

OREGON
GOVERNMENT ETHICS
LAW

A GUIDE FOR PUBLIC OFFICIALS



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DISCLAIMER

This guide discusses how the provisions in Chapter 244 of the Oregon Revised Statutes apply to public officials. ORS 244.320 requires this publication to explain in understandable terms the requirements of Oregon Government Ethics law and the Oregon Government Ethics Commission's interpretation of those requirements. Toward that end, the statutory language has been summarized and paraphrased in this guide. Therefore, the discussion in this guide should not be used as a substitute for a review of the specific statutes and rules.

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INTRODUCTION

In 1974, voters approved a statewide ballot measure to create the Oregon Government Ethics Commission (Commission). The measure established laws that are contained in Chapter 244 of the Oregon Revised Statutes (ORS).

When the Commission was established, it was given jurisdiction to implement and enforce the provisions in ORS Chapter 244 related to the conduct of public officials. In addition, the Commission was given jurisdiction for ORS Chapter 171, related to lobbying regulations, and ORS 192.660 concerning executive session provisions of Oregon Public Meetings law.

The Commission has prepared a guide for lobbyists and clients or employers of lobbyists regulated under provision in ORS Chapter 171. This guide for public officials includes a discussion of provisions that may interact with Lobbying Regulations. If you have questions regarding lobbying activity or lobbying expenditure reporting requirements, please refer to our guide on lobbying.

ORS 192.660 lists the specific criteria a governing body must use when convening an executive session. The statutory authority for executive sessions is limited to specific topics or procedures. The guide does not discuss this portion of the Oregon Public Meetings law, but there is a detailed discussion of ORS 192.660 in the Attorney General's Public Records and Meetings Manual.

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

You will find links to the ORS Chapters, 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.

JURISDICTION

The jurisdiction of the Oregon Government Ethics Commission is limited. Other Oregon statutes regulate the activities of elected officials and public employees in a number of areas outside the jurisdiction of this Commission. Some examples are:

- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.
- Criminal activity of any type would fall under the jurisdiction of federal, state or local law enforcement.
- The Commission does not have jurisdiction over the laws that govern public meetings or records as set out in Oregon Public Records and Meetings laws, except for the executive session provisions.
- The Oregon Bureau of Labor and Industries investigates cases involving employment related sexual harassment or discrimination on the basis of race, religion, disability or gender.

There are occasions when a public official engages in conduct that may be viewed as unethical, but that conduct may not be covered by Oregon Government Ethics law. Without an apparent statutory violation, the following are some examples of conduct by public officials that are not addressed:

- An elected official makes promises or claims that are not acted upon.
- Public officials mismanage or exercise poor judgment when administering public money.
- Public officials may be rude or unmannerly.
- Public officials using deception or misrepresenting information or events.

While the behavior described above may not be addressed in Oregon Government Ethics law, public agency policies and procedures may prohibit or redress the behavior. Please contact the Commission staff if you need further clarification regarding how the Oregon Government Ethics law may apply to circumstances you may encounter.

HOW DO I KNOW IF I AM A PUBLIC OFFICIAL?

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.

[The actual definition of a public official is found in ORS 244.020(13).]

WHAT PUBLIC OFFICIALS NEED TO KNOW!

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 in a public office is a public trust and the 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)]

ORS 244.020(14) provides a definition for the relative of a public official, which is operative in the application of ORS Chapter 244, except for ORS 244.175 through .179, which addresses nepotism and applies a broader definition of relative. Relative, as defined in ORS 244.020(14), includes the public official's spouse or domestic partner and children, siblings, spouses of siblings or parents of the public official and spouse. If the public official has a legal support obligation for an individual or provides or receives benefits from another individual, they also may be defined as a relative of the public official.

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 address how Oregon Government Ethics law applies to various circumstances that are encountered through public employment and service.

There is one element of Oregon Government Ethics law that a public official should understand as it is one of the keys to knowing how the law may apply in a variety of circumstances. That element is found in the phrase **legislative or administrative interest**, which is defined in ORS 244.020(8) as follows:

Legislative or administrative interest means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

There are occasions when members of the general public may have an economic interest in the actions of a governmental agency. When that economic interest is shared by all members of the general public, it is not defined as a legislative or administrative interest. For example, decisions regarding drivers licenses issued to drivers in the state are likely to have the same general economic impact on all applicants from the general public.

