



DEPARTMENT OF JUSTICE

Justice Building
1162 Court Street NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4400

March 26, 2015

The Honorable Chip Shields, Co-Chair
The Honorable Jennifer Williamson, Co-Chair
Joint Committee on Ways and Means, Public Safety Subcommittee
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Please accept this letter as a partial response to questions raised by the Subcommittee during the Department of Justice's (DOJ) budget presentation on March 24, 2015. Other questions concerning charging District Attorneys for services and implications of Measure 91 will require further research, and we will follow-up with a response to the Subcommittee as quickly as possible.

Q1. What is the full cost, regardless of biennium, of the cases against the Department of Fish and Wildlife (ODFW) for the McKenzie and Sandy fish cases?

A1. McKenzie Flyfishers v. ODFW – From November 2012 to March 2015, DOJ has billed Department of Administrative Services (DAS), Risk Management a total of 1,520.5 hours and \$220,385.

Sandy Hatchery – From May 2011 to February 2015, DOJ has billed a total of 1,878.8 hours and \$257,595 (\$247,690 to DAS Risk Management and \$9,905 to ODFW).

Q2. Did the Criminal Justice Division make a sentencing recommendation in the Browning case? If yes, did that recommendation include PERS?

A2. Yes, the Criminal Justice Division made a recommendation. The attorney involved is out of the office and the specific details are not readily available. We will follow-up an answer.

Q3. Do you have the Internet Crimes Against Children (ICAC) statistics by gender?

A3. These statistics are not collected by gender.

Q4. What is the status of the foreclosure mediation program?

A4. From July 1, 2013 through February 28, 2015, completed case intakes for the program totaled 19,917, and we expect to complete 24,621 by the end of the biennium. Estimated program expenditures for the biennium total \$6.4 million, 96% of which supports payments to the mediation service provider for its services and the services of facilitators and community dispute resolution centers. The program is fee supported. Counseling services are coordinated through the Oregon Housing and Community Services Department. We understand that the Legislative Fiscal Office will seek additional information from that agency.

Q5. Can any other state agency investigate non-profit organizations?

A5. DOJ is the only Oregon agency with authority to regulate charitable entities through requiring them to file registrations with this office, and has broad oversight authority over charities that is unique. For example, DOJ is the only agency that has the ability to enforce the operational standards set forth in the Nonprofit Corporation Act. In addition, DOJ is the only agency responsible for ensuring that charitable assets are used for charitable purposes and for protecting the public interest in charities by enforcing requirements applicable to charitable fiduciaries. Nonetheless, charitable organizations are generally subject to the same types of regulations as other businesses. For example, charities have to comply with employment laws and nonprofit hospitals are subject to regulation by the Oregon Health Authority. In addition, government agencies may contract with charitable organizations for services and may impose and enforce conditions in connection with such contracts.

In some instances, DOJ's jurisdiction may overlap with other agencies. For example, if a charity mispends funds it receives from the government, then both the agency that provided the funds and DOJ may have the ability to take legal action to redress that misuse. County governments and the Department of Revenue are involved in determining whether property owned or used by a charitable organization is exempt from property taxes, and those entities may take enforcement action under their own authority.

Q6. How many non-profits have been decertified?

A6. Charitable organizations are required to register with DOJ's Charitable Activities Section if they solicit donors in Oregon or if they hold assets in this state, but it is probably more appropriate to think of it as registration system rather than a licensing or certification system. The Section reviews registrations to ensure that the articles of incorporation

include the appropriate restrictions for a charitable organization, but other than having the appropriate corporate documents in place, there is no set of minimum standards that an organization must demonstrate before it is eligible to register or engage in solicitations.

One of the restrictions on charities is that when they cease operations, they must turn over any assets they hold to another charitable organization. Charities are required to notify DOJ when they cease operations, and we monitor these closures to ensure that remaining assets have been appropriately distributed. The organizations' registration file is then closed, which is similar to revoking certification, but is a voluntary process. DOJ processes hundreds of these types of closures every year. In some cases, we learn of charitable organizations that have essentially ceased operations, but their assets lie dormant in bank accounts because the organization has not gone through a formal dissolution process. We generally work cooperatively with these types of organizations to remind them of their obligation to distribute assets to other charities that could make good use of the funds and monitor to make sure the distribution occurs.

