

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

HOUSE COMMITTEE ON LEGISLATIVE RULES AND REAPPORTIONMENT

February 27, 1991Hearing Room E 5:00 p.m.Tapes 10 - 11

MEMBERS PRESENT:Rep. Greg Walden, Chair Rep. Peter Courtney,
Vice-Chair Rep. Margaret Carter Rep. Ron Cease Rep. Beverly Clarno Rep.
Carl Hosticka Rep. Bill Markham Rep. Tom Mason Rep. Randy Miller Rep.
Fred Parkinson

MEMBER EXCUSED: Rep. Ray Baum

STAFF PRESENT: Greg Leo, Committee Administrator Carol Wilder,
Committee Assistant Kathleen Beaufait, Legislative Counsel MEASURES
CONSIDERED: HCR5 - PH/WS HB 2171 - PH/PWS HB 2173 -
PH/PWS

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TAPE 10, SIDE A

005 CHAIR WALDEN: Calls the meeting to order at 5:02 p.m.

HCR5 - PUBLIC HEARING

017 REP. CARTER: Introduces HCR5 which honors Bruce Klunder and requests that he be memorialized in Legislative Assembly.

068 CHAIR WALDEN: Opens the work session.

HCR5 - WORK SESSION

075 REP. MILLER: Did you know Mr. Klunder?

075 CARTER: I did not.

076 REP. MILLER: Who provided the information?

077 REP. CARTER: The information was written up by a friend of his who went to school with him in Baker City and is now the coach at Corvallis High School. He wrote this very lengthy article on him. Mr. Morris Diehs gave them information from Alabama. He's enshrined in a marker in Alabama and he happened to have seen it. He wanted to memorialize his friend. It was in The Oregonian and I was very impressed by his work and his dedication, so I just took up the banner and wanted to memorialize an Oregonian who had died in the struggle.

087 REP. MILLER: I appreciate that, Rep. Carter. The only hesitation that I have is we aren't presented with a lot of other information other than this article about any other facets of his life. I just want to make sure that the honor is going to someone we would truly mean to honor.

100 REP. CARTER: There is more information regarding his religious affiliation and his affiliation in the community. We just have not received all the information at this moment. He was well regarded in the Corvallis community for his work. One of the high schools just paid tribute in a memorial service for him in the community of Corvallis.

112 REP. CLARNO: On line 24, after "resolved", do we need a capital T? Is that just a typo or is that correct?

118 CHAIR WALDEN: Counsel is advising us that that is correct style for this type of document.

MOTION: Rep. Carter moves HCR5 to the Floor with a Do Pass recommendation.

VOTE: In a roll call vote, the Motion was unanimously approved. Reps. Baum and Courtney were excused.

HB 2172 - PUBLIC HEARING

148 PAT HEARN, EXECUTIVE DIRECTOR, OREGON GOVERNMENTAL ETHICS COMMITTEE: Submits and summarizes written testimony in favor of HB 2172 (EXHIBIT A).

198 REP. PARKINSON: Give a real life example.

202 HEARN: Public officials currently have to report office-related travel on their statements of economic interest if it exceeds \$50. Pursuant to 244.060(6) back it to 244.020(9)(c), it doesn't refer to that when it exempts gifts in the list of exemptions that's contained in that paragraph. So that's why this adds the phrase, "subject to the reporting requirement of ORS 244.060(6)".

218 CHAIR WALDEN: What does that mean in layman's terms? Invites Kathleen Beaufait of Legislative Counsel to the witness table.

220 REP. MARKHAM: Gives an example: if PGE invites him up to Trojan to inspect the plant and he stays overnight and they buy his meals and hotel room at Rainier.

230 HEARN: What would be the purpose of your visit?

232 REP. MARKHAM: Because they invited me to inspect it. We have Trojan bills that pop up here every session.

232 HEARN: I would say that would be considered office-related travel and if the value of that exceeded \$50, then you would have to report it.

