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Oregon Progressive Party Position on Bill at 2019 Session of Oregon Legislature:

HB 2097: Oppose

Dear Committee:

The Oregon Progressive Party opposes this bill, which significantly changes the legal significance of advisory opinions issued by the Oregon Government Ethics Commission or its staff and effectively establishes an "ignorance is bill" defense to violations of ethics laws and rules.

Under existing law, anyone can seek an advisory opinion from OGEC. The person's liability for violation of ethics laws is then limited as follows:

- (4) A lobbyist or lobbyist employer associated with the lobbyist shall not be liable under ORS 171.725 to 171.785 for any action or transaction carried out in accordance with an advisory interpretation issued under subsection (3) of this section. Such an advisory interpretation shall be considered a formal opinion having precedential effect and shall be subject to review by legal counsel to the commission before the interpretation is sent to the requester.

Thus, existing law establishes an objective test for liability: Is the action or transaction "carried out in accordance with an advisory opinion"?

HB 2097 changes the test to a subjective one:

- (3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 171.992 on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 171.992 on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request.

Thus, even if the action objectively violates the law or rule, as set forth in the advisory opinion, the person cannot be punished as long as she took the action in "good faith." That is a subjective standard that plumbs the mental state of the person and affords a defense, even if the person's actions clearly violated the law or rule. Enforcement of ethics laws and rules should not depend upon the idiosyncratic thought processes of potential violators. When "good faith" is the standard, even ignorance is a defense. The Oregon Supreme Court has equated to an "ignorance is bliss exception" to liability. *State v. Carsey*, 295 Or 32, 44, 664 P2d 1085, 1094 (1983).

Thus, HB 2097 significantly reduces the standard of conduct required for compliance with ethics laws and rules.

HB 2097 also authorizes new levels of advisory opinions, to be issued by the OGEC staff. The person can also escape all liability for ethics violations, apart from a mere letter of reprimand, for "any good faith action a person takes in reliance on a staff advisory opinion." Again, the standard of conduct is thus significantly reduced.

HB 2097 should be rejected or should be amended so that the standard of conduct is objective, as in existing law, and not subjective.

Oregon Progressive Party

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