Oregon Government Ethics Law

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The Oregon Government Ethics Commission (OGEC), established by vote of the people in 1974, is a seven-member citizen commission charged with enforcing government ethic laws. Oregon government ethics laws prohibit public officials from using office for financial gain, and require public disclosure of economic conflict of interest. The OGEC also enforces state laws that require lobbyists and the entities they represent to register and periodically report their expenditures. The third area of OGEC jurisdiction is the executive session provisions of public meetings law.

Am I a "Public Official? The answer is yes if you are serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee, agent or otherwise, irrespective of whether you are compensated for services.[ORS 244.020(14)]

What you need to know if you are a public official

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions a public official may make. The restrictions placed on public officials are different than those placed on private citizens because service as a public office is a public trust and provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust.

Public officials are prohibited from using or attempting to use their positions to gain a financial benefit or to avoid a financial cost for themselves, a relative, or their businesses if the opportunity is available only because of the position held by the public official [ORS 244.040(1)].

There are conditions that must be met before a public official may accept a gift and in some cases, there are limits on the value of gifts that can be accepted. Certain public officials are required to file reports that disclose some gifts accepted and specific economic interests.

When met with a conflict of interest, a public official must follow specific procedures to disclose the nature of the conflict. There are also restrictions on certain types of employment subsequent to public employment and on nepotism.

This guide will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, and relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at www.oregon.gov/ogec. Questions or comments may be submitted to the Commission by email at ogec.mail@state.or.us, by Fax to 503-373-1456 or by telephone to 503-378-5105.

Are you a public official?

Public official is defined in ORS 244.020(14) as any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health Sciences University.

"As defined in ORS 244.020(14), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an "agent." An "agent" means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990)." The Commission has adopted, by rule, additional language used to clarify the use of "agent in the definition of "public official" in the following OAR 199-005-0035(7).

My position as a _____ defines me as a public official.

What does a public official need to know about relatives?

Public officials need to know how Oregon Government Ethics law defines who is a "relative". While a public official should exercise sound judgment when participating in actions that could result in personal financial benefits, a public official should also exercise sound judgment when participating in actions could result in financial benefits for a relative.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit.

In everyday conversation the use of "relative" is applied to a broader spectrum of individuals with "family ties" than those defined as relatives in ORS 244.020(15). In general, when a provision in ORS Chapter 244 refers to "relative" it means one of the following:

- Spouse of a public official or candidate
- Children of a public official or candidate
- Children of the spouse of a public official or candidate
- Siblings of a public official or candidate
- Siblings of the spouse of a public official or candidate
- Spouse of siblings of a public official or candidate
- Spouse of siblings of the spouse of a public official or candidate
- Parents of the of public official or candidate
- Parents of the spouse of a public official or candidate
- Person for whom the public official or candidate have a legal support obligation
- Person benefiting from a public official when benefits are from the public official's public employment
- Person who benefits a public official or candidate when benefits are from the person's employment

I have approximately _____ relatives as defined by statute.

ORS Chapter 244 does address the issue of "nepotism." Nepotism, as used in ORS Chapter 244, is based on the relative relationship alone. The definition of "relative" in ORS Chapter 244 [ORS 244.175(4)] takes on a broader meaning when applying ORS 244.175 through

ORS 244.179:

- **Spouse** of a public official
- **Children** of the public official or spouse
- **Parents** of the public official or spouse
- **Stepparents** of the public official or spouse
- **Stepchildren** of the public official or spouse
- **Brothers** of the public official or spouse
- **Sisters** of the public official or spouse
- **Half-brothers** of the public official or spouse
- **Half-sisters** of the public official or spouse
- **Brothers-in-law** of the public official or spouse
- **Sisters-in-law** of the public official or spouse
- **Sons-in-law** of the public official or spouse
- **Daughters-in-law** of the public official or spouse
- **Mothers-in-law** of the public official or spouse
- **Fathers-in-law** of the public official or spouse
- **Aunts** of the public official or spouse
- **Uncles** of the public official or spouse
- **Nieces** of the public official or spouse
- **Nephews** of the public official or spouse

If I am a volunteer, does that make me a public official?

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, "irrespective of whether" you are "compensated" you are a public official.

Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer are elected or appointed members of governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts.

Financial Gain

What are the provisions in the law that prohibits a public official from using the position or office held for financial gain?

