the legislative process.

Maintain your credibility. Be candid and avoid making demands or overstating the truth. An effective witness is regarded as a valuable resource. Most legislators respond best to well-reasoned arguments.

Be concise. Be direct and to the point. Focus on your primary message. If necessary, written testimony can include additional attachments and longer explanatory information.

Be positive. Demonstrate positive advocacy and provide constructive feedback on issues. Remember, legislators are trying to solve problems, real or perceived. Flat-out opposition may arouse hostility.

Be persistent. Do not give up. Persistence makes the difference in the statehouse.

Build relationships. Build widespread support from a variety of interest groups for your legislative proposal or position. Bills are often torpedoed by interest groups that feel they were excluded from the formulation of the policy. When appropriate, recruit section and committee support.

Monitor the status of bills. Carefully follow the progress of your legislation. Do not lose sight of your bill until it is signed into law by the governor.

Consider fiscal implications. Do not overlook the importance that financial impact may have on the success or failure of a legislative proposal.

Recognize the art of compromise. Remember, half a loaf is better than nothing. Be professional, because today's opponent may be tomorrow's ally.

Practical Aspects of Lawyer “Lobbying”

The legislative process is complex. Failure to understand basic principles of the process and organization frequently result in an inability to effectively pursue necessary legal changes. To render valuable service to clients, the public and the law itself, a lawyer should know fundamental rules of the legislative process. These include:

Who's Who: Speaker of the House and President of the Senate, Majority and Minority Leaders, Committee Chairs, Committee Members, Clerk, Secretary, floor staff, legislative assistants, committee and caucus staff.

What's What: Committee rooms, offices in the Capitol, chambers, Coffee Shop, rules in the hall.

Bill Drafting and Introduction: Legislative Counsel (how to get a “note from mother”), pre-session filing, interim committees, requests, priorities, amendments, and relating clauses.

Bill Tracking: Following the agenda in both chambers, hearing schedules (24-hour and 36-hour rules; suspension in final days), floor motions, debate and votes, conference committees, veto/signing by governor, Session Laws.

Lobbying: Preparing testimony and exhibits, visiting members in office, after hours, in committee and during floor session. What a legislator needs from a lawyer lobbyist and when lawyers should keep out of sight.

Ethics Issues for Lobbyists

1. What is lobbying?

It is defined as 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 good will of legislative officials. ORS 171.725(8).

2. What are some of the fine points regarding the question “What is lobbying?”

Oregon Attorney General Opinion 8259 (August 7, 1998) discusses the following issues, among others:

- a. Is providing information without taking a position either in support of or opposition to specific legislative action lobbying? Short answer: No.
- b. Is office work such as creating, drafting, editing and finalizing legislative presentations lobbying? Short answer: No. Lobbying only includes the acts of imparting or transmitting testimony or presentations to legislative officials and does not encompass the acts of creating and preparing testimony.
- c. Is waiting to testify, in and of itself, lobbying? Short answer: No.
- d. Does lobbying include attending meetings of interested stakeholders for the purpose of obtaining approval or compromise on proposals for legislative measures? Short answer: Yes, if attendees request or urge members of the stakeholder group to communicate with legislative officials about the group’s work for the purpose of having proposed measures sponsored, supported, passed, or defeated.

3. Who are “legislative officials”?

ORS 171.725(7) defines “legislative official” to mean “any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.”

4. How is “lobbyist” defined?

As defined in ORS 171.725(9), lobbyists include:

- a. any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
- b. any person not otherwise within a. above who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.
- c. any public official who lobbies.

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

“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. ORS 171.725(11).

5. When do “lobbyists” have to register with the Oregon Government Standards and Practices Commission (OGSPC)?

The statutes that answer this question are not models of clarity. Once a person spends more than 24 hours during any calendar quarter lobbying or spends more than \$100 lobbying during any calendar quarter, the person must register as a lobbyist. ORS 171.735(4). Although it is somewhat unclear, travel time appears to be excluded from the 24-hour computation. The cost of personal travel, meals and lodging appear to be excluded from the \$100 computation. OAR 199-010-0075(5). Once an individual or other entity passes either the 24 hour or \$100 threshold, the individual or entity must register with the OGSPC within three working days. ORS 171.740(1).

6. Are there any other exceptions to registration?

Yes. See ORS 171.735. The one most relevant to this discussion is contained in ORS 171.735(3). “Any individual who receives no compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies” is exempt from registration so long as the person is not otherwise registered with the OGSPC.

7. Beyond registering, what must lobbyists do?

They must file statements of lobbying in accordance with the requirements of ORS 171.745.

Note should be made of ORS 171.745(4). It provides that “a registered lobbyist, who engages in lobbying activities without compensation on behalf of an organization is not required to register as a lobbyist for the organization as long as the lobbying activity does not exceed the financial or time limits set in ORS 171.735(4).”

8. What must employers of lobbyists do?

Any person on whose behalf a lobbyist was registered, or was required to register with the OGSPC at any time during the preceding calendar year, must file with the OGSPC by January 31 of the following year a statement of expenditures in accordance with the requirements of ORS 171.750.

9. What other important restrictions apply to lobbyists?

a. Lobbyists may not instigate the introduction of any legislative action for the purpose of obtaining employment to lobby in opposition to the legislative action. ORS 171.756(1).

- b. Lobbyists 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 threat of financing opposition to the candidacy of the member, at any future election. ORS 171.756(2).
- c. Persons may not lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity. ORS 171.756(3).
- d. Lobbyists cannot, pursuant to ORS 171.764(1), make false statements or misrepresentations to any legislative or executive official or, knowing a document to contain a false statement, cause a copy of such document to be received by a legislative or executive official without notifying such official in writing of the truth as prescribed in ORS 171.764(2).

10. Are there additional restrictions that apply to lawyer-lobbyists?

Yes. Oregon lawyers must comply with all applicable provisions of the Oregon Rules of Professional Conduct (ORPC) while engaging in lobbying activities. Some of the more important rules include:

- a. ORPC 3.9: A lawyer representing a client before a legislative body must disclose that the appearance is in a representative capacity. The lawyer must comply with the duties of candor in ORPC 3.3, the requirements of fairness to opposing parties and counsel in ORPC 3.4, and the rules in ORPC 3.5 regarding impartiality and decorum.
- b. ORPC 8.4(a)(3): It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.
- c. ORPC 7.1(a)(5): A lawyer may not make any communication that states or implies an ability to influence improperly a government agency or official or to achieve results by means that violate the ORPC or other law.

- d. ORPC 1.11: Lawyers who hold public office must comply with rules relating to special conflicts of interest for former and current government officers and employees.

11. Isn't it unlawful to make political contributions to elected officials during a legislative session?

ORS 260.174(3) prohibits this, but Oregon Attorney General Opinion 8274 (January 2, 2001) concludes that ORS 260.174 violates Article I, Section 8 of the Oregon Constitution and therefore cannot be enforced. Notwithstanding Oregon Attorney General Opinion 8274, ORS 260.174(3) is still the law in Oregon.

The 2001 Oregon Legislative Assembly enacted ORS 260.076 in an effort to address some of the concerns related to contributions received during a legislative session. ORS 260.076(1) provides that "A legislative official, statewide official or candidate therefor, or the official's or candidate's principal campaign committee, shall file statements showing contributions received by or on behalf of the official, candidate or committee during the period beginning January 1 immediately preceding a regular biennial session of the Legislative Assembly and ending upon adjournment of the regular biennial session of the Legislative Assembly, or during any special session of the Legislative Assembly." The required statement "shall be filed not later than two business days after the date a contribution is received" on a form prescribed by the Secretary of State. ORS 260.076(5).

12. Are members of the Board of Governors, OSB Committee Chairs and Members, and OSB Section Executive Committee Chairs and Members required to register as lobbyists for the Oregon State Bar?

As a general proposition, yes, if they spend more than 24 hours during any calendar quarter lobbying or spend more than \$100 lobbying during any calendar quarter.

The exception contained in ORS 171.735(3) should be restated here: "Any individual who receives no compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies" does not have to register as a lobbyist.

And, again, as previously noted, ORS 171.745(4) provides that "a registered lobbyist, who engages in lobbying activities without compensation on behalf of an organization is not required to register as a lobbyist for the organization as long as the lobbying activity does not exceed the financial or time limits set in ORS 171.735(4)."

ORPC 1.11: Special Conflicts of Interest Rules for Government Officers and Employees

Except as otherwise permitted, a lawyer who has formerly served as a public officer or employee of the government has a duty not to use confidential information to the government's disadvantage. This duty continues after the conclusion of the lawyer's service. ORPC 1.9(c). In addition, the lawyer may not otherwise represent a client in matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents in writing to the representation. ORPC 1.11(a).

When a lawyer is disqualified under ORPC 1.11(a), other lawyers in her or his firm are disqualified as well, unless the disqualified lawyer is screened from participation in accordance with ORPC 1.10(c) and written notice is promptly given to the appropriate governmental agency to enable it to monitor compliance. ORPC 1.11(b).

A lawyer with confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client with adverse interests in a matter in which the information could be used to the person's disadvantage. A firm with which that lawyer is associated is not disqualified if the disqualified lawyer is screened from participation in accordance with ORPC 1.10(c). ORPC 1.11(c).

A lawyer currently serving as a public officer or employee is subject to the general conflicts rules in ORPC 1.7 and 1.9 applicable to current and former clients. ORPC 1.11(d) (1). In addition, the lawyer may not:

1. Use the lawyer's public position to obtain or attempt to obtain special advantage in legislative matters for the lawyer or for a client.
2. Use the lawyer's public position to influence or attempt to influence a tribunal to act in favor of the lawyer or a client.
3. Accept anything of value from any person when it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
4. Either while in or after leaving office, use information the lawyer knows is confidential government information obtained while a public official to represent a private client.
5. Participate in a matter in which the lawyer participated personally while in nongovernmental employment, unless the lawyer's former client and the appropriate governmental agency give informed written consent.
6. Negotiate for private employment with anyone who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially. ORPC 1.11(d) (2).

Consistent with the debate clauses in the state and federal constitutions, and notwithstanding any ORPC, a lawyer-legislator is not subject to discipline for words uttered in legislative debate. ORPC 1.11(e).

A member of a lawyer-legislator's firm is not subject to discipline for representing a client in a claim against the state, provided that the lawyer-legislator is screened from participation or representation under ORPC 1.10(c) and does not directly or indirectly receive a fee from such representation. ORPC 1.11(f).

MCLE Credits for Legislative Service*

**Current at the time of this handbook's publication.*

OSB MCLE Rules and Regulations
RULE 5 — ACCREDITATION STANDARDS

5.2(e) Other CLE Activities — Legislative Service

Two general credit hours per month shall be given for each full month of service as a member of the Oregon Legislative Assembly while it is in session.

Oregon Lobbying Statute

171.725 Definitions for ORS 171.725 to 171.785.

As used in ORS 171.725 to 171.785, unless the context requires otherwise:

- (1) “Compensation” has the meaning given that term in ORS 292.951.
- (2) “Consideration” includes a gift, payment, distribution, loan, advance or deposit of money or anything of value, and includes a contract, promise or agreement, whether or not legally enforceable.
- (3) “Executive agency” means a commission, board, agency or other body in the executive branch of state government that is not part of the legislative or judicial branch.
- (4) “Executive official” means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS 171.725 to 171.785.
- (5) “Judge” means an active judge serving on the Oregon Supreme Court, Court of Appeals, Oregon Tax Court, or an Oregon circuit court.
- (6) “Legislative action” means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.
- (7) “Legislative official” means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.
- (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.

- (9) “Lobbyist” means:
 - (a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
 - (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.
 - (c) Any public official who lobbies.
- (10) “Public agency” means a commission, board, agency or other governmental body.
- (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. [1973 c.802 §2; 1975 c.747 §1; 1977 c.588 §1; 1987 c.566 §1; 1991 c.378 §1; 2001 c.751 §1]

171.730 Lobbying regulation purpose. The Legislative Assembly finds that, to preserve and maintain the integrity of the legislative process, persons who engage in efforts to persuade members of the Legislative Assembly or the executive branch to take specific actions, either by direct communication with members or employees of the Legislative Assembly or the executive branch or by solicitation of others to engage in those efforts, should regularly report their efforts to the public. [1973 c.802 §1; 2001 c.751 §2]

171.735 Application of ORS 171.740 and 171.745 to certain persons. ORS 171.740 and 171.745 do not apply to the following persons:

- (1) News media, or their employees or agents, that in the ordinary course of business directly or indirectly urge legislative action but that engage in no other activities in connection with the legislative action.
- (2) Any legislative official acting in an official capacity.