Decisions made with regard to tax rates are also likely to have the same general economic impact on all members of the general public. Decisions on the cost of a sport fishing license are likely to have the same general economic impact on all license applicants from the general public.

Whether a person has a legislative or administrative interest in the governmental agency served by the public official determines whether restrictions apply to offers of gifts or other financial benefits. It also determines what reporting requirements will apply to public officials or others who may provide financial benefits to public officials. This guide addresses those restrictions and reporting requirements, but first, we need to understand how the definition of a legislative or administrative interest applies in various circumstances. The following examples are presented to illustrate how the definition of a legislative or administrative interest might apply, but are **not intended to cover all of the circumstances where there is an economic interest distinct from that of the general public:**

- If a business could sell services or products to a governmental agency, that business would have an economic interest in that agency that is distinctly different than the economic interest held by members of the general public.
- If a business could submit bids on a governmental agency's request for proposals, that business would have an economic interest in that agency that is distinctly different than the economic interest held by members of the general public.
- If a business or person, apart from members of the general public, is regulated or licensed by a governmental agency that business or person would have an economic interest in that agency that is distinctly different than the economic interest held by members of the general public.
- If a business or person must apply for a permit from a governmental agency, that business or person would have an economic interest in that agency that is distinctly different than the economic interest held by members of the general public.
- Lobbyists are advocates for legislative outcomes and have an economic interest in governmental agencies that submit or act on proposed legislative action. The lobbyist's interest is distinct from the economic interest of the general public.
- If a lobbyist is employed or retained to advocate for legislative outcomes through contact with legislative or executive officials, the lobbyist and the lobbyist's client or employer has an economic interest that is distinct from the economic interest of the general public.
- Public employees could have an economic interest in the actions of their agency supervisor that is distinct from the economic interest held by the general public.

PUBLIC OFFICIALS CANNOT:

1. Public officials may not use or attempt to use their official position or office to obtain a **personal** financial gain or to avoid a **personal** financial detriment if the opportunity would not otherwise be available but for their holding the official position or office. *[ORS 244.040(1)]*
2. Public officials may not use or attempt to use their official position or office to obtain a financial gain or to avoid a financial detriment for a public official's **relative** if the opportunity would not otherwise be available but for their holding the official position or office. *[ORS 244.040(1)]*
3. Public officials may not use or attempt to use their official position or office to obtain financial gain or to avoid a financial detriment for a **member of the public official's household** if the opportunity would not otherwise be available but for their holding the official position or office. *[ORS 244.040(1)]*
4. Public officials may not use or attempt to use their official position or office to obtain financial gain or to avoid a financial detriment for a **business** with which the public official, relative of the public official or member of the public official's household are associated if the opportunity would not otherwise be available but for their holding their official position or office. *[ORS 244.040(1)]*
5. A public official, a relative of a public official or a member of the public official's household may **not accept gifts** that exceed \$50 (*This restriction in ORS 244.025 is discussed later.*) from a source* that has a **legislative or administrative interest** in the public official's governmental agency. *[ORS 244.040(2)(e)]*
6. Public officials and candidates may not accept the payment of expenses for **entertainment** nor can a source offer such paid expenses. *[ORS 244.025(4) and see entertainment defined in OAR 199-005-0025(4)]*
7. Public officials or candidates for public office, or members of their households, may not solicit or accept **honoraria**. *[ORS 244.042(1) and ORS 244.042(2)]*
8. Public officials may not solicit or accept the offer, pledge or promise of future employment based on any understanding that a vote, official action or judgment would be **influenced by the offer**. *[ORS 244.040(3)]*
9. Current or former public officials may not use or attempt to use **confidential information** gained through their positions as public officials for financial gain. *[ORS*

* Source of a gift is defined in OAR 199-005-0030 as the person or organization that pays the cost of the gift and receives no reimbursement for the expense from another person or organization.

244.040(4) and ORS 244.040(5) and see confidential information defined in OAR 199-005-0035(5)]

10. Public officials may not represent a **private client** for a fee before a governing body when the public official is a member of that same body. *[ORS 244.040(6)]*
11. After complying with the conflict of interest provisions in ORS 244.120, public officials cannot participate in any personnel action taken by the public agency that would impact the employment of a relative or member of the public official's household. *[ORS 244.177]* Exceptions to the provision are:
 - If acting as a reference, making a recommendation or performing ministerial acts that are normal functions of the position held.
 - If the personnel action involves a relative or member of the household who is an unpaid volunteer.
 - Members of the Oregon Legislative Assembly may employ relatives on their personal staff.

