

See: Minutes of Subcommittee No. 2
9/16/69, p. 22, Vol. XI, Tape #81

CRIMINAL LAW REVISION COMMISSION
311 Capitol Building
Salem, Oregon

ARTICLE 21 BRIBERY AND CORRUPT INFLUENCES

Preliminary Draft No. 2; August 1969

Reporter: Roger D. Wallingford

Subcommittee No. 2

ARTICLE 21. BRIBERY AND CORRUPT INFLUENCES

Preliminary Draft No. 2; August 1969

Section 1. Bribery and corrupt influences; definitions. As used in this Article, except as the context may require otherwise:

(1) "Benefit" means gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary.

(2) "Pecuniary benefit" means a benefit in the form of money, property, commercial interests or economic gain, but does not include a political campaign contribution reported in accordance with ORS chapter 260.

(3) "Public servant" includes:

(a) A public officer or employe of the state or of any political subdivision thereof or of any governmental instrumentality within the state;

(b) A person serving as an advisor, consultant or assistant at the request or direction of the state, any political subdivision thereof or of any governmental instrumentality within the state;

(c) A person elected or appointed to become a public servant, although not yet occupying the position; and

(d) Jurors.

COMMENTARY - BRIBERY AND CORRUPT INFLUENCES; DEFINITIONS

The proposed draft revisions reflect the advice of subcommittee No. 2 advanced during its sixth meeting on June 10, 1969.

The term "or anything else of which the primary significance is economic gain" has been removed from the definition of "pecu-

niary benefit". In the interest of clarity and conciseness the term "economic gain" has been used to define the interest.

Insofar as they are reported in accordance with ORS chapter 260 (Corrupt Practices Act), political campaign contributions have been excluded from the scope of "pecuniary benefit". This qualification is intended to make it clear that legitimate political campaign contributions, though made with an intent to advance a political viewpoint, are not to be considered a form of criminal bribery.

The terms "government" and "governmental function" were used to define a "public servant" in Preliminary Draft No. 1. It was therefore necessary to define those two terms.

The subcommittee felt that the definition of "government" failed to sufficiently encompass all aspects of local government, e.g., home rule charter cities, water and sewer districts. The terms "government" and "governmental function" have not been used in this draft. The definition of "public servant" has been defined to make it clear that all "political subdivisions" and "governmental instrumentalities" within the state are included. Varying elements creating a public servant status have been divided into separate subparagraphs. The structure of the original definition made it difficult to clearly distinguish each class of persons intended to be included.

No attempt has been made to distinguish between the public servant serving in a compensatory position and one serving gratuitously. The gist of the offense is an intent to wrongfully influence the course of public administration. The public servant functioning gratuitously may often be as effective in corrupting governmental process as the paid functionary.

The proposed definition of public servant does not contemplate inclusion of persons advising public officials in a private capacity. A lobbyist, for example, is not a public servant, since in advancing his views he promotes a private interest. A practicing attorney would not normally be a public officer; his designation as an "officer of the court" does not create a contractual relationship empowering him to act on behalf of the state. A businessman advising a member of the executive or legislative branch of government, in the absence of official status, would not be a public servant. In the latter instance, the public servant receiving the advice has a duty to exercise his own judgment on the merits of the proffered advice.

TEXT OF REVISIONS OF OTHER STATES

Text of New York Revised Penal Law

§ 10.00 Definitions of terms of general use in this chapter

Except where different meanings are expressly specified in subsequent provisions of this chapter, the following terms have the following meanings:

15. "Public servant" means (a) any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or (b) any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.

Section 2. Bribe giving. A person commits the crime of bribe giving if he offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, action, decision or exercise of discretion in his official capacity.

Section 3. Bribe receiving. A person commits the crime of bribe receiving if while a public servant he:

(1) Solicits any pecuniary benefit with the intent that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

(2) Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Section 4. Bribery defenses. (1) In any prosecution under section 2 of this Article, it is a defense that the defendant offered, conferred or agreed to confer the pecuniary benefit as a result of the public servant's conduct constituting extortion or coercion.

(2) It is no defense to a prosecution under sections 2 and 3 of this Article that the person sought to be influenced was not qualified to act in the desired way, whether because he had not assumed office, lacked jurisdiction or for any other reason.

COMMENTARY - BRIBE GIVING; BRIBE RECEIVING; BRIBERY DEFENSES

Substantial structural changes have been adopted in connection with the Bribery section in an effort to resolve some of the problems raised by the subcommittee. (See, Bribery, Preliminary Draft No. 1, section 2, p. 6; Minutes of Sixth Meeting, subcommittee No. 2, June 10, 1969, p. 19).

Bribe giving and bribe receiving have been divided into separate sections. The language "upon an agreement or understanding" has been replaced in the bribe giving section with the term "with the intent". The purpose of this change is to avoid the necessity of proving a "meeting of the minds", which is an element of an agreement or understanding. The revised section makes the subjective wrongful intent of the bribe offeror the gravamen of the offense.

The section on bribe receiving breaks down two aspects of the offense into separate paragraphs. The solicitation of a bribe is coupled with the mens rea requirement "with the intent". The acceptance or agreed acceptance of a bribe requires proof that it was based upon an "agreement or understanding". The object of this division is to make it clear that a solicitation for a bribe need not be based upon a bilateral "agreement or understanding", but that the acceptance of a bribe should require this element.

The bribery defense material has been consolidated into a single section. The only change made in the section is the inclusion of a reference to the substantive offense to which the section applies.

Section 5. Rewarding past official misconduct. A person commits the crime of rewarding past official misconduct if he knowingly offers, confers or agrees to confer any pecuniary benefit upon a public servant as consideration for a past violation of his duty as a public servant.

Section 6. Receiving reward for past official misconduct.

A person commits the crime of receiving reward for past official misconduct if while a public servant he solicits, accepts or agrees to accept any pecuniary benefit from another person as consideration for having violated his duty as a public servant.

COMMENTARY - REWARDING PAST OFFICIAL MISCONDUCT; RECEIVING REWARD
FOR PAST OFFICIAL MISCONDUCT

This section was tentatively approved by the subcommittee. It has been divided into separate sections, one for giving and one for receiving, to conform to the basic bribery statutes. A minor structural change was made in the language in section 5.

The elements of the offense remain the same:

- (1) The compensation or consideration must be a "pecuniary benefit", and
- (2) It must be in consideration of past official action, and
- (3) The past official action rewarded must have been a violation of the public servant's legal duty.

Due to the exception incorporated into the definition of "pecuniary benefit", political campaign contributions are excluded from the reach of this section.

ADDITIONAL COMMENTARY

Section 5, Preliminary Draft No. 1, was a statute on intimidation in public and political matters. It was determined that the conduct covered by this section would be effectively reached by a criminal coercion statute. Such a section was included in the Kidnapping Draft, which was pending approval. The Kidnapping Draft has since been approved by the full Commission. We may therefore eliminate section 5 from the Bribery Article.

Section 6 of Preliminary Draft No. 1 covered official misconduct. The subcommittee voted to delete the section from the Bribery Draft. Your reporter feels that an official misconduct section is required in the criminal code to protect the public interest. It is therefore proposed that a similar section be included in the Article on Abuse of Public Office, which has not yet been drafted. A similar section will be submitted for consideration in connection with that Article, which, upon further analysis, represents a more logical classification.