

OREGON GOVERNMENT ETHICS COMMISSION

PRELIMINARY REVIEW

CASE NO: 23-222ESM

DATE: August 11, 2023

RESPONDENT: FAGAN, Shemia, former Secretary of State, State of Oregon

COMPLAINANTS: PARRISH, Julie

RECOMMENDED ACTION: Move to Investigate Possible Violations of ORS 244.040(1) and ORS 244.120(2)

1 **PRELIMINARY REVIEW:** The Oregon Government Ethics Commission (Commission)
2 received a signed, written complaint on June 13, 2023, from Julie Parrish, through her
3 attorney Steve Elzinga, alleging that former Secretary of State Shemia Fagan may have
4 violated Oregon Government Ethics laws by using State resources for personal benefit
5 and obtaining reimbursements for personal expenditures. (#PR1). Receipt of the
6 complaint was acknowledged in letters to Shemia Fagan and Julie Parrish. Ms. Fagan
7 was provided with the information received in the complaint and invited to provide any
8 information to assist the Commission in conducting the preliminary review in this matter.

9

10 Oregonian Article

11 The complaint submitted by Julie Parrish references a June 13, 2023 Oregonian news
12 article by reporter Aimee Green entitled “Shemia Fagan spent taxpayer or donor money
13 on hotel pet fees, airfare for her kids. She says she’s done nothing wrong.” The article
14 reports that employees in the Secretary of State’s Office “repeated told their former boss,
15 Shemia Fagan, that she was bending – if not breaking – state travel rules by bringing her
16 family along on state-paid business trips.” The article reports that “Fagan disregarded her
17 staff’s warnings and did it anyway.” (#PR2).

1 The Oregonian's investigation indicates that Shemia Fagan had thousands of dollars in
2 questionable reimbursements for state travel expenses. It also reports that she spent
3 "tens of thousands of dollars in campaign funds" on travel expenses for her children and
4 family. The article states that it "appears possible that Fagan double dipped, getting
5 compensated both by the state and her campaign for airfare, lodging and meals." (#PR2).

6 7 Complaint

8 In her complaint, Julie Parrish quotes extensively from the Oregonian article. Ms. Parrish
9 writes:

10
11 As outlined in the Oregonian article by Aimee Green, Shemia Fagan appears to
12 have violated ethics laws through use of state resources for inappropriate personal
13 use and inappropriate reimbursements for personal expenditures. The article
14 indicates that Fagan's use of state resources included hotels, meals, travel costs,
15 and other expenses that Fagan used for herself and apparently also for her
16 relatives, romantic partner, and pet. (#PR1).

17
18 Ms. Parrish asserts that a "full and transparent investigation is needed" to determine if
19 Shemia Fagan violated the Government Ethics Laws in ORS Chapter 244. She points
20 out, as reported in the Oregonian article, that "even Fagan's own accounting staff raised
21 concerns that Fagan's use of state resources violated ethics requirements in multiple
22 ways." In pertinent part, Ms. Parrish asks that OGEC investigate whether Shemia Fagan
23 used state resources to pay for lodging and travel expenses for her relatives and her
24 romantic partner on the following trips:

- 25
- 26 • April 2023 Trip to Washington DC with her children to attend the White House
27 Easter Egg Roll. Shemia Fagan apparently used \$1,169 in state funds for this trip,
28 along with funds from the National Lieutenant Governors Association (NLGA) and
29 from her campaign, to pay for four nights at a four-star Washington DC hotel near
30 the White House. The trip apparently included not only Ms. Fagan's two children,
31 but also her romantic partner.

