

JEANNE P. ATKINS
SECRETARY OF STATE



SECRETARY OF STATE
136 STATE CAPITOL
SALEM, OREGON 97310-0722

Phone 503-986-1500

MEMORANDUM

DATE: May 8, 2015
TO: Senator Brian Boquist
FROM: Jeanne Atkins, Secretary of State
RE: Potential election law changes related to payment for, or donation of, legal services to campaigns or candidates.

Dear Senator Boquist,

Thank you for your patience while our office examines both the technical and the policy issues involved in your effort to address perceived gaps in the reporting system under ORS Chapter 260. Your questions have helped us identify some of the areas where our statutes create confusion or inconsistency. As our office has sorted through the issues we have focused on the following:

1. Defining “contribution” to include legal services provided to a candidate or committee, whether the services were paid for or not.

We understand your goal to be to assure that reporting requirements (including timely reporting rules) apply to legal services in full measure – whether provided gratis or paid for by the committee or candidate.

In the past, the Secretary of State’s office (and the Legislature) has taken the position that encouraging the pro bono provision of legal services is a sufficient policy goal to exclude some services from the definition of contributions, meaning they need not be reported. ORS 260.005(3)(a) provides that “personal services for which no payment was offered or given” are not “contributions”. Unpaid legal work is therefore not a “contribution”. Then, more specifically, ORS 260.007 (8) says that payment for legal work provided "solely for the purpose of ensuring compliance with the provisions of [ORS 260]" is excluded from the definition of “contribution” if the person paying for the services “is the regular employer of the individual rendering the services.”

At the same time, it is clear in statute that if a campaign committee uses funds to pay for legal services for another campaign committee, that expenditure is required to be reported both as an expenditure of the

first campaign committee, and as an in-kind contribution to the second campaign committee. In addition, any expenditure of a committee for direct legal services has to be reported as an expenditure. While this may seem contradictory, my assessment is that it represents an effort to encourage individual attorneys to provide (and campaigns and candidates to get) legal services but tries to make sure there is transparency when such legal advice is coming through third-party payment; and in addition assuring that any direct expenditure by a campaign committee has to be reported.

I am reluctant to actively support changing long-standing policy positions of this office without the opportunity to hear from stakeholders and research fully the concerns the public might have of either current law or any proposed changes. In light of the opportunity that exists if the Rules Committee were to take up such an amendment, however, I have asked staff to work with Legislative Counsel to provide you with amendment language that you can put before the Committee at your discretion. I am happy to have the chance to engage in discussion with the Rules Committee on the subject and will take the direction of the Legislature should they determine that a change in policy is warranted.

2. The scope of legal services that are appropriate for the use of campaign funds and therefore should be subject to current or future reporting requirements.

Whether or not the Legislature determines that free legal services should be excluded from the definition of contribution, it would be helpful for the Elections Division staff and the Secretary of State to have clarity in the description of those legal services that can be appropriately paid for by a campaign committee. Our preference would be for the statutes to make it clear that allowable expenditures include only those incurred either for legal advice or representation related to state election law. Moreover, the rules should clearly include work related to compliance with all state election laws, not just those related to Chapter 260. Making those changes would both make it clear what needs to be reported and but also explicitly narrow what is appropriate for campaign funds to be spent on.

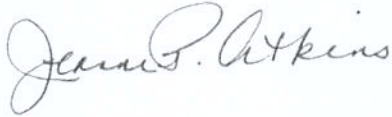
3. Additional opportunities if the contribution definitions are changed.

Assuming that we get clarification of the types of legal services that are reportable, our Elections staff has also identified clarifications of reporting requirements that would not need statutory change but could be done through the usual update of the Secretary of State's Campaign Finance Manual.

- Any use of committee funds for legal services that is allowed under 260.407 (if amended in the ways described above) will be required to be reported as an expenditure of that committee. All "expenditures" by political committees are already required to be reported under existing law.
- Any payment by a political committee for legal services that is allowed under 260.407 (if amended in the ways described above) and is a "contribution" to a candidate or another political committee under ORS 260 will be required to be reported as an in-kind contribution under existing law.
- Any payment by a "person" for any of the legal services described in ORS 260.407 (if amended in the ways described above) that is a "contribution" to a candidate or a political committee under ORS 260 will be required to be reported as an in-kind contribution under existing law.

The attached memo describes the amendments that the Secretary's office is willing to endorse, as well as the already-drafted -1 amendments regarding regular audits of miscellaneous donations under \$100 submitted by filers. As I said above, we are also happy to work with you to get draft amendments prepared on the subject of "personal services for which no payment was offered or given", should you decide to go forward with that amendment.