PUBLIC OFFICIALS CAN:

1. Public officials may accept any part of their official **compensation package** from their public employer. *[ORS 244.040(2)(a) and see compensation package defined in OAR199-005-0035(3)]*
2. Public officials may solicit and accept **honorarium, a certificate, plaque, commemorative token or other items** with a value of less than \$50. *[ORS 244.040(2)(b) and ORS 244.042(3)(a)]*
3. Public officials and candidates may solicit and accept **honoraria** for services related to the public official's private profession, occupation, avocation or expertise. *[ORS 244.042(3)(b)]*
4. Public officials may request and accept the **reimbursement of expenses** from their public employer for expenses incurred while on official business. *[ORS 244.040(2)(c) and see reimbursed expenses defined in OAR199-005-0035(4)]*
5. Public officials may accept unsolicited **awards for professional achievement**. *[ORS 244.040(2)(d)]*
6. A public official, a relative of a public official or a member of the public official's household may accept **gifts** from a source when it is reasonable to believe that the **source does not have a legislative or administrative interest** in the public official's governmental agency. *[ORS 244.040(2)(f)]*
7. When it is reasonable to believe that the **source has a legislative or administrative interest** in a public official's governmental agency, the public official, a relative of a public official or a member of the public official's household may accept gifts when the aggregate value in one calendar year from a single source does not exceed \$50. This prohibition also applies to candidates for a position with a governmental agency. *[ORS 244.025(1)]* Sources are also prohibited from offering gifts exceeding \$50. *[ORS 244.025(2) and ORS 244.025(3)]*
8. Public officials **may accept gifts** when the item or event is a specific exception from the definition of "gift" as described in ORS 244.020(5)(b). *[ORS 244.040(2)(g)]* Those events or items that are excluded from the definition of a "gift" are identified in the gift section of this guide.
9. Public officials may accept contributions to their **legal expense trust fund** established under ORS 244.209. *[ORS 244.020(2)(h)]*

GIFTS

A gift is something given to a public official, a relative of the public official or a member of the public official's household when there is no payment, or payment is for a discounted price, and the opportunity (gift) is not available to others who are not public officials on the same terms or conditions. *[ORS 244.020(5)(a)]*

The following are **NOT GIFTS** and may be accepted:

- Campaign contributions as defined in ORS 260.005. *[ORS 244.020(5)(b)(A)]*
- Contributions to a legal expense trust fund established under ORS 244.209. *[ORS 244.020(5)(b)(G)]*
- Gifts from relatives or members of the public official's household. *[ORS 244.020(5)(b)(B)]*
- 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(5)(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(5)(b)(D)]*
- Waivers or discounts for registration or materials related to continuing education to satisfy a professional licensing requirement. *[ORS 244.020(5)(b)(J)]*
- Entertainment for a public official, a relative of the public official or a member of the public official's household that is incidental to the main purpose of the event. *[ORS 244.020(5)(b)(M) and see "incidental" defined in OAR199-005-0025(3)]*
- 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(5)(b)(N) and see "ceremonial" defined in OAR199-005-0025(5)]*
- Food, beverage and admission for a public official, a member of the public official's household or staff when the public official is scheduled to speak or answer questions at an organization's reception, meal or meeting. *[ORS 244.020(5)(b)(E) and see this exception discussed in OAR199-005-0015]*
- Food and beverage consumed at a reception where the food and beverage is an incidental part of the reception and there was no admission charged. *[ORS 244.020(5)(b)(L) and OAR199-005-0025(3)]*

- 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(5)(b)(K)]*
- Food, lodging or travel expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, 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 certain tax-exempt not-for-profit organizations. *[ORS 244.020(5)(b)(F) and see definition of terms for this exception in OAR 199-005-0020]*
- 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(5)(b)(H) and see definition of terms for this exception in OAR 199-005-0020]*
 - Officially sanctioned trade promotion or fact-finding mission;
 - Officially designated negotiation or economic development activity when receipt has been approved in advance.
- Food and beverage when acting in an official capacity in the following circumstances: *[ORS 244.020(5)(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;
 - When the office of the Treasurer is engaged in business related to proposed investment or borrowing;
 - When the office of the Treasurer is meeting with a governance, advisory or policy making body of an entity in which the Treasurer's office has invested money.