- (3) Any individual who receives no compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies.
- (4) A person who spends not more than 24 hours during any calendar quarter lobbying and who does not spend an amount in excess of \$100 lobbying during any calendar quarter.
- (5) The Governor, Executive Assistant to the Governor, 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, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries and any judge. [1973 c.802 §3; 1974 c.72 §27; 1975 c.747 §2; 1977 c.588 §1a; 1979 c.666 §1; 1981 c.528 §1; 1987 c.566 §2; 1991 c.378 §2; 1993 c.714 §1; 2001 c.751 §3]
- 171.740 Lobbyists required to register; contents of statement.** (1) Within three working days after exceeding the limit of time or expenditure specified in ORS 171.735 (4), a lobbyist shall register with the Oregon Government Standards and Practices Commission by filing with the commission a statement containing the following information:
- (a) The name, address and telephone number of the lobbyist.
- (b) The name, address and telephone number of each person that employs the lobbyist or in whose interest the lobbyist appears or works.
- (c) A general description of the trade, business, profession or area of endeavor of any person designated under paragraph (b) of this subsection, and a statement by the person that the lobbyist is officially authorized to lobby for the person.
- (d) The name of any member of the Legislative Assembly employed, retained or otherwise compensated by:
- (A) The lobbyist designated under paragraph (a) of this subsection; or
- (B) A person designated under paragraph (b) of this subsection.
- (e) The general subject or subjects of the legislative action of interest to the person for whom the lobbyist is registered.
- (2) The designation of official authorization to lobby shall be signed by an official of each person that employs the lobbyist or in whose interest the lobbyist appears or works.
- (3) If a lobbyist appears for a person for whom the lobbyist has not registered, the lobbyist shall register with the commission within three working days of the lobbyist's appearance.
- (4) If any of the information submitted by a lobbyist in the statement required under subsection (1) of this section changes, the lobbyist shall revise the statement within 30 days of the change.
- (5) A lobbyist registration expires December 31 of an odd-numbered year. If a lobbyist renews the registration before March 31 of the following even-numbered year, the commission shall consider the registration to have been effective as of December 31 of the odd-numbered year on which the registration expired.
- (6) For the statement required by this section, an entity comprised of more than one lobbyist may file one statement for the lobbyists that comprise the entity. The statement the entity files must include the names of the individuals authorized to lobby on behalf of the client listed in the statement. [1973 c.802 §4; 1974 c.72 §28; 1975 c.747 §3; 1987 c.566 §3; 1993 c.714 §2; 2001 c.751 §4]
- 171.743** [1993 c.714 §3; repealed by 2001 c.751 §9]
- 171.745 Statements of lobbying expenses required; contents; time of filing.** (1) A lobbyist registered with the Oregon Government Standards and Practices Commission or required to register with the commis-

sion shall, on January 31 and July 31, of each even-numbered year, and on January 31, April 30 and July 31 of each odd-numbered year, file with the commission a statement showing:

- (a) The total amount of all moneys expended by the lobbyist for the purpose of lobbying in the preceding reporting period for:
 - (A) Food, refreshments and entertainment;
 - (B) Printing, postage and telephone;
 - (C) Advertising, public relations, education and research; and
 - (D) Miscellaneous; and
 - (b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure in excess of \$25 is made for the purposes of lobbying, and the date, name of payee, purpose and amount of that expenditure.
- (2) Beginning on July 1, 1979, the dollar amount specified in subsection (1)(b) of this section shall be adjusted annually by the commission based upon the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor or its successor during the preceding 12-month period. The amount determined under this subsection shall be rounded to the nearest dollar.
 - (3) Statements required by this section need not include amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses. If the amount of any expenditure required to be included in a statement is not accurately known at the time the statement is required to be filed, an estimate of the expenditure shall be submitted in the statement and designated as an estimate. The exact amount expended for which a previous estimate was made shall be submitted in a subsequent report when the information is available.
- (4) Notwithstanding ORS 171.735, 171.740 and subsections (1) to (3) of this section, a registered lobbyist, who engages in lobbying activities without compensation on behalf of an organization is not required to register as a lobbyist for the organization as long as the lobbying activity does not exceed the financial or time limits set in ORS 171.735 (4).
 - (5) A statement required by this section shall include a copy of any notice provided to a public official under ORS 244.100 (3).
 - (6) For each statement required by this section, an entity comprised of more than one lobbyist may file one statement that reports expenditures by the entity and not by individual lobbyists. [1973 c.802 §5; 1974 c.72 §29; 1975 c.747 §4; 1979 c.666 §2; 1987 c.158 §32; 1987 c.566 §4; 1991 c.354 §1; 1991 c.677 §2; 1993 c.743 §4; 2001 c.751 §5]

171.750 Employers of lobbyists required to file expense statements; annual revision of base amount.

(1) Any person on whose behalf a lobbyist was registered, or was required to register with the Oregon Government Standards and Practices Commission at any time during the preceding calendar year, shall file with the commission, by January 31st of each year, a statement showing, for the preceding calendar year:

- (a) The total amount of all moneys expended for lobbying activities on the person's behalf, excluding living and travel expenses incurred for a lobbyist performing lobbying services.
 - (b) The name of any legislative or executive official to whom or for whose benefit, on any one occasion, an expenditure in excess of \$25 for the purpose of lobbying is made by the person, but not including information previously reported in compliance with ORS 171.745, and the date, name of payee, purpose and amount of that expenditure.
- (2) Using July 1, 1979, as the base, the dollar amount specified in subsection (1)(b) of this section shall be adjusted annually by the commission based upon the change in the Portland Consumer Price Index for All Urban Consumers for All Items as prepared by the Bureau of Labor Statistics of the United States Department of Labor, or its successor, during

the preceding 12-month period. The amount determined under this subsection shall be rounded to the nearest dollar.

- (3) A statement required under subsection (1) of this section shall include a copy of any notice provided to a public official under ORS 244.100 (3). [1973 c.802 §6; 1975 c.747 §5; 1979 c.666 §3; 1987 c.566 §5; 1991 c.677 §3; 2001 c.751 §6]

171.755 [1965 c.488 §1; repealed by 1973 c.802 §15]

171.756 Prohibited conduct. (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 threat 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. [1973 c.802 §7; 1974 c.72 §30; 1975 c.747 §6; 1987 c.566 §6; 1989 c.340 §1; 1993 c.743 §5; 2001 c.751 §7]

171.760 [1965 c.488 §4; repealed by 1973 c.802 §15]

171.762 Verification of reports, registrations and statements. (1) Each report, registration or statement required by ORS 171.725 to 171.785 shall contain or be verified by a written declaration that it is made under the penalties of false swearing. Such declaration shall be in lieu of any oath otherwise required.

- (2) No person shall willfully make and subscribe any document which contains or is verified by a written declaration for false swearing which the person does not believe to be true and correct to every matter. [1973 c.802 §8; 1979 c.666 §4]

171.764 False statement or misrepresentation by lobbyist or public official prohibited; defense. (1) No lobbyist or public official, as defined in ORS 244.020, shall make any false

statement or misrepresentation to any legislative or executive official or, knowing a document to contain a false statement, cause a copy of such document to be received by a legislative or executive official without notifying such official in writing of the truth as prescribed in subsection (2) of this section.

- (2) It is a defense to a charge of violation of subsection (1) of this section if the person who made the false statement or misrepresentation retracts the statement or misrepresentation and notifies the official in writing of the truth:
- (a) In a manner showing complete and voluntary retraction of the prior false statement or misrepresentation; and
- (b) Before the subject matter of the false statement or misrepresentation is submitted to a vote of a legislative committee or either house of the Legislative Assembly or is relied upon by an executive official in an administrative hearing.
- (3) As used in this section:
- (a) “False statement or misrepresentation” means the intentional misrepresentation or misstatement of a material fact.
- (b) “Material” means that which may have affected the course or outcome of any proceeding or transaction if known prior to the proceeding or transaction. [1993 c.743 §6]

171.765 [1965 c.488 §2; repealed by 1973 c.802 §15]

171.766 Public nature of reports, registrations and statements. All information submitted to the Oregon Government Standards and Practices Commission in any report, registration or statement required by ORS 171.725 to 171.785 is a public record. [1973 c.802 §9; 1983 c.740 §38]

171.770 [1965 c.488 §3; repealed by 1973 c.802 §15]

171.772 Commission to prescribe forms, accept voluntary filings and provide public access to filed information. In carrying out the provisions of ORS 171.725 to 171.785, the Oregon Government Standards and Practices Commission shall:

- (1) Prescribe forms for registrations, statements and reports required to be filed by ORS 171.725 to 171.785, and provide such forms to

persons required to register and to file such statements and reports;

- (2) Accept and file any information voluntarily supplied that exceeds the requirements of ORS 171.725 to 171.785; and
- (3) Make registrations, statements and reports filed available for public inspection and copying during regular office hours, and make copying facilities available at a charge not to exceed actual cost. [1973 c.802 §10; 1983 c.740 §39]

171.775 [1965 c.488 §5; repealed by 1973 c.802 §15]

171.776 Commission's duties; advisory opinions; status of opinions. (1) In addition to the duties prescribed in ORS 171.772, the Oregon Government Standards and Practices Commission may make inquiries or investigations in the manner prescribed in ORS 171.778 with respect to registrations, statements and reports filed under ORS 171.725 to 171.785, and with respect to any alleged failure to register or to file any statements or reports required under ORS 171.725 to 171.785, and upon signed complaint by any individual or on its own instigation, with respect to apparent violation of any part of ORS 171.725 to 171.785.

- (2) Upon written request of any lobbyist, lobbyist employer or any person, or upon its own motion, the commission, under signature of the chairperson, may issue and publish opinions on the requirements of ORS 171.725 to 171.785, based on actual or hypothetical circumstances.
- (3) If any lobbyist or lobbyist employer associated with the lobbyist is in doubt whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785, the lobbyist or lobbyist employer may request in writing a determination from the commission. The requester shall supply such information as the commission requests to enable it to issue the interpretation.
- (4) A lobbyist or lobbyist employer associated with the lobbyist shall not be liable under ORS 171.725 to 171.785 for any action or transaction carried out in accordance with an advisory interpretation issued under subsection (3) of this section. Such an advisory interpretation shall be considered a formal opinion having precedential effect and shall

be subject to review by legal counsel to the commission before the interpretation is sent to the requester. [1973 c.802 §11; 1983 c.740 §40; 1993 c.743 §7]

171.778 Investigation and review of complaints of violations of ORS 171.725 to 171.785; procedure; confidentiality; order; court review.

(1) Upon its own instigation or signed complaint of any person, the Oregon Government Standards and Practices Commission may undertake action in the Preliminary Review Phase with respect to any alleged violation of ORS 171.725 to 171.785. The person who is the subject of a complaint or of the commission's own action shall be notified immediately upon receipt of the complaint or upon adoption of a motion by the commission to undertake any action concerning the person. The notice shall be given by telephone if the person can be reached and a notice shall also be mailed to the person. The notice shall include the nature of the complaint or motion and a copy of all materials submitted along with the complaint or materials which give rise to the commission's instigation of action on its own motion. However, the person must also be notified in advance if an issue that may give rise to a motion to undertake action on the commission's own instigation is to be discussed at a commission meeting. Before investigating any complaint or undertaking an investigation on its own instigation, the commission shall make a finding that there is cause to undertake an investigation, notify the person who is the subject of the investigation, identify the issues to be examined and shall confine its investigation to those issues. If the commission finds reason to expand its investigation, it shall move to do so and shall record in its minutes the issues to be examined before expanding the scope of its investigation and formally notify the complainant and the person who is the subject of the complaint of the expansion and the scope thereof. If the commission does not make a finding of cause, it shall dismiss the complaint or rescind its motion and shall formally enter the dismissal or rescission on its records. The commission shall notify the person of the dismissal or rescission. After dismissal or rescission, the commission shall take no further action involving the person unless a new and different complaint is filed or action at its own instigation is undertaken based on different conduct.

