

FORMAL OPINION NO. 2005-7

Lawyer as State Legislator: Lobbying on a Client's Behalf

Facts:

Lawyer, who is also a member of the state legislature, is asked by Client to seek legislation that would benefit Client. Client offers to pay Lawyer a fee for this work.

Question:

May Lawyer ethically perform the work requested for the fee offered?

Conclusion:

No.

Discussion:

The proposed conduct would constitute bribe-giving (ORS 162.015) and bribe-receiving (ORS 162.025), both of which are felonies. Pursuant to Oregon RPC 1.2(c) and 8.4(a)(1)–(2), Lawyer could not knowingly commit or assist in such illegal conduct.¹ *See also* Oregon RPC 7.1(a)(5) (lawyer may not “[state] or impl[y] an ability to influence improperly a government agency or official”).

In addition, Oregon RPC 1.11(d)(2) provides, in pertinent part:

A lawyer currently serving as a public officer or employee shall not:

(i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

¹ Oregon RPC 1.2(c) provides, in pertinent part, that “[a] lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent.”

Oregon RPC 8.4(a) provides that it is professional misconduct for a lawyer to

(1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

(ii) use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

(iii) accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

(iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

Oregon RPC 1.11(c) provides, in pertinent part:

[T]he term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public.

Although ORS 244.120(1)(b) permits a legislator to disclose certain conflicts of interest and participate in the legislative process notwithstanding the conflict, nothing in ORS chapter 244 or in Oregon RPC 1.11 permits bribe-giving or bribe-taking. *Cf.* ORS 244.040.

Approved by Board of Governors, August 2005.

COMMENT: For additional information on this general topic and related subjects, see *In re McMahon*, 266 Or 376, 513 P2d 796 (1973) (deputy district attorney violated ethics rules by accepting gifts from bail bondsmen when it was obvious that offer was to influence his action as public official); THE ETHICAL OREGON LAWYER §§12.17, 14.4 (Oregon CLE 2003); and RESTATEMENT (THIRD) OF THE LAW GOVERNING LAWYERS §133 (2003).