

See: Commission Minutes  
10/10/69, p. 1, Vol. IX  
Tapes #36 and 37

Criminal Law Revision Commission  
311 Capitol Building  
Salem, Oregon

ARTICLE 21. BRIBERY AND CORRUPT INFLUENCES

Preliminary Draft No. 3; October 1969

Reporter: Roger D. Wallingford

Subcommittee No. 2

ARTICLE 21. BRIBERY AND CORRUPT INFLUENCES

Preliminary Draft No. 3; October 1969

Section 1. Bribery and corrupt influences; definitions. As used in this Article, unless the context requires 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 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 servant since he does not exercise the functions of 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 Model Penal Code

**Section 240.0. Definitions.**

In Articles 240-243, unless a different meaning plainly is required:

(1) "benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose;

(2) "government" includes any branch, subdivision or agency of the government of the State or any locality within it;

(3) "harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person or entity in whose welfare he is interested;

(4) "official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary or other person taking testimony or deposition in connection with any such proceeding;

(5) "party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts, or participates in directing or conducting party affairs at any level of responsibility;

(6) "pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain;

(7) "public servant" means any officer or employee of government, including legislators and judges, and any person participating as juror, advisor, consultant or otherwise, in performing a governmental function; but the term does not include witnesses;

(8) "administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law, or in which law or regulation is particularized in application to individuals.

Text of Michigan Revised Criminal Code

**[Definition of Terms]**

Sec. 4701. (1) The definitions contained in section 4501 are applicable in this chapter unless the context otherwise requires.

(2) "Benefit" means any gain or advantage to the beneficiary, including any gain or advantage to a third person pursuant to the desire or consent of the beneficiary.

(3) "Pecuniary benefit" is benefit in the form of money, property, commercial interests or anything else the primary significance of which is economic gain.

(4) "Public servant," as used in this chapter, includes persons who presently occupy the position of a public servant as defined in section 4501(3) or have been elected, appointed or designated to become a public servant although not yet occupying that position.

(5) "Party officer" means a person who holds any position or office in a political party, whether by election, appointment or otherwise.

**[Definition of Terms]**

Sec. 4501. The following definitions apply in this chapter unless the context otherwise requires:

(a) "Government" includes any branch, subdivision or agency of the government of this state or any locality within it

(b) "Governmental function" includes any activity which a public servant is legally authorized to undertake on behalf of a government

(c) "Public servant" means any officer or employee of government, including legislators and judges, and any person participating as an adviser, consultant or otherwise in performing a governmental function; but the term does not include witnesses

Text of New York Revised Penal Law

**§ 10.00** Definitions of terms of general use in this chapter

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.

17. "Benefit" means any gain or advantage to the beneficiary and includes any gain or advantage to a third person pursuant to the desire or consent of the beneficiary. L.1965, c. 1030; amended L.1967, c. 791, § 1, eff. Sept. 1, 1967.

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.

Existing  
Law

ORS

162.210  
162.220  
162.230  
162.240  
561.210  
619.830  
619.240  
279.032  
162.670  
162.510  
162.655  
260.680  
260.690  
260.700  
241.525  
167.720  
167.725  
167.730  
167.735

COMMENTARY - BRIBERY AND CORRUPT INFLUENCES

A. Summary

The gist of the crime of bribery is an effort to secure an improper advantage in the judicial, administrative and legislative decision-making process.

Although the term "corruptly" is often used in extant legislation and judicial decisions it is ambiguous when applied to two important categories of cases: (1) where the alleged briber seeks to justify his conduct on the ground that he sought only to counter opposing corrupt offers, or to influence an official to make the decision which he should in any event make; and (2) where the alleged bribe is an offer of appointment or promotion in the public service, or of political support, in exchange for like commitments by the offeree.

The proposed draft eliminates use of the word "corruptly" and prohibits without qualification the giving or receiving of any pecuniary benefit to influence official or political decision-making.