- 1 • July 18-23, 2022 Trip to Chicago, which also included her children and romantic
2 partner. Shemia Fagan used \$878.16 in state funds to pay for several nights of
3 lodging at a Chicago hotel, and she also sought reimbursement for travel to/from
4 the airport.
- 5
- 6 • 2022 Trip to Washington DC, to attend the NLGA Conference. Shemia Fagan was
7 accompanied by her son on this trip. The complaint notes that Ms. Fagan used her
8 own credit card for the reimbursed hotel stay, and questions whether she earned
9 personal rewards points by doing so.
- 10
- 11 • August 2022 Trip to Oregon Coast. This trip began along the southern Oregon
12 coast, ventured into the Jedediah Smith Redwoods State Park in Northern
13 California, then went to the Malheur National Wildlife Refuge, before heading to
14 the Painted Hills, and then ending in Sunriver. The purpose of the trip was to visit
15 county clerks, survey a state research forest, tour a state prison, and attend a state
16 land board meeting. Ms. Fagan was accompanied on this trip by her two children,
17 her aunt, and her dog. The complaint states that Ms. Fagan used state funds to
18 pay for several nights of lodging and sought reimbursement for car rental for a full-
19 sized SUV and gas. At each stop, Ms. Fagan required a double-queen hotel room
20 to house two adults, two children, and one dog. It appears that several of the hotels
21 charged pet fees ranging from \$15 to \$30 per night. According to the complaint
22 and the Oregonian article, Ms. Fagan spent more hours visiting recreational sites
23 than she did carrying out the official reasons for the trip. Additionally, because
24 Fagan's family filled one rental car, that meant that the Secretary of State's staff
25 member, senior advisor Molly Woon, needed to rent a separate car in order to
26 accompany her on the trip.
- 27
- 28 • May 2022 Trip to Eastern Oregon. The purpose of the trip was to visit county clerks
29 and prisons in eastern Oregon. Ms. Fagan was accompanied by her children, her
30 sister, and her dog, as well as by her staffer, Molly Woon. Again, the trip required
31 renting two separate vehicles because Ms. Fagan's family and dog filled the first

1 vehicle. According to the complaint and the Oregonian article, the state paid \$425
2 for Ms. Fagan and Ms. Woon to stay an extra two nights in Pendleton, because
3 after state-related visits on Wednesday, Thursday and Friday, Ms. Fagan
4 scheduled visits to two state prisons the following Monday. Again, because Ms.
5 Fagan's family filled the rented SUV, the state paid for a separate rental car for
6 Ms. Fagan's staffer, Molly Woon. (#PR1).

7
8 The complaint also noted that in July 2022, Shemia Fagan attended the Oregon 22 Track
9 and Field Games as Governor Brown's guest. These games were held in Salt Lake City,
10 Utah. According to the complaint, Ms. Fagan sought and received a reimbursement of
11 \$128.99 for a COVID-19 test she purchased at Walgreens. (#PR1).

12
13 Response

14 Shemia Fagan is represented by attorney David Elkanich, who submitted a response
15 letter on August 4, 2023. Mr. Elkanich writes: "The Parrish Complaint asks the
16 Commission to determine whether Ms. Fagan, a recent divorcee with shared custody of
17 her two young children, violated ORS 244.040 by seeking reimbursements from the State
18 for her expenses where her young children accompanied her on official travel." (#PR3).

19
20 Mr. Elkanich writes:

21
22 During her tenure as Secretary of State, Ms. Fagan's travel submissions from April
23 through September 2022 were investigated by the State's Audits Division following
24 a complaint from a State employee, alleging, like the Parrish Complaint, that Ms.
25 Fagan was traveling for personal benefit and seeking reimbursement for traveling
26 with pets and family. * * * The Audits Division conducted the review "independently"
27 and "without the knowledge of Secretary Fagan" of Ms. Fagan's "travel
28 reimbursement claims from April to September 2022." * * * (#PR3).

29
30 Mr. Elkanich notes that the Secretary of State's Office's Audits Division issued a report
31 on October 13, 2022 that found that the controls within the Office of the Secretary of State

1 were effective and that minor issues with filed reimbursement claims were addressed in
2 real time; that despite effective controls, one claim may have resulted in a potential ethics
3 violation; that other reimbursement claims generally aligned with existing policy; that
4 Secretary Fagan did not seek reimbursement for her children’s airfare or expenses; and
5 that several reimbursement claims could have been increased under existing policy.
6 (#PR3).