- (2) The commission may:
- (a) During the Preliminary Review Phase, seek, solicit or otherwise obtain any books, papers, records, memoranda or other additional information, administer oaths, and take depositions necessary to determine whether there is cause; and
 - (b) During the Investigatory Phase, require any additional information, administer oaths, take depositions and issue subpoenas to compel attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to complete the investigation. If any person fails to comply with any subpoena issued under this section or refuses to testify on any matters on which the person may be lawfully interrogated, the procedure provided in ORS 183.440 shall be followed to compel compliance.
- (3) The person conducting any inquiry or investigation shall do so in an impartial, objective manner. All favorable and unfavorable information collected by the investigator shall be turned over to the commission.
- (4) The findings of the commission in any inquiry or investigation shall be reported impartially, including both favorable and unfavorable findings, and shall be made available to the person who is the subject thereof and to any employer of the person.
- (5) Hearings relating to any charge of alleged violation of ORS 171.725 to 171.785 must be held before an administrative law judge assigned from the Office of Administrative Hearings established under section 3, chapter 849, Oregon Laws 1999. The procedure shall be that for a contested case under ORS 183.310 to 183.550.
- (6) (a) The period of time from the filing of a complaint or from acting on the commission's own instigation to the finding of cause or dismissal of the complaint or rescission of the motion shall be termed the Preliminary Review Phase and shall not exceed 90 days unless a delay is stipulated to by both the subject person and the Oregon Government Standards and Practices Commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) The Preliminary Review Phase shall be confidential. Commission members and staff may acknowledge receipt of a complaint but shall make no public comment or publicly disclose any materials relating to a case during the Preliminary Review Phase. A person who intentionally violates this paragraph is subject to a civil penalty in an amount not to exceed \$1,000. Any person aggrieved as a result of a violation of this paragraph by a member of the commission or its staff may file a petition in a court of competent jurisdiction in the county in which the petitioner resides in order to enforce the civil penalty provided in this paragraph.
- (c) The commission's deliberations of a case at the conclusion of the Preliminary Review Phase shall be conducted in executive session. All case related materials and proceedings shall be open to the public after the commission makes a finding of cause, dismisses a complaint or rescinds a motion. Prior to the end of the Preliminary Review Phase, the executive director of the commission shall prepare a statement of the facts determined during the phase, including appropriate legal citations and relevant authorities. Before presentation to the commission, the executive director's statement shall be reviewed by legal counsel to the commission.
- (d) The time limit imposed in this subsection and the commission's inquiry are suspended if:
- (A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission, unless the parties stipulate otherwise; or
 - (B) A court has enjoined the commission from continuing its inquiry.

- (7) (a) The period of time from the finding of cause to the beginning of any contested case proceedings shall be termed the Investigatory Phase and shall not exceed 120 days unless a delay is stipulated to by both the subject person and the Oregon Government Standards and Practices Commission, with the commission reserving a portion of the delay period to complete its actions.
- (b) The time limit imposed in this subsection and the commission's investigation are suspended if:
- (A) There is a pending criminal investigation that relates to the issues arising out of the underlying facts or conduct at issue in the matter before the commission, unless the parties stipulate otherwise; or
- (B) A court has enjoined the commission from continuing its investigation.
- (c) At the end of the Investigatory Phase, the commission shall take action by order, which action may include:
- (A) Dismissal, with or without comment;
- (B) Continuation of the investigation to determine further facts, but no more than one continuation, not to exceed 30 days' duration, shall be taken;
- (C) Moving to a contested case proceeding;
- (D) Seeking a negotiated settlement; or
- (E) Taking other appropriate action if justified by the findings.
- (8) If, at the end of the Investigatory Phase, the commission takes action by order to move to a contested case proceeding, a person may notify the commission that the person elects to have the commission file a lawsuit against the person in the Marion County Circuit Court in lieu of the contested case proceeding. The court may impose the penalty described in ORS 171.992. The person shall notify the commission of the election in writing no later than 21 days after receiving notification of the commission's action by order to move to the contested case proceeding. The commission shall file suit within 30 days after receiving notice that the person has elected the lawsuit procedure.
- (9) The commission shall not inquire into or investigate any complaint or act at its own instigation on alleged conduct that occurred more than four years before the complaint is filed or action is undertaken.
- (10) Nothing in this section is intended to prevent the commission and the person alleged to have violated ORS 171.725 to 171.785 from stipulating to a finding of fact concerning the violation and consenting to an appropriate penalty. The commission shall enter an order accordingly.
- (11) As used in this section, "cause" and "pending" have the meanings given those terms in ORS 244.260. [1993 c.743 §2; 1993 c.747 §1; 1999 c.849 §48, §49; 2003 c.75 §27]

Note: The amendments to 171.778 by section 49, chapter 849, Oregon Laws 1999, become operative January 1, 2004. See section 50, chapter 849, Oregon Laws 1999. The text that is operative on and after January 1, 2004, is set forth for the user's convenience.

171.780 [1973 c.802 §14; repealed by 1981 c.522 §2]

171.785 Sanctions to be prescribed by either chamber of Legislative Assembly; uniform application. (1) In addition to such penalties as otherwise may be provided by law, a person is subject to such sanctions as either house of the Legislative Assembly may prescribe if the person:

- (a) Violates any provision of ORS 171.740 to 171.762; or
- (b) Fails to file any report, registration or statement or to furnish any information required by ORS 171.725 to 171.785 and 171.992.
- (2) The sanctions referred to in subsection (1) of this section shall be uniformly applied to all persons subject to ORS 171.725 to 171.785 and 171.992. [1973 c.802 §12]

Contact With Legislative Assembly

171.790 Local government officials and employees authorized to contact Legislative Assembly.

Notwithstanding any provision of a city or county charter or any ordinance or order adopted thereunder, a city or county shall not:

- (1) Prohibit an elected official, other officer or employee of the city or county from initiating contacts with legislators or giving testimony before public sessions of committees of the Legislative Assembly or public hearings of state agencies when:
 - (a) The contacts are made or testimony given as a representative of the city or county;
 - (b) The contacts are made or testimony given to represent the interests of the city or county or the residents thereof;
 - (c) No substantial part of the duties performed by the official, officer or employee consists of influencing or attempting to influence matters which may be the subject of action by either house of the Legislative Assembly or any of its committees;
 - (d) The official, officer or employee receives no consideration for making the contacts or giving testimony other than the remuneration ordinarily paid to the official, officer or employee out of the funds of the city or county in return for duties performed for the city or county, together with reimbursement for expenses actually and necessarily incurred in appearing before the legislative committees or state agencies; and
 - (e) The official, officer or employee is not required to register with the Oregon Government Standards and Practices Commission under ORS 171.725 to 171.785 and the rules of the commission adopted thereunder.
- (2) Prohibit an elected official, other officer or employee of the city or county from initiating contacts with legislators when the contacts are made to express personal political views and do not occur during working hours while the official, officer or employee is on the job.

- (3) Prohibit an elected official, other officer or employee of the city or county from responding to requests from legislators or committees of the Legislative Assembly for information, data or opinions. [1985 c.788 §1]

171.795 Electronic distribution of information. (1)

The Legislative Assembly finds and declares that it is now possible and feasible in this electronic age to distribute information more widely by way of electronic communication. The Legislative Assembly further finds that it is desirable to make information available to the citizens of this state in a timely manner and for the least possible cost. The use of electronic communication will:

- (a) Better inform the public of legislative proceedings and matters pending before the Legislative Assembly;
 - (b) Allow broader participation among Oregonians in the legislative process;
 - (c) Make information regarding legislative matters and proceedings more readily available to the citizens of this state;
 - (d) Allow constituents to better communicate with their elected representatives, irrespective of where they reside;
 - (e) Make administrative rules adopted or amended by state agencies more readily available to the citizens of this state; and
 - (f) Provide the public with a better insight into the operations of state government.
- (2) This section and ORS 173.763, 173.766 and 183.365 may be cited as the Oregon Public Access Act. [1995 c.614 §§1, 2]

Attorney General Opinion on Agency Lobbying

August 7, 1998

No. 8259

This opinion is issued in response to questions from Chris Dearth, Legislative Director, Office of the Governor, concerning application of the state lobbying regulations, ORS 171.725 to 171.785, to certain activities by state employees.

FIRST QUESTION PRESENTED

Are any of the following activities by a state employee "lobbying" for purposes of ORS 171.725 to 171.785?

- a. Creating and preparing testimony to be presented at a legislative hearing that takes a position on a legislative measure?⁽¹⁾
- b. Waiting to testify at a legislative hearing in support of or opposition to a legislative measure?
- c. Testifying at a legislative hearing in support of or opposition to a legislative measure?
- d. Discussing a legislative measure with a legislator in the legislator's office, when the discussion includes not only information, but reasons why the agency employee, representing the position of the Governor, thinks it is a good or bad idea?
- e. Developing legislative measures, including holding or attending stakeholder meetings for approval or compromise during the interim, which may or may not result in pre-session or session filing of a legislative measure?
- f. Pre-session work on agency budgets to be presented to the legislature as appropriation bills?
- g. Pre-session meetings with stakeholders discussing the proposed agency budget?
- h. Session testimony stating support of the agency budget?

ANSWER GIVEN

- a. Creating and preparing testimony that takes a position on a legislative measure is not "lobbying."
- b. Waiting to testify at a legislative hearing in support of or opposition to a legislative measure is not "lobbying" so long as the state employee does not engage in any activities that would be "lobbying" during the waiting period.
- c. Testifying at a legislative hearing in support of or opposition to a legislative measure is "lobbying."
- d. Discussing a legislative measure with a legislator in the legislator's office, when the discussion includes not only information, but reasons why the agency employee, representing the position of the Governor, thinks it is a good or bad idea is "lobbying."
- e. The activities of state employees in developing legislative measures are not "lobbying" if those activities are internal to

the agency and do not involve communications with others, except for obtaining input to the agency. If agency employees hold or attend stakeholder meetings for approval or compromise during the interim, the employees are "lobbying" to the extent that during such meetings they communicate with legislative officials to attempt to influence sponsorship, voting or other legislative action on the measure, or solicit the stakeholders to do so.

f. Pre-session work on agency budgets to be presented to the legislature as appropriation bills is not "lobbying" so long as there is no communication with legislative officials to influence or attempt to influence legislative action on the budget or solicitation of others to attempt to influence legislative action on the budget.

g. State employees' pre-session meetings with stakeholders discussing the proposed agency budget are "lobbying" if the employees solicit the stakeholders to attempt to influence legislative action on the budget, whether or not any of the stakeholders so solicited carried through with any attempt to influence legislative action.

h. Presentation of the budget to the legislature and testimony in support of that budget by state employees is "lobbying."

SECOND QUESTION PRESENTED

For purposes of the answers to the first question, would it make a difference if:

- a. The individual is registered as a lobbyist?
- b. The activity is performed by agency support staff at the request of the agency's registered lobbyist?
- c. The testimony or activity is invited or requested by a legislator or the legislator's aide?
- d. The testimony or activity is neither in support of or opposition to a legislative measure, but merely provides information?

ANSWER GIVEN

Our answers to the first question would not change merely because the individual is registered as a lobbyist, the activity is performed by agency support staff at the request of the agency's registered lobbyist, or the testimony or activity is invited or requested by a legislator or the legislator's aide. If the testimony or activity described in the first question is neither in support of or opposition to a legislative measure, but merely provides information, the testimony or activity would not be "lobbying."

THIRD QUESTION PRESENTED

If any of the activities identified in the first question are "lobbying," must they be reported? If so, by whom -- the agency staff person performing the activity, the agency's registered lobbyist, the employer?

ANSWER GIVEN

Unless exempt under ORS 171.735 from the reporting requirements, ORS 171.745 requires any state employee who

engages in any lobbying activities to report, at regular intervals, all moneys expended by that employee "for the purpose of lobbying." If a state agency employs a lobbyist who was registered or required to register with the Government Standards and Practices Commission (GSPC), ORS 171.750 requires the agency to report annually all moneys expended "for lobbying activities" in behalf of the state agency. See the discussion below for an explanation of how these requirements apply in the situations identified in the first question.

DISCUSSION

I. Lobbying

In 1973, the Oregon Legislative Assembly enacted ORS 171.725 to 171.785, finding that to preserve and maintain the integrity of the legislative process, it is necessary that the identity, expenditures and activities of certain persons *who engage in efforts to persuade members of the Legislative Assembly* or the executive branch to take specific actions, either by direct communication to such officials or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

ORS 171.730 (emphasis added). To accomplish this purpose, ORS 171.725 to 171.785 require "lobbyists" to register with the Oregon Government Standards and Practices Commission (GSPC), ORS 171.740, and to file periodic reports detailing their lobbying expenditures, ORS 171.745.