Sincerely,

A handwritten signature in cursive script that reads "Jeanne P. Atkins". The signature is written in black ink and is positioned below the word "Sincerely,".

Jeanne P. Atkins
Oregon Secretary of State

**PROPOSED AMENDMENTS TO
SENATE BILL 762**

NOT A WORK DRAFT

- 1 On page 1 of the printed bill, delete lines 26 through 28.
- 2 On page 2, delete lines 1 through 9 and insert:
- 3 “(2)(a) The Secretary of State by rule shall prescribe a method for regu-
- 4 larly auditing statements filed for contributions of less than \$100.
- 5 “(b) After conducting the audits required under paragraph (a) of this
- 6 subsection, the Secretary of State shall ensure that, if a person, political
- 7 committee or petition committee: ”.
- 8 In line 10, after “year” insert “on behalf of a candidate or to a political
- 9 committee or a petition committee”.
- 10 In line 15, after “year” insert “on behalf of a candidate or to a political
- 11 committee or a petition committee”.
- 12 _____



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

May 12, 2015

Senator Brian Boquist
900 Court Street NE S305
Salem OR 97301

Re: Campaign Finance Reporting Requirements for Legal Advice

Dear Senator Boquist:

You have provided us with a memorandum from the Secretary of State¹ ("memo") and asked for our comments relating to how legal services need to be reported under Oregon's campaign finance laws. Your questions and our responses are below.

Questions 1 and 2: When and how did the Legislative Assembly exempt legal services from campaign finance reporting laws? What laws exempt legal services from campaign finance reporting laws?

Oregon's campaign finance laws specifically exempt certain types of legal services from reporting requirements. In contrast, other types of legal services must be reported.

The memo correctly notes the two laws that exempt certain legal services from reporting requirements: ORS 260.005 (3)(a) and 260.007 (8).² ORS 260.005 (3)(a) states, in relevant part, that "personal services for which no compensation is asked or given" are not considered "contributions." We believe that the plain language meaning of "personal services" encompasses legal services, as well as things like accounting services. As a result, we agree with the memo that "[u]npaid legal work is therefore not a 'contribution'" under ORS 260.005.³ Because it is not considered a contribution, under current law a political committee is not required to report on ORESTAR any unpaid legal work that is provided to the political committee.

As is also noted in the memo, the policy decision reflected in ORS 260.005 (3)(a) is long-standing. When initially drafted in 1971, the list of services exempt from the definition of "contribution" was written more narrowly to exclude "services by speakers, writers, publishers or others, for which no compensation is asked or given."⁴ However, in 1973, this language was amended to its current form of excluding all "personal services" from the definition of "contribution."⁵

¹ Memorandum from Secretary of State Atkins to Senator Boquist dated May 8, 2015.

² Memo, at 1.

³ Memo, at 1.

⁴ Section 1, chapter 749, Oregon Laws 1971.

⁵ Section 1, chapter 744, Oregon Laws 1973.

A similar situation exists with respect to ORS 260.007 (8), which states that payment for "legal and accounting services rendered to a candidate or political committee" is excluded from the definition of contributions and expenditures, *if* "the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of this chapter."

Like ORS 260.005 (3)(a), ORS 260.007 (8) reflects a long-standing policy decision, as it has existed with respect to candidates since ORS 260.007 was first enacted into law in 1995.⁶ In 1999, the exemption for legal and accounting services was enlarged to include services provided to political committees, as well as to candidates.⁷

Question 3: How do political committees maintain accurate committee bank balance books and ORESTAR filings if political committees are not required to report legal services?

As detailed above, Oregon does not require candidates or political committees to report the receipt of legal services in two situations: (1) when the legal services are provided free of charge to the candidate or campaign; and (2) when the legal services relate to compliance with campaign finance laws and the attorney's regular employer pays for the legal services. In contrast, and as is noted in the memo, any time a candidate or political committee actually pays for legal services, the payment must be reported as an expenditure in ORESTAR.⁸ As a result, the committee bank balance should match the ORESTAR filing.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel's office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel's office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel



By
Daniel R. Gilbert
Deputy Legislative Counsel

⁶ Section 2, chapter 1, Oregon Laws 1995.

⁷ Section 2, chapter 999, Oregon Laws 1999.

⁸ Memo, at 2 ("In addition, any expenditure of a committee for direct legal services has to be reported as an expenditure.").