7
8 In a footnote, Mr. Elkanich comments that while the April 2023 trip to Washington D.C.
9 was not included in the Audit Division’s report, the complaint “fails to provide any evidence
10 that the reimbursement requests from Ms. Fagan violated State ethics laws.” Mr. Elkanich
11 writes:

12
13 Ms. Fagan was careful to comply with all regulations and policies regarding
14 expenditures reimbursed by the State or her Political Action Committee. As noted
15 above, Ms. Fagan shares custody of her young children. While most of the time,
16 as Secretary of State, Ms. Fagan traveled without her children, she was not willing
17 to leave them behind every time she traveled for official business or political
18 events. Indeed, Ms. Fagan explained the same point of view during the Audits
19 Division investigation * * *. (#PR3).

20
21 The response explained that based on the Audit Division’s finding of one possible
22 violation, Ms. Fagan filed a self-report to the Commission on November 14, 2022. (#PR3;
23 #PR4). In response to her self-reported complaint, Ms. Fagan received a letter from
24 Commission Director Ron Bersin, dated November 28, 2022. Mr. Elkanich characterizes
25 this letter as “dismiss[ing] the complaint, finding the facts did not appear to support a
26 ‘violation of ORS 244.040(1) * * * or implicate any of the other laws in ORS Chapter 244.’”
27 (#PR3; #PR5).

28
29 Mr. Elkanich concludes his response letter by requesting that “the Commission stand by
30 its earlier determination on similar allegations and facts and dismiss the Parrish Complaint
31 for lack of an ethical violation.” (#PR3).

1 The self-reported complaint that Ms. Fagan filed with the Commission on November 14,
2 2022 explained that in mid-2022 she attended the Oregon Trial Lawyers Association
3 (OTLA) convention in Sunriver. She attended this convention in her private capacity. This
4 OTLA convention was scheduled over a weekend, on August 13th to 14th. In her role as
5 Secretary of State, Ms. Fagan had existing travel plans during the week preceding this
6 convention. She explained that she was traveling in her official capacity from August 7th
7 to August 12th, visiting the Elliott State Research Forest and the town of Charleston, near
8 Coos Bay, the towns of Port Orford and Grants Pass (meeting with the Josephine County
9 Clerk), Klamath Falls (meeting with the Klamath County Clerk), and the town of Lakeview
10 (meeting with the Lake County Clerk and visiting the Warner Creek Correctional Facility).
11 She was then traveling north to Canyon City (meeting with the Grant County Clerk), John
12 Day, and Fossil (meeting with the Wheeler County Clerk), Mitchell, and then to the
13 Painted Hills. (#PR4).

14
15 Ms. Fagan then explained that she asked to extend the rental vehicle she was using for
16 the official state travel by 2+ days, so that she would not have to drive the almost four
17 hours to return the rental vehicle to Salem on August 12th and then immediately drive her
18 personal vehicle or private rental car back to Sunriver to attend the OTLA conference. In
19 making this request, she instructed her assistant to reduce her travel reimbursement (per
20 diem, gas, and lodging on August 13th and 14th) “to ensure the official vehicle rental
21 expenditure properly reflected *only* [her] official travel.” (#PR4).

22
23 In response to her self-reported complaint, the Commission's Executive Director sent Ms.
24 Fagan a letter on November 28, 2022. That letter explained that because the information
25 in her submission did not indicate a violation of the Government Ethics Law, the
26 Commission would not open a case. The letter noted that the issue raised in her self-
27 reported complaint related to her request to extend her use of a rental vehicle for two
28 additional days (August 13th and 14th) during her work-related travel, so that she could
29 attend the OTLA conference. The letter indicated our understanding from the information
30 she had submitted was that on her return she sought reimbursement for the cost of the
31 rental vehicle only for the days when it was used for official business. (#PR5).