In other cases, we find that organizations have been mismanaged, but assuming the charitable programs are worthwhile and beneficial to the community, we generally work with the charities' leadership to help them implement reforms so the charitable programs can continue.

The Attorney General has the legal authority to bring a court action to seek to dissolve an Oregon charitable corporation if the corporation can no longer carry out its charitable purposes or is being used for fraud. However, that is a sanction of last resort and is used sparingly; perhaps once per year.

On a state level, DOJ cannot affect the IRS status of tax exempt organizations, although if the organization is judicially dissolved, then its operations cease and its federal tax status is moot. Recently, the Oregon enacted legislation expanding the Attorney General's ability to take other types of action in appropriate cases to address abuses involving charitable organizations. House Bill 2060 (2013) authorizes the Attorney General to disqualify certain charities from receiving tax deductible contributions for Oregon income tax purposes if, based upon their own 990 filings, they spend less than 30 % on charitable programs. This legislation addresses a relatively small but persistent group of organizations that spend more on telemarketing than on charitable programs, such as those on the Attorney General's annual "worst charities" list. Similarly, House Bill 4081 (2014) enhanced the Attorney General's ability to obtain administrative orders to enjoin solicitations if the charities fail to file reports or provide information to DOJ about their use of charitable funds.

DOJ is in the process of implementing rules related to this legislation. A notice of proposed rulemaking with respect to House Bill 2060 and House Bill 4081 will be published in the April Bulletin and the rulemaking notification process is underway. A public hearing is scheduled for May 8, 2015 and the proposed rules should be effective shortly after that. Information about the rulemaking is posted in the Charitable Activities Section of the DOJ website <http://www.doj.state.or.us/charigroup/pages/index.aspx>.

Q7. Does DOJ need any other legislation to help regulate charities?

A7. The Charitable Activities Section is focused on the implementation of statutory expansion of its authority granted by the Legislature in the last two sessions. The section does not need additional legislation at this time.

Q8. Does DOJ regulate 501(c)3 and 501(c)4s?

Q8. This is a complex area of law. The state-level regulatory distinctions between 501(c)(3)s and 501(c)(4)s are complicated because there is no state level counterpart to federal 501(c)(3)s and 501(c)(4) entities. Under state law, the definition of charity is not tied to the IRS tax exempt classification, and it is possible to be treated as a charity under state law even if an organization has never applied for federal tax exempt status.

The state law definition of charity for charitable registration purposes is broader than that used by the IRS. At the state level, charities include organizations that promote the well-being of the public at large, which is very similar to the definition of a 501(c)(4) social welfare organization. However, DOJ oversight may also be affected by the form of the nonprofit corporation selected by the 501(c)(4). Pursuant to ORS Ch. 65, the Attorney General has greater oversight over nonprofit public benefit corporations than she does over mutual benefit corporations.

Most 501(c)(4)s are subject to DOJ's charitable registration and reporting requirements. Similarly, 501(c)(4)s are subject to oversight with respect to legal prohibitions on deceptive solicitations and prohibitions relating to improperly using the nonprofit organization for private financial gain. In addition, sometimes issues arise regarding maintaining appropriate levels of separation between related 501(c)(3)s and 501(c)(4)s. Charitable fiduciaries could endanger the 501(c)(3)s tax exempt status if the 501(c)(3) provides too much support to the 501(c)(4).

However, many of the recent concerns relating to 501(c)(4)s relate to the extent to which these entities can engage in political or lobbying activity without public disclosure of donors. That issue is more an issue for the Secretary of State, as that office has regulations requiring the reporting of independent political expenditures that could apply if such expenditures are made by a 501(c)(4). The Secretary of State is more suited to describing those reporting responsibilities. In connection with DOJ's charitable oversight authority, there are no specific regulations governing the extent to which 501(c)(4)s may engage in political or lobbying activity or that require disclosures beyond those contained in the federal IRS form 990 financial report. In general, DOJ retains authority to require charitable fiduciaries to comply with state and federal legal requirements and to prevent nonprofit organizations of any type from defrauding the public, but many of the concerns relating to 501(c)(4)s do not necessarily rise to that level.

March 26, 2015

Page 5

If we can provide additional information on any of these topics, do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Frederick M. Boss". The signature is written in a cursive style with a large initial 'F' and a long horizontal stroke at the end.

FREDERICK M. BOSS
Deputy Attorney General

Cc: John Borden, Legislative Fiscal Office