



OREGON STATE SENATE
STATE CAPITOL
SALEM 97310

SENATOR FRED W. HEARD
MAJORITY LEADER
503 576-8700

February 19, 1980

James A. Redden, Attorney General
Justice Department
100 State Office Bldg.
Salem, OR 97310

Dear Attorney General Redden:

We are disturbed by recent press accounts regarding the "Governor's Fund" established to defray certain expenses incurred by Governor and Mrs. Atiyeh and staff.

The Governor's press aide has stated that the fund is not a political fund subject to Oregon law, but that they have voluntarily filed certain disclosures with the Secretary of State. Those disclosures reveal that contributions to the fund are called "dues" and have come from a variety of businesses and individuals, including a bank holding corporation.

It has been our understanding that funds of this type must be established as Political Action Committees and that regular reports must be filed on the Secretary of State's forms. As PAC's, such funds are subject to all of the restrictions of the elections laws.

If the fund is not a PAC, then it is our concern that the use of such funds to pay personal, non-governmental expenses of the Governor, his immediate family and perhaps staff could violate the laws prohibiting gifts to public officials, specifically ORS 244.040.

Our questions are:

1. May an elected official, specifically the Governor, establish a fund by collecting dues from individuals and businesses, and use such moneys to defray expenses not covered by personal monies or state appropriations?

2. If such a fund may be established, is it required to comply with the laws relating to political action committees?

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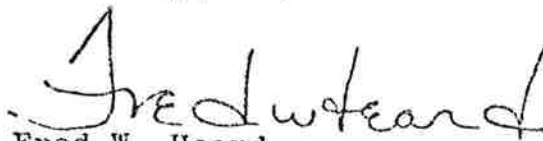
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James A. Redden, Attorney General


3. Can such a fund be transferred into a candidate's principal political committee at a later date?

4. Would your answer to question 3 be different if the original fund contained dues or contributions received from businesses prohibited from making direct campaign contributions by state or federal law?

Thank you for your prompt attention to our questions.

Sincerely,


Fred W. Heard,
Senate Majority Leader


Grattan Kerans,
House Majority Leader

TO: Lee Johnson

February 28, 1980

FROM: Bob Oliver *BO*

SUBJECT: Governor's Fund

Fred Heard and Grattan Kerans, Democratic majority leaders of the respective legislative Houses, have asked the Attorney General four questions relating to the "Governor's Fund" established to defray certain expenses incurred by the Governor, Mrs. Atiyeh and the Governor's staff. Their concern is that it violates ORS 244.040, which prohibits a public official from receiving, directly or indirectly, during any calendar year, gifts with an aggregate value in excess of \$100 "from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or over which the official exercises any authority." Since the Governor is the chief officer of the executive branch of state government, it is difficult to call to mind many individuals or entities in Oregon who do not have some kind of legislative or administrative interest in an agency over which the Governor exercises authority. The primary question, then, involves the definition of "gift."

ORS 244.020(5) defines "gift" as "something of economic value given to a public official . . . without valuable consideration . . . which is not extended to others who are not public officials." The term "gift" is further defined to exclude campaign contributions, gifts from relatives and "the giving or receiving of food, lodging and travel when participating in an event which bears a relationship to the public official's office and when appearing in an official capacity." The third exclusion, however, must be reported when such expenses exceed \$50.

When the Governor (or a member of his staff) incurs lodging and travel expenses in attendance at a Republican party function, or other activity covered by the fund and not qualifying for state reimbursement but relevant to his business and deductible under federal and state income tax regulations, ordinarily he would pay the expense out of his own pocket. The purpose of this fund is to reimburse him directly for such expenses. In such case, of course, he either would not claim it as a deduction on his federal tax return, or would report as income the amount of reimbursement from the fund.

It is my view that if the Governor (or a member of his staff) incurred expenses in an activity which was purely personal -- such as a vacation -- and were reimbursed from the fund, then such reimbursement would constitute a "gift" under ORS 244.020. The fact that contributions from various individual entities are commingled in a common fund would not, in my view, insulate the recipient from the donors in terms of the donors' legislative or administrative interests.

