

Sen Boquist

From: Sen Boquist
Sent: Thursday, March 2, 2023 4:57 PM
To: Sen Wagner
Cc: Sen Anderson; Sen Woods; BERSIN Ron A * OGEC; Sen Lieber; Sen Knopp; sberman@stollberne.com; MooreGreen Raquel; Rep Rayfield
Subject: Status & Follow Up Complaint - FW: 5a Question - RE: Refresher on Legislature
Attachments: OGEC Prozanski Complaint 23 Dec 22.pdf; Prozanski Data 21 Dec 22.pdf; Sen Boquist Masons Rules Floor Letter 23 Jan 23.pdf; OGEC Ltr 27 Dec 22.pdf; OGEC Letter 2023-01-19 Prozanski Boquist.pdf; Senate Conduct Committee Report 28 Feb 23.pdf; Senate Conduct Complaint Follow Up 2 March 2023.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

President Wagner:

You have been in possession of the complaints in which Oregon Government Ethics Commission and Secretary of State determined the Oregon State Senate has jurisdiction. As the new Senate President you have had the constitutional complaints since January 6, 2023. OGEC cited AG Opinion 8265 2/24/1999. The Secretary of State concurred in writing this was a legislative issue per the Oregon Constitution. Pre-complaint pre-conflict LC Opinions by Dexter Johnson confirm this fact. The process of 'whom' has jurisdiction began prior to November 30, 2022. The Senate Conduct Committee while possessing the complaint is awaiting your instructions.

The constitutional complaints, after a stop at the OGEC, were provided on January 6, 2023 to Senator Wagner as President Elect, Senator Lieber as Democrat Leader, and Senator Knopp the Republican Leader, per the Senate process at that time. OGEC was copied as well. Senator Dembrow and the Secretary of Senate were aware some issues existed. The Chief Justice of the Supreme Court was advised there was a swearing in issue on January 4, 2023. There was some communications between the Senate and Judicial Branch, but it is apparent, the Chief Justice was not informed a Senator, she was to swear in, might not be qualified for office. Then on January 9, 2023, Senator Lieber, a lawyer and officer of the court, nominated Senator Prozanski on the Floor to co-chair the Senate Conduct Committee knowing full well a formal constitutional issue had be raised questioning the legality of holding office. A legality that is old, but, previous Senate Presidents and majority leadership had shielded Floyd Prozanski from action in the past.

On February 24, 2023, the Senate Conduct Committee under Senator Woods and Senator Anderson organized the conduct committee then adopted rules. Less than a minute later an investigation was completed. The prepared script of the committee was followed well. The single complaint processed was whether there was "economic" gain under Senate Rule 3.3 and ORS 244.020. While I do not agree with outside counsel, the mere presence of independent legal advice acquired by Senator Woods and Senator Anderson is a very good start to re-establishing ethical standards to the Oregon State Senate. I have made some suggestions to them that will be provided under separate cover.

Legislative Counsel Opinion LC 0358 states "Mason's charges the presiding officer with the enforcement of "all the laws and regulations applicable to the body." Thus, the presiding officer is authorized to begin an investigation into the conduct of a member or legislative officer in an effort to enforce applicable laws and

regulations.” Please inform Co-chairs Anderson and Woods to have the committee proceed to establish and adopt uniform investigations standards with the help of the Oregon Government Ethics Commission then with the two other members commence to investigate the Nine (9) additional complaints regarding Floyd Prozanski and then Senator Prozanski.

Mason’s Section 575 states “The duties of the presiding officer” includes (i) “to enforce all laws and regulations applicable to the body.” Quoted from LC Opinion 0358 penned by Dan Gilbert and Dexter Johnson.

Mason’s Section 42 (7) and Section 5.20 required committees to take votes to reach any action of the committee or the floor. This applies to all of the below complaints.

Mason’s Manual of Legislative Procedures Section 42, in its entirety, is routinely now ignored in the Oregon State Senate, each Sec 42 subsection must be adhered to, this shortfall applies to all of the below complaints. Likewise, Section 2, Section 3, Section 795, and Section 796 are routinely ignored by the Oregon State Senate.

Be reminded, the Chief Justice’s Oregon Rules of Professional Conduct RPC C 1.7 (a) prohibit Dexter Johnson and Marc Abrams, meaning Legislative Counsel and the Attorney General, from being involved in any manner. Four separate court rulings establish attorney client privilege between these men and Lori Brocker. Further, these lawyers represent Jessica Knieling along with some other Senators and employees. Your predecessor’s office is named but you are not personally. You mentioned meeting with Dexter Johnson for advice on this matter. He is Senator Prozanski’s lawyer. Such a meeting would be a conflict itself. It would trigger other rule violations. Note this is why I have advocated for years the need for a General Counsel. Too late.

Let me list the complaints in regard to Floyd Prozanski in order dating back to November 15, 2023.

First Complaint.

Or Const Art II Section 10 prevents Floyd Prozanski from serving in two lucrative offices at the same time. Mr. Prozanski is a city prosecuting attorney in Springfield, Eugene, and Florence by his own admission. There is no exemption for prosecuting attorneys listed in Or Const Art XV Section 8. This is affirmed by the Oregon Supreme Court in *Gibson v. Kay* and *State v. Babson*. Legislative Counsel authored an opinion on Fall 2022 affirming it was unconstitutional for a legislator to serve in the Oregon House of Representatives and city position at the same time. If Mr. Prozanski wants to be Senator Prozanski then he should resign these three positions.