For purposes of these statutes, a "lobbyist" is:

- (a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
- (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.
- (c) *Any public official who lobbies.*

ORS 171.725(8) (emphasis added). Public officials were expressly added to the definition of "lobbyist" in 1975. Or Laws 1975, ch 747. A "public official" is defined as "any member or member-elect of any public agency and any member of the staff or an employee thereof." ORS 171.725(10). A public agency is "a commission, board, agency or other governmental body." ORS 171.725(9).

"Lobbying" is defined as:

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.

ORS 171.725(7). "Legislative action" includes the introducing of, or testifying, voting or any other official action on any measure or other matter that may be the subject of action by either house of the Legislative Assembly, or any legislative committee. ORS 171.725(4).⁽²⁾

We are asked whether different types of activities by a state employee would be "lobbying" under the above statutes. To answer these questions, we must interpret the statutory definition of "lobbying."

In interpreting a statute, our goal is to discern the intent of the legislature. ORS 174.020; *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We first look at the text and context of the statute, which includes other provisions of the same statute and related statutes. In so doing, we consider statutory and judicially developed rules of construction that bear directly on how to read the text, such as "words of common usage typically should be given their plain, natural, and ordinary meaning." *Id.* at 611. If the legislative intent is clear from the text and context, the search ends

there. Only if the legislative intent is not clear from the text and context of the statute will we look to the legislative history to attempt to discern that intent. *Id.* at 611-612. If, after considering text, context and legislative history, the intent of the legislature remains unclear, we may resort to general maxims of statutory construction to resolve any remaining uncertainty as to the meaning of the statute. *Id.* at 612.

The primary element of "lobbying" is "influencing, or attempting to influence, legislative action." ORS 171.725(7). The terms "influencing" or "attempting to influence" are not defined in the lobbying statutes. Webster's Third New International Dictionary (unabridged 1993) (*hereinafter* Webster's) defines the verb "influence" as:

1 : to affect or alter the conduct, thought or character of by indirect or intangible means * * * **2** : to have an effect on the condition or development of : determine partially * * * .

Id. at 1160. None of the dictionary definitions of the term "influence" in either its verb or noun sense includes any element that the conduct of influence be limited to advocacy or efforts to persuade. Arguably, providing "neutral" information to legislative officials could be "lobbying" if it influences legislative action, even if the person providing the information takes no position on a particular legislative action. Further insight into whether the legislature intended this very broad interpretation of the term "influence" may be found in the remainder of the statutory definition of "lobbying."

"Lobbying" includes not only "influencing" but also "attempting to influence" legislative action. The term "attempt" means "to make an effort to do, accomplish, solve, or effect." Webster's, *supra*, at 140. "Attempting to influence legislative action" inherently requires some intent to accomplish or effect a certain result, which strongly suggests that advocating a particular position must be an element not only of the attempt, but also of "influencing." Thus, the legislature may not have intended to include in "lobbying" merely providing neutral information to legislators when the person making that communication takes no position on the legislative action.

At the first level of statutory interpretation, we consider not only the text of the statute, but also its context. ORS 171.730 expresses the legislative purpose for the lobbying statutes, i.e., to regulate "certain persons who engage in efforts to persuade members of the Legislative Assembly * * * to take specific actions." Relying on this purpose statement, this office previously concluded that the Oregon Council on Crime and Delinquency did not engage in "lobbying" by publishing "information bulletins" on juvenile justice issues because those bulletins did not advocate "either the passage or defeat of any particular bill." Letter of Advice dated April 10, 1979, to Keith A. Stubblefield, Administrator, Law Enforcement Council of Oregon, (OP 4617), at 3.

In light of the purpose statement in ORS 171.730, we believe that it is reasonable to conclude that "lobbying" does not include merely providing information to legislators without taking a position either in support of or opposition to specific legislative action. Because we cannot say that this is the only plausible interpretation of the statute, however, we turn to legislative history. See *State v. Allison*, 143 Or App 241, 251, 923 P2d 1224 (1996),

Before 1973, the Oregon statutes provided minimal regulation of persons who engaged in "lobbying," which was defined as "influencing, or attempting to influence, the passage or defeat of a measure by the Legislative Assembly or the approval or veto thereof by the Governor or attempting to influence other executive branch action, or inaction, regarding passage, defeat or veto of legislation." ORS 171.755(1) (1971). When ORS 171.725 to 171.825 were enacted in 1973, David B. Frohnmayer testified on behalf of Common Cause, at whose request the legislation was introduced, about "deficiencies" in Oregon's existing lobbying law. One of those deficiencies was that "the existing law could exempt informational lobbying which, of course, is one of the major loopholes in the federal lobbying Act." Joint Special Committee on Professional Responsibility (HB 2530), May 7, 1973, tape 7, side 1 at 380. This statement corresponded to item nine in the Statement of Common Cause Oregon Policy Advisory Committee, which further described that "loophole" as follows:

[E]xpenditures and efforts made in attempts to 'inform' as opposed to 'influence' need not be reported. The Oregon law defines lobbying in such a way that it appears to refer exclusively to influence or advocacy situations.

Thus, the proponents of the legislation apparently understood the then-existing definition of "lobbying" in ORS 171.755(1) (1971) (i.e., "influencing, or attempting to influence") to exclude providing neutral information to legislators. Mr. Frohnmayer was asked by the committee co-chairs to provide a definition of "lobbying," as the proposed legislation did not contain one.

On May 14, 1973, Dick Allen, representing the Capitol Club, testified about the lack of a definition of "lobbying" in the bill. Mr. Allen stated that there was an existing definition of "lobbying" in ORS 171.755 (1971), which we think is pretty

good. It seems to take care of the usual and the usually thought of definition and we think it is concise enough to take in most of what most of us think of as lobbying.

Testimony of Dick Allen, Joint Special Committee on Professional Responsibility, House Members (HB 2530), May 14, 1973, tape 9, side 1 at 224. Mr. Frohnmayer then noted that he felt a separate definition of "lobbying" was unnecessary, but that he had prepared a memorandum for the committee with various definitions of lobbying from other states. In this memorandum, Mr. Frohnmayer recommended that the legislation define lobbying as "influence directed at public decision makers," giving as an example those statutes that include virtually any *influence* situation in which legislators and other parties are involved. The Wisconsin Act, specific in most respects, typically declares that lobbying is

". . . the practice of *promoting or opposing* the introduction or enactment of legislation before the legislature, or the legislative committees, or the members thereof."

While other statutes in this group do not always define "lobbying" or "lobbyists" in quite these terms, their applicability is essentially the same. Thus Virginia does not define lobbying, but it defines "legislative counsel and agent" as

". . . any person employed *to promote or oppose* in any manner the passage by the General Assembly of any legislation."

Memorandum from David B. Frohnmayer to Senator Jack D. Ripper and Representative Robert C. Ingalls, Joint Special Committee on Professional Responsibility, May 14, 1973, at p. 3 (emphasis added). Mr. Frohnmayer then stated that although he had some technical adjustments to suggest, the definition of lobbying provided by Dick Allen, which he described as "the intent to influence the passage or defeat of a measure," was a good starting point. Testimony of David B. Frohnmayer, Joint Special Committee on Professional Responsibility, House Members (HB 2530), May 14, 1973, tape 9, side 1 at 235.

Ultimately, the definition of "lobbying" in the 1973 legislation, codified as ORS 171.725(4), differed from the previous definition in ORS 171.755(1) only by the addition of the language shown below as bold and the deletion of the language in brackets.

"Lobbying" means influencing, or attempting to influence, **by direct communication**, the passage or defeat of [*a measure by the Legislative Assembly*] **legislative action** or the approval or veto thereof by the Governor or attempting to influence other executive branch action, or inaction regarding passage, defeat or veto of legislative action.

Or Laws 1973, ch 802, § 3(4). In effect, the "loophole" identified by Common Cause in the pre-1973 definition of "lobbying" -- that it did not cover efforts to "inform" -- was not fixed by the 1973 legislation. Based on the above history, we believe that, when enacted in 1973, that definition was not intended to include neutral information provided to legislators, but only communications that take a position on the passage or defeat of legislative action.

In 1975, "public officials" were expressly added to the definition of lobbyists. Or Laws 1975, ch 747, § 1. During the debate over whether public officials should be included, the issue of what was considered "lobbying" again came up. John Richardson, Assistant to the Chancellor of Higher Education, suggested that if public officials were included, and the Department of Agriculture then asked an Oregon State University (OSU) professor for assistance in preparing legislation, the OSU professor "would have to register." Testimony of John Richardson, House Elections Committee (HB 2757), April 15, 1975, tape 15, side 1 at 222. Representative Earl Blumenauer responded:

I would differ with you on your interpretation * * *. He may have been contacted because of his expertise to draft legislation, but he's not really up here selling it unless he's really coming up here and testifying and trying to push a particular idea through the legislature. I would think that he still remains an employee of the institution and not really a lobbyist. But when, I think, people from some of these institutions come and they say, "we've got a point of view and we would want to tell you about it -- that affects our budget," I think that's very much the same as any other interest group that's telling their story.

Testimony of Rep. Blumenauer, *id.*, at 224. No one controverted this point of view.

The resulting legislation significantly simplified the definition of "lobbying" to provide merely: "'Lobbying' means influencing, or attempting to influence, legislative action." Or Laws 1975, ch 747, § 1(6). The former references to "direct communication" and to the "passage or defeat" of legislative action were deleted.

That definition remained in the statute until 1987 when a bill was introduced at the request of the Government Ethics Commission to clarify the meaning of the phrase "attempting to influence legislative action," which the Commission felt was ambiguous after the phrase "by direct communication" was deleted from the definition of "lobbying" in 1975. *See* Minutes, Senate Judiciary Committee (HB 2171-A), May 26, 1987, Exhibit A.⁽³⁾ There was no discussion of whether or not "influencing" or "attempting to influence" would include providing only neutral information to a legislator. Ultimately, the words shown in bold below were added to the end of the definition:

"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.**

Or Laws 1987, ch 566, § 1.

Based on the text, context and legislative history of the definition of "lobbying" in ORS 171.725, we conclude that for purposes of ORS 171.725 to 171.785, "lobbying" does not include merely providing information to legislators without taking a position either in support of or opposition to specific legislative action. Taking a position in support of or opposition to specific legislative action includes not only seeking a legislator's vote on the merits of a legislative measure, but also suggesting or seeking sponsorship, testimony, debate or any other official action on the measure or on any amendment (whether "technical" or otherwise) to the measure, or an appointment, report, or any other matter that may be the subject of action by the legislature or a legislative committee. *See* ORS 171.725(5).

With this interpretation of "lobbying" in mind, we turn to the specific activities by state employees identified in the first question.

A. Creating and Preparing Testimony for Legislative Hearing

We are first asked whether creating and preparing testimony to be presented at a legislative hearing is "lobbying" if the testimony takes a position on a legislative measure. The relevant portion of the definition of "lobbying" is "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials." ORS 171.725(7).

Creating and preparing the testimony is not by itself a communication "with" a legislative official. Unless the testimony being prepared is actually presented to a legislative official, merely creating and preparing testimony cannot be "lobbying." When such testimony is presented, however, the question becomes whether the acts of creating and preparing the testimony are integral to the testimony and therefore an inseparable part of the "communication" with legislative officials.

The term "communication" can mean either "the act or action of imparting or transmitting" or the "information communicated." Webster's, *supra*, at 460. We believe that the legislature intended "lobbying" to include only the acts of imparting or transmitting the testimony to legislative officials and not to encompass the acts of creating and preparing the testimony.

"Lobbying" is accomplished through communication "with" legislative officials. Because the acts of creating and preparing testimony often are done by someone other than the person presenting the testimony, those acts are clearly separable from any contact "with" legislative officials. Moreover, the legislative purpose expressed in ORS 171.730 is to regulate the activities of "certain persons who engage in efforts to persuade members of the Legislative Assembly * * * either by **direct communication** to such officials or by solicitation of others to engage in such efforts." (Emphasis added.) Thus, based on its text and context, the definition of "lobbying" appears to be limited to acts of directly communicating with someone, not the acts of preparing the communication.