235 REP. MARKHAM: Under present law?

236 HEARN: Yes.

238 REP. MARKHAM: \$50 per day?

239 HEARN: Per trip.

241 KATHLEEN BEAUFIT, LEGISLATIVE COUNSEL: One of the difficulties that was encountered was particularly with some member in the situation who failed to make the declaration. When it was discovered, the member replied that the statute said the gift is not included and the gift is what we're talking about, not just the expenses. The Commission decided it needed to crossrefer notwithstanding whether it is not a gift it is still declarable. This may not be a gift but it's subject to being reported if it falls in the purview of this other statute that requires it to be reported. It was just a misunderstanding on the part of the members who thought it only dealt with gifts. One exception is that you're required to report certain other kinds of expenses if they amount to more than \$50. Without changing the law, we're trying to warn you that although the giving and receiving of the food and lodging in an official capacity may not be a gift it's still declarable.

272 REP. PARKINSON: If the Speaker appoints me to the Western Legislative Conference, I go to their conference and my ticket and hotel room is paid for by the state, I report that?

277 BEAUFIT: No, it would have to be received from a nonpublic agency. There is the disclosure law and the theory is if you travel at state expense LAC is going to have the files if someone wants to look at them. This is simply a way to get at making public the other kinds of official travel you may have done in your official capacity but were not funded from public sources.

285 REP. MILLER: Where is the \$50 language?

287 BEAUFIT: P. 3, line 20.

290 REP. MILLER: When was the \$50 figure placed in the statute?

292 BEAUFIT: My guess would be when it was enacted.

293 REP. MILLER: Which would have been when?

298 BEAUFIT: Probably in the early 80's.

299 REP. MILLER: We had a series of bills last night that although this committee didn't adopt, the thrust of the bills was to streamline recordkeeping activities. I wonder if the Commission has given any thought to raising the reporting threshold of \$50 so that not to lose sight of the potential conflicts but to recognize the fact that if you

left Rep. Markham's district you can't get there without spending \$50. Perhaps not every trip needs to be reported. Have you given any thought to that?

313 HEARN: It hasn't been discussed that I'm aware of but I would certainly be pleased to take it to the Commission.

317 REP. MARKHAM: He might even be willing take what we put in there to the Commission, Rep. Miller.

318 REP. MILLER: If this committee is interested, Rep. Markham.

320 REP. MARKHAM: Several years ago, we put a limit on what the third house could spend on a legislator when they go out socially. We also hooked on the cost of living on that figure. It moves up as we move along. If we went back to the date when this was done and figured out the cost of living there's where this should end up.

325 REP. CEASE: That kind of travel is strictly a social thing. There's no upper limit on this, is there?

335 HEARN: Yes, it's declared.

337 REP. MARKHAM: This would make it that you wouldn't have to report if you were under that floor.

337 CHAIR WALDEN: Mr. Hearn, could you go back to the Commission and see if this figure needs to be updated and report back to us?

340 REP. CARTER: I was prepared to give you a number because you can't even stay at Motel 6 for \$50. I'm prepared to ask the committee if they would consider a number of \$100.

343 CHAIR WALDEN: Rather than pick a number out of the air at this point I think it might be better to have the Commission take a look at it and gives us their advice and we can go into work session later on.

346 REP. PARKINSON: When they come up with that figure, how about adding a COLA as Rep. Markham suggested so that each session doesn't have to update the figure?

350 BEAUFIT: In addition to that, Rep. Mason and Rep. Miller are probably familiar with the doctrine called the R'envoi Doctrine and that is you start at point A which refers you to point B which tells you to go back to point A which tells you to go back to point B. On the second page on line 10 if I had it to do over again I don't think I would have used the word "subject". I would have thought of something else so that the reference doesn't appear to make one draw the conclusion that if you fail to declare, it suddenly becomes a gift and it falls in the \$100 category of prohibited receipt. That, I'm sure, was not the Commission's intention. If you're going to proceed with it, I'd like to have the opportunity to think of a better phrase to use instead of the word "subject".