Floyd Prozanski is a prosecuting attorney for the City of Springfield and City of Florence. Prosecuting attorney authority is derived from 16 citations in the Oregon Constitution, and by statute. Prosecuting attorneys are officers of the Court meaning Judicial Branch under the original Oregon Constitution. As a city prosecuting attorney enforcing the Oregon Revised Statutes, the city’s authority comes from 29 citations in the Oregon Constitution, and by statute. Note municipalities are referenced 10 times, districts 237 times, and counties 174 times in the Oregon Constitution. An attorney, and prosecuting attorney, are sworn oathed offices under Oregon Revised Statutes. OGEK OAR ORS definitions make Mr. Prozanski a public official in an executive entity under the present Oregon Constitution. Mr. Prozanski is paid, thus lucrative, but the Oregon Supreme Court has determined, regardless of pay, providing legal services is lucrative. *Gibson v. Kay*. Mr. Prozanski’s

government legal services are well documented with Elections Division filings, OGEC filings, his own legislative webpage, and the cities themselves.

OGEC Public Office Guide, page 6, states “As defined in ORS 244.020(15), a public official includes the First Person and anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).” Legislative Counsel has used this definition routinely in LC Opinions. *Gibson v. Kay* cites the legislature designation of public officials.

OGEC Public Office Guide, page 28, has an additional reference worth understanding in which it states “To illustrate, private contractors have an economic interest in any public official who has the authority to decide or vote to award them contracts. The economic interest of these contractors is distinct from the economic interest held by members of the general public in those decisions or votes.”

Mason’s Manual of Legislative Procedures adopted by Senate Rule 2.01 Section 6 (2) states “A constitutional provision regulating procedure controls over all other rules of procedure.”

Any statutory exception is meaningless under constitutional law.

Kay v. Gibson from the Oregon Supreme Court states “for the reasons stated, the claimant was not authorized to accept the appointment, or perform the duties mentioned in the writ. He could not; therefore, properly or lawfully claim the compensation annexed to’ that appointment.” The Supreme Court reasoned under the Oregon Constitution, the second “appointment” was not legally authorized thus null and void. The court stripped the elected public official of his second position. For Floyd Prozanski, the public prosecutor was the first appointment, thus Senator Prozanski may not legally exist under Article II Section 10, and Article III Section 1 in the Second Complaint.

The non-credentials committee was reasonably aware, and leadership was knowledgeable, of this issue before January 9, 2023 organizational day.

See OGEC documents. See Secretary of State documents. See LC Opinions.

Second Complaint.

Or Const Art III Section 1 prevents Floyd Prozanski from serving in two sperate branches of government whether it be state, county, district, municipal or city. This is affirmed by the Oregon Supreme Court in *Gibson v. Kay* and *State v. Babson*. *Gibson v. Kay* very specifically prohibits the providing of legal services in relation to serving as a State Senator. If Mr. Prozanski wants to be Senator Prozanski then he should resign these three positions.

Floyd Prozanski is a prosecuting attorney for the City of Springfield and City of Florence. Prosecuting attorney authority is derived from 16 citations in the Oregon Constitution, and by statute. Prosecuting attorneys are officers of the Court meaning Judicial Branch under the original Oregon Constitution. As a city prosecuting attorney enforcing the Oregon Revised Statues, the city’s authority comes from 29 citations in the Oregon Constitution, and by statute. Note municipalities are referenced 10 times, districts 237 times, and counties

174 times in the Oregon Constitution. An attorney, and prosecuting attorney, are sworn oathed offices under Oregon Revised Statutes. OGEK OAR ORS definitions make Mr. Prozanski a public official in an executive entity under the present Oregon Constitution. *Gibson v. Kay* and *State v. Babson* from the Oregon Supreme Court are quite clear this is unconstituonal. Mr. Prozanski' s government legal services are well documented with Elections Division filings, OGEK filings, his own legislative webpage, and the cities themselves.

OGEK Public Office Guide, page 6, states "As defined in ORS 244.020(15), a public official includes the First Person and anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990)." Legislative Counsel has used this definition routinely in LC Opinions. *Gibson v. Kay* cites the legislature designation of public officials (office & officer) in determining a State Senator is an officer in the legislature, therefore, cannot be an officer in the Executive Branch.

Mason's Manual of Legislative Procedures adopted by Senate Rule 2.01 Section 6 (2) states "A constitutional provision regulating procedure controls over all other rules of procedure."

Any statute exception is meaningless under constitutional law. *Gibson v. Kay*, 68 Or. 589, 137 Pac. 864, stripped a State Senator of his second appointment. Made it null and void. A case involving lawyers, legal services, Senators, and the Legislative and Executive Branches of the State of Oregon.

The non-credentials committee was reasonably aware, and leadership was knowledgeable, of this issue before January 9, 2023 organizational day.

See OGEK documents. See Secretary of State documents. See LC Opinions.

Once it is determined if Mr. Prozanski is legally Senator Prozanski, then the next complaints are regard to his actions at Senate Conduct Committee leading to and after the November 28, 2022 work session.

Third Complaint.

Senator Prozanski was required under ORS 173.900 to recuse himself from the November 28, 2023 work session given we are Plaintiff verses Defendant in a federal lawsuit regarding the topic of the work session. There is no class exception. It is two named individuals: Brian Boquist and Floyd Prozanski. The 'State of Oregon' is not named in 42 USC 1983 lawsuits as confirmed by LC Opinion 0358. An opinion under the name of one Dexter Johnson. This recusal issue was raised in writing in advance of the work session. Senator Prozanski did not recuse himself. ORS 173.900 (10) states a member "shall be recused from service on a committee on conduct performing functions under Article IV, section 15, of the Oregon Constitution, if the facts and circumstances at issue could impair the member's ability to act impartially and without bias."

The Senate President per rules, statute and prevailing constitutional authority should have appointed a replacement. ORS 173.900 (10) further ... "In the event of a recusal, the appointing authority shall appoint an acting member until the functions performed under Article IV, section 15, of the Oregon Constitution, have been resolved." Senate Rule 8.15. Mason's Rules. Or Const Art IV.

