



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

March 9, 2017

Re: Restrictions on lobbying by former member of Legislative Assembly

You asked whether a former legislator violates ORS 244.045 (6) by being hired by the Governor "as a senior staffer who lobbies the Legislature." The date of hire is prior to the adjournment sine die of the regular session of the Legislative Assembly that next succeeded the date the former legislator ceased being a member of the Legislative Assembly. In answering your question, we are mindful of recent news reports stating that former Representative Peter Buckley is being appointed by Governor Brown as a senior advisor in the Governor's office for transformation and budget stability. He "will work on stabilizing the budget over the next three biennia, looking at major cost drivers in state government and potential state revenue changes."¹

ORS 244.045 (6) provides:

A person who has been a member of the Legislative Assembly may not receive money or any other consideration for lobbying as defined in ORS 171.725 performed during the period beginning on the date the person ceases to be a member of the Legislative Assembly and ending on the date of adjournment sine die of the next regular session of the Legislative Assembly that begins after the date the person ceases to be a member of the Legislative Assembly.

In other words, ORS 244.045 (6) prohibits a former member from engaging in "lobbying" for a specified period. The remedy for a violation of ORS 244.045 (6) is through the Oregon Government Ethics Commission complaint and investigation process outlined in ORS 244.260.

As used in ORS 244.045 (6), "lobbying" means:

[I]nfluencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials. ORS 171.725 (8).

¹ Tracy Loew, "Former Rep. Peter Buckley, two more familiar names to join Oregon Gov. Kate Brown's office," *Statesman Journal*, March 7, 2017.

Two other definitions also bear on answering your question. A “lobbyist” means, in relevant part, any public official who lobbies. A “public official” means, in relevant part, any member of the staff or an employee of a public agency. ORS 171.725 (9) and (11).

Read together, ORS 244.045 (6) and the defined terms discussed above prohibit a former legislator from influencing or attempting to influence legislative action through oral or written communication with legislative officials during the regular session that follows the end of the former legislator’s term of office. But for one additional exception, ORS 244.045 (6) does not restrict the former legislator from any other employment activity. The additional exception prohibits the former legislator from soliciting executive officials or other persons to influence or attempt to influence legislative action or to obtain the goodwill of legislative officials. “Soliciting” is not defined in ORS 244.045 or other related laws. Terms that are used in a statute but not defined in that statute are given their plain and ordinary meaning. *State v. Gaines*, 346 Or. 160, 175 (2009). The plain and ordinary meaning of “solicit,” in relevant part, is “to move to action; to strongly urge; insist upon; to plead for.”² Thus, “solicit” is a narrower term than “communicate.” A former legislator subject to the restrictions of ORS 244.045 (6) may not encourage, strongly urge or plead for executive officials or other persons to influence legislative action or obtain legislative goodwill, but is not prohibited from communicating in oral or written form with executive officials or other persons concerning legislative matters or other public policy issues.

Applying this analysis to Mr. Buckley’s situation as described in news reports, Mr. Buckley may not engage in lobbying, including engaging in oral or written communication with legislative officials that attempts to influence legislative action, and also may not engage in the far narrower soliciting activities described above. But for those two limitations, Mr. Buckley may generally perform all other activities in undertaking a senior staff position with Governor Brown’s office.

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,



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² *Merriam-Webster Unabridged*, <http://unabridged.merriam-webster.com/unabridged/soliciting> (visited March 8, 2017).