



Oregon

John A. Kitzhaber, MD, Governor

Government Ethics Commission

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July 12, 2013

Wes Wagner, Chairperson
Libertarian Party of Oregon
PO Box 1099
Wilsonville, OR 97070

Dear Mr. Wagner:

At its July 12, 2013 meeting, the Oregon Government Ethics Commission (Commission) adopted the following advisory opinion:

OREGON GOVERNMENT ETHICS COMMISSION ADVISORY OPINION NO. 13A-1002

STATED FACTS:

Candidates for certain offices in Oregon are required to file a Statement of Economic Interest (SEI) with the Oregon Government Ethics Commission (Commission) according to deadlines found in ORS 244.050(1) and (3) through (5).

The election laws for the State of Oregon differentiate between major party candidates and minor party candidates as far as the process for becoming a candidate for partisan office and applicable deadlines. Major party candidates participate in the primary election process held in May.

The Libertarian Party of Oregon (LPO) is a recognized minor political party in the State of Oregon and its nominees do not participate in Oregon's primary election process. Minor political party nominees become official candidates by filing a certificate of nomination for the general election. This certificate of nomination may not be filed until after the primary election but must be filed no later than 70 days prior to the date of the November general election.

QUESTION: Are minor party nominees and others who become candidates for offices described in ORS 244.050(1)(a) by means other than participation in the primary election required by ORS 244.050 to file an SEI?

ANSWER: Yes. Minor party nominees and other persons who become candidates for the offices described in ORS 244.050(1)(a) after the candidate filing deadline for the primary election are required to file an SEI pursuant to ORS 244.050(4). They are not exempt from compliance with ORS 244.050(4) by the application of ORS 244.050(5).

First, we examine the subsections of ORS 244.050 that concern candidates (as opposed to office holders or appointees), to determine the plain meaning of each subsection of the statute. [See Addendum for relevant text of ORS 244.050.]

ORS 244.050(1)(c) requires candidates for certain offices to file an SEI by April 15 with the Commission. In order to comply with that SEI deadline, one's candidacy for office would have to be official and known before April 15. ORS 244.050(3) and (4) detail the deadlines for persons depending on the process by which they become official candidates.

ORS 244.050(3) requires candidates who participate in the primary election to file an SEI by April 15. Candidates for office in Oregon who participate in the May primary election are required to file a declaration of candidacy or nominating petition 70 days prior to the primary date (for example, March 6, 2012). Therefore, candidates participating in the primary are officially known at least 30 days prior to the April 15 deadline for their SEI filing.

ORS 244.050(4) applies to candidates who did not participate in the primary election because they are minor party nominees, nonaffiliated candidates for partisan office, or candidates who were nominated during the primary with write-in votes. It states that within 30 days after the filing deadline for the general election, those candidates must file their SEI with the Commission. ORS 249.722 requires minor party candidates or nonaffiliated candidates who do not participate in the primary election to file a certificate of nomination. This certificate of nomination may not be filed until after the primary election has taken place but no later than 70 days prior to the November general election. Therefore, by a date in late summer (for example, August 28, 2012), those who become candidates by filing a certificate of nomination are officially known, and have 30 days to file their SEI with the Commission.

ORS 244.050(5) in its first sentence limits the application of the preceding subsections by stating they “apply only to...persons who are candidates on April 15”. However, the second sentence states that the preceding subsections “also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.” The plain meaning of 244.050(5) is not readily apparent. When a statutory provision is ambiguous, one looks to the legislative history of the provision to attempt to discern the legislature’s intent.

The text found in section (5) was added to ORS 244.050¹ by HB 2171 [1991, Or Laws, ch 163]. Hearing transcripts make clear that the legislation was intended to include all candidates in the SEI filing requirement. The Oregon Legislative Assembly’s “Staff Measure Summary” for HB 2171 issued by the House Committee on Legislative Rules and Reapportionment describes the purpose and intent of the legislation as follows:

“The intent here is that every officeholder and candidate must file a Statement of Economic Interest, regardless of the timing or circumstances of their becoming candidates.”

Similarly, the 1991 “Staff Measure Summary” issued by the Senate Committee on Government Operations for HB 2171 describes the intent of the bill as follows:

“There has been confusion regarding which candidates must file a statement of economic interest with the OGEC. The intent of this bill is that all candidates must file a statement regardless of the manner in which they became a candidate.”

It is apparent that the legislature’s intent when amending ORS 244.050 was to require all candidates for the offices listed in ORS 244.050(1)(a) to file an SEI with the Commission. The intent of the legislation would be frustrated if minor party candidates and others who become candidates for the general election after April 15 were excluded from the requirement to file an SEI. To the contrary, ORS 244.050(4) explicitly applies the SEI filing requirement to those persons such as minor party nominees, who become candidates after the primary election process, so it does not make sense that ORS 244.050(5) would exempt those same candidates.