Fourth Complaint.

Per Mason's Section 521, Senator Prozanski should have recused himself from the committee given his personal interest in the federal lawsuit. This issue was raised in advance of the work session. Senator Prozanski did not recuse himself. This is not an economic recusal. This is a personal interest requirement. Two people verses each other in a lawsuit is defined as personal under the law. Floyd Prozanski, Esquire, as an officer of court knows the legal definitions.

There is no debate as to definition of "personal" in the Webster's Third New International Dictionary, the official dictionary of the Oregon Supreme Court. World.

Mason's Manual of Legislative Proceedings adopted by Senate Rule 2.01 in "Section 521 (3) states "It is the practice in the state legislative to excuse a member from voting when that member has a personal interest in the matter voted upon or other good cause."

Fifth Complaint.

Per Mason's Section 522, Senator Prozanski not only should have recused himself but is prohibited from voting on any motion in which he has a personal interest. It does not mean economic only. It means any personal interest as well. He should not even have been on the committee. Senator Prozanski did not recuse himself or raise a personal conflict issue. Floyd Prozanski, Esquire, as an officer of court, knows the legal definitions.

The known federal lawsuit resulting from the actions of Senator Prozanski are at the heart of the November 28, 2022 work session is deemed "personal" not state under the law.

There is no debate as to definition of "personal" in the Webster's Third New International Dictionary, the official dictionary of the Oregon Supreme Court.

Mason's Manual of Legislative Proceedings adopted by Senate Rule 2.01 in "Section 522 Members Voting on Questions Which They Have a Personal Interest" states "It is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest."

Sixth Complaint.

Senator Prozanski used attorney client privilege and confidential information from Dexter Johnson, Lori Bocker, and his Attorney General lawyer gained between November 15, 2022, if not earlier, through the work session on November 28, 2022, and afterward, for his personal and political gain. He used his Committee Co-Chair position, attorney client privilege, confidential information, and the confidential use of legislative committee employees to organized and conduct a work session to his personal benefit. Not even Senator Hansell, the other co-chair, was in meetings between the above individuals on November 15, 2022.

ORS 244.040 (4) states "a public official may not attempt to further or further the personal gain of the public official through the use of confidential information gained in the course of or by reason of holding position as a public official or activities of the public official." None of the information was available to the public. Much of the facts were withheld from committee members. This information "would not otherwise be available but for the public official's holding of the official position or office."

Oregon voters are not as naïve as lawyers and politicians want them to be. Candidates in Oregon for elected office spent millions in 2022 on advertising court actions and lawsuits for their personal private benefit, detriment, advantage, avoidance, or gain. FEC and ORESTAR financial filings personally required of candidates proves this fact. On former State Representative appears to have sent over a million along exploiting lawsuits for their personal gain. Candidates for the legislature can win or lose election or re-election based on a lawsuit. Donors do not like lawsuit liability. Candidates are personally liable for all aspects of funding raising and campaign spending. If a candidate cannot raise outside donations due to a win or loss of a lawsuit they must spend their own personal funds. ORESTAR PAC Friends of Floyd Prozanski #1685 fillings are no different.

Since the February 24, 2023 work session, it has been learned by a court filing, that two state lawyers and one legislative lawyer serving Senator Prozanski advised him in confidence to schedule the November 28, 2022 work session. Senator Prozanski has admitted using this confidential information to plan and execute the work session on November 28, 2022 per filings discovered on February 27, 2023. These document can be provided to the committee.

Legislative Counsel wrote the ethics and campaign laws regarding personal and private benefits and restrictions. That three LC lawyers have forgotten what was written, and passed into law, and entered by LC in the statutes, means fresh outside private counsel will be required to interpret statutes for the investigation.

ORS 162.425 Misuse of confidential information may well apply to this complaint as well. It is the Senate President, per Mason's 561, who is required to ensure compliance with all laws in the Senate. Again, it is Legislative Counsel stating the President's authority as fact in LC 0358 posted on OLIS. Court documents regarding the misuse of confidential information can be provided to the committee.

It is noted, ORS 162.415, official misconduct in the first degree, constitutes "an unauthorized exercise in official duties." The Speaker and President brought such charges against a legislator in 2020, thus, must be reviewed as well. This statute resulted in the application of Or. Const. Article IV Section 15 "punishment and expulsion of (a legislative) member." Parallel authority falls under Senate Rule 3.33 as well. SR 3.33 should immediately be amended to allow for education and training in leu of punishment which is common with the Oregon Government Ethics Commission stipulated orders.

Note none of the existing unconflicted members of the conduct committee organized and constituted on November 28, 2022 are present members of the 2023 conduct committee except Senator Prozanski. Hence, are witnesses to these facts. A review of the OLIS works session for November 28, 2022 establishes portions of this complaint, a formal court ready transcript can be provided to the committee. A review of the work session of February 24, 2022 adds to this complaint.

The Oregon Government Ethics Commission stacks of advisory opinions on personal gain conflicts online for public access. The Senate Conduct Committee heard facts related to this in its work session on February 24, 2023 from inside and outside counsel on potential gains. A legal position gain was discussed outside of a potential 'economic' gain. State and federal courts have established Senator Prozanski's attorney client privilege with the aforementioned legislative employees. Along with the Attorney General and Stoel Rives LLP lawyers. The Work Session of November 28, 2022 was requested by, organized by, and the committee scripts for the predetermined outcome were the actions of Senator Prozanski based on his access to aforementioned confidential information including from the Attorney General. Note the Attorney General submitted testimony on behalf of Senator Prozanski at the February 24, 2023 work session as well.