370 CHAIR WALDEN: If you would, please. Pat, if you would plan to report back to us on the two points about raising the dollar amount to keep pace with inflation and an automatic increase from then on to keep it with what was the original intent.

HB 2173 - PUBLIC HEARING

380 PAT HEARN, EXECUTIVE DIRECTOR, OREGON GOVERNMENT ETHICS COMMISSION: Summarizes H.B. 2173, which transfers the "crime" of unlawful legislative lobbying from criminal statutes to the lobby regulation laws.

425 REP. PARKINSON: What would you anticipate if we change it if this bill passes?

427 HEARN: The relocation of that particular regulation from the criminal statutes to the lobby regulation laws. I don't know that functionally anything would change as a result of it. We're unaware of any criminal prosecutions for it

433 REP. MARKHAM: You would get rid of six months in jail, wouldn't you?

434 HEARN: Yes.

437 REP. MILLER: If you put it into a different section, are you dropping the crime?

442 HEARN: Yes, it would decriminalize it.

TAPE 11, SIDE A

007 REP. MILLER: If it does decriminalize it, then we've got different proof standards and different protections afforded those who are accused, etc. Maybe that's the aim of this. It probably is what Rep. Parkinson suggests that perhaps on not the same amount of evidence, charges can be brought and can be played out publicly whereas you could bring charges also in the criminal sense, maybe not with the same success or notoriety.

015 BEAUFIT: I have to plead some extent of ignorance here. When we receive some bill requests, we don't always receive the information as to what the parties are trying to accomplish and we got instructions on this that were quite specific and followed the bill draft without what they were trying to accomplish. This is really a disclosure provision. That's saying that a lobbyist doesn't go up to a member and lobby like mad and not tell them that you're representing somebody else. Perhaps the better thing might be to restructure this and have an administrative penalty so that any person who fails to disclose to one of you that they're lobbyists and proceeds to lobby you, that there would be a remedy to report to OGEC and OGEC could look at that registration and either determine the lobbyist should have been registered and wasn't or is a lobbyist subject to their jurisdiction and subject to some kind of administrative penalty. This would take a little reshaping of this.

037 REP. CEASE: In reference to this term, "unlawful", you indicated that if someone tries to lobby you and they haven't told you, what other kinds of activities would come under that term? We're lobbied all the time.

045 BEAUFIT: When a citizen approaches you, the citizen is exercising rights under the 1st Amendment right of free speech, right to petition the government for redress and grievances, and the citizen is not subject to limitation. Whether the citizen discloses to you that they

do or don't live in your district or wouldn't vote for you, or is not of your party, that becomes a free speech issue. The regulation that the courts allow is that when someone is representing other people, that person doesn't have the same free speech rights and that right to contact members can be regulated to some extent. The statute came from saying if you are representing others that are lobbying, full disclosure of where you're coming from is necessary before you proceed. Whether that's criminal conduct or should be administratively prescribed or just makes you very angry and carry its own penalty in that fashion is something else again.

060 REP. CEASE: Are there other kinds of activities that would be under this definition of "unlawful" lobbying, or is that the only kind?

070 BEAUFAIT: That's the only thing I see. Knowing attempts to influence a member in relation to a measure. That's what we generally consider to be the definition of lobbying, whether it's oral communication, written, or whatever.

070 REP. CEASE: Is there a suggestion that if you do the civil, you will end up with some cases, where previously in the criminal statutes we haven't had any?

082 HEARN: It is the Commission's intent and desire and understanding that the purpose of this was to remove it from criminal statutes into administrative proceedings and decriminalize it. There must have been a misunderstanding between the Commission and the former Executive Director in the initial conceptualizing of this measure.

097 REP. MILLER: These days when the Commission gets information from somebody regarding a complaint about almost any ethical conduct you, after investigation, determine that it has no merit, is there anything you do to the person who filed the complaint? If it's like a frivolous complaint, is there any action you can take against the person filing the complaint?