Because we cannot say that this is the only plausible interpretation, however, we also consider legislative history. One of the bills introduced by the Oregon Government Ethics Commission during the 1987 legislative session would have added "research and preparation of testimony or other materials related to legislative action" to the definition of "lobbying." HB 2169 (1987). This language raised concerns that it would include many people in a law firm or lobbyist's office "who have never met a legislator * * * [but] have been preparing testimony, doing research and putting other materials related to legislative action together * * * much of * * * which will get tossed out, maybe the whole thing will." Testimony of Roger Martin, Capitol Club Ethics Committee, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, tape 70, side A at 180-200. *See also* Testimony of Representative Ron Cease, *id.* at 232 ("[I]n response to what Roger has said, if

you had three or four staff people in your office that were involved in preparing testimony, this presumably would cover those people, and I don't know why that makes any sense at all."). The Ethics Commission already had proposed an amendment to delete that provision regarding research and preparation of testimony, which Betty Reynolds, Executive Director of the Ethics Commission, described as "overly broad." Testimony of Betty Reynolds, *id.* at tape 71, side A at 140, 307. The amendment was passed unanimously (one member excused). Minutes, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, at 7.

We recognize that the legislature's failure to include "research and preparation of testimony" in the definition of "lobbying" is of dubious value in interpreting legislative intent. *See Kola Tepee, Inc. v. Marion County*, 99 Or App 481, 484, 782 P2d 955 (1989), *rev den* 309 Or 441, 789 P2d 5 (1990) ("The defeat of an amendment to existing law, even if it directly concerns a substantive aspect of a law, is of dubious value, if any at all, in determining legislative intent."); *see also Oregon State Emp. Assn. v. Workers' Compensation Dept.*, 51 Or App 55, 624 P2d 1078, *rev den OSEA v. Workers' Compensation Dept.*, 291 Or 9, 631 P2d 340 (1981). But the legislature not only rejected the proposal to include the preparation of testimony in the definition of "lobbying," the legislature instead added language clarifying that "influencing or attempting to influence legislative action" was only "lobbying" when it was done "through oral or written communication with legislative officials." This new language addressed the ambiguity created in 1975 when the phrase "by direct communication" was deleted from the definition of "lobbying," which is what the Ethics Commission sought to accomplish. *See* Minutes, House Committee on State and Federal Affairs (HB 2169), April 6, 1987, Exhibit A at 1. The legislature resolved the ambiguity as to whether research and preparation of testimony was "lobbying" not only by refusing to add those acts to the definition, but also by limiting the influence aspect of "lobbying" to communication "with" legislative officials.

Accordingly, based on text, context and legislative history, we conclude that the legislature intended to exclude from "lobbying" the acts of creating and preparing testimony, whether or not that testimony is actually presented to a legislative committee in support of or opposition to a particular legislative measure.

B. Waiting to Testify at a Public Hearing

We are next asked whether waiting to testify at a legislative hearing in support of or opposition to a legislative measure is "lobbying." Although waiting is often a necessary aspect of communicating with legislative officials, it is not an oral or written communication; nor does it express any position or attempt to affect any particular legislative action. Thus, time spent waiting to testify is not "lobbying," regardless of whether the testimony to be presented is "lobbying," so long as the employee does not engage in any activities that would be considered "lobbying" during the waiting period.

This conclusion is supported by legislative history. In one of the hearings on House Bill 2171 (1987), Senator William Frye, Chairman of the Senate Judiciary Committee, suggested that a lobbyist might sit in the audience of one of the committee meetings for about three days waiting to testify, to which Senator Jan Wyers responded: "That's not lobbying, Mr. Chairman. * * * [i]t's when you're trying to influence legislative action. It's when you're actually talking with somebody trying to -- ." This statement was supported by Betty Reynolds, Executive Director of the Ethics Commission, at whose request the legislation was introduced. Testimony, Senate Judiciary Committee (HB 2171), May 26, 1987, tape 158, side A at 145, 160.

During the time spent waiting to testify before a legislative committee, an individual may do more than just wait. Thus, if a state employee, while waiting to testify, communicates with a legislative official in a manner that influences or attempts to influence any legislative action, that would be "lobbying." "Lobbying" includes not only communication with legislative officials in support of or opposition to legislative action, but also "solicitation of others to influence or attempt to influence legislative action or attempting to obtain the good will of legislative officials." ORS 171.725(7). If the employee engages in any of these activities while waiting to testify, that also would be "lobbying."

C. Testimony at a Legislative Hearing

We are also asked whether testifying at a legislative hearing in support of or opposition to a legislative measure is "lobbying." Again, the relevant portion of the definition of "lobbying" is "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials." ORS 171.725(7).

Whether presented orally or in writing, testimony at a legislative hearing is a "communication with legislative officials."

Because the testimony in the question posed takes a position in support of or opposition to a legislative measure, it is "lobbying." This would include testimony that proposes, supports or opposes amendments to a bill, no matter how minor or technical, as well as testimony that states support for or opposition to the bill in its entirety.

D. Private Discussions with Individual Legislators

We are next asked about a discussion with a legislator in the legislator's office, when the discussion includes the reasons why the state employee, representing the position of the Governor, thinks that a particular legislative measure is a good or bad idea. The definition of "lobbying" includes any attempt to influence legislative action through oral or written communication with "legislative officials." ORS 171.725(7). Although the term "legislative officials" is in the plural, we do not believe that the legislature intended to exclude from the definition of "lobbying," communications with individual legislators. *See* ORS 174.110(1) (as used in Oregon statutes, the singular may include the plural and the plural, the singular). Thus, we conclude that any attempt to influence legislative action through oral or written communication with one or more legislators is "lobbying."

Legislative officials include not only legislators, but also "any staff person, assistant or employee." ORS 171.725(6).⁽⁴⁾ A private meeting with a legislator or staff person to express the position of the Governor on a particular legislative measure falls squarely within the definition of "lobbying." The statute draws no distinction based on the location where the communication with legislative officials takes place. If the meeting includes any communication in support of or opposition to the merits of the measure or suggests sponsorship, testimony, debate or any other official action on the measure or on any amendment (whether "technical" or otherwise) to the measure, then the state employee is "lobbying."

E. Developing Legislative Measures

We are asked about activities to develop legislative measures, including holding or attending stakeholder meetings for approval or compromise during the interim, that may or may not result in legislative bills. "Lobbying" includes three distinct acts: (1) "influencing, or attempting to influence, legislative action through oral or written communication with legislative officials," (2) "solicitation of others to influence or attempt to influence legislative action," and (3) "attempting to obtain the good will of legislative officials." ORS 171.725(7).

We first consider activities by state employees to develop legislative measures that are internal to the agency and do not involve stakeholder meetings or other contacts with persons outside of the agency. An example might be when agency employees prepare a "legislative concept." Because these activities do not involve contact with persons outside of the agency, such activities are not communications "with" legislative officials, nor "solicitation of others," nor attempts to obtain the "good will" of legislative officials. Therefore, activities to develop legislative measures that are internal to the agency are not "lobbying." Even if other persons were to meet with agency employees to provide information or suggestions *to* the agency, those activities would not be "lobbying" so long as the agency employees are not soliciting others to influence or attempt to influence legislative action.

We next consider the participation of state employees in stakeholder meetings held for purposes of obtaining approval or compromise on proposals for legislative measures. If any legislative officials are present during such a meeting, state employees who participate in the meetings would likely be "lobbying." This would be the case if the employees make any oral statements or hand out written materials that encourage the sponsorship or passage of the proposed measure. Even if legislative officials are not present during the stakeholder meeting, "lobbying" may occur if, for instance, the employees request or urge members of the stakeholder group to communicate with legislative staff or interim committees about the group's work for the purpose of having the proposed measure sponsored, supported or passed (or contrary legislation defeated). Such actions by the state employees would be "solicitation of others to influence or attempt to influence legislative action" even if none of the stakeholders so solicited carried through with any attempt to influence legislative action.

In sum, whether or not a legislative measure is actually introduced during the session, the activities of state employees in developing a legislative measure is "lobbying" if the employees communicate with legislative officials to attempt to influence the sponsorship, voting or other legislative action on the measure, or solicit others to do so.

F. Pre-session Work on Agency Budgets

The next three activities about which we are asked involve the preparation of agency budgets and their presentation to the legislature as appropriations bills. The budget process involves the efforts of many persons in state agencies, coordinating with the Department of Administrative Services and ultimately the Governor to present a state budget to the Legislative Assembly. ORS 291.200 to 291.224. The first step in this process is for the agency to assess the cost of its programs to determine what size of a budget the agency needs to implement and administer those programs.

When state employees prepare the agency budget or assist in the preparation of the budget, they are not "lobbying." "Lobbying" does not occur when there is neither oral or written communication "with" legislative officials nor solicitation of others to communicate with legislative officials in support of the agency budget.

G. Pre-session Discussions with Stakeholders on Proposed Agency Budget

State employees who participate in stakeholder meetings to discuss the agency's proposed budget would likely be "lobbying" if the purpose of the meetings is to engender support for the agency budget and to have that support conveyed to legislative officials or to others who might themselves make a request to legislative officials to support the agency budget. It would be "lobbying" for agency employees, by word or manner, to solicit the stakeholders to attempt to influence legislative action, i.e., approval of the agency budget even if none of the stakeholders so solicited carried through with any attempt to influence legislative action. In contrast, if the purpose of the meeting is to obtain input from stakeholders about what should be included in the agency budget, or to explain what the agency has put in its budget, agency employees who participate in the meeting would not be "lobbying" so long as there was no solicitation of the stakeholders to influence or attempt to influence legislative action. Caution is appropriate, however, because the agency budget ultimately is legislation and the line between providing information about that budget and soliciting others to support that budget may be difficult to ascertain.

H. Session Testimony in Support of Agency Budget

The presentation of the budget to the legislature and testimony in support of that budget by state employees is "lobbying." The presentation is a communication with legislative officials, the sole purpose of which is to influence legislative action, i.e., the adoption of the agency's budget. ORS 171.725(5), (7).

II. Factors Affecting Whether an Activity Is "Lobbying"

The second question asks whether our answers to the first question would be affected by any of several factors. Specifically, we are asked whether it would make any difference to our answers if the individual performing the activity is a registered lobbyist. It would not. An activity is "lobbying" if it comes within the definition of that term. ORS 171.725(7). Whether or not the individual is a registered lobbyist may affect the duty to report, but it does not alter whether the activity itself is "lobbying."

We are asked whether our answers would differ if the activity is performed by agency support staff at the request of the agency's registered lobbyist. Again, that fact would not be determinative of whether the activity is "lobbying."

We are also asked whether the fact that the testimony or activity is invited or requested by a legislator or legislative aide would affect our answers. It would not. The definition of "lobbying" makes no distinction between meetings or activities initiated by the legislative official or the state employee. If the activity meets the definition of "lobbying," then the state employee is lobbying.

Finally, we are asked whether our answers would differ if the testimony or activity is neither in support of nor opposition to a legislative measure, but merely provided information. As discussed above, at pages 5 to 8, we do not believe that "lobbying" includes merely providing neutral information to legislative officials without taking a position either in support of or opposition to specific legislative action. Therefore, if the employee merely provides information to legislative officials, either in testimony at a legislative hearing or in private discussions, without taking a position in support of or in opposition to a particular legislative measure (or amendments thereto) or other legislative action, the employee would not be "lobbying." Likewise, employee meetings with stakeholders would not be "solicitation of others to influence or attempt to influence legislative action" if the employee did not request the stakeholders to take a position in support of or in

opposition to a legislative measure or the proposed agency budget.

III. Reporting Requirements

The next question relates to the reporting requirements. Two different statutes require the filing of reports with the GSPC. ORS 171.745 requires lobbyists to report expenditures by the lobbyist. ORS 171.750 requires employers of lobbyists to file a report of moneys expended for lobbying activities in the employer's behalf. We discuss each of these requirements below.

A. Lobbyist Reporting Requirements

ORS 171.745(1) requires "[a]ny lobbyist who engages in any lobbying activities" to file reports at regular intervals with the GSPC, showing the total amount of "all moneys expended by the lobbyist for the purpose of lobbying." Provided they are not already registered with the GSPC, the following persons are exempt from the lobbyist reporting requirements of ORS 171.745:⁽⁵⁾

(1) News media or their employees or agents * * * .

(2) Any legislative official acting in an official capacity.