The Senate Conduct Committee has online the complaint before it on February 24, 2023 which outlines the events and details commencing on November 15, 2022. Further transcripts can be provided to the committee during its investigation. OGE basic investigation standards are to interview the complainant, respondent and witnesses as part of an investigation.

Seventh Complaint.

Senator Prozanski used his official position to schedule a work session, refusing to recuse himself, to reduce his future personal financial liability, by orchestrating a needless committee action in the Oregon State Senate, and misleading other Senators as to his intent. OGE Advisory Opinions clearly advise actions similar to those of Floyd Prozanski would constitute a prohibited use of office as “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.”

ORS 244.040 (1) Prohibited use of official position or office states “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 ... 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.” This is not Senate Rule 3.33. This is not ORS 244.020.

Candidates in Oregon for elected office spent millions in 2022 on advertising court actions and lawsuits for their personal private benefit, detriment, advantage, avoidance, or gain. FEC and ORESTAR financial filings personally required of candidates proves this fact. See ORESTAR PAC Friends of Floyd Prozanski #1685 filing in the name of Floyd Prozanski. Candidates for the legislature can win or lose election or re-election based on a lawsuit. Candidates are personally liable for all aspects of funding raising and campaign spending. Potential donors do not like candidate lawsuit unless it is detrimental to the political opponent. It costs money to defend a candidate when they lose as lawsuit. If a candidate cannot raise outside donations due to a win or loss of a lawsuit they must spend their own personal funds.

Legislative Counsel wrote the ethics and campaign laws regarding personal and private benefits and restrictions. That three LC lawyers have forgotten what was written, and passed into law, and entered by LC in the statutes, means fresh outside private counsel will be required to interpret statutes for the investigation.

Since the February 24, 2023 work session, it has been learning by a court filing, that two state lawyers and one legislative lawyer serving Senator Prozanski advised him in confidence to schedule the November 28, 2022 work session.

The Senate Conduct Committee heard from outside counsel on February 24, 2023 his opinions on 42 USC 1983 lawsuit outcomes. His contention was there could be no economic gain or loss to Senator Prozanski when he loses the lawsuit. Outside counsel failed to discover in his research legal exceptions for legislator immunity. Ninth Circuit 1983 Outline, dated 2022 page 42, claws back exceptions in regard to legislative immunity quote “but concluding that defendants were not entitled to absolute immunity where decisions were administrative, not legislative.” Ninth Circuit 1983 Outline, 2022 edition, page 14, further states that “plaintiffs may seek damages against a state official in his personal capacity.” There are other federal exceptions as well.

The Oregon Supreme Court in 2014 established a state legislator claw back as well, stating “enforcement is not generally part of the legislative function, extending the privilege to legislators’ participation in some aspect of enforcement of a law would not serve the clause’s purpose.” The court qualifies, if a legislator acts outside

their authority, specifically attempting to enforce administrative functions, legislators lose immunity. There is no “may” in the Oregon Supreme Court ruling. Even the Attorney General representing Senator Prozanski’s 1983 lawsuit, admits the core issue is employment law enforcement, which is an administrative function, as defined by the Oregon Supreme Court. The court has yet to make this determination in this situation. The court could easily rule Senator Prozanski was acting outside his official authority in violating constitutional law. The State of Oregon does not indemnify nor pay legal expenses for state employees who violate the law outside of their known authority.

Legislative Counsel, who is one of Senator Prozanski’s court identified lawyers, has misquoted state government indemnification when he losses the 1983 lawsuit. ORS 30.285 (3) states “the provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.” Dexter Johnson (LC) and Marc Abrams (AG) who have submitted testimony to the Senate Conduct Committee, on behalf of Senator Prozanski, know full well the 1983 claims are malfeasance in nature. ORS 30.285 (3) required Senator Prozanski to apply to DAS and the AG in writing for representation and overage under ORS 30.285. This Senator has seen no such application. Why? Because under ORS 173.135 the Legislative Counsel Committee by vote must approve outside counsel. Never happened. Then *State v. Babson* and *Gibson v. Kay* prevent separation of powers legal services specifically between the Legislative and Executive Branches in the State of Oregon. Oregon Supreme Court constitutional rulings trump any rule, policy or statute. Likewise, Oregon Supreme Court constitutional ruling trump any lawyer’s opinion as well.

Further, few Oregon lawyers know that buried in the Oregon Revised Statute is a right of action for citizens to sue an elected official to recover misspent public funds or misspent as a result of even minor misconduct of that elected official. These laws were last amended by work of Legislative Counsel in 2002. There is no reason the present LC is unfamiliar with these options. This was considered in 2019, as a result of the \$1.3 million BOLI harassment settlement in the legislature. This will be used to recover any state tax dollars spent on behalf of Senator Prozanski, and former President Courtney, when the 42 USC 1983 lawsuit is won by the Plaintiff. This liability is real to Senator Prozanski.

The federal court’s future determination may make Floyd Prozanski personally liable as that is the nutshell of the lawsuit.

However, if *Kay v. Gibson* from the Oregon Supreme Court is applied, Floyd Prozanski may be entitled to absolutely nothing. No immunity. No state anything. Constitutional complaint One and Two date back four years or more. *Kay v. Gibson* states “for the reasons stated, the claimant was not authorized to accept the appointment, or perform the duties mentioned in the writ. He could not; therefore, properly or lawfully claim the compensation annexed to’ that appointment.” The Supreme Court reasoned under the Oregon Constitution, the second “appointment” was not legally authorized thus null and void. The court stripped the elected public official of his second position. Floyd Prozanski, the public prosecutor was the first appointment, thus Senator Prozanski may not legal exist. Thus not entitled to any state government anything.

Eighth Complaint.

