

See: Minutes of Subcommittee on  
Grading and Sentencing  
4/5/70, p. 55, Vol. X  
Tape #57

CRIMINAL LAW REVISION COMMISSION  
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Salem, Oregon

ARTICLE 21 . BRIBERY AND CORRUPT INFLUENCES

Tentative Draft No. 1; December 1969

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Subcommittee No. 2

ARTICLE 21 . BRIBERY AND CORRUPT INFLUENCES

Tentative Draft No. 1; December 1969

Section 1. Bribery and corrupt influences; definitions. As used in this Article, unless the context requires otherwise:

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

(2) "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 nominated, elected or appointed to become a public servant, although not yet occupying the position; and

(d) Jurors.

COMMENTARY - BRIBERY AND CORRUPT INFLUENCES; DEFINITIONS

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.

A broad interpretation of "pecuniary benefit" could conceivably be applied to prohibit "logrolling," i.e., the offer by a legislator or other public servant to vote in a particular way in exchange for some beneficial act such as political assistance at the polls. Bargaining of this nature is not intended to be covered by the Bribery Article. Gratuities of an insignificant value, in the form of a social amenity or holiday gift, are also beyond the scope of the bribery sections. The consideration sought to be prohibited is one whose primary significance is economic value and which is transferred with a wrongful intent to influence a public servant's exercise in judgment.

The definition of "public servant" has been drafted to make it clear that all "political subdivisions" and "governmental instrumentalities" within the state are included. Varying elements that fix that status of a public servant have been divided into separate subdivisions. Coverage is intended to reach a broad classification of persons who serve governmental instrumentalities at the request or direction of the state or its agents in advisory and consultative capacities.

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 the 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.

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 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.

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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

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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 public servant commits the crime of bribe receiving if 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.

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 form of consideration applicable to sections 2 and 3 is represented by the term "pecuniary benefit." The potential for pernicious application of a broad definition of the proscribed benefits outweighs the advantage in insuring coverage of appropriate cases. It is a particular concern that a public servant should not become suspect every time he receives 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."

Bribe giving and bribe receiving are divided into separate sections. The mens rea requirement in the bribe giving section is framed in terms of "with the intent." The thrust of this requirement is to avoid the necessity of proving a "meeting of the minds," a crucial element in an agreement or understanding. The subjective wrongful intent of the bribe offeror is the gravamen of the bribe giving offense.

The section on bribe receiving divides into separate paragraphs two variant aspects of the offense. 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 qualification 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 requires proof of such a circumstance.

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 (s. 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 s. 240.1, MPC; s. 4705, Michigan Revised Criminal Code; and s. 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 Constitution: Article II, Section 7. "Bribery at Elections. Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given, or offered a bribe, threat, or reward to procure his election. "

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 Statutes. 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 these 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 162.670 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 162.655 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 162.240 deals with gratuities to public officials for services rendered. In the absence of circumstances giving rise to bribery this coverage is not continued in the Bribery Article. Acceptance of such consideration may, in certain cases, subject the public servant to criminal liability for official misconduct, an offense included in the Article on Abuse of Office.

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. See commentary to ORS 162.240, supra.

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 employes 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 REVISION 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.

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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.

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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.

**§ 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.

**§ 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.

**§ 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.

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.

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