107 HEARN: Under existing statute, there is not. We notify the respondent of the complaint that the action is going no further, that the Commission is dismissing it. We notify the complainant as well. I have heard that there has been a couple of incidents where the complaints were so frivolous and so obviously politically motivated that some former members in public meetings verbally reprimanded the complainant for using the Commission as a political device. I am, however, unaware of any other type of existing penalty.

125 REP. MILLER: What I'm thinking is the fact that no evidence, no criminal complaint has ever been brought under this statute so far as you were able to determine.

128 HEARN: Not to our knowledge.

129 REP. MILLER: We seek to move this into a little more convenient venue, although we don't have hard evidence that there really is a problem. I'm a little concerned about the ease at which complaints can be filed, and even though frivolous there is really nothing to be done about those who file those complaints.

135 REP. CEASE: In a different part of the statutes does it cover when someone tries to influence you to vote a certain way, and during the session if you do this they will support you come next election with so

much money. Are there provisions under the criminal statutes for that kind of situation? That clearly is unlawful lobbying.

143 BEAUFIT: That is prohibited conduct and is specifically prohibited and is enforced by civil administrative procedures.

146 REP. CEASE: So that kind is civil but this kind is currently criminal. It doesn't make any sense, does it?

148 BEAUFIT: I think this is a historical throwback that never was rethought through when the lobbying laws came forth.

151 REP. CEASE: I assume as a legislator when anybody talks to me most people are trying to influence me even in social situations. If somebody tries to improperly influence your vote it is a more serious issue than this. If that's in the civil statutes, then I would think this ought to be in the civil statutes.

165 REP. HOSTICKA: I'm trying to read the language that the Ethics Commission has provided us from the statutes and it says something like "without first disclosing completely to the member the true interest of the person". Are you interpreting the true interest of the person to mean they are representing somebody else or they supposed to disclose even more?

172 HEARN: Our interpretation would be their true motive in talking to the legislator.

177 REP. HOSTICKA: Have you just committed the crime of illegal lobbying because you're been talking to us and trying to influence us about this bill and I haven't heard you disclose your true interest? How literally are we supposed to read this?

183 HEARN: Maybe I am violating except that I did make it known my affiliation and my interest in these bills.

187 CHAIR WALDEN: I understand your question, but he submitted written testimony, identified himself, both in writing and in person.

190 REP. HOSTICKA: If the question is the true interest, I would say almost everyone who has ever talked to me has probably violated this because they don't first disclose; it takes awhile to get them to disclose what their true interest may be and sometimes I don't know if they've ever disclosed.

196 CHAIR WALDEN: Would this current law also require them to do that every time you meet with them?

199 BEAUFIT: If this were recast in terms of saying it permits this prohibited act if the person contacts a member as a lobbyist and fails to disclose who they're representing. Those terms are defined in your lobbying laws, whether it's the true interest or simply letting you know the organization is being represented, to discern from that what the interest is.

205 REP. CEASE: A lobbyist wanted me to draft an amendment to a bill, which is perfectly appropriate. I found out later that the reason for the amendment had to do with keeping a particular individual off a commission. An individual who happened to be a friend of mine and I wasn't aware of the real motivation of the lobbyist who asked me to do

it. Would that be applicable under this statute?

215 BEAUFIT: The true interest is a phrase that would at that point be debatable; is the true interest an ulterior motive?

220 HEARN: In response to some concerns that both Rep. Miller and Rep. Cease have raised, I think in this particular instance that by and large virtually all complaints of this nature would come from legislators once they found out that they were betrayed by these people. I don't think you would find it coming from the citizenry, just by the sheer nature of the parameters of the potential violation.