1 In our correspondence, we explained that there is an exception in ORS 244.040(2)(c) for
2 reimbursement of expenses incurred in the conduct of official duties. Thus, so long as the
3 reimbursement payment complied with applicable laws and policies, it would not
4 constitute a prohibited use of office. Based on the information in her submission, it
5 appeared that she only sought reimbursement of expenses for the rental vehicle for those
6 expenses incurred in the conduct of her official duties and that the reimbursement
7 complied with applicable laws and policies. Therefore, we indicated that the Commission
8 would take no further action because it did not appear that there was a violation. (#PR5).

9
10 Additional Information

11 During this preliminary review, Commission staff obtained additional information and
12 records from the Secretary of State's Office. Included in this information was the
13 Secretary of State Travel Policy, BSD.10.010, effective 8/11/2021. This travel policy
14 provides that reimbursement of personal expenses is not permitted. Examples of such
15 personal expenses include parking tickets, lodging safe fees, or commuting mileage. The
16 travel policy also includes a process for requesting a rental vehicle. The policy notes that
17 "[e]conomy-size or compact-size vehicles will normally be rented by state personnel."
18 (#PR6).

19
20 Also included in the records were emails between Karla Willmschen, the Revenue
21 Accountant & Agency Travel Coordinator at the Secretary of State's Office, and Emily
22 McLain, Chief of Staff to Secretary Fagan, dated from 9/7/2022 to 9/20/2022. The emails
23 related to Ms. Fagan's reimbursement request for the August 2022 vehicle rental. In one
24 of the emails, dated 9/8/2022, Ms. Willmschen highlights that because the vehicle was
25 rented using the state contract (which presumably involves a discounted rate), a public
26 official who extends that rental for personal use could be using the state contract for
27 personal gain. (#PR7).

28
29 The Secretary of State's Office also provided a spreadsheet summarizing Secretary
30 Fagan's travel expenditures from January 2021 through May 2023 (#PR8), and the
31 supporting documentation for all of her travel expenditures during that period (#PR9).

1 Finally, Steve Bergmann, the Business Services Director at the Secretary of State's
2 Office, also provided a spreadsheet he had prepared based on his internal review of
3 Secretary Fagan's travel transactions. In this spreadsheet, he notes there were questions
4 about double-dipping, referring to instances where the State paid reimbursements but
5 Ms. Fagan also received payments or reimbursements from her campaign funds or from
6 sponsoring entities, such as the NLGA. The spreadsheet indicates that further information
7 and documentation would be needed to make any determination on the double-dipping
8 issues. The last entry on the spreadsheet indicates that "[p]ermitting family members to
9 ride in a state-paid rental vehicle is prohibited by the agency's travel policy." (#PR10).

10
11 **RECOMMENDATIONS:** Shemia Fagan was the elected Secretary of State during the
12 period relative to this preliminary review. As such, she was a public official, as defined in
13 ORS 244.020(15), required to comply with Oregon Government Ethics laws.

14
15 Statutes and Administrative Rules

16 A public official is met with a conflict of interest when they make a decision or
17 recommendation, or take action, in their official capacity, and that decision,
18 recommendation or action could (potential conflict) or would (actual conflict) have a
19 financial benefit or detriment on the public official, their relative, or any business with
20 which they or their relative is associated. [ORS 244.020(1) and ORS 244.020(13)].

21
22 When met with a conflict of interest, an elected public official must make a public
23 announcement of the nature of their conflict of interest. Then if it is a potential conflict of
24 interest, after making the public announcement, they may continue to participate and may
25 vote on the matter. If it is an actual conflict of interest, after making the public
26 announcement, they must refrain from any participation in the matter, unless their vote is
27 needed to meet a minimum vote requirement, in which case they may vote but may not
28 participate in any discussion or debate on the matter. [ORS 244.120(2)].

29
30 ORS 244.040(1) prohibits a public official from using or attempting to use their position to
31 obtain a financial benefit or avoid a financial detriment for the official, a relative or

1 household member, or a business with which any of them are associated, if the financial
2 benefit or avoidance of detriment would not otherwise be available but for the public
3 official's holding the official position.

