



# Oregon

Theodore R. Kulongoski, Governor

Government Ethics Commission

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November 20, 2009

John R. Kroger  
Attorney General  
Oregon Department of Justice  
1162 Court Street, N.E.  
Salem, Oregon 97301-4096

Dear Attorney General Kroger:

At its November 20, 2009 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion:

**Oregon Government Ethics Commission Advisory Opinion NO. 09A-1006**

**Stated Facts:** John R. Kroger holds the elected position as Attorney General and is the chief executive officer for the Oregon Department of Justice. The Department of Justice has regulatory authority over charitable activities of non-profit organizations in Oregon. The regulatory responsibilities related to charitable activities are assigned to the Charitable Activities Section in the department. This section maintains a record of the registration which each regulated non-profit must submit to the department.

A member of the attorney general's household is a fifth grade student in the Richmond Elementary School located in the Portland metropolitan area. This elementary school offers the opportunity for students at all grade levels to learn the Japanese language through a Japanese Immersion Program.

One feature of the Japanese Immersion Program is that each year the students who reach the fifth grade have the opportunity to travel to Japan with members of their fifth grade class on a trip sponsored by the school. Some parents accompany the students as chaperones.

Oya No Kai, Inc. was formed as a non-profit corporation under Section 501(c)(3) of the Internal Revenue Tax Code. This non-profit was designed to support the school and its activities. The school, students and their parents participate in various activities to raise funds or to solicit charitable donations which are given to Oya No Kai and the organization deposits and accounts for the funds. The fund raising activities of Oya No Kai are overseen by the Department of Justice Charitable Activities section.



One of the school activities Oya No Kai supports is the trip fifth grade students take to Japan each year. Before the trip, members or officers of Oya No Kai have procedures established to evaluate the financial needs of some fifth grade students' households and award needs-based scholarships to be used by selected students to help them meet travel costs. After the scholarships are awarded the balance of the funds that have been raised is divided equally among the households of the fifth grade students that were not awarded scholarships. The purpose for funds given to these households is to defray the travel expenses of the student, who is a member of the household.

**NOTE:** The analysis of the stated facts and the application of Oregon Government Ethics law are based on provisions that are in effect on the date this advisory opinion is issued. When revisions to ORS Chapter 244 become operative in January 2010, the revisions would not have a substantive impact on how the law applies to the stated facts for this opinion.

**Question:** Would the Oregon Attorney General violate Oregon Government Ethics law by participating with other parents of fifth grade students attending Richmond Elementary School in activities to raise funds given to Oya No Kai, Inc.?

**Answer:** No. In this question, any funds raised are for the financial benefit of Oya No Kai and not to the Attorney General or any public official or the household of the Attorney General or the household of any public official.

**Question:** Would the Oregon Attorney General violate Oregon Government Ethics law by accepting funds from Oya No Kai, Inc. under the same conditions as other parents of fifth grade students attending Richmond Elementary School to defray the travel costs of a member of his household?

**Answer:** No. The stated facts describe the fund raising activities of the students and their parents. The funds raised are managed and disbursed by Oya No Kai. Some of the students' households receive needs based scholarships, but most households receive equal shares of the balance of funds raised after the scholarships are awarded. These equal shares are awarded to the households because there is a member who is a student in the fifth grade class. Whether there is a public official who is also a member of a student's household is not a factor that is considered when the funds are disbursed.

After the needs based scholarships are awarded, the Attorney General as a parent of a fifth grade student may accept a share of the funds raised to defray the travel expenses of a member of his household. This is because the share accepted by the Attorney General is equal to the share awarded to the other households of students under the same terms and conditions as the share awarded to the Attorney General. Therefore,

the equal share awarded to the Attorney General would not be defined as a gift, as set forth in ORS 244.020(5)(a).

Oya No Kai certainly has a legislative or administrative interest in the Oregon Department of Justice which means that gifts from Oya No Kai would be restricted by ORS 244.025. Because the equal share would not represent a gift, the Attorney General is not prohibited from accepting an equal share of the funds raised for the fifth grade students' travel expenses. This would be the case regardless of whether the Attorney General participated in fund raising or not.

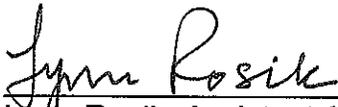
**THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO ORS 244.280. A PUBLIC OFFICIAL OR BUSINESS WITH WHICH A PUBLIC OFFICIAL IS ASSOCIATED SHALL NOT BE LIABLE UNDER ORS CHAPTER 244 FOR ANY ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED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

Issued by Order of the Oregon Government Ethics Commission at Salem, Oregon on the 20th day of November 2009.



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Charles Beggs, 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(5)(a) "Gift" means something of economic value given to a public official or a relative or member of the household of the public official:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives or members of the household of public officials on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials.

244.020(8) "Legislative or administrative interest" means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

244.020(9) "Member of the household" means any person who resides with the public official.

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.

**244.025 Gift limit; entertainment prohibition.** (1) During a calendar year, a public official, a candidate for public office or a relative or member of the household of the public official or candidate may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the public official holds, or the candidate if elected would hold, any official position or over which the public official exercises, or the candidate if elected would exercise, any authority.

244.025(2) During a calendar year, a person who has a legislative or administrative interest in any governmental agency in which a public official holds any official position or over which the public official exercises any authority may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

**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.