The basic policy decision is inherent in the use of the term "pecuniary benefit" in sections 2 and 3.

The MPC, section 240.1, makes a distinction between the form of consideration applicable to its bribery section by using the term "pecuniary benefit" in regard to public servants, party officials and voters, while using the term "any benefit" in regard to judicial or administrative proceedings. The MPC thereby establishes a higher standard of official conduct for those involved in judicial or administrative proceedings.

The Michigan Revised Criminal Code uses the term "pecuniary benefit" throughout its basic bribery sections. The Michigan revisors recognized this deviation from existing law in limiting bribery to the giving of "pecuniary benefit" to public servants, supporting their position in the following:

"Section 118 C.L. 1948, includes as an element of bribery statute the offer of any gift or 'any act beneficial' to the public servant. Although the Michigan Supreme Court has not had occasion to determine the applicability of these terms to non-pecuniary benefits, statutes in other states using similar language have been applied to such benefits. This result seems entirely consistent with the basic function of the bribery statutes.

"On the other hand, a broad interpretation of the benefits described in Section 118 could also be used to prohibit 'log rolling', i.e., the offer by a legislator or other official to vote in a particular way in exchange for some 'beneficial act' such as political assistance at the polls, etc. Obviously, bargaining of this nature should not be covered by the bribery statute.

"The Committee believed that the potential for pernicious application of a broad definition of the proscribed benefits outweighs the advantage in insuring coverage of appropriate cases. It was particularly concerned that a public servant should not become suspect everytime he received a non-pecuniary favor from a member of the public. It should be noted that as defined such benefits are not limited to the distribution of cash, but include all items 'the primary significance of which is economic gain'."

It might also be noted that the MPC anticipated this problem by drafting a specific exception to cover it (Tent. Draft No. 8, Art. 208, p. 105), which was not incorporated into the official proposed draft.

Your reporter felt that the necessary breadth of the definition of "benefit" would create difficulties when applied to situations arising in the process of political compromise. It is submitted that the qualifying language "economic gain" in the definition of pecuniary benefit should cover those bargains with public servants most inimical to public welfare.

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, page 6; Minutes of Sixth Meeting, subcommittee No. 2, June 10, 1969, page 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 4 (1) recognizes the tendency of the individual citizen to capitulate to threats by a public servant rather than to resist them. Courts have emphasized that bribery extends only to "voluntary" conferral of benefits, not the product of threats. (See People v. Ritholz, 359 Mich 539, 103 NW2d 481 (1960).)

Section 4 (2) is derived from MPC 240.1, which is based upon a general proposition rejecting "impossibility" as a defense to attempts to interfere with government administration. The New York Penal Code commentators (section 200.00, p. 649) point out that it is immaterial and no defense to a prosecution for bribery of a public servant that the public servant sought to be influenced was not qualified to act in the particular way desired. They emphasize that the gist of the crime of bribery is the effort to secure an impermissible advantage in the decision-making process of government.

#### B. Derivation

The basic bribery statute is derived from section 240.1, MPC; section 4705, Michigan Revised Criminal Code; and sections 200.00 through 200.15, New York Revised Penal Law.

#### C. Relationship to Existing Law

Common law definition of bribery: "Bribery, under the common law, is usually defined to be the giving or receiving anything of value, or any valuable service intended to influence one in the discharge of a legal duty." (See People v. Peters, 265 Ill 122, 128, 106 NE 513, 515 (1914).)

Oregon case law in the field of bribery is virtually non-existent. State v. Coffey, 157 Or 457, 72 P2d (1937), involved the conviction of a municipal police officer for accepting money in consideration for allowing an illegal slot machine to operate unabated. A municipal police officer was held to be an "executive officer" within the statute prohibiting executive officers from accepting bribes.

State v. Packard, 4 Or 157 (1871), involved the conviction of a county clerk for knowingly receiving compensation for

official duty other than that authorized by law. The indictment was held insufficient for failure to designate the service for which compensation was received.