GIFTS: A DISCUSSION

In understanding issues related to gifts, the operative definition of a “gift” should be used when deciding if Oregon Government Ethics law would apply to a gift offered to a public official. The following is a paraphrase of the definition taken from ORS 244.020(5)(a):

A gift is something **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.

There is another provision in Oregon Government Ethics law that must be included in any gift discussion. ORS 244.040(1) prohibits public officials from using or attempting to use their official positions to gain a financial benefit or to avoid a financial cost if the opportunity is one that would not otherwise be available but for a public official holding the official position.

There may be occasions when a financial benefit that is available to a public official could meet the definition of gift, but if a public official accepts the financial benefit a violation of ORS 244.040(1) could occur because acceptance would represent the prohibited use of an official position to gain a financial benefit.

It is important to remember that there is a distinction between how the law addresses a financial benefit as a gift in contrast to a financial benefit gained through the use of an official position. The following examples are offered to illustrate, in part, that distinction:

- A salesperson from a software company offers to take a county’s information technology manager out to lunch. The meal would be a gift and, if accepted, the value would be included in the aggregate value of gifts, which cannot exceed \$50 in one calendar year. *[ORS 244.025(1) and (2)]*
- A city recorder has overseen the installation and implementation of a new software program to manage the city’s financial records. The software distributor asks the city recorder to participate as a trainer at an event the distributor has planned for public employees who work for different city governments. The distributor has offered to compensate the city recorder and pay expenses for food, lodging and travel. If the city recorder accepted this offer, it could constitute the use of the official position to gain a financial benefit because the opportunity for the compensation and paid expenses would not be available but for being the city recorder.
- A city manager attends a conference on salaried time and is reimbursed for expenses by the city. When the city manager checks out of the hotel, she is offered a coupon for two nights of free lodging at any of the hotel chain’s nationwide hotels.

If accepted and used for personal lodging, it could constitute the use of an official position to gain a financial benefit because the opportunity for two nights of free lodging would not be available but for the city sending and paying the travel expenses for the city manager to attend the conference.

- A state employee is sent by his agency to attend a two-day training conference and is reimbursed for his expenses. The salaried employee attends during his regular working hours. A salesperson for a company that sells products to the state agency is near the registration table for the conference and offers a collection of gifts valued at over \$100 to all registrants. If accepted, the gifts could constitute the use of an official position to gain a financial benefit because the opportunity to accept the gifts would not be available but for the state agency paying to send the employee to the conference.
- During the same conference, the state employee is going out to dinner after the conference adjourns for the day. While passing through the hotel lobby, he stops to speak with the salesperson who offered the gifts during the conference registration. The salesperson asks to join the state employee for dinner and offers to pay for the meal. Since the employee is on personal time, if accepted, the value of the meal would be included in the aggregate value of gifts, which cannot exceed \$50 in one calendar year. *[ORS 244.025(1) and (2)]*
- A city mayor goes out to lunch in a local city restaurant. During lunch a well known developer approaches the mayor and offers to pay for the mayor's meal. The value of the meal, if accepted, would be included in the aggregate value of gifts from a source, which cannot exceed \$50 in one calendar year. *[ORS 244.025(1) and (2)]*

In the preceding examples the sources of the financial benefits have a legislative or administrative interest in the governmental agencies represented by the public officials. That is important to remember because if there were no legislative or administrative interest the public officials would not be prohibited from accepting the offers. *[ORS 244.040(2)(f)]*

QUESTION: As a public official, if I, my relative or a member of my household is met with an opportunity to obtain a financial benefit, how do we decide if the opportunity should be avoided or accepted?

To answer this question the following questions are offered to suggest how an opportunity for financial benefit should be examined:

- Does the source of a financial benefit have a legislative or administrative interest in my governmental agency?

If the answer is no, then accepting the financial benefit would not be prohibited. *[ORS 244.040(2)(f)]*

If yes, then it may be an opportunity that should be avoided *[ORS*

244.040(1)] or if accepted, be aware of the conditions and restrictions that may apply. [ORS 244.020(5)(b), ORS 244.025 and ORS 244.042]

- Would the opportunity for this financial benefit be available if you did not hold your position as a public official?