Public officials become public officials through employment, appointment, election or volunteering. ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available but for the position held by the public official. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which either the public official, a relative or a member of the public official's household are associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. ORS 244.040(4) specifically prohibits public officials from attempting to use confidential information gained because of the position held or by carrying out assigned duties to further the public official's personal gain. ORS 244.040(5) also prohibits a former public official from attempting to use confidential information for personal gain if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

ORS 244.040(6) also has a single provision to address circumstances created when public officials who are members of the governing body of a public body own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are member of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firms, may encounter circumstances in which this provision may apply.

There a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

NOTES:

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Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available <u>but for</u> holding the position as a public official?

Yes, ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official and some may also be accepted by a public official's relative or member of the public official's household:

<u>Official Compensation</u>: Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package." [ORS 244.040(2)(a)]

OAR 199-005-0035(3) provides a definition of "official compensation package:"

An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package", the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. "Official compensation package" also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

<u>Reimbursement of Expenses</u>: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4): "'reimbursement of expenses' means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment."

<u>Honorarium</u>: Public officials are allowed to accept honorarium by ORS 244.040(2)(b) as it is defined in ORS 244.020(7). A public official must know how honorarium is defined because there are many occasions where someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium.

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event.

The limitation for honorarium is $_____.

Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize an achievement of the public official [ORS 244.040(2)(d).

Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(6)(b)(C), honorarium allowed by ORS 244.040(2)(b) or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for an achievement. Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards allowed by ORS 244.040(2)(d).

Gifts

There are occasions when public officials can accept gifts and Oregon Government Ethics law does not limit the quantity or value of gifts, but there are other occasions when the acceptance of gifts is limited to an aggregate value of $50 from a single source in each calendar year. [ORS 244.025]

When Oregon Government Ethics law uses the word "gift" it has the meaning in ORS 244.020(6)(a):

"'Gift' means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(A) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(B) For valuable consideration less than that required from others who are not public officials or candidates." In other words, a "gift" is something of economic value that is offered to:

- A public official or candidate or to relatives or members of the household of a public official or candidate,
    - Without cost, at a discount or as forgiven debt and,
    - The same offer is not made or available to the general public who are not public officials or candidates.

To know whether gifts from a single source are limited or unlimited you must determine if the decisions or votes of the public official, who is offered a gift, would have a distinct economic impact on the source making the offer. If the source of the offer would receive a financial gain or avoid a financial cost from the decisions or votes of a public official, gifts from that source to that public official would be limited as to the aggregate value of gifts accepted from that source in a calendar year. This economic interest is a pivotal factor in determining the propriety of gifts and is found in the expression "legislative or administrative interest" which is defined in ORS 244.020(9) and is used in ORS Chapter 244, primarily, when applying the provisions regarding gifts accepted by public officials.

While a "gift" is defined in ORS 244.020(6)(a), ORS 244.020(6)(b), identifies specific gifts that are exempt from gift restrictions if the offers are made or accepted in the specific circumstances and conditions described.

What does a public official need to know about a "Legislative or Administrative Interest"? ORS 244.020(9)

Beginning in 2010, the change to the definition of what is a legislative or administrative interest represents one of the most significant changes made in Oregon Government Ethics law during the last session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift offered to a public official has a legislative or administrative interest determines whether or not the gift offered is allowed or restricted. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in the public official's governmental agency, but now the focus is on the vote or decision of each individual public official. The change places greater responsibility on the individual public official to decide if a gift offered is restricted by ORS Chapter 244. The definition of a legislative or administrative interest is provided in ORS 244.020(9) as follows:

"'Legislative or administrative interest' means an economic interest, distinct from that of the general public, in:

(a) Any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official; or

(b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official."

In the context of gifts offered to or accepted by a public official or candidate, the public official or candidate must determine if the source of the offered gift has a legislative or administrative interest in the decision or vote of the public official or candidate, if elected. In applying the phrase "legislative or administrative interest," there are several factors to consider:

Source: The Commission adopted a rule [OAR 199-005-0030(2)] that identifies the source of a gift is the person or entity that makes the ultimate and final payment of the gift's expense. OAR 199-005-0030 also places on the public official the burden of knowing the identity of the source and insuring that the aggregate value in ORS 244.025 is not exceeded.

Distinct from that of the general public: This phrase refers to an economic interest and in the context of gifts the economic interest of the source of a gift. The economic interest is whether a vote or decision by a public official would result in a financial gain or a financial detriment to the party who holds the interest. There are many votes or decisions made by public officials that have the same general economic impact on all members of the general public. Income or property tax rates would be examples.