Bradshaw v. U. S., 15 F2d 970 (1927), held that an indictment for attempting to bribe a juror was sufficient to put into issue the defendant's knowledge that such person was a juror.

There is no statutory definition of bribery in the present Oregon Revised Code. The various statutes dealing with bribery of public officials embody the essential elements of the substantive offense.

ORS 162.210 defines the judicial, legislative and executive officers covered by the bribery statutes. Subsection (1) (c) includes referees, umpires and arbitrators. Insofar as this subsection applies to persons not defined as public servants they will not be covered by this section. Section \_\_\_\_, Article \_\_\_\_, Sports bribery, will cover those officials.

ORS 162.220 and ORS 162.230 deal with the bribery and intimidation of public officials. The material dealing with bribery would be repealed by the proposed draft. The material dealing with intimidation of public officials is covered by section \_\_\_\_, Article \_\_\_\_, Criminal coercion.

ORS 162.240 deals with gratuities to public officials for services rendered. In the absence of circumstances giving rise to bribery or rewarding past misconduct this coverage is not continued in the proposed draft. Administrative remedies and rejection by the voter is adequate to control this form of abuse.

ORS 162.670 prohibits any person from inducing the deposit of funds by offering or giving any gift, compensation or reward to the Multnomah County Treasurer. The proposed draft would repeal this statute as the Multnomah County Treasurer comes within the definition of "public servant".

ORS 162.510 prohibits the taking of any fee or compensation not authorized by law by any state officer, excepting the Governor, judges of the Supreme Court and members of the Legislative Assembly. This problem is similar to that of receiving gratuities for services rendered and can be effectively discouraged in the same manner.

ORS 162.655 prohibits any offer of gift, compensation, reward or inducement by any persons to the State Treasurer to induce him to deposit funds in any bank, contrary to state law.

ORS 279.032 prohibits paying or agreeing to pay a public officer anything of value in order to obtain a public contract. These statutes are covered by the basic bribery provisions.

ORS 561.210 prohibits the offering or accepting a bribe to improperly perform duties imposed by law relating to agriculture, including ORS 616.405 through ORS 616.475 relating to grades and standards. This statute would be repealed by the proposed draft as the officials covered are within the definition of public servants.

ORS 619.830 prohibits offering or giving anything of value to Department of Agriculture meat food officers, agents or employees to influence the discharge of their functions. ORS 619.240 prohibits the same conduct but makes special reference to special meat hygiene agents. Both of these statutes would be repealed by the proposed draft as they are directed at public servants as defined in the draft.

ORS 260.680, Corrupt Practices and Other Election Offenses, prohibits giving, offering or promising to give any gift, gratuity or valuable consideration to a voter to influence his vote.

ORS 260.690 prohibits the acceptance of any such consideration by a voter upon an understanding that he will vote a particular way.

ORS 260.700 extends coverage of the two preceding statutes to persons who vote or offer to vote even though they are not legally qualified to do so. Subsection (2) provides that if a person is convicted a second time for an offense under the preceding statutes a penitentiary term is mandatory.

The definition of "public servant" as used in this section does not include voters. It is submitted that the Oregon Corrupt Practices and Election Act provides a comprehensive statutory scheme for regulation in this important area and should be left intact by the criminal code revision.

TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

**Section 240.1. Bribery in Official and Political Matters.**

A person is guilty of bribery, a felony of the third degree, if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party official or voter; or

(2) any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a known duty as public servant or party official.

It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, or lacked jurisdiction, or for any other reason.

Text of Michigan Revised Criminal Code

[Bribery]

Sec. 4705. (1) A person commits the crime of bribery if:

(a) 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, exercise of discretion or other action in his official capacity; or

(b) While a public servant, he solicits, accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be influenced.