Senator Prozanski as the Senate Conduct Committee co-chair failed to comply with open deliberations commencing on November 15, 2023, before the work session, and during the Work Session on November 28, 2022. If Senator Prozanski used committee staff behind the scenes to influence the outcome of the February 24, 2023 work session this expands the complaint. This situation transpired in July 2019 per court discovery earlier. Senator Prozanski predetermined the outcome of the November work session by withholding material facts from other members of committee, and the public, per rules and the constitution. This type of complaint

has been filed against Senator Prozanski in the past, in which the then Presiding Officer, intervened to make corrective actions at another committee. Talking scripts and the motion were prepared in advance upon Senator Prozanski's instructions. Information Senator Prozanski gained in confidence and as committee chair was not shared with the other members. Questions asked in the committee by two Senate Conduct Committee members were not answered by Senator Prozanski when he had the information due to other members himself. The OLIS video provides this fact. Only after the work session did at least one committee member receive deliberative facts withheld by Senator Prozanski in his capacity as co-chair.

Senate Rule 3.05 requires all deliberations to be open.

Oregon Constitution, Article IV Section 14. Deliberations to be open; rules to implement requirement states "the deliberations of each house, of committees of each house or joint committees and of committees of the whole, shall be open. ..."

The citizens of Oregon adopted Or. Art IV Sec 14 in 1978 to prevent the legislature from backroom and political deals. Its intent was every member would receive all and the same information on a committee and on the floor. Read the ballot measure materials. This rule and clause is violated almost every day the legislature is in session.

Mason's Section 42 (2) states "any understanding or agreement made before, after or outside a legal meeting is not valid or binding." Mason's Sec 42 (9) and (11) apply as well. As simple view of the OLIS recording of the November 28, 2023 work session shows clear violations of this rule, and the above senate rule and constitutional clause. OLIS video from November 28, 2022 shows pre-work session deliberations were held. Questions by one Senate committee member expand the events that transpired outside the work session.

Mason's Manual of Legislative Procedures adopted by Senate Rule 2.01 Section 6 (2) states "A constitutional provision regulating procedure controls over all other rules of procedure."

Ninth Complaint

It is a material fact Senator Prozanski is utilizing free Attorney General services without the permission of the "legislature," or Legislative Counsel Committee, as required by the law.

ORS 173.135 states "When deemed necessary or advisable to protect the official interests of the Legislative Assembly, one or more legislative committees, or one or more members of the Legislative Assembly, the Legislative Counsel Committee may direct the Legislative Counsel and the staff of the Legislative Counsel, or may retain any member of the Oregon State Bar, to appear in, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States. Expenses and costs incurred pursuant to this section may be paid by the committee from any funds available to the committee."

Mason's Section 42 (7) and Section 5.20 required committees to take votes to reach any action of the committee or the floor. Mason's Section 42 in its entirety is routinely now ignored in the Oregon State Senate.

Note part of Senator Prozanski's legal representation is being paid under a Legislative Administration contract, hence, the knowledge of hourly costs upwards of \$1000 per hour. This contract was never approved

by the Legislative Counsel Committee as required by law, and no evidence can be found the Legislative Administration Committee approved the contract either.

Per ORS 173.730, the new presiding officers, co-chairs, Senator Wagner and Representative Rayfield, are responsible for the legal shortfalls of the Legislative Administration Committee as of January 6, 2023. This failures could easily be cleaned up by the new leadership to comply with Mason's, Senate Rules, House Rules, and Oregon Revised Statutes.

Per ORS 173.191, if the new presiding officers, co-chairs, Senator Wagner and Representative Rayfield, want to offer legal services, costing over \$1000 per hour at times, from outside counsel to representation Senator Prozanski, then they need to call a meeting of the Legislative Counsel Committee to vote for this decision per ORS 173.135. The Legislative Counsel Committee has not met in years. It has never met to hire the Attorney General or outside private counsel, such as Stoel Rives LLP, to support Senator Prozanski. Further, the Legislative Counsel Committee has never approved outside counsel for conduct committee lawsuits regarding the ongoing *Munson Case* or the *Hanson Case* as well. Two additional suits may follow the *Hanson* lawsuit. There well may be other unknown lawsuits hidden from members if not the new President and Speaker.

Again, it is up to the presiding officers, using committee actions, that require votes per rule and law, if they want to continue to use tax payer dollars from their appropriated budgets, into the hundreds of thousands of dollars per year, per the public records. But presently, none of these expenditures have been approved by Mason's, Senate Rules, House Rules, and the Oregon Revised Statutes.

It seems a wiser less costly course of action than unlimited unchecked unregulated spending could be instituted by the new Senate President and House Speaker to help re-establish ethical standards in the Legislative Assembly under their new leadership.

It is noted as part of the complaints, that presiding officers, and co-chairs, Senator Wagner and Representative Rayfield, have never convened the Legislative Policy & Research Committee to approve policies and rules for committees either. Like investigation procedures or model rules. Per ORS 173.165, the presiding officers should rectify this shortfall by meeting to establish uniform procedures. The LPRO Committee has not met in years so model rules and procedures have never been approved by a committee vote as required. This could be easily cleaned up by the new leadership to comply with Mason's, Senate Rules, House Rules, and Oregon Revised Statutes.

End of Complaints #1 to #9. Second filing.

Senator Woods and Senator Anderson were provided, with the recent committee members, a list of Mason's Manual of Legislative Procedures that should be followed in the future, and some incorporated into a written non-LBPR 27 investigation process for all members and the public. Every serving Oregon State Senator has gotten multiple copies via floor letters of rules, statutes, and constitutional clauses we are all obligated to follow.

Proposed Senate Rule changes are being prepared to placement on the Floor to establish guidelines for the Senate Conduct Committee in regard to Article IV Section 15 complaints outside of ORS 244.020 and LBPR 27.