¹ In 1991, ORS 244.050 was amended to add subsection (6) which read “Subsections (1) to (5) of this section apply only to persons who are incumbent, elected or appointed officials as of April 15 and to persons who are candidates for office on April 15. Those sections also apply to persons who do not become candidates until 30 days after the filing date for the statewide general election.” Since that time subsection (6) has become (5) and “filing date” has been changed to “filing deadline”.

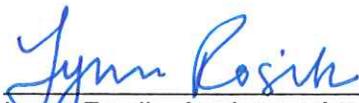
The Commission construes ORS 244.050 so that each subsection is given effect while remaining faithful to the explicit legislative intent to require all candidates to file SEIs. The Commission thus advises that minor party candidates for the offices described in ORS 244.050(1)(a) must file an SEI by the deadline described in ORS 244.050(4).

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 12th day of July 2013.



Ian Whitlock, Chairperson



Lynn Rosik, Assistant Attorney General

ADDENDUM

RELEVANT STATUTES: The following Oregon Revised Statutes (ORS), or relevant portions thereof, are applicable to the issues that are addressed in this opinion:

244.050 Persons required to file statement of economic interest; filing deadline

(1) On or before April 15 of each year the following persons shall file with the Oregon Government Ethics Commission a verified statement of economic interest as required under this chapter:

- (a) The Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, district attorneys and members of the Legislative Assembly.
- (b) Any judicial officer, including justices of the peace and municipal judges, except any pro tem judicial officer who does not otherwise serve as a judicial officer.
- (c) Any candidate for a public office designated in paragraph (a) or (b) of this subsection.

(2) By April 15 next after the date an appointment takes effect, every appointed public official on a board of commission listed in subsection (1) of this section shall file with the Oregon Government Ethics Commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(3) By April 15 next after the filing deadline for the primary election, each candidate described in subsection (1) of this section shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(4) Within 30 days after the filing deadline for the general election, each candidate described in subsection (1) of this section who was not a candidate in the preceding primary election, or who was nominated for public office described in subsection (1) of this section at the preceding primary election by write-in-votes, shall file with the commission a statement of economic interest as required under ORS 244.060, 244.070 and 244.090.

(5) Subsections (1) to (4) of this section apply only to persons who are incumbent, elected or appointed public officials as of April 15 and to persons who are candidates on April 15. Subsections (1) to (4) of this section also apply to persons who do not become candidates until 30 days after the filing deadline for the statewide general election.

249.037 Time for filing petition or declaration. (1) Except as otherwise provided in this section, a nominating petition or declaration of candidacy shall be filed not sooner than the 250th day and not later than the 70th day before the date of the primary election.

(2) If a vacancy occurs in a partisan elective office after the 80th day and before the 70th day before the primary election, a nominating petition or declaration of candidacy for that office may be filed not later than the 65th day before the primary election.

(3) A declaration of candidacy for the office of precinct committeeperson may not be filed before February 1 immediately preceding the primary election.

249.705 Nomination by other than major party. A minor political party, assembly of electors or individual electors may nominate one candidate for each partisan public office to be filled at the general election by preparing and filing a certificate of nomination as provided in ORS 249.712 to 249.850.

249.722 Time for filing certificate; filing officers; rules. (1) Except as provided in subsection (3) of this section, a certificate of nomination of a candidate for public office shall be filed not sooner than the 15th day after the date of the primary election and not later than the 70th day before the date of the general election.

(2) A certificate of nomination of a candidate for:

(a) State office, United States Senator or Representative in Congress shall be filed with the Secretary of State.

(b) County office shall be filed with the county clerk.

(c) City office shall be filed with the chief city elections officer.

(3) For a special election, including an election to fill a vacancy that occurs after the 70th day before the general election, the Secretary of State by rule may adopt a schedule specifying the period within which a certificate of nomination must be filed. If the Secretary of State does not adopt a rule under this subsection, a certificate of nomination must be filed before the 61st day preceding the election.

254.056 Date and purpose of general election and primary election.

(1) The general election shall be held on the first Tuesday after the first Monday in November of each even-numbered year. Except as provided in ORS 254.650, at the general election officers of the state and subdivisions of the state, members of Congress and electors of President and Vice President of the United States as are to be elected in that year shall be elected.

(2) The primary election shall be held on the third Tuesday in May of each even-numbered year. At the primary election precinct committeepersons shall be elected and major political party candidates shall be nominated for offices to be filled at the general election held in that year.