(3) Any individual who receives no additional compensation for lobbying and who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, if the individual testifies, registers an appearance in the records of such committees or agencies.

(4) A person who spends not more than 24 hours during any calendar quarter lobbying, excluding travel time, and who does not spend an amount in excess of \$100 lobbying during any calendar quarter excluding the cost of personal travel, meals and lodging. * * *

(5) The Governor, Executive Assistant to the Governor, 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, Attorney General, Deputy Attorney General appointed pursuant to ORS 180.130, Superintendent of Public Instruction, Commissioner of the Bureau of Labor and Industries and any judge.

ORS 171.735. Thus, any public official who "lobbies" and who is not exempt under ORS 171.735 is subject to the lobbyist reporting requirements of ORS 171.745.

Two of the above exemptions are most relevant to the questions we have been asked. ORS 171.735(3) exempts any individual: (1) who receives no additional compensation for lobbying, (2) whose lobbying activities are limited *solely* to formal appearances to give testimony before public sessions of committees of the Legislative Assembly or public hearings of state agencies, and (3) who registers an appearance in the records of such committees or agencies before which he or she testifies. State employees do not receive additional compensation for their lobbying activities above their regular state salary and, thus, would meet that element. However, the exemption applies only if both of its other elements are also met. Thus, if a state employee speaks privately with a legislator on a single occasion to express reasons why a particular bill is a good or bad idea, asks other persons to support or oppose a legislative measure, or engages in any other lobbying activity than formal, registered appearances at public sessions of legislative committees, the employee would not come within this exemption. In that case, *all* moneys expended by the employee "for the purpose of lobbying" would need to be reported, even those expenditures for prior formal appearances that the employee registered in committee or agency records, unless he or she comes within one of the other exemptions.⁽⁶⁾

ORS 171.735(4) exempts any individual who, during any calendar quarter, does not spend more than 24 hours or more than \$100 lobbying, excluding travel, meals and lodging. All of the activities that we identify in response to the first question as "lobbying" would be counted toward this 24-hour or \$100 threshold. Once either the 24-hour or \$100 threshold is exceeded by an employee, the employee must comply with the lobbyist reporting requirements of ORS 171.745. If a state employee meets the exemption in ORS 171.735(3) because he or she only makes formal, registered appearances before legislative committees, however, the employee would be exempt from the lobbyist reporting requirement even if

those appearances totaled more than 24 hours or \$100 in expenditures. If the employee does not meet the exemption in ORS 171.735(3) because the employee does not limit his or her lobbying activities to formal, registered appearances before legislative committees, any such appearances would count toward the 24-hour threshold.⁽⁷⁾

If a state employee is not exempt from the lobbyist reporting requirements, the lobbyist's report must show the total amount of all moneys "expended by" that individual "for the purpose of lobbying" in the preceding reporting period.⁽⁸⁾ ORS 171.745(1)(a). We believe that ORS 171.745 requires the employee to report only those amounts actually paid out by the lobbyist personally. The term "expend" means "to pay out or distribute : spend." Webster's, *supra*, at 799. Under this definition, a state employee expends only those moneys that he or she pays out; the employee does not "expend" funds when he or she arranges the purchase of goods or services that are billed to the state agency.⁽⁹⁾ In other words, we believe that the employee must include in the lobbyist's report only his or her out-of-pocket expenses.

These amounts must be reported by general category, including but not limited to (A) food, refreshments and entertainment; (B) printing, postage and telephone; (C) advertising and public relations, education and research;⁽¹⁰⁾ and (D) miscellaneous. *Id.* The expenditures required to be reported do not include "amounts expended by the lobbyist for personal living and travel expenses and office overhead, including salaries and wages paid for staff and secretarial assistance, and maintenance expenses."⁽¹¹⁾ ORS 171.745(3).

The lobbyist's report must also show the name of any legislative official to whom or for whose benefit an expenditure of more than \$60 is made on any one occasion "for the purposes of lobbying." ORS 171.745(1)(b).⁽¹²⁾ The date, name of payee, purpose and amount of that expenditure must also be shown. *Id.*

Further explanation of the lobbyist reporting requirements may be found in the GSPC rules, OAR 199-010-0060 to 199-010-0081.⁽¹³⁾

B. Employer Reporting Requirements

ORS 171.750 contains a separate reporting requirement for the employers of lobbyists who were registered or required to register with the GSPC at any time during the preceding calendar year.⁽¹⁴⁾ This employer reporting requirement expressly applies to public agencies. The exemptions in ORS 171.735 do not directly apply to the employer reporting requirements. Thus, if an employer has at least one employee who was registered or required to register with the GSPC because he or she did not come within any of the exemptions in ORS 171.735, the employer must file the employer report showing expenditures for all lobbying activities for the preceding calendar year, including those of any exempt lobbyists.

The employer's report must show the "total amount of all moneys expended for lobbying activities in the employer's behalf, excluding living and travel expenses incurred during a session of the Legislative Assembly." ORS 171.750(1)(a). Unlike ORS 171.745(1)(a), which requires a lobbyist to report moneys expended "for the purpose of lobbying," ORS 171.750(1)(a) requires the employer to report moneys expended "for lobbying activities." Thus, the employer's report needs to include only expenditures for those activities that are "lobbying." ORS 171.750 does not, however, exclude the office overhead directly related to those activities. Thus, the employer's report must include that portion of the salary, benefits and directly related overhead of any employees who engage in "lobbying," but not the salaries, benefits or overhead for support personnel or other persons who may assist the lobbyist but do not themselves engage in any "lobbying" activities.⁽¹⁵⁾ Unlike the lobbyist's expenditure report, the employer's report need not list expenditures by category.

The employer's report must also show the name of any legislative official to whom or for whose benefit an expenditure of more than \$60 is made on any one occasion by the employer for "the purpose of lobbying," but not including information previously reported in a lobbyist's report filed in compliance with ORS 171.745. ORS 171.750(1)(b).⁽¹⁶⁾ The date, name of payee, purpose and amount of that expenditure must also be shown. *Id.*

C. Examples

To more clearly explain how the principles discussed above would apply to state agency employees in the situations identified in the first question, we discuss several examples below.

Example #1: Employee A presents testimony in support of a legislative measure at a public session of a legislative committee and has registered that appearance in the records of the committee.

Assuming that Employee A does not engage in any other lobbying activities, Employee A would be exempt under ORS 171.735(3) from the lobbyist reporting requirement. If Employee A engages in lobbying activities other than registered, formal testimony, Employee A would need to file the lobbyist's expenditure reports if the total of his or her lobbying activities, including formal committee appearances, exceeds either the 24-hour or the \$100 threshold.

If Employee A is not exempt under ORS 171.735(3) or (4) from the lobbyist reporting requirement, then he or she is also required to register with the GSPC. In that case, the agency that employs this individual must file an employer expenditure report showing the portion of this employee's salary, benefits and overhead attributable to this employee's lobbying activities, as well as all other moneys expended "for lobbying activities" in the agency's behalf. Even if Employee A is exempt from the lobbyist reporting (and registration) requirement, the agency must report expenditures for Employee A's lobbying activities if any other persons employed by the agency were registered or required to register with the GSPC.

Example #2: Employee B creates and prepares the formal testimony presented by Employee A in the above example.

Creating and preparing testimony in support of a legislative measure is not "lobbying," whether or not done at the direction of the lobbyist who presents the testimony. Assuming that Employee B does not engage in any other activities that would be "lobbying," Employee B does not need to file a lobbyist's expenditure report.

The agency that employs Employee B does not need to report the salary or other expenses attributable to Employee B's creation and preparation of testimony because those expenditures are not "for lobbying activities."

Even if Employee A is required to file a lobbyist's expenditure report, he or she would not need to include in that report the portion of Employee B's salary attributable to Employee B's creation and preparation of the testimony. Although Employee B's activities were "for the purpose of lobbying" by Employee A, the lobbyist's report need not include office overhead or staff salaries.

If Employee B does engage in activities that are "lobbying," he or she would need to file the lobbyist's expenditure reports unless he or she is otherwise exempt under ORS 171.735. If Employee B, or any other person employed by the agency as a lobbyist, is required to register and to file a lobbyist's expenditure report, the agency employer would need to file an employer expenditure report that shows the total amount of all moneys expended "for lobbying activities" in the agency's behalf. This would include the portion of Employee B's salary, benefits and overhead attributable to Employee B's lobbying activities, but not Employee B's creation and preparation of testimony because that is not a "lobbying" activity.

Example #3: Employee C and Employee D each spend approximately 25 hours working together to develop a legislative concept and approximately 10 hours at stakeholder meetings at which they encourage the stakeholders to contact their representatives to support the proposed legislation. In addition, Employee D authorizes an expenditure of \$150 for printing and advertising for the meetings, which will be paid by the agency employer. These are the only activities engaged in by Employees C and D that could be considered "lobbying."

Assuming that Employee C does not engage in other "lobbying" activities, Employee C does not need to file a lobbyist's expenditure report. Because 25 hours of Employee C's activities were internal to the agency and did not entail communicating with legislative officials or stakeholders, they are not "lobbying." The 10 hours that Employee C spent at the stakeholder meetings does not exceed the 24-hour threshold.

Assuming that Employee D does not engage in other "lobbying" activities, Employee D does not need to file a lobbyist's expenditure report. The 10 hours that Employee D spent "lobbying" at stakeholder meetings does not exceed the 24-hour threshold. Although the expenditure of \$150 that Employee D authorized for printing and advertising for the stakeholder meetings exceeds the \$100 expenditure threshold, Employee D did not personally expend or pay out those moneys.

Because neither Employee C nor Employee D is required to register or to file a lobbyist's expenditure report, the agency employer is not required to file an employer expenditure report unless other agency employees are registered or required to register with the GSPC. If any agency employee is registered or required to register with the GSPC during the calendar year, then the agency employer must file an employer expenditure report that includes the portion of both Employee C's and Employee D's salary, benefits and overhead directly related to the 10 hours that they spent at the stakeholder meetings, as well as the \$150 expenditure authorized by Employee D and all other moneys expended for "lobbying activities" in the

agency's behalf. Because the 25 hours that Employee C and Employee D spent in developing the legislative concept is not "lobbying," the agency's expenditures for those activities does not need to be included in the agency's report.

IV. Caveat

This opinion construes statutory provisions that have not been interpreted by the courts or by the GSPC in advisory opinions issued pursuant to ORS 171.776. We recognize that our answers to several of the questions differ from that of the GSPC in its informal advice to lobbyists and in the GSPC rules.

The GSPC has authority to issue and publish opinions on the requirements of ORS 171.725 to 171.785 based on actual or hypothetical circumstances. ORS 171.776(2). Any lobbyist or lobbyist employer may request in writing a determination from the GSPC whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785. An advisory opinion issued by the GSPC in response to such a request is considered a formal opinion having precedential effect. ORS 171.776(4). A lobbyist or lobbyist employer who relies on such a formal opinion shall not be liable for violation of the lobbying statutes for any action or transaction carried out in accordance with the GSPC opinion. *Id.* Although we believe that our interpretation of the reporting requirements is correct and would be shared by the GSPC if it were asked to address those questions, an opinion from this office does not guarantee the same protection from liability.

HARDY MYERS

Attorney General

HM:AV:naa/JGG11E72

1. By "creating and preparing" testimony, we understand you to be describing the creative acts of devising the content of the testimony, not the manual acts of typing and formatting a written document.

Return to [previous location](#).

2. ORS 171.725(5) provides in its entirety:

"Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter which may be the subject of action by either house of the Legislative Assembly, or any committee thereof or the approval or veto thereof by the Governor.

Return to [previous location](#).

3. Two bills introduced at the request of the Oregon Government Ethics Commission, HB 2169 and 2171, would have amended the lobbying statutes. HB 2169, which contained the original "clarifying" language to the definition of "lobbying," was consolidated into HB 2171.

Return to [previous location](#).

4. "Legislative official" is defined as:

any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

agency's behalf. Because the 25 hours that Employee C and Employee D spent in developing the legislative concept is not "lobbying," the agency's expenditures for those activities does not need to be included in the agency's report.

IV. Caveat

This opinion construes statutory provisions that have not been interpreted by the courts or by the GSPC in advisory opinions issued pursuant to ORS 171.776. We recognize that our answers to several of the questions differ from that of the GSPC in its informal advice to lobbyists and in the GSPC rules.