The above rules will include the option used by the Oregon Government Ethics Commission to use education and training as the first response. Meaning a voluntary agreement to get trained and educated to ensure a

respondent or even complainant understands the rules, statutes, and constitutional responsibilities of members of the Oregon State Senate. This voluntary stipulation could be agreed upon at the committee level. Non-adjudicative. Non-admitting. Non-retribution. Before any floor recommendation of reprimand, censure or expulsion would be sent to the Floor for the required vote.

LBPR 29 complaints have been compiled via sworn testimony and legal documents regarding the entire issue back to July 8, 2019. These have been process counselled and/or advised by legislative counsel as legitimate complaints. However, given the Senate Conduct Committee has failed to uphold the BOLI Conciliation Agreement, and no Legislative Equity Officer exists, and 'investigators' enjoy attorney client privilege with Democrat leadership with their employees, these complaints will be filed with the new LEO upon hiring. The statute of limitations is five years.

The Co-Chairs and Presiding Officers, as the statutory head of the Legislative Counsel Committee law firm, will under separate cover, be receiving Oregon Rules of Profession Conduct complaints in regards to Dexter Johnson shortly. The violations are easily identified in the public records regarding the November 2022 and February 2023 work sessions with the public emails to Senator Woods and Senator Anderson. These rules are propagated as law by the Chief Justice of the Oregon Supreme Court who is noted in paragraph two. Mason's, Oregon Revised Statutes, and Oregon Administrative Rules place initial responsibility with the Co-Chairs and Presiding Officers. However, please be "noticed" Dexter Johnson has a legal conflict of interest in these complaints or anything related to the circumstances or procedures of these complaints back to July 2019.

There are other Mason's Manual of Legislative Procedures not referenced in these complaints that impact the work session of November 28, 2022, therefore, the work session of February 24, 2023, that the parliamentarian should have identified to the Senate President and Co-Chairs thus should at this time. If not, there likely will be a follow up set of complaints once it is determined if Floyd Prozanski Esquire can also be State Senator Floyd Prozanski.

Finally, again, per the rules, you are requested to please inform Co-chairs Anderson and Woods to have the committee proceed to establish and adopt uniform investigations standards with the help of the Oregon Government Ethics Commission then with the two other members commence to investigate the Nine (9) complaints regarding Floyd Prozanski and then Senator Prozanski.

The goal of these complaints is educational compliance with ethical standards clearly identified in the Oregon Constitution, Senate Rules, Mason's Rules of Legislative Procedures, Oregon Revised Standards, Oregon Administrative Rules, and the protocols-procedures of the Oregon State Senate.

Lastly, the common law traditional reason Presiding Officers have thirty days to send a complaint to a committee is to attempt to mediate and resolve issues prior to sending to a committee for an adjudication recommendation the floors. This is common law tradition is why every court in Oregon asks the whether parties attempted to mediate the complaint before the court. Your predecessor always refused any mediation. If you would like thirty days to attempt to resolve this matter, like in the above paragraph, please let me know.

Sincerely,

Brian J. Boquist
Oregon State Senator
SD-12 IPO

Following are the original complaints and correspondences that have not been acted upon for whatever reason by the Oregon State Senate since before organizational days and swearing in proceedings.

From: Sen Boquist

Sent: Saturday, February 11, 2023 12:03 PM

To: Sen Wagner <Sen.RobWagner@OregonLegislature.gov>

Cc: Sen Woods <Sen.AaronWoods@oregonlegislature.gov>; Sen Anderson <Sen.DickAnderson@oregonlegislature.gov>; Sen Knopp <Sen.TimKnopp@oregonlegislature.gov>; Sen Lieber <Sen.KateLieber@oregonlegislature.gov>

Subject: FW: 5a Question - RE: Refresher on Legislature

President Wagner:

Which committee did you send these constitutional complaints: Conduct or Rules?

Appears the nonconflicted Co Chairs know nothing of these complaints filed a month ago. Well beyond reasonable deadlines. We have asked the Co Chairs in writing. As You and I discussed, there needs to be a set procedure that complies with rules, enduring statutory rules, and the constitution. Given the OLCC booze scandal now implicates legislators, having the unconflicted co-chairs well versed in the legal procedures, should be an imperative. The media is already asking questions. The chances of a Senator or legislative employee being implicated in the OLCC booze scandal is very great.

Next, it has been implied the co-chairs have been bypassed with Dexter Johnson the Legislative Counsel taking the lead. True or false I do not know. **However, if true, the Presidency has a more serious problem on your hands now.** If you do not know, there was a state court ruling establishing attorney client privileges between the President, Dexter Johnson, Floyd Prozanski, Jessica Knieling and the branches employment lawyer Ms. Baumgart regarding this issue. Further, there is an active federal court ruling establishing attorney client privilege on this very matter between Floyd Prozanski, Dexter Johnson, Lori Brocker and the Attorney General.

If Dexter Johnson or Lori Brocker are involved in an investigation, or any legal matter whatsoever regarding these complaints, or the procedures of these complaints, then it is no different than the criminal investigation justification for the Attorney General to launch an OLCC investigation including on legislator conduct.

Have you unknowingly tasked Dexter Johnson the Legislative Counsel to investigate his own client Floyd Prozanski in regard to the exact same issue in violation of a stack of rules and laws? Since the Co-Chairs do not know whom have you tasked as an employee or member? Rules?

Further, if true, that Mr. Johnson is involved, as your legal counsel, why did he not inform you the President he had a legal conflict himself? Again, it is not clear who is involved but it was insinuated LC had the lead in violation of rules, statutes and the constitution.

