September 3, 1997

M. Max Williams II
Miller, Nash, Weiner, Hager & Carlsen LLP
3500 US Bancorp Tower
111 SW Fifth Ave
Portland, OR 97204-3699

Dear Mr. Williams:

This is in response to your correspondence dated August 4, 1997 and August 13, 1997 regarding the propriety of a lawyer/legislator being paid compensation to lobby the governor of Oregon.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION NO 97S-026

STATED FACTS: A corporation has interest in a piece of federal legislation relating to forest issues on federal land in Oregon. The corporation believes that the White House will seek input from the governor of Oregon on the issue. The corporation has approached a member of the state legislature, who is also an attorney, wanting to hire the attorney to assist the corporation in lobbying the governor on this issue. While the arguments in support of the corporation s position are of a legal nature , the attorney is being retained primarily because of his knowledge of the issues and his relationship with the governor.

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

> ORS 171.725(1): 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.

ORS 171.725(5): 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.

ORS 171.725(6): 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.

ORS 171.725(7): 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.

ORS 171.725(8): 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.

ORS 171.756(4): No legislative or executive official shall receive consideration other than from the State of Oregon for acting as a lobbyist.

<u>QUESTION:</u> Do Oregon s lobbying regulation laws prohibit a legislator/lawyer from accepting compensation for lobbying the governor on a federal issue where it is clear that the matter would not be an issue that would come before the legislature?

<u>OPINION:</u> It does not appear that Oregon s lobbying regulation statutes would prohibit a legislator/lawyer from accepting compensation for lobbying the governor on a federal issue. Of the relevant statutes cited above, the key appears to be the definition of legislative action . The most significant portion of that definition appears to be ... 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.

It appears form the statutory definition that, in order for the governor to take legislative action, the matter must have been subject to action by either house of the Legislative Assembly. According to the stated facts, the federal forest legislation which would be the

issue for which the lawyer/legislator would be lobbying the governor has not and would not be subject to action by the Oregon legislature. It follows then, that the lawyer/legislator would not be a lobbyist as defined by statute nor would the lawyer/legislator be lobbying as defined by statute. Thus, the lawyer/lobbyist would not be subject to the prohibition of ORS 171.756(4) which prohibits legislators from receiving compensation for lobbying from any source other than the state of Oregon.

Notwithstanding, the lawyer/legislator should be encouraged to seriously consider the ramifications of entering into the proposed arrangement. If the arrangement were to be made known to the public, it is likely that some observers would perceive that the legislator/lawyer received compensation to lobby the governor primarily because of being a legislator and that money and cronyism are key components in the operation of state government in Oregon.

THIS RESPONSE IS BASED SOLELY ON THE INFORMATION PROVIDED IN YOUR WRITTEN INQUIRY AND IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Please advise this office if you would like this matter submitted to the GSPC for adoption as a formal advisory opinion at a future meeting. Do not hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:vl/so/williams.so