There are other decisions or votes that have an economic impact on specific persons, businesses or groups that are not experienced by members of the general public alike. To illustrate, private contractors have an economic interest in a public body's authority to award contracts and that economic interest is distinct from the economic interest held by members of the general public in the contracting authority of a public body. Also, real estate developers would have an economic interest in a public body's authority to approve subdivision applications and that economic interest is distinct from the economic interest held by members of the general public in the approval authority of a public body.

Vote: This has the common meaning of to vote as an elected member of a governing body of a public body or as a member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly or the Office of the Governor.

Decision: The Commission adopted a rule [OAR 199-005-0003] and in OAR 199-005-0003(2) "decision" is defined. A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

The change to the definition of a legislative or administrative interest places the focus on the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts from that same source because not all public officials in the same public body have similar responsibilities that would require any or similar decisions or votes.

Again, if the source of the offer of a gift to a public official does not have a legislative or administrative interest in the decisions or votes of the public official, the public official can accept unlimited gifts from that source. [ORS 244.040(2)(f)] However, if the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed $50 in a calendar year. [ORS 244.025]

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official are limited, there are some gifts that are exempt from the definition of what is a "gift." If the offer of a gift is exempt from the definition of a "gift," the offer may be accepted by a public official. The value of gifts that are allowed as exemptions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year.

There are gifts that are allowed because when offered under specific conditions and within certain circumstances the gifts are exempt from the definition of a "gift." ORS 244.020(6)(b) provides a description of gifts that are allowed. If you are a public official accepting gifts or a source offering gifts it is important you become familiar with the requirements that may apply to you.

The following **GIFTS ARE ALLOWED** as exemptions to the definition of what is a "gift":

- Campaign contributions as defined in ORS 260.005. *[ORS 244.020(6)(b)(A)]*

- Contributions to a legal expense trust fund established under ORS 244.209. *[ORS 244.020(6)(b)(G)]*

- Gifts from relatives or members of the household of public officials or candidates. *[ORS 244.020(6)(b)(B)]*

- Anything of economic value received by a public official or candidate, their relatives or members of their household when; [ORS 244.020(6)(b)(O)]

- The receiving is part of the usual and customary practice of the person's business, employment, or volunteer position with any legal non-profit or for-profit entity. [ORS 244.020(6)(b)(O)(i)]

- The receiving bears no relationship to the person's holding the official position or public office. [ORS 244.020(6)(b)(O)(ii)]

- Unsolicited gifts with a resale value of less than $25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos. *[ORS 244.020(6)(b)(C) and see resale value discussed in OAR199-005-0010]*

- Publications, subscriptions or other informational material related to the public official's duties. *[ORS 244.020(6)(b)(D)]*

- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate. *[ORS 244.020(6)(b)(J)]*

- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event.

- *[ORS 244.020(6)(b)(M) and see "incidental" defined in OAR199-005-0025(1)]*

- Entertainment for a public official, a relative of the public official or a member of the public official's household when the public official is acting in an official capacity and representing a governing agency for a ceremonial purpose. *[ORS 244.020(6)(b)(N) and see "ceremonial" defined in OAR199-005-0025(2)]*

- Cost of admission or food and beverage consumed by the public official, a member of the public official's household or staff when they are accompanying the public official, who is representing government, state, local or special district, at a reception, meal or meeting held by an organization. *[ORS 244.020(6)(b)(E) and see this exception discussed in OAR199-005-0015]*

- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. *[ORS 244.020(6)(b)(L) and OAR199-005-0025(1)]*

- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official. *[ORS 244.020(6)(b)(K)]*

- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3). *[ORS 244.020(6)(b)(F) and see definition of terms for this exception in OAR 199-005-0020]*

- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following: *[ORS 244.020(6)(b)(H) and see definition of terms for this exception in OAR 199-005-0020]*

  -Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(6)(b)(H)(i)]

  -Officially designated negotiation or economic development activity when receipt has been approved in advance. [ORS 244.020(6)(b)(H)(ii)]

  [**NOTE:** How and who may officially sanction and officially designate these events is addressed in OAR 199-005-0020(1)(b)(B).]

- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip. [ORS 244.020(6)(b)(P)]

- Food and beverage when acting in an official capacity in the following circumstances: *[ORS 244.020(6)(b)(I)]*

    - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction; *[ORS 244.020(6)(b)(I)(i)]*

The last gift I received was from _____. The source of this offer <u>is / is not</u> economically affected by my decisions or votes as a public official.