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At the same time, if the Governor (or a member of his staff) is participating in a legitimate business activity, deductible under tax regulations, and not strictly personal in nature, reimbursement from the funds simply "washes out" an expenditure made by the Governor (or a member of his staff). So long as a deduction is not taken -- or the reimbursement is reported as taxable income -- the economic situation of the recipient has not been bettered.

There is a paucity of case law interpreting ORS chapter 244 (Government Ethics), particularly the definitions under ORS 244.020 and the application of 244.040. Common sense, however, tells me that if I attend some function by virtue of my position as a member of the Governor's staff, and not as a private individual, reimbursement of my expenses -- whether by the state or someone else -- isn't a "gift," so long as I come out even, and so long as I make appropriate reports and/or deductions under state and federal income tax laws.

[thereto, under the laws of the], in this state [or any municipality].

(2) [Any] An appointment or election to [any] an office or position of trust, honor or emolument made in violation of subsection (1) of this section shall be void.

(Particular Offenses)

Section 369. Payments in false name. ORS 260.402 is amended to read:

260.402. No person shall make a payment of [his own money or of another person's] money to any other person, [in connection with] relating to a nomination or election of any candidate or the support or opposition to any measure, in any name other than that of the person who in truth provides [such] the money. No person shall knowingly receive [such] the payment or enter or cause it to be entered in [his] accounts or records in another name than that of the person by whom it was actually provided. However, if the money is received from the treasurer of any political committee, it shall be sufficient to enter it as received from [such] the treasurer.

Section 370. Payments by or solicitation of certain businesses. ORS 260.472 is amended to read:

260.472. (1) As used in this section, "[corporation or] company" means:

(a) Any [corporation] entity carrying on the business of a bank, savings bank[,] or cooperative bank[.].

(b) Any entity carrying on the business of a trust, trustee, surety, indemnity, safe deposit, insurance, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, water, cemetery or crematory company.

[(b)] (c) Any [company] entity engaged in business as a common carrier of freight or passengers by railroad, motor truck, motor bus, airplane or watercraft.

[(c) Any company having the right to take or condemn land or to exercise franchises in public ways granted by the state or any county or city.]

(2) No [corporation or] company shall [pay or] contribute [in order] to aid, promote or prevent the nomination or election of any person, or [in order] to aid or promote the interests, success or defeat of any political party or political committee supporting or opposing any person as a candidate. No person shall solicit or receive such [payment or] contribution from [such corporation or] a company.

(3) This section does not prohibit any voluntary activity for or against any candidate undertaken by an officer or employe of a [corporation or] company on [his] the officer's or employe's own behalf that is:

(a) Casual and occasional and occurs during business hours; or

(b) More than casual and occasional but occurs on the officer's or employe's own time.

Section 371. Acceptance of employment where compensation to be contributed. ORS 260.422 is amended to read:

260.422. No person shall accept employment with the understanding or agreement, express or implied, that [he] the person will contribute [all or] any [part] of the compensation to be received [by him by reason of] because of the employment to or on behalf of a candidate or political committee in support of the nomination or election of the candidate or in support of or in opposition to a measure.

Section 372. Solicitation of public employes; activities of public employes during working hours. ORS 260.432 is amended to read:

260.432. (1) No person shall attempt to, or actually, coerce, command or require a public employe to influence or give money, service or other thing of value to aid [or], promote or oppose any political committee or to aid [or], promote or oppose the nomination or election of [any person to public office] a candidate, the adoption of a measure or the recall of a public office holder.

(2) No public employe shall solicit any money, influence, service or other thing of value or otherwise aid or promote any political committee or aid, promote or oppose the nomination or election of [any person to public office] a candidate, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, [nothing in] this section [is intended to] does not restrict the right of a public employe to express [his] personal political views.