The GSPC has authority to issue and publish opinions on the requirements of ORS 171.725 to 171.785 based on actual or hypothetical circumstances. ORS 171.776(2). Any lobbyist or lobbyist employer may request in writing a determination from the GSPC whether a proposed transaction or action constitutes a violation of ORS 171.725 to 171.785. An advisory opinion issued by the GSPC in response to such a request is considered a formal opinion having precedential effect. ORS 171.776(4). A lobbyist or lobbyist employer who relies on such a formal opinion shall not be liable for violation of the lobbying statutes for any action or transaction carried out in accordance with the GSPC opinion. *Id.* Although we believe that our interpretation of the reporting requirements is correct and would be shared by the GSPC if it were asked to address those questions, an opinion from this office does not guarantee the same protection from liability.

HARDY MYERS

Attorney General

HM:AV:naa/JGG11E72

1. By "creating and preparing" testimony, we understand you to be describing the creative acts of devising the content of the testimony, not the manual acts of typing and formatting a written document.

Return to [previous location](#).

2. ORS 171.725(5) provides in its entirety:

"Legislative action" means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter which may be the subject of action by either house of the Legislative Assembly, or any committee thereof or the approval or veto thereof by the Governor.

Return to [previous location](#).

3. Two bills introduced at the request of the Oregon Government Ethics Commission, HB 2169 and 2171, would have amended the lobbying statutes. HB 2169, which contained the original "clarifying" language to the definition of "lobbying," was consolidated into HB 2171.

Return to [previous location](#).

4. "Legislative official" is defined as:

any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

Return to [previous location](#).

5. These same persons are exempt from the registration requirements in ORS 171.740. ORS 171.735.

Return to [previous location](#).

6. The employee would also no longer be exempt from the registration requirement in ORS 171.740 unless he or she came within another exemption.

Return to [previous location](#).

7. It is conceivable, though perhaps unlikely, that a state employee might spend more than 24 hours in formal, registered appearances before legislative committees during a calendar quarter. If such an individual were then to engage in some other lobbying activity (e.g., a 5-minute conversation with a legislator outside the committee room urging the legislator to support an amendment to a bill), the employee would no longer be exempt under ORS 171.735(3) from the reporting requirements. Because this employee had already exceeded the 24-hour limit for exemption under ORS 171.735(4) at the time he or she became no longer exempt under ORS 171.735(3), he or she would now be required to comply with the registration requirements of ORS 171.740 and the lobbyist reporting requirements of ORS 171.745. The employee would need to register with the GSPC within three working days after losing the exemption under ORS 171.735(3). The employee would have to file a report with the GSPC on the next reporting date, showing the total amount of all moneys expended by the employee for the purpose of lobbying "in the preceding reporting period." ORS 171.745(1)(a). The employee must also include in this report any expenditures made to, or for the benefit of, a legislative or executive official. ORS 171.745(1)(b). Although the statute does not specify, we believe that such reportable expenditures are also limited to those in the preceding reporting period.

Return to [previous location](#).

8. These reports must be filed on January 31 and July 31 of each even-numbered year and on January 31, April 30 and July 31 of each odd-numbered year. ORS 171.745(1).

Return to [previous location](#).

9. The GSPC rules provide that all expenditures "incurred by a lobbyist or at the lobbyist's direction or instigation for the purpose of lobbying" must be reported, even though the employer pays the bills. OAR 199-010-0075(1). We believe this rule is overly broad in that it requires reporting by the lobbyist of amounts that are not actually "expended by the lobbyist." See ORS 171.745(1)(a).

Return to [previous location](#).

10. ORS 171.745(1)(a)(C) requires a lobbyist who engages in any lobbying activities to file a statement showing the "total amount of all moneys expended by the lobbyist for the purpose of lobbying," expressly including "research." This provision requires expenditure reporting of research only when it is done "for purposes of lobbying," not research prepared initially for other purposes. To the extent testimony at a legislative hearing incorporates information or research from a report or other document prepared initially for other purposes, the work of researching and preparing the earlier report or document would not be "lobbying" because it was not done for the purpose of influencing legislative action. In the 1973 hearing on House Bill 2530, one of the senators asked whether lobbying included all research done on the subject of the law merely because it becomes available to a legislator or whether the research had to be done specifically in order to influence legislation. David B. Frohnmayer responded:

I would say the latter conclusion and I would point to the language [of the bill] which says "all amounts received or expended directly or indirectly for lobbying activities." And while something clearly could do double duty, it seems to me that the purpose of that expenditure would not initially have been for the purpose of influencing a given legislator and therefore that would not be reported.

Using the Media

The media is powerful in all our lives. It is infinitely more powerful in the lives of our legislators. Used effectively, a media strategy can reinforce your work in Salem when major policy issues are involved. Because of legislators' unique sensitivity to the media, any public comment or publicity needs to be part of a larger media strategy.

Much like successful legislative work, an effective media strategy depends on building relationships. Media tools include press kits, news releases, op-ed articles/guest editorials, editorial meetings, establishment as a resident "expert," and participation in community forums. Together, they add tremendously to the power of your legislative message.

Most law improvement projects will not usually be of great interest to the media. However, Kateri Walsh, OSB media relation coordinator, would be happy to work closely with any group or individual in developing a more comprehensive plan for working on specific topics which may have media involvement.

Here are some media tips!

- Don't trump your legislator. In fact, the legislature should be your first point of contact, and media conversations should flow from those communications, not vice-versa.
 - Rule no. 1 is to not grandstand with the media in any way that trumps the efforts of the legislators who have the power to advance - or table - the larger agenda.
- Prepare your legislator. Nothing that comes from you or your office should come as a surprise to any of the legislators you have contacted.
- Develop one or two key messages, and keep coming back to them. Most of the issues you'll be commenting on are complex. But most news stories have a finite capacity for complexity. You will stay on track if you have one or two messages that you focus on consistently throughout a conversation, or communication.
- Repeat, repeat, repeat. The rule in media is that nothing reaches the public consciousness until it is presented at least three times. Establish your key message, but then find multiple ways of presenting it to the media. Keep it fresh.
- Don't speak off the cuff. If you get an unsolicited call from a reporter, don't feel like you have to talk with them at that moment. Ask them what their deadline is, and offer to call them back. It gives you an opportunity to develop your key message and language, and think through the potential questions and implications. If appropriate, you can even call your legislators and chat with them about their public priorities prior to shaping your response.
- Be consistent as you move from legislative to media communications. From a public relations standpoint, it can be tempting to alter your message slightly depending on the audience. Don't tell your legislator one thing, and then alter it for presentation to the media. It impacts your credibility with Salem, dilutes your message, and adds fuel to the other side of the issue.
- Tie news releases to a hard news angle. Soft news stories and features can be quite effective in making an issue "real" to the public. But whenever possible, tie your message to hard news. Find a study that's recently out that reinforces your message. Provide hard, tangible numbers to illustrate your point of view.
- Plan your responses to the toughest potential questions. You have two goals: to establish your expertise on a topic; and to present yourself as a citizen who wants to help facilitate public discussion. Don't appear to get agitated if questions get tough. It's part of facilitating the discussion. Have your responses ready, preferably in the form of some hard numbers, statistics or facts. Avoid emotional arguments. And keep coming back to your key messages.
- Know the media outlet before meeting with them. Particularly in dealing with print media, or with radio talk shows, be aware of the institution's or the individual's bias prior to talking.
- Eliminate all legalese. Simplify the issue - and your language - to its simplest components. Understand that the reporters did not attend law school, and their readers/audience often didn't attend college, or even high school. Be patient if the issue requires some lengthy explanation. Everybody's better off ensuring that the reporter gets it right before you leave.
- Provide a list of further contacts that will reinforce your message. Reporters want to have a list of recognized "experts." Make it easy on them. Provide them with names, phone numbers, and titles or other reason for their expertise.

Legislative Resources

CONTACT NUMBERS

Oregon State Bar

Public Affairs Department(503)431-6376
www.osbar.org/pubaffairs/publicaffairs.htmlpubaff@osbar.org

Oregon Legislature

Legislative Committees(503) 986-1813
 House Democratic Office(503) 986-1900
 House Republican Office(503) 986-1400
 Senate Republican Office(503) 986-1950
 Senate Democratic Office(503) 986-1700
 Legislative Counsel(503) 986-1243
 Distribution Center (for copy of legislative bills)(503) 986-1180

WEB SITE RESOURCES

Oregon Legislature

www.leg.state.or.us

Legislative Measures (Search Engine)

www.leg.state.or.us:8765/

2005 Oregon Revised Statutes (ORS) (Search Engine)

www.leg.state.or.us:8765/

Oregon Secretary of State Elections Division

www.sos.state.or.us/elections/elechp.htm

Oregon State Archives

<http://arcweb.sos.state.or.us/>

United States Congress

<http://thomas.loc.gov/>

United States House of Representatives

www.house.gov/

House Judiciary Committee

www.house.gov/judiciary/

United States Senate

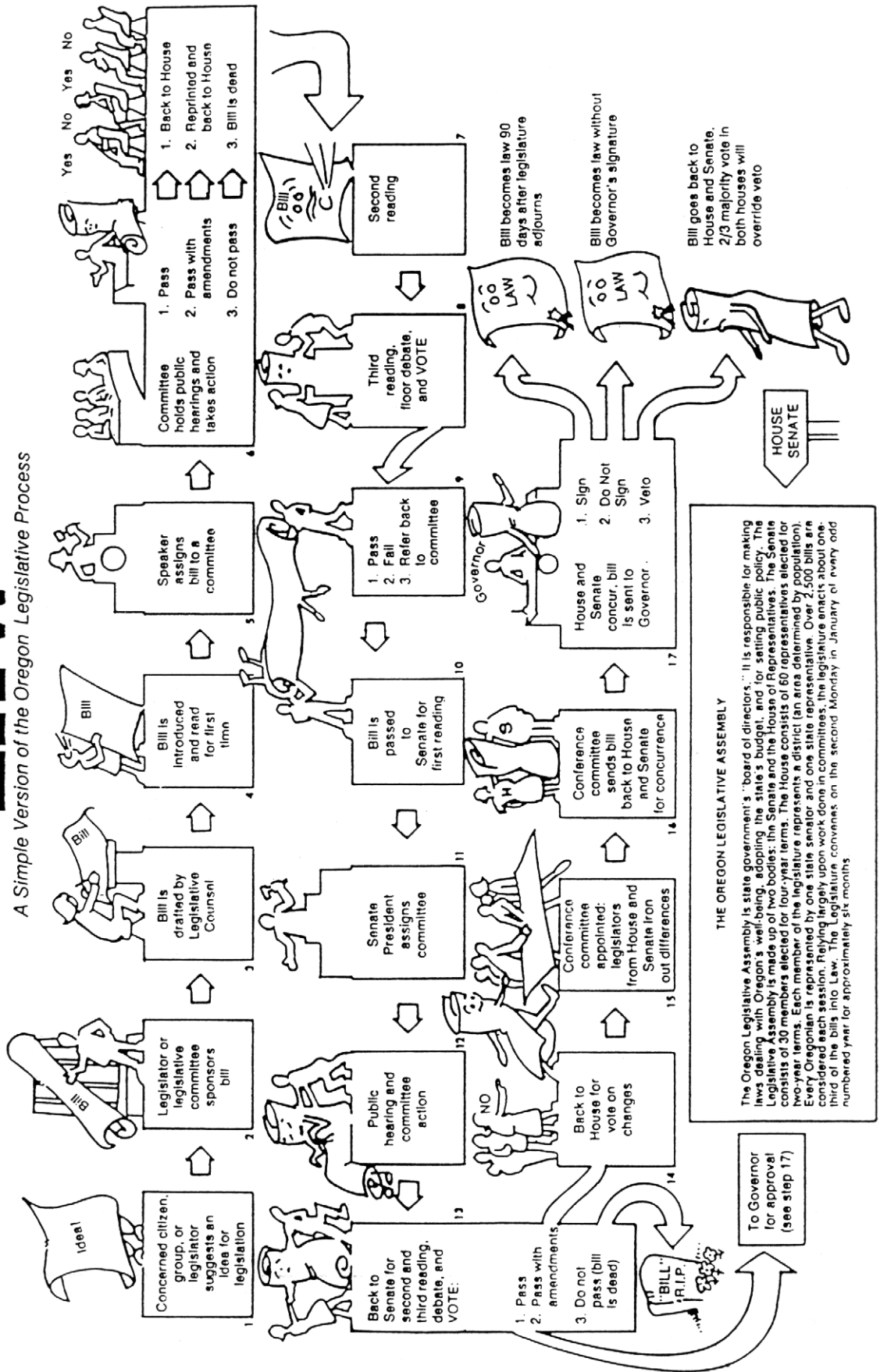
www.senate.gov/

Senate Judiciary Committee

www.senate.gov/judiciary

How An Idea Becomes LAW

A Simple Version of the Oregon Legislative Process



THE OREGON LEGISLATIVE ASSEMBLY

The Oregon Legislative Assembly is state government's "board of directors." It is responsible for making laws dealing with Oregon's "wallet" - adopting the state's budget and for setting public policy. The Legislative Assembly is made up of two bodies: the Senate and the House of Representatives. The Senate consists of 30 members elected for four-year terms. The House consists of 60 Representatives elected for two-year terms. Each member of the legislature represents a district (an area defined by population). Every Oregonian is represented by one state senator and one state representative. Over 2,500 bills are considered each session. Regularly scheduled work done in committee. The legislature enacts about one-third of the bills into law. The legislature convenes on the second Monday in January of every odd numbered year for approximately six months.