<u>Gifts vs. Prohibited Use of Position</u>

In understanding issues related to gifts, the operative definition of a "gift" is used in deciding how Oregon Government Ethics law would apply to a gift offered to or accepted by a public official or candidate. The application of the gift provisions regarding candidates is not included in this discussion. The following is a paraphrase of the definition taken from ORS 244.020(6)(a):

Gift: "Something of economic value" given to a public official, a relative of the public official or a member of the public official's household and the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions as** those that apply to the gift offered to **the public official**, the relative or a member of the household.

The definition of a "gift" has remained much the same since Oregon Government Ethics law was enacted. Originally, the law prohibited the offer or acceptance of any gifts; it allowed some gifts and for others it imposed limits on the aggregate value on gifts that could be accepted. With the recent revisions, Oregon Government Ethics law does not prohibit gifts but does place conditions on when some gifts may be accepted and for other gifts there is a limit on the aggregate value that can be accepted.

The primary focus of ORS 244.040(1) is on the use or attempted use of the position held by the public official and not on whether a gift is accepted by a public official. However, accepting gifts that would not be available "but for" holding a position as a public official could represent a prohibited financial benefit.

The financial benefit prohibited by ORS 244.040(1) is one obtained by a public official through the use or attempted use of a position or office held. The prohibited benefit may be gained through the public official's access to and use of the public body's resources.
The financial benefit may take several forms. It may be the avoidance of a personal expense, money, extra income from private employment, creation of a new employment opportunity or the use of confidential information for financial gain.

Gifts, on the other hand, are not received by a public official, primarily, because of the public official's use of a public body's resources, but because gifts are offered by sources other than the public official's government employer or the public body represented by the public official. Sources of gifts are private individuals, businesses or organizations; they are public bodies that are not the employer of or represented by the public official. Sources of gifts may also be employees of the same public body of the public official and they offer gifts acquired with their personal resources, not the public body's resources. If something of economic value is received from the employer of or the public body represented by a public official, that "something" is not a gift, it is a financial benefit either allowed or prohibited by ORS 244.040.

Conflict of Interest

Oregon Government Ethics law defines **actual conflict of interest** [ORS 244.020(1)] and **potential conflict of interest** [ORS 244.020(12)]. In brief, a public official is met with a conflict of interest when participating in official action which could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either are associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could." A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated.

I own a business that the _____ does business with. Yes / No

I have a relative that owns a business that the _____ does business with. Yes / No

A member of my household owns a business that the _____ does business with. Yes / No

I have identified _____, a business or businesses with which myself, my relatives and members of my household are associated.

What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Public Employees:

Public officials in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met. [ORS 244,120(1)(c)]

My appointing authority is _____.

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)] These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the numbers of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position. [ORS 244.020(12)(a)]

- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or "class". The Commission has the authority to determine the minimum size of a "class." [ORS 244.020(12)(b) and ORS 244.290(3)(a)]

- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)]

How is the announcement of the nature of a conflict of interest recorded?

The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records of the public body. [ORS 244.130(1)]

Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?

The announcement needs to be made on each occasion the conflict of interest is met. For

example, an elected member of the city council would have to make the public announcement one time during a meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. An employee in a city planning department would have to give a separate written notice on each occasion they participate in official action on a matter that gives rise to a conflict of interest. [ORS 244.120(3)]

If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?

No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest. [ORS 244.130(2)]

My positions as a _____ requires me to _____ announce the nature of conflicts of interest on _____ occasion.

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Employment

Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?

No. Many public officials hold or perform services as volunteers, meaning there is little or no compensation and they have a private source of income to maintain a household. There are also public officials who do receive compensation, but for personal reasons find it necessary to seek additional sources of income. Some obtain employment with a private business and others establish a private business of their own.

ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also insure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
    - Employees of governmental agencies must give written notice to their appointing authority.
    - Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

What are the restrictions on employment after I resign, retire or leave my public official position?

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; however, most former public officials may enter the private work force with few restrictions.

Resources

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions.

The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.
- Written opinions on specific circumstances can also be requested.

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as "safe harbor" protection from becoming a respondent to a complaint filed with or initiated by the Commission?

There is no "safe harbor," if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint, found violating laws within the jurisdiction of the Commission or receiving a penalty for a violation.

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction the law may have a different application for one public official than for other public officials.

Sanctions for Violations

- Civil Penalty [ORS 244.350]
- Forfeiture [ORS 244.306]
- Letters of Reprimand, Correction or Education [ORS 244.350(5)]

Resources and Information

- Telephone 503-378-5105
  - Fax 503-373-1456
  - e-mail: ogec.mail@state.or.us
  - Website: ogec.state.or.us
  - Training
    - In person
    - iLinc Webinars- Presented live using the internet.
    - iLearn- Self paced online eLearning.

Notes:_____
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