

November 28, 2001

John DiLorenzo, Jr.  
Hagen, Dye, Hirschy & DiLorenzo  
Pioneer Tower, Suite 1000  
888 S.W. Fifth Avenue  
Portland, Oregon 97204-2024

Re: Your File No. 4327.001

Dear Mr. DiLorenzo:

At its November 28, 2001 meeting, the Oregon Government Standards and Practices Commission (GSPC) adopted the following advisory opinion:

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION**  
**ADVISORY OPINION NO. 01A-1013**

STATED FACTS: A lobbyist/treasurer of a multi-candidate political action committee (PAC) was successful in raising substantial funds during the last campaign cycle. The committee thereupon distributed contributions to various candidates for election to the Oregon House and Senate. The lobbyist/treasurer of the committee was, and continues to be, one of the prime decision makers with respect to allocation of the committee's resources.

This PAC is an unincorporated association that is tax exempt under Internal Revenue Code Section 527. The PAC files contributions and expenditures reports with the Office of the Secretary of State, has filed Internal Revenue Service Form 8871 and files Internal Revenue Services Forms 8872 on a regular basis with the Internal Revenue Service pursuant to the McCain Amendments which were enacted in 1999.

The lobbyist/treasurer of the committee is contemplating retaining as an independent contractor a person to assist the lobbyist/treasurer in raising funds for the committee during this campaign cycle. Although the lobbyist/ treasurer hopes to raise substantially greater sums than in the past cycle, neither the character of the committee or the nature of its contributions will change substantially. The lobbyist/treasurer proposes to retain the fundraiser pursuant to a contract between the fundraiser and the committee. The fundraiser's compensation will, in large part, be contingent upon the success which the fundraiser has in raising funds for the committee. The compensation formula will be similar to that which prevails in the community. The fundraiser will solicit funds for the

committee primarily by way of personal contacts. The fundraiser will solicit funds for the benefit of the committee only during the interim and will not solicit funds during any period of time in which the Legislature is in session.

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

244.020(2) "'Business' means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official is associated in a nonremunerative capacity."

244.020(3) "'Business with which the person is associated' means any business of which the person or the person's relative is a director, officer, owner or employee, or agent or any corporation in which the person or the person's relative owns or has owned stock worth \$1000 or more at any point in the preceding calendar year."

244.020(15) "'Public official' means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services."

244.040 "**Code of ethics; prohibited actions; honoraria.** The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120:"

244.040(1)(a) "No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated."

QUESTION #1: Would it be a violation of Oregon Government Standards and Practices laws for the committee to retain as its contract fundraiser a person who is a current member of the Oregon Legislature?

OPINION: Oregon Government Standards and Practices law, ORS Chapter 244, does not prohibit a current member of the legislature from being retained as an independent contract fundraiser for the committee. ORS Chapter 244 also does not prohibit members of the legislature from holding employment in addition to their position in the legislature.

In previous advisory opinions of a similar nature the Oregon Government Standards and Practices Commission (GSPC) has issued guidelines related to public officials who choose to engage in outside employment or professional activity. Those guidelines have been based upon Oregon law pursuant to ORS Chapter 244 and include the following:

**GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. That private business not be conducted on public time.
2. That public supplies, facilities, equipment, personnel, records or any other public resources not be used to carry out private business.
3. That no official action toward a third party be conditioned on a private business relationship with that third party.
4. That no confidential information be used to obtain financial benefit for the employee.

QUESTION #2: Would the opinion to question #1 change if the legislator who is retained is currently term limited and will, therefore, not be a member of the 2003 Legislative Assembly?

OPINION: The opinion would not change.

QUESTION #3: If the arrangement does not violate Oregon Government Standards and Practices laws, will the legislator be required to report compensation received from the committee on the legislator's Annual Verified Statement of Economic Interest (SEI)?

OPINION: The legislator would be required to report the compensation received from the committee on the legislator's SEI if any of the following criteria apply:

1. If the income is 10% but less than 50% of the combined total gross household income.
2. If the income produced 50% or more of the total combined household income.
3. If the income is more than \$1,000, only if the source could be expected to do business with the official's public body or if the source has a legislative or administrative interest in the public body. (If not reported under either of the previous criteria)

QUESTION #4: Assuming the source of payment to the fundraiser is directly from political contributions raised on behalf of the committee, will the lobbyist/treasurer of the committee or any of the contributors be required to reflect compensation paid from the committee to the fundraiser on lobby reporting forms?

OPINION: No. According to the stated facts, such expenditures do not appear to be lobbying expenses.

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

Issued by Order of the Oregon Government Standards and Practices Commission at Salem, Oregon on the 28<sup>th</sup> day of November, 2001.

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Katherine E. Tennyson, Chairperson

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Lynn Rosik  
Assistant Attorney General

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Date