230 REP. PARKINSON: Do agency people that lobby have to register?

230 BEAUFIT: Yes they do, if they fit the definition of the amount of time spent. There are specific statutory exemptions for the certain public officials who are not required to register. All the others are if they spend the time and fit the definition but you carefully exempted the public official that goes to Ways and Means to present the budget for the agency. That is not lobbying.

240 REP. PARKINSON: One of the departments came to another committee and was carrying an amendment for the city of Portland. It was given to the committee as an amendment needed by the other agency. They never divulged that he was carrying water for the city of Portland. As I read it, he would be in violation. He did not disclose the true motive. Would that be a violation of this?

253 BEAUFIT: I suppose that the other possibility would be that the agency's representation itself would be in the interest and the fact that the benefit would fall someplace else is incidental. That's where you get into a problem with what the words, "true interest", mean? Obviously, you're not going to express their untrue interest. It's one of those modifiers that leaves you wondering.

272 CHAIR WALDEN: Can you tell us where in the statute it is that says, "must disclose true interest"?

275 BEAUFIT: ORS 162.465, the section that would be moved.

290 DENISE MCPHAIL, LOBBYIST FOR THE CAPITAL CLUB: Supports putting the statutes that govern lobbyists together in one place. If Sub B is dropped, you could probably get rid of the criminal statute.

312 REP. CEASE: What are referring to when you say Sub B?

315 MCPHAIL: In 162,465, I thought it was Sub B; it might be Sub 2; where it makes it a Class B misdemeanor under the criminal statutes.

318 REP. CEASE: You're clearly saying that it is the support of the Capitol Club to put in effect the current statutes and move them from the criminal to the civil.

320 MCPHAIL: Yes.

325 REP. MILLER: Has the requirement of disclosing your true interest ever created any problems?

325 MCPHAIL: If it is as was discussed here, that every time I talk to one of you that I would identify myself as being from PGE I probably

don't do that because you know that already. I think that generally speaking my company's true interest in the measure is not something that I have difficulty in disclosing. If we wanted the true interest, you might want to get more modern language to say what it is you really want to disclose. PGE usually has an economic interest in whatever it is we're testifying on.

345 CHAIR WALDEN: Carries the bill over to a future agenda. Closes public hearing on HB 2173. Discusses agenda for tomorrow night's meeting.

362 REP. MARKHAM: Asks Mr. Hearn, are you aware that Multnomah County passed an ordinance that said they will not have a professional lobbyist in the Oregon Legislature or anywhere else. Yet one person comes down here every day and does his thing. Are you aware of that? I asked my colleague how he can get away with it and he said that the delegation from Multnomah County all sign a letter requesting him down here. Couldn't we do that with anybody and they wouldn't have to be termed a lobbyist?

390 REP. COURTNEY: This is a very ticklish situation. Now you are asking them to investigate the activities of an individual versus the legal opinion as to the law. How you initiate their looking into conduct which is specific is a whole different issue than a general inquiry.

400 HEARN: OGEC would have no jurisdiction in enforcing a local ordinance passed by Multnomah County. If their lobbyist is in fact registered with the Commission in compliance with ORS 171, he is fine as far as we're concerned.

405 REP. MARKHAM: But it's my understanding that he isn't registered.

407 REP. CEASE: As far as I understand the charter provision, they wouldn't have a separate paid lobbyist. Other elected and appointed officials should do that, so in part it's the choice of having one person do it or having a definite Multnomah County official down here doing their business. That is the issue.

415 REP. PARKINSON: Is the gentleman registered as a lobbyist?

420 CHAIR WALDEN: I'm not sure that this is the correct place to determine all that.

422 REP. CARTER: There are two questions to be asked: Is he here in the active capacity of lobbying or is his presence being perceived as that of lobbying?

430 CHAIR WALDEN adjourns the meeting at 5:57 p.m.

Submitted by: Reviewed by:

Carol Wilder Greg Leo Assistant Administrator

EXHIBIT LOG:

A - Testimony on HB s 2172 and 2173 - Pat Hearn - 2 pages