If no, then it may be an opportunity prohibited by ORS 244.040(1), unless it is one of the exceptions described in ORS 244.040(2).

- Is the financial benefit defined as a gift?

If yes, then it may be an opportunity you could accept, but be sure you know the conditions and restrictions that may apply. *[ORS 244.020(5)(b), ORS 244.025 and ORS 244.042]*

WHAT DO PUBLIC OFFICIALS REPORT?

There are approximately 5,000 Oregon public officials who must file disclosure forms with the Oregon Government Ethics Commission. Currently, the report forms are provided to the public officials by the Commission. Beginning in 2010, public officials will file their reports electronically.

There are two report forms that must be filed by public officials who hold positions specified in Oregon Government Ethics law:

1. **Annual Verified Statement of Economic Interest forms (SEI)** filed by April 15 of each calendar year. *[ORS 244.050]*
2. **Quarterly Public Official Disclosure forms (QPOD)** filed on January 15, April 15, July 15 and October 15. *[ORS 244.105].*

The **public officials who are required to file reports are specified in ORS 244.050**. Please refer to that section of the law to see if your specific position requires you to file these forms. Generally:

- State public officials who hold elected or appointed executive, legislative or judicial positions are required to file. Additionally, those who have been appointed to positions on certain boards or commissions must file.
- In counties, elected officials, such as commissioners, assessors, surveyors, treasurers and sheriffs must file, in addition to planning commission members and the county's principal administrator.
- In cities, all elected officials, the city manager or principal administrator, municipal judges and planning commission members file reports.
- Administrative and financial officers in school districts, education service districts and community college districts must file.
- Some members of the board of directors for certain special districts must file.
- Candidates for some elected public offices are also required to file the annual and quarterly forms.

The Commission staff has identified the groups of positions that are required to file reports. Each group of officials has a person who acts as the Commission's contact person. The current name and address of each public official filer is obtained from the contact person.

The forms to be completed and filed by the specific public officials are sent either directly to the public official or in some cases, to the contact person for distribution.

The governing body to which you are elected or the public agency with which you are employed should advise you of your reporting requirements. You should also receive information as to the procedures your governing body or public agency follows in assisting you to meet the reporting requirements.

The reporting requirement is the personal responsibility of each public official. Please ensure that you comply and file timely, as the civil penalties for late filing are \$10 for each of the first 14 days and \$50 for each day thereafter. *[ORS 244.350(4)(c)]*

Annual Verified Statement of Economic Interest Form:

When the forms are distributed, instructions and definitions will be included to assist the filer in completing the forms. The form, which is due on April 15 of each calendar year, requests information that pertains to the previous calendar year. Public officials holding a position on April 15 that requires them to file, must complete the form. The following is a brief description of the information requested in the form:

- Name and address of each business in which a position as officer or director was held by the filer or member of the household. *[ORS 244.060(1)]*
- Name and address of each business through which the filer or member of the household did business. *[ORS 244.060(2)]*
- Name and address of the five most significant sources of income for the public official and members of the household, identifying the source and type of income and the name of the person who received it. *[ORS 244.060(3)]*
- Ownership interests held by the public official or members of the household in real property, except for the principal residence, located within the geographic boundaries of the governmental agency in which the public official position is held or sought. *[ORS 244.060(4)(a)]*
- Names of each member of the household 18 years or older. *[ORS 244.060(5)]*
- Names of each relative over 18 years of age who is not a member of the household. *[ORS 244.060(6)]*

The following information is required if the information requested relates to an individual or business that has been or could reasonably be expected to do business with the filer's governmental agency or has a legislative or administrative interest in the filer's governmental agency:

- Name of each person the filer has owed \$1,000 or more, including the date of the loan and interest rate. Debts on retail contracts or with regulated financial institutions are excluded. *[ORS 244.070(1)]*