Again, the is not an LBPR 27 set of complaints yet. If Dexter Johnson is now involved a new Rule 27 complaint that would certainly be an option. The goal is to reestablish an ethical standard in the Oregon State Senate with minimal retrospective damages to anyone.

In the face of the new expanding scandal you need to set the standard as the President of the Oregon State Senate.

Respectfully requested,

Brian Boquist
Oregon State Senator

From: Sen Boquist

Sent: Tuesday, February 7, 2023 2:35 PM

To: Sen Anderson <Sen.DickAnderson@oregonlegislature.gov>; Sen Woods <Sen.AaronWoods@oregonlegislature.gov>

Subject: FW: 5a Question - RE: Refresher on Legislature

Senator Anderson & Senator Woods:

It is quite apparent the Senate leadership is confused on how to legally process constitutional and institutional complaints to maintain any ethical or moral standards. Senate Rules are not being followed. Masons Rules are not being followed. And the Oregon Constitution is not being followed. Likewise, due to confusion we hope, it is not even clear the two of you are in possession of these three complaints provided to the new President on January 6, 2022.

Or Const Art IV Sec 15 states "either house may punish members." AG Opinion 8265 2/24/1999 places this "exclusive authority to adjudicate" in "each chamber" for which cannot be "delegated to any other body." OGEC agrees. Secretary of State agrees. Legislative Counsel previously agreed.

244.040 prohibits the use of official position or office for any potential or real gains which is exactly what transpired from November 15-28, 2022. Senate Rules incorporating Masons Sec 522 states it is the general rule that no members can vote on a question in which they have a direct personal or pecuniary interest.

Or Const Art II Section 10 prevents Floyd Prozanski from serving in two lucrative offices at the same time. There is no exemption for prosecuting attorneys listed in Or Const Art XV Section 8. This is affirmed by the Oregon Supreme Court in Gibson v. Kay and State v. Babson.

Or Const Art III Section 1 prevents Floyd Prozanski from serving in two sperate branches of government whether it be state, county, district, municipal or city. This is affirmed by the Oregon Supreme Court in Gibson v. Kay and State v. Babson. Gibson v. Kay very specifically prohibits the providing of legal services in relation to serving as a State Senator.

Then there is the issue of compliance with ORS 173.900 (10) that is in gray area of whether it is a conflict of interest or other type statute.

These are not LBPR 27 complaints. Those are yet to come as this gets more screwed up by the day. These are simple easily fixable rules and constitutional issues. Simple nonpunitive solutions will go a long way to reestablishing an ethical standard in the Oregon State Senate.

To be very clear, this is not a staff function. You are the responsible members.

Please confirm in writing you were provided these complaints by the Senate President as the appropriate supervising authority under the constitution, statute, senate rules, and masons rules?

Respectfully requested,

Brian J. Boquist
Oregon State Senator

From: Sen Boquist
Sent: Friday, January 6, 2023 4:38 PM
To: Sen Wagner <Sen.RobWagner@OregonLegislature.gov>
Cc: Sen Knopp <Sen.TimKnopp@oregonlegislature.gov>; Sen Lieber <Sen.KateLieber@oregonlegislature.gov>
Subject: FW: 5a Question - RE: Refresher on Legislature

Senator Wagner:

As the President, you will inherit this series of complaints next week. There are several issues regarding Senator Prozanski for which the Oregon Government Ethics Commission first claimed authority, then, the Attorney General advised them reverse course.

Now it is the responsibility of the Oregon State Senate, either Rules or Conduct, for which raises issues of committee membership elected on Monday. The present process appears to be via the President, Majority and Minority Leaders to field the complaints. That is, those outside the LEO which does not exist.

Failing this, it goes to the Oregon Supreme Court, during session as it involves credentials and eligibility to serve in the legislature. You may recall Legislative Counsel advised the Clerk of the House a Representative could not serve both a city public official and legislator at the same time. There is no exemption in the constitution for anybody except educators, judges and military members. No lawyer exemption exists. Likewise, there is an Oregon Supreme Court ruling regarding a State Senator serving in two legal positions.

You are fully aware of the conflict of interest complaint. You are now aware of three additional complaints to be referred to a Senate committee for resolution by you as the new President. Please be advised there is another rules report filed last month as well. The fact no Legislative Equity Officer has existed for two years places employees in pre-2019 conditions.

For the sake of organizational days, there will only be some NO votes without discussions during open day.

It may be best to discuss this at your convenience in the near future as some simple equitable solutions do exist in some areas.

Again, this can wait until after organizational days as a practical matter.

Respectfully,

Brian J. Boquist
Oregon State Senator
SD 12 IPO

From: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Sent: Wednesday, January 4, 2023 8:43 AM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

I will get a letter to you soon.

Thank you,

Ronald A. Bersin

Executive Director
Oregon Government Ethics Commission

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Tuesday, January 3, 2023 2:53 PM
To: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Cc: Nasbe Joshua <joshua.nasbe@doj.state.or.us>; Sellers Michael <SellerM@oregonlegislature.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

Director Bersin:

Thank you for the email but neither the email or letter point to what the exception is in Article IV Section 9.

Then please answer the original generic question below in a separate letter.

Thank you in advance,

Brian Boquist
State Senator

From: BERSIN Ron A * OGEC <"debateRon.A.BERSIN@ogec.oregon.gov">
Sent: Tuesday, January 3, 2023 2:06 PM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Cc: Nasbe Joshua <joshua.nasbe@doj.state.or.us>
Subject: RE: 5a Question - RE: Refresher on Legislature

OGEC has authority over all public officials, including legislators in Chapter 244. There are limits and exclusions that apply directly to legislators, as the Chapter is currently written. The information in your submission involved conduct protected by Oregon's Constitution and is expressly excluded from the Commission's jurisdiction, as provided in ORS 244.260 (5)(a).

