

December 5, 2008

John Kroger  
Attorney General-elect  
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1211 S.W. Fifth Avenue, Suite 1900  
Portland, Oregon 97204

Dear Mr. Kroger:

At its December 5, 2008 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion:

**OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 08A-1007**

**STATED FACTS:** John Kroger is a tenured professor at the Lewis and Clark Law School. He has been elected to serve as Attorney General for the State of Oregon beginning January 2009.

Upon taking office and while serving as Attorney General, Mr. Kroger will take a leave of absence without compensation from the Lewis and Clark Law School, but wishes to retain his tenure as a professor with the law school.

Mr. Kroger also anticipates being offered opportunities to be compensated for teaching occasional courses at Oregon law schools while serving as Attorney General.

**QUESTION:** Would John Kroger violate Oregon Government Ethics law by taking a leave of absence without compensation and retaining tenure as a professor while serving as Attorney General?

**ANSWER:** In holding the position of Attorney General Mr. Kroger would meet the definition of a public official as set forth in ORS 244.020(13).

Public officials are prohibited from using or attempting to use the official position held as a public official to obtain a financial gain or to avoid a financial detriment for the public official, a relative, member of the household of the public official or any business with which the public official, relative or member of the household are associated, if the

financial benefit would not otherwise be available but for the public official holding the official position [ORS 244.040(1)].

Taking a leave of absence without compensation and retaining tenure as a professor with the law school is not an opportunity that is only available to Mr. Kroger but for being a public official. Rather, it is an opportunity that is available as a tenured professor at a private law school. If Mr. Kroger chooses to retain his tenure as a professor he would not violate Oregon Government Ethics law.

**QUESTION:** Would John Kroger violate Oregon Government Ethics law by accepting compensation for teaching courses at Oregon law schools while holding the position as Attorney General?

**ANSWER:** Public officials are not precluded from engaging in personal activity which may result in income or other financial benefits during their personal time, but the public official must refrain from using the official's government agency time or resources to advance such personal activities.

ORS 244.040(1) is the provision that prohibits a public official from using the resources of the public official's government agency for financial gain from a personal endeavor. A public official is also prohibited from using the official position held to create or discover opportunities for producing additional personal financial benefits, the opportunities for which would not otherwise be available but for holding the official position.

Before taking office, the circumstances and nature of any opportunities to teach in an Oregon law school offered to Mr. Kroger cannot be known. Since public officials are not prohibited from engaging in personal activities on personal time to gain income, the Commission has developed guidelines for public officials to follow so as to avoid violating Oregon Government Ethics law:

### **GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS**

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.

3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:

Employees of governmental agencies must give written notice to their appointing authority.

Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

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

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

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 5th day of December 2008.

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Judith Stiegler, Chairperson

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Lynn Rosik, Assistant Attorney General

## ADDENDUM

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

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

244.020(14) "Relative" means:

- (a) The spouse of the public official;
- (b) The domestic partner of the public official;
- (c) Any children of the public official or of the public official's spouse;
- (d) Siblings, spouses of siblings or parents of the public official or of the public official's spouse;
- (e) Any individual for whom the public official has a legal support obligation; or
- (f) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment.

**244.040 Prohibited use of official position or office; exceptions; other prohibited actions.** (1) Except as provided in subsection (2) of this section, a public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

244.040(2) Subsection (1) of this section does not apply to:

- (a) Any part of an official compensation package as determined by the public body that the public official serves.

- (b) The receipt by a public official or a relative or member of the household of the public official of an honorarium or any other item allowed under ORS 244.042.
- (c) Reimbursement of expenses.
- (d) An unsolicited award for professional achievement.
- (e) Gifts that do not exceed the limits specified in ORS 244.025 received by a public official or a relative or member of the household of the public official from a source that could reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.
- (f) Gifts received by a public official or a relative or member of the household of the public official from a source that could not reasonably be known to have a legislative or administrative interest in a governmental agency in which the official holds any official position or over which the official exercises any authority.
- (g) The receipt by a public official or a relative or member of the household of the public official of any item, regardless of value, that is expressly excluded from the definition of "gift" in ORS 244.020.
- (h) Contributions made to a legal expense trust fund established under ORS 244.209 for the benefit of the public official.