- Business name, address and nature of beneficial interest over \$1,000, or investment held by the filer or a member of the household in stocks or securities over \$1,000. Exemptions include mutual funds, blind trusts, deposits in financial institutions, credit union shares and the cash value of life insurance policies. *[ORS 244.070(2)]*
- Name of each person from whom the filer received a fee of over \$1,000 for services, unless disclosure is prohibited by a professional code of ethics. *[ORS 244.070(3)]*
- Name of each lobbyist associated with any business the filer or a member of the household is associated, unless the association is through stock held in publicly traded corporations. *[ORS 244.090]*

Quarterly Public Official Disclosure:

These forms are available on the Commission website or from the public entity. Instructions and definitions will be included to assist the filer in completing the forms. The forms are filed on the 15th day of the month that follows each calendar quarter. The information requested pertains to the previous calendar quarter. The following is a brief description of the information requested on the form:

- Identify any organization or unit of government that paid over \$50 in food, lodging and travel expenses for the filer to participate in a convention, meeting, mission or trip as described in ORS 244.020(5)(b)(F). Include the date and nature of the event and the sum of expenses paid. *[ORS 244.100(1)(a)]* The source of the paid expenses is required to provide a written notice as to the value of this event. *[ORS 244.100(2)(a)]*
- Provide the name and address of any person who paid over \$50 in expenses for the filer to participate in a mission, negotiations or economic development activities as described in ORS 244.020(5)(b)(H). Include the date and nature of the event and the sum of expenses paid. *[ORS 244.100(1)(b)]*
- List all honoraria received by the filer or members of the household that exceeded \$15. *[ORS 244.100(1)(c)]* Note that honoraria may not be accepted if it is valued at more than \$50. *[ORS 244.042]* The source of the paid expenses is required to provide a written notice as to the value of this event. *[ORS 244.100(2)(b)]*
- List each source of income over \$1,000 for the filer or a member of the household if the source has a legislative or administrative interest in the governmental agency of the filer. *[ORS 244.100(1)(d)]*

The Quarterly Public Official Disclosure forms must be filed even if the public official has no activity to report.

CONFLICTS OF INTEREST

Oregon Government Ethics law defines **actual conflict of interest** [ORS 244.020(1)] and **potential conflict of interest**. [ORS 244.020(11)] 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.” An **actual** conflict of interest occurs when the action taken by a public official **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 **potential** conflict of interest exists when the action taken by the public official **could** have a financial impact on that official, a relative of that official or a business with which the official or the relative of that official is 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:

Legislative Assembly:

Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120(1)(a). [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

Judges:

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]

Public Employees:

Public officials 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)]

Elected Officials or Appointed Members of Boards and Commissions:

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)]

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.
- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]

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 where members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action even when all members are present.

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 that was a prerequisite for holding the public official position. [ORS 244.020(11)(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". [ORS 244.020(11)(b)]
- If the conflict of interest arises from a position or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(11)(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 public record. [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.

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)]*

THE RETURN TO PRIVATE LIFE

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.
- Oregon Government Ethics law restricts the subsequent employment of certain public officials. The restrictions apply to positions listed below:

ORS 244.045(1)

State Agencies:

Director of Department of Consumer and Business Services
Administrator of Division of Finance and Corporate Securities
Administrator of Insurance Division
Administrator of Oregon Liquor Control Commission
Director of Oregon State Lottery
Public Utility Commissioner

1. One year restriction on gaining financial benefits from a private employer in the activity, occupation or industry that was regulated by the agency for which the public official was the Director, Administrator or Commissioner.
2. Two year restriction on lobbying or appearing as a representative before the agency on behalf of the activity, occupation or industry regulated by the agency for which the public official was the Director, Administrator or Commissioner.
3. Two year restriction on disclosing confidential information gained as the Director, Administrator or Commissioner for the agency.

ORS 244.045(2)

Oregon Department of Justice:

Deputy Attorney General
Assistant Attorney General

1. Restricted for two years from lobbying or appearing before an agency that they represented while with the Department of Justice.

ORS 244.045(3)

Office of the Treasurer:

State Treasurer
Chief Deputy State Treasurer

1. Restricted for one year from accepting financial benefit from a private entity with which there was negotiation or contract awarding \$25,000 in one year by the State Treasurer or Oregon Investment Council.
2. Restricted for one year from accepting financial benefit from a private entity with which there was investment of \$50,000 in one year by the State Treasurer or Oregon Investment Council.
3. Restricted for one year from being a lobbyist for an investment institution, manager or consultant or from appearing as a representative of an investment institution, manager or consultant before the office of State Treasurer or Oregon Investment Council.