Legislative Summary Format

This is a suggested legislative summary format for bar group sponsored legislation. The legislative summary will be the cornerstone of communications with other legal interest groups as well as the basis for future written and oral testimony provided to legislative committees during session. It may also serve as a useful format to analyze bills under consideration during the session. The summary should be no more than 1-2 pages in length. More in-depth measure analysis may be attached as an additional document if necessary.

OREGON STATE BAR Legislative Summary of Proposal

RE: Legislative Concept

FROM: Committee or Group proposing legislation

Legislative Contact:

Name:

Telephone:

Fax:

Email:

This bill would amend ORS _____

1. PROBLEM PRESENTED

Briefly state the PROBLEM PRESENTED (include ORS or case citation if applicable)

2. SOLUTION

Identify the SOLUTION to the problem (include proposed language change)

3. PUBLIC POLICY IMPLICATION

Identify any PUBLIC POLICY IMPLICATIONS (this includes legal, constitutional, financial, and any other issues as well as potential sources of opposition)

Sample of Legislative Summary

OREGON STATE BAR Legislative Summary of Proposal

RE: Requirement that trustee under the Oregon Trust Deed Act file notice of amount necessary to cure or pay off 15 days prior to foreclosure sale. (LC 443)

FROM: OSB – Debtor/Creditor

Legislative Contact:

Name:

Phone Number:

Fax:

Email:

This bill would amend ORS 86.705, et. seq., the Oregon Trust Deed Act and, specifically, we anticipate amending 86.750(3).

1. PROBLEM PRESENTED

The problem arises in that more and more out-of-state “trustee services companies” are conducting non-judicial foreclosures in Oregon. These “foreclosure mills” are nearly inaccessible to borrowers, holders of junior encumbrances and potential investors wishing to bid at foreclosure sales, to obtain information on the amounts necessary to cure or the minimum bid at the sale. Some of these trustee services companies do not even list their telephone numbers on the trustee’s notices of sale. Most have automated phone systems that give parties endless options to choose, where a live person cannot be reached. Some have actually disseminated recorded information that is incorrect. Despite repeated requests, it is often difficult for borrowers to obtain cure amounts or payoffs, if they have refinances or sales of their property. Their only alternative is to file an action to enjoin the sale or file for bankruptcy protection.

2. SOLUTION

The solution to the problem is to require the trustee to record an affidavit prior to the sale that sets forth the information that a borrower, junior encumbrancer or investor may need to tender a cure or pay off the loan. In this way, a tender may be made prior to the sale.

3. PUBLIC POLICY IMPLICATION

The requirement to record the affidavit will not significantly burden the trustee nor the existing procedures for non-judicial sales. While the “foreclosure mills” may oppose this additional requirement, it is generally within the contemplations of the act. Currently, ORS 86.753 allows a borrower or its successor in interest to cure the defaults at any time prior to five days before the last date set for the sale. That statute currently does not require the trustee or the beneficiary to give the borrower the amount necessary to cure. In many cases, due to complex interest accruals, late charges, foreclosure costs and attorney’s fees, the borrower may not know the amount necessary to tender. We believe that this change will conform with current public policy.

Sample Letter to Legislator

LANE
POWELL
SPEARS
LUBERSKY
LLP
—
—

Christopher P. Cline
(503) 778-2103
clinec@lanepowell.com

June 14, 2001

VIA FACSIMILE (503) 986-1778

Law Offices

*A Limited
Liability
Partnership
Including
Professional
Corporations*

*601 S.W.
Second Avenue
Suite 2100
Portland, OR
97204-3158*

(503) 778-2100

*Facsimile:
(503) 778-2200*

*Website:
www.lanepowell.com*

Senator John Minnis
900 Court Street NE, S-311
Salem, OR 97301

Dear Senator Minnis:

I am writing to you on behalf of the Executive Committee of the Oregon State Bar’s Estate Planning Section. I previously had testified before your committee on behalf of two bills which our committee had sponsored. I am writing to you today to express our committee’s support for that portion of SB 166 relating to so-called “pet trusts.” Our committee previously had supported HB 2739, which incorporated this legislation. I realize that, at first blush, such legislation appears trivial. However, our committee believes that it is nevertheless substantial legislation for the following reasons.

First, believe it or not, many of our clients ask that trusts be established for their pets, and it is not clear under current Oregon law whether such trusts are allowed. Second, this legislation is being introduced together with federal legislation that would provide a charitable income tax deduction for trusts that are created for pets, where the remainder interest on the pet’s death passes to charity. Adopting the Oregon “pet trust” bill would allow Oregon residents to create such charitable trusts once the federal legislation is passed. For these reasons, our committee endorses that portion of SB 166 relating to pet trusts, and we respectfully ask for your support and approval as well. If you have any questions, please feel free to contact me.

Very truly yours,

LANE POWELL SPEARS LUBERSKY LLP



Christopher P. Cline

CPC:jrm
cc: J. Alan Jensen, Esq.
Susan Grabe, Esq.
Craig Heath, Esq.

999999.2001/325984.1

*Anchorage, AK
Mount Vernon, WA
Olympia, WA
Portland, OR
Seattle, WA
London, England*

Sample Legislation

71st OREGON LEGISLATIVE ASSEMBLY--2001 Regular Session

House Bill 2372

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Judiciary Committee for the Procedure and Practice Committee of the Oregon State Bar)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Allows taking of testimony in civil jury trial by simultaneous transmission from different location. Requires showing of compelling need.

A BILL FOR AN ACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

Relating to testimony in civil trials; creating new provisions; and amending ORS 45.010.

Be It Enacted by the People of the State of Oregon:

SECTION 1. In civil jury trials the court may, on timely notice and for good cause shown, in compelling circumstances and with appropriate safeguards, permit presentation of testimony in open court by simultaneous transmission from a different location.

SECTION 2. ORS 45.010 is amended to read:

45.010. The testimony of a witness is taken by *[five]* **six** modes:

(1) Affidavit.

(2) Deposition.

(3) Oral examination.

(4) Telephone examination under ORS 45.400.

(5) Examination before a grand jury by means of simultaneous television transmission under ORS 132.320.

(6) Examination by simultaneous communication device under section 1 of this 2001 Act.

Sample of Testimony Before House Judiciary Committee

Wednesday January 22, 2003

In Support of HB 2064

Chair Williams, members of the committee, my name is Kevin Chames. I have been a lawyer since 1987. I currently maintain an office in Wilsonville and have practiced in the Portland metropolitan area since admission to the bar. I am here as a member of the Oregon State Bars' Procedure and Practice Committee as a whole and the subcommittee assigned to study HB 2064.

The Procedure and Practice Committee is composed of attorneys throughout the state, including Pendleton, Bend, Corvallis, Eugene, Medford and Wilsonville as well as Portland. The Committee prides itself on maintaining an evenly balanced membership of attorneys who represent both defendants and plaintiffs in civil litigation. In my practice I represent both. Our committee works hard to build a consensus on each issue we look at. We are charged with assessing the practical impact on the day-to-day workings of our civil judicial system, posed by bills presented to the legislature. Today, I am here to comment on HB 2064 on behalf of our committee.

certain situations by means of a notarized affidavit. The notary requirement increases the time and expense of litigation, especially in less populated areas of Oregon where there are a limited number of public notaries. Even where the number of notaries is more plentiful, the notary requirement still increases the time spent by both the lawyer and the client; which, ultimately costs the client more in the form of attorney fees and both the lawyers and client's productivity in having to take the time to get statements notarized.

HB 2064 would amend statutes to allow for the use of a "declaration," subject to the penalty of perjury, as an additional mode of offering testimony. The types of declarations are currently used in federal courts in Oregon.

I urge the Judiciary Committee to move this bill to the full House with a "do pass" recommendation. Thank you for the opportunity to testify before you today. I would be happy to answer any questions.

Currently, ORS allows for testimony to be given in

Sample of Legislative Testimony Before the Senate Judiciary Committee – Civil

May 14, 2001

In Favor of HB 2363

My name is Ruth Simonis. I am co-chair of the Legislative Committee of the Elder Law Section of the Oregon State Bar Association.

During the 1998 legislative session, new notice requirements were added in cases involving a petition for guardianship over an allegedly incapacitated adult. These requirements were codified in ORS 125.070(3), which included a statutorily prescribed notice form. The intent was that the traditional notice requirements in ORS 125.070(2) be given in *addition to* the new notice form in ORS 125.070(3).

Unfortunately, due to inartful drafting, the notice requirements under ORS 125.070(2), which was originally required to be given to *all* respondent's in a guardianship are now only required for *minor* respondents in a guardianship. Adult respondents are required to receive *only* the statutory notice form created last session under ORS 125.070(3). Experienced elder law attorneys have continued to give both the traditional notice information and the new notice form to adult respondents, but the statute itself is unclear. Attorneys unfamiliar with this area of law would not know that both kinds of notice should be provided.

This bill would solve this problem by providing that the pre-1998 traditional notice requirements in ORS 125.070(2) would apply only to the appointment of a conservator for a financially incapable respondent, or for a guardian/conservator of a *minor* respondent. The new notice requirements passed last session and codified, as ORS 125.070(3), would be amended to include those notice requirements listed in ORS 125.070(2) which were not included in subsection (3). The result would be one standardized, comprehensive statutory notice form to all adult respondents in a guardianship. The consolidation of notice requirements into ORS 125.070(3) will provide clear direction to practitioners and ensure that the important information about the guardianship proceeding is provided in a readable and uniform manner to all adult respondents in a guardianship.

Sample Letter Requesting a Hearing



B.B. Bouneff • John Chally
Sandra Hodgson*

*Admitted in Oregon and Montana

Legal Assistants
Leslie East
Shelly Reynolds

March 26, 2001

Senator Bill Fisher
Chair, Senate Health and Human Services Committee
900 Court Street NE S-209
Salem, OR 97301

RE: Senate Bill 125

Dear Senator Fisher:

I am writing to request you to schedule a hearing on Senate Bill 125. I am a member of the Standing Committee on Adoption for the Family Law Section of the Oregon State Bar. Our committee worked with the Coalition of Oregon Adoption Agencies on this bill, and we believe it provides a needed service for birth parents who are placing their children for adoption.

SB 125 adds a new section to the adoption statutes that would require written notice to a birth parent who is voluntarily relinquishing a child for adoption that he or she has the right to receive adoption related counseling in either an independent or agency adoption. The prospective adoptive parents would be required to pay for the uninsured costs of the counseling. The counseling would be limited to three sessions prior to relinquishment and three sessions after relinquishment.

There is no financial or constitutional impact from this bill.

It is currently standard practice in adoption situations for the adoptive parents to pay for birth parents' adoption counseling. This bill would insure that all consenting birth parents were notified of the availability of counseling.

Please schedule a hearing on SB 125 so that it can be considered this session. Thanks for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads 'Sandra Hodgson'.

Sandra Hodgson

SH:srr

Enclosures

cc: Susan Grabe, Oregon State Bar

825 N.E. Multnomah, Suite 1125, Portland, Oregon 97232-2193
Website: adoptionnorthwest.com Email: bounchal@worldstar.com
Telephone: 503/238-9720 • FAX: 503/239-3989