4
5 ORS 244.040(2)(c) provides that the prohibition in ORS 244.040(1) does not apply to a
6 public official receiving reimbursement of expenses. OAR 199-008-0005(4) defines
7 "reimbursement of expenses" as "the payment by a public body to a public official serving
8 that public body, of expenses incurred in the conduct of official duties on behalf of the
9 public body. Any such repayment must comply with any applicable laws and policies
10 governing the eligibility of such repayment. * * *"

11
12 Analysis

13 The information in this preliminary review establishes cause to undertake an investigation
14 as to whether Shemia Fagan may have had conflicts of interest or may have used her
15 position to obtain personal financial gains, primarily relating to her travel expenses.

16
17 On a number of occasions, Ms. Fagan included her children, her sister, her romantic
18 partner, and family dog on her business trips, both within Oregon and outside the state.
19 While the Secretary of State's Office initial review appears to indicate that Ms. Fagan
20 may have sought reimbursement only for the portion of the travel expenses relating to her
21 own expenses, and only those for her official travel, Commission staff has not confirmed
22 whether all of the reimbursements were permitted under existing laws and policies. Any
23 reimbursement of expenses that did not comply with applicable laws and policies would
24 fall outside of the exception in ORS 244.040(2)(c), meaning that the act of seeking such
25 reimbursement could constitute a prohibited use of office, in violation of ORS 244.040(1).
26 Further, submitting such an expense reimbursement would constitute taking official action
27 in her role as a public official for personal benefit, thus requiring a conflict of interest
28 disclosure under ORS 244.120(2).

29
30 Pointing to Ms. Fagan's self-reported complaint in November 2022 and the
31 correspondence from the Commission's Executive Director declining to open a case

1 based on that complaint, David Elkanich suggests this current complaint is based on
2 similar allegations and facts and asks that the Commission also dismiss it. Initially, we
3 note that the issue alleged in Ms. Fagan's self-reported complaint was limited to the
4 extended use of the rental vehicle during her stay in Sunriver for the OTLA convention,
5 whereas the current complaint addresses many more issues. Further, it also appears,
6 based on the additional information provided by the Secretary of State's Office, that at the
7 time of the self-reported complaint, Commission staff may not have been provided with
8 all of the potentially relevant information related to that issue.

9
10 The Secretary of State's Office has provided substantial documentation for Ms. Fagan's
11 travel and reimbursement requests. As this documentation numbers 568+ pages, there
12 was not sufficient time during the limited period of this preliminary review for Commission
13 staff to review all of that documentation to ascertain whether it established a basis for
14 each of the reimbursements being authorized under the State or Secretary of State travel
15 policies.

16
17 Further investigation is needed in this case to determine whether any of the
18 reimbursements could constitute a prohibited use of office or give rise to a conflict of
19 interest. For example, it appears that on some occasions, Ms. Fagan specifically
20 requested hotel rooms that were double queens, to house 2 adults, 2 children, and 1 dog.
21 While it appears that Ms. Fagan did not seek reimbursement for any of the pet fees, it
22 appears the cost of the double-queen rooms was greater than the cost of a single-
23 occupancy room, which may be a violation of the conflict of interest and use of office
24 provisions. . Additionally, it appears that the rental car used for the August 2022 trip
25 through southern and eastern Oregon was a full-sized SUV, rather than a compact or
26 economy car (which, according to the Travel Policy, is what would "normally be rented by
27 state personnel"). Use of a larger vehicle for her personal benefit, or that of her family, in
28 order to fit her family may be a violation of the conflict of interest and use of office
29 provisions.

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31 ///

1 Further, it appears that Ms. Fagan's family and dog used the rented SUV to travel with
2 her. This may have caused staffer Molly Woon to rent a separate vehicle in order to
3 accompany Ms. Fagan on her official duties during this trip. That second vehicle may not
4 have been required had Ms. Fagan not had her family and dog on the trip. The SUV rental
5 may constitute a prohibited use of office if it allowed Ms. Fagan to avoid a financial
6 expense, either in the form of the wear and tear on her family vehicle or from access to
7 the discounted state rental contract.