ORS 244.045(4)

Public Officials who invested public funds:

1. Restricted for two years from being a lobbyist or appearing before the agency, board or commission for which public funds were invested.
2. Restricted for two years from influencing or trying to influence the agency, board or commission.
3. Restricted for two years from disclosing confidential information gained through employment.

ORS 244.047

Public Officials who authorized a public contract:

1. A public official who authorized or had a significant role in a contract while acting in an official capacity may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.
2. A member of a board, commission, council, bureau, committee or other governing body who has participated in the authorization of a public contract may not have a direct, beneficial, financial interest in the public contract for two years after leaving the official position.

OAR 199-005-0035(6) indicates that “authorized by” means that public official performed a significant role in the selection of a contractor or the execution of the contract. A significant role can include recommending approval of a

contract, serving on a selection committee or team, having the final authorizing authority or signing a contract.

ORS 244.045(5)

Department of State Police

Supervising programs related to Native American tribal gaming
Supervising programs related to Oregon State Lottery

1. Restricted for one year from accepting employment from or gaining financial benefit related to gaming from the Lottery or a Native American Tribe.
2. Restricted for one year from gaining financial benefit from a private employer who sells gaming equipment or services.
3. Restricted for one year from trying to influence the Department of State Police or from disclosing confidential information.

Exceptions include subsequent employment with the state police, appointment as an Oregon State Lottery Commissioner, Tribal Gaming Commissioner or lottery game retailer, or personal gaming activities.

ORS 244.045(6)

Legislative Assembly

Representative
Senator

After a legislator's membership in the Legislative Assembly ends, a legislator may not become a compensated lobbyist until adjournment of the next regularly scheduled session of the Legislative Assembly following the end of membership in the Legislative Assembly. *[Note: In 2008 and 2010, the first special sessions are considered to be regular sessions.]*

OREGON GOVERNMENT ETHICS COMMISSION

The Governor appoints all seven members of the Commission and each appointee is confirmed by the Senate. The commissioners are recommended and appointed as follows:

- 1 Recommended by the Senate Democrat leadership
- 1 Recommended by the Senate Republican leadership
- 1 Recommended by the House Democrat leadership
- 1 Recommended by the House Republican leadership
- 3 Recommended by the Governor

No more than four commissioners with the same political party affiliation may be appointed to the Commission to serve at the same time. The commissioners are limited to one four year term, but if an appointee fills an unfinished term they can be reappointed to a subsequent four year term.

The commission members select a chairperson and vice chairperson annually. The commission is administered by an executive director, who is selected by the Commission and legal counsel is provided by the Oregon Department of Justice.

Training:

The Commission has designated training as one of its highest priorities. It has one staff position to provide training on the laws and regulations under its jurisdiction to public officials and lobbyists. Training is provided by making presentations at training events, posting informational links on the website, creating topical handouts and offering guidance when inquiries are received.

Advice:

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 immediately 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.

Requests for written opinions must describe the specific facts and circumstances that provide the basis for questions about how the Oregon Government Ethics law may apply. The written opinions will be in one of the following formats, as requested:

Staff Advice

ORS 244.284 provides for informal staff advice, which may be offered in several forms, such as orally, by e-mail or by letter. In a letter of advice, the facts are restated as presented in the request and the relevant laws or regulations are applied. The answer will conclude whether a particular action by a public official comports with the law. The Commission may consider whether an action by a public official that may be subject to penalty was taken in reliance on staff advice.

Staff Advisory Opinion

ORS 244.282 authorizes the executive director to issue a staff advisory opinion upon receipt of a written request. The opinion is issued in a letter that restates the facts presented in the written request and identifies the relevant statutes. The letter will discuss how the law applies to the questions asked or raised by the facts presented in the request. The Commission must respond to any request for a staff advisory opinion within 30 days, unless the executive director extends the deadline by an additional 30 days. The Commission shall consider whether an action by a public official that may be subject to penalty, was taken in reliance on this staff advisory opinion.

Commission Advisory Opinion

ORS 244.280 authorizes the Commission to prepare and adopt by vote a Commission Advisory Opinion. This formal written opinion also restates the facts presented in a written request for a formal opinion by the Commission. The opinion will identify the relevant statutes and discuss how the law applies to the questions asked or raised by the fact circumstances provided in the request. These formal advisory opinions are reviewed by legal counsel before the Commission adopts them. The Commission must respond to any request for an advisory opinion within 60 days, unless the Commission extends the deadline by an additional 60 days.