Thank you,

Ronald A. Bersin

Executive Director
Oregon Government Ethics Commission

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Monday, January 2, 2023 10:26 AM
To: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Cc: Sen Knopp <KnoppT@oregonlegislature.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

Director Bersin:

Just want to confirm, the attached letter you sent the 27th answers the below from Josh Nasbe AAG correct?

The OGEC has no authority in this regard to legislators under ORS 244 correct?

Thank you in advance.

Sincerely,

Brian Boquist
State Senator – IPO

From: Sen Boquist
Sent: Thursday, December 22, 2022 2:21 PM
To: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

OK. Letter opinion it is then.

From: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Sent: Thursday, December 22, 2022 1:32 PM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

I know this seems like a simple question, but when discussing the State's Constitution, I am more comfortable writing a letter and having that letter reviewed by the Department of Justice (They are the experts on Oregon's Constitution). It is important for me to provide you with information that I know is correct. I will attempt to have an answer to you by the end of next week. I apologize for the delay.

Thank you,

Ronald A. Bersin

Executive Director
Oregon Government Ethics Commission

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Thursday, December 22, 2022 10:41 AM
To: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

Director:

Not sure a letter is required. Rather simple question really. You had said ORS 244.260 applied to legislators.

The simplest question is if a 244.260 complaint were filed regarding a legislator with in the 15 day window of session is it delayed until after session?

BTW, the 15 days before the session is either 12/25 or 1/2 depending on which lawyer is talking.

Brian

From: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Sent: Thursday, December 22, 2022 9:49 AM
To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Subject: RE: 5a Question - RE: Refresher on Legislature

I will work with DOJ to author a letter back to you, attempting to answer your questions. It will probably be some time next week due to the Holidays and my limited time with staff. Thanks

Thank you,

Ronald A. Bersin

Executive Director
Oregon Government Ethics Commission

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Thursday, December 22, 2022 9:09 AM

To: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>

Subject: 5a Question - RE: Refresher on Legislature

Director:

First, congratulations on retirement. Saw it in the news.

Have a further question on 244.260 5a. I reviewed your letter opinion 19-043S of March 20, 2019 along with numerous others as you suggested.

5a covers the issue of Article IV Section 9 specifically the 15 days before a legislature session. It appears by the read in the advisory, if an ORS 244.040 complaint were filed during legislative session the commission would simply dismiss it never to be renewed again. The dismissal would be based on the legislative session. Is this correct? Or is an investigation delayed? Or could the complaint be filed after session?

Also, I noted in 19-043S, the issue of holding two different public official jobs. These being two different lucrative positions under the constitution. While ORS 244.010 allows holding multiple public positions it does not address the situation in which those positions are in different branches of government. Specially, the ORS does not address separation of powers for which the Oregon Supreme Court has ruled upon numerous times nor the lucrative positions. Or Const Art II Sec 10 and Art III Sec 1 and Art XV Sec 8. In looking a other advisory opinions they are carefully worded to say the "statute" says XYZ. Then several opinions regarding this issue have a disclaimer that there may 'constitutional' issues but that is not advised upon. Sort of putting a question mark out there. In determining ORS 244.040 authority, if the situation involves two lucrative positions in two different branches, if not all three branches meaning a single official in the legislative, executive and judicial, does the OGEC have the jurisdiction to make such a determination? Or asked another way, the authority to review for consideration an ORS 244.040 complaint?

FYI, I asked the Sec of State the lucrative and separation question. They said nope cannot do it but it is not us who enforces it after an election. Gotten the same answer at multiple places. Not us.

Thank you in advance,

Brian Boquist

From: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>

Sent: Wednesday, November 30, 2022 2:27 PM

To: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>

Subject: RE: Refresher on Legislature

CAUTION: This email originated from outside the Legislature. Use caution clicking any links or attachments.

Senator Boquist, great to hear from you. I will make sure you are emailed a copy the Attorney General Opinion you requested.

The Legislature was careful when crafting the Commission's authority. You are correct, the Commission does not have authority over conflicts of interest in the legislative assembly. We do however have authority in many of the other areas of ORS Chapter 244 such as "Use of Office" as outlined in ORS 244.040.

Some of your other questions are very fact specific, therefore making it very difficult for me to answer.

Thank you,

Ronald A. Bersin

Executive Director
Oregon Government Ethics Commission

From: Sen Boquist <Sen.BrianBoquist@oregonlegislature.gov>
Sent: Wednesday, November 30, 2022 1:51 PM
To: BERSIN Ron A * OGEC <Ron.A.BERSIN@ogec.oregon.gov>
Subject: Refresher on Legislature

Director Bersin:

You'd think after nearly 20 years I could remember the authority of the OGEC over legislators. Can someone help me with a couple of questions?

I reviewed the most recent Guide to Public Officials. Link:

<https://www.oregon.gov/ogec/Documents/2021%20PO%20Guide%20Final%20Adopted.pdf>

Am I correct that Commission has no authority over the failure to declare conflicts of interest in the Legislative Assembly?

What happens if a legislator fails to recuse themselves from something that is disallowed by a statute? Is it still the Legislative Assembly?

What happens if a legislator participates in an executive session in the legislature? Yes, I know executive sessions are not allowed in the Legislative Assembly but happens regularly.

What if the legislator has dual status meaning both a legislator and an official in a city or county? I note ORS 244.020(15) includes city officials and agents of cities. And yes, I know a person cannot serve in both capacities but that is common now. Really nobody to oversee separation of powers violations.

Can the commission provide a copy of 49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999 cited in the guide? I searched the AG online opinions but found nothing.

There may not be answers to some of the questions.

Thank you in advance,

Brian Boquist
State Senator