(2) A person does not commit a crime under this section if he confers or agrees to confer any pecuniary benefit upon a public servant as a result of conduct of the public servant constituting extortion or coercion. The burden of injecting this issue is on the defendant, but this does not shift the burden of proof.

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

(4) Bribery in the first degree is a Class C felony.

Text of New York Revised Penal Law

**§ 200.00 Bribery**

A person is guilty of bribery when he confers, or offers or agrees to confer, any benefit upon a public servant upon an agreement or understanding that such public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribery is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 200.05 Bribery; defense**

In any prosecution for bribery, it is a defense that the defendant conferred or agreed to confer the benefit involved upon the public servant involved as a result of conduct of the latter constituting larceny committed by means of extortion, or an attempt to commit the same, or coercion, or an attempt to commit coercion. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 200.10 Bribe receiving**

A public servant is guilty of bribe receiving when he solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

Bribe receiving is a class D felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 200.15 Bribe receiving; no defense**

The crimes of (a) bribe receiving, and (b) larceny committed by means of extortion, attempt to commit the same, coercion and attempt to commit coercion, are not mutually exclusive, and it is no defense to a prosecution for bribe receiving that, by reason of the same conduct, the defendant also committed one of such other specified crimes. L.1965, c. 1030, eff. Sept. 1, 1967.

Text of California Penal Code

Section 67 Bribes; Giving or offering to executive officers; punishment.

Giving or offering bribes to executive officers. Every person who gives or offers any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion or other proceeding as such officer, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years, and is disqualified from holding any office in this state.

Section 68 Bribes; Executive or ministerial officers, or appointees, asking or receiving; punishment.

Every executive or ministerial officer, employee or appointee of the State of California, county or city therein or political subdivision thereof, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the State Prison not less than one nor more than fourteen years; and in addition thereto, forfeits his office, and is forever disqualified from holding any office in this state.

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.

Existing Law
ORS
162.240

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

A. Summary

This section is intended to obviate the difficulty present in bribery prosecutions where the defendant contends that he did not solicit or receive the pecuniary benefit until after completion of the official action.

It is submitted that compensation for past official favor should be discouraged as detrimental to the integrity of public administration. Compensation for past official action implies a precedent for similar future compensation. Such compensation also puts pressure upon others dealing with the public servant to engage in similar activity or risk subtle disfavor.

An example of the conduct prohibited would be the accepting of money by fire department inspectors for failing to report past violations or payment to an official process server for his negligent delay in serving judicial papers.

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.

B. Derivation

The proposed draft is derived from the New York Penal Law sections 200.20 and 200.25.

The Michigan revisors did not adopt such a provision stating that the Committee felt that the underlying policy should not be made applicable to public servants generally. The Michigan Code did retain sections applicable to receipt of gratuities by specific officials, e.g., probate judges and labor department inspectors.

Model Penal Code section 240.3 relates to Compensation of Past Official Behavior.

C. Relationship to Existing Law

ORS 162.240 prohibits acceptance of any fee, commission, compensation, gift, reward or other consideration by public officials for services rendered to persons dealing with public administration. "Services rendered" includes past official action and as such would be repealed by the proposed draft.



TEXT OF REVISIONS OF OTHER STATES

Text of Model Penal Code

**Section 240.3. Compensation for Past Official Behavior.**

A person commits a misdemeanor if he solicits, accepts or agrees to accept any pecuniary benefit as compensation for having, as public servant, given a decision, opinion, recommendation or vote favorable to another, or for having otherwise exercised a discretion in his favor, or for having violated his duty. A person commits a misdemeanor if he offers, confers or agrees to confer compensation acceptance of which is prohibited by this Section.

Text of New York Revised Penal Law

**§ 200.20 Rewarding official misconduct**

A person is guilty of rewarding official misconduct when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.

**§ 200.25 Receiving reward for official misconduct**

A public servant is guilty of receiving reward for official misconduct when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct is a class E felony. L.1965, c. 1030, eff. Sept. 1, 1967.