The Commission may not impose a penalty on a public official for any good faith action taken by relying on a Commission Advisory Opinion, unless it is determined that the person who requested the opinion omitted or misstated material facts in the opinion request.

Compliance:

The Commission has a program manager who oversees the management and administration of the various reports that are filed with the Commission. There are approximately 2,000 lobbyists and employers of lobbyists who file quarterly lobbying activity expense reports. Each of the nearly 1,000 lobbyists must file or renew their lobbying registrations every two years. There are approximately 5,000 public officials who must file

the Quarterly Public Official Disclosure form after each calendar quarter and an Annual Verified Statement of Economic Interest form each April 15.

Investigations:

Investigations are initiated through a complaint procedure. [ORS 244.260] Any person may file a signed, written complaint alleging that there has been a violation of Oregon Government Ethics law. The complaint must state the person's reason for believing that a violation occurred and must include any evidence relating to the alleged violation. The executive director reviews the complaint and if additional information is needed, the complainant is asked to provide that information.

If there is reason to believe that there has been a violation of Oregon Government Ethics law, the Commission may also initiate an investigation on its own motion. Before approving such a motion, the public official against whom the action may be taken is notified and given an opportunity to appear before the Commission at the meeting when the matter is discussed.

When a complaint is accepted, the public official against whom the allegations are made is referred to as the respondent. The respondent is notified of the complaint and provided with the information received in the complaint and the identity of the complainant. Whether based on a complaint or a motion by the Commission, the initial stage of the Commission procedure is called the Preliminary Review Phase. The time allowed for this phase is limited to 135 days and the Commission must act on the complaint within that period.

If there is a pending criminal matter related to the same circumstances or actions to be addressed in the Preliminary Review, the time period is suspended until the criminal matter is concluded.

There may be a variety of reasons for a respondent to ask for additional time before the Commission determines whether there is cause to investigate the issues raised by the complaint. With the consent of the Commission, a respondent may request a waiver of the 135 day time limit. If a complaint is made against a candidate within 61 days of an election, the candidate may request a delay.

During the Preliminary Review Phase, the Commissioners and staff can make no public comment on the matter other than acknowledge receipt of the complaint. It is maintained as a confidential matter until the Commission ends the Preliminary Review Phase. Under most circumstances, the Commission will end the Preliminary Review Phase by either dismissing the complaint or finding cause to conduct an investigation. The Commission meets in executive session to conduct deliberations and vote on the finding of cause or to dismiss. After the close of the Preliminary Review Phase, the case file is open to public disclosure.

If the complaint is dismissed the matter is concluded and both the respondent and complainant are notified. If cause is found to investigate, then an Investigatory Phase begins. This phase is limited to 180 days.

During each phase, information and documents are solicited from the complainant, respondent, and other witnesses and sources that are identified. Before the end of the 180 day period, the Commission will consider the results of the investigation. Normally, the Commission will either dismiss the complaint or make a preliminary finding that a violation of Oregon Government Ethics law was committed by the respondent. The preliminary finding of a violation is based on what the Commission considers to be sufficient evidence to support such a finding.

If a preliminary finding of violation is made, the respondent will be offered the opportunity to request a contested case hearing. At any time, the respondent is also encouraged to negotiate a settlement with the executive director, who represents the Commission in such negotiations. Most cases before the Commission are resolved through a negotiated settlement, with the terms of the agreement described in a Stipulated Final Order.

The Commission has a variety of sanctions available after making a finding that a violation occurred. Sanctions range from letters of reprimand to civil penalties and forfeitures. The maximum civil penalty that can be imposed for each violation is \$5,000. Any financial gain that a respondent realized from the violation is subject to a forfeiture of twice the gain. Any monetary sanctions imposed and paid are deposited into the State of Oregon General Fund.

Legal Expense Trust Fund

The Oregon Government Ethics Commission can authorize a public official to establish a trust fund to be used to defray expenses incurred when mounting a legal defense in any civil, criminal or other legal proceeding that relates to or arises from the course and scope of duties of the person as a public official. *[ORS 244.205]*

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