8
9 Investigation is also needed to confirm whether Ms. Fagan sought reimbursement for any
10 travel related expenses that were not related to her official duties. For example, it appears
11 that during the August 2022 tour of Oregon, in addition to official meetings, tours and
12 events, various side-trips may have occurred. For example, it appears that there were no
13 official events or activities in the Painted Hills and the visit to the Malheur National Wildlife
14 Refuge was a 60-mile excursion off course from her official work trip. This was not
15 disclosed as part of Ms. Fagan's self-reported complaint. Additionally, a review of the
16 documentation relating to the out-of-state trips, where she was accompanied by her
17 children and her romantic partner, is needed. Such an examination would examine
18 whether the reimbursement requests included any expenses relating to her family or
19 partner, such as requests for more expensive taxis or lyft/uber rides to accommodate the
20 larger party size, or excursions to particular locations unrelated to her official business.

21
22 On a number of occasions, Ms. Fagan submitted reimbursement requests to the
23 Secretary of State's Office, but available information appears to show that she may have
24 submitted the same or similar requests for reimbursement or payment by her campaign
25 funds, or by sponsoring entities such as the NLGA. For example, in Steve Bergmann's
26 spreadsheet, he raises questions regarding possible double reimbursements for hotel
27 expenses and airfare for the March 2022 Washington DC trip. In an investigation,
28 Commission staff would seek to ascertain whether the additional reimbursements and
29 payments from Ms. Fagan's campaign funds and from sponsoring entities were for her
30 own travel related expenses (for which she was already being reimbursed by the State)
31 or for the travel related expenses of her children or partner. The Secretary of State's

1 Travel Policy provides that reimbursements for travel expenses will be reduced equivalent
2 to any receipt of travel expenses received from outside sources. Thus, if the Ms. Fagan
3 sought reimbursement from the Secretary of State's Office for expenses that were
4 covered by outside sources, whether her own campaign funds or sponsoring
5 organizations, that may constitute a prohibited use of office.

6
7 Based on the information available in this preliminary review, there appears to be a
8 substantial objective basis to believe that Shemia Fagan may have engaged in a
9 prohibited use of office and failed to disclose conflicts of interest relating to the
10 reimbursements for her travel related expenses.

11
12 The Oregon Government Ethics Commission should move to investigate whether Shemia
13 Fagan may have violated ORS 244.040(1) and ORS 244.120(2). (Motion 4).

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1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint from Julie Parrish, submitted on June 13, 2022.
- 3 #PR2 Oregonian news article, "Shemia Fagan spent taxpayer or donor money on
4 hotel pet fees, airfare for her kids. She says she's done nothing wrong,"
5 published on 6/9/2023.
- 6 #PR3 Response letter for David Elkanich, dated 8/4/2023.
- 7 #PR4 Shemia Fagan self-reported complaint, dated 11/14/2022.
- 8 #PR5 Correspondence from Executive Director Ronald A. Bersin, dated
9 11/28/2022.
- 10 #PR6 Secretary of State Travel Policy, BSD.10.010, effective 8/11/2021.
- 11 #PR7 September 2022 emails between Karla Willmschen and Emily McLain.
- 12 #PR8 Spreadsheet of Secretary Fagan's travel expenses, January 2021 to May
13 2023.
- 14 #PR9 Documentation supporting Secretary Fagan's travel expenses.
- 15 #PR10 Spreadsheet from Steve Bergmann relating to Secretary Fagan's travel
16 reimbursements.

PREPARED BY Susan Myers, Investigator *sum 8/11/2023*

APPROVED BY Ronald A. Bersin, Executive Director *via email 8/11/2023*

REVIEWED BY Sean T. Brady, Assistant Attorney General *via email 8/11/2023*