

OREGON GOVERNMENT STANDARDS AND PRACTICES LAWS

A GUIDE FOR PUBLIC OFFICIALS



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I. THE OREGON GOVERNMENT STANDARDS AND PRACTICES LAW

History and Purpose

During the Watergate scandal of the early seventies, some elected officials engaged in deceit and misuse of power. Citizens across the nation began calling for accountability from their governments. In response, Oregon was one of the first states to create laws designed to open government to greater public scrutiny.

In 1974, more than 70 percent of the voters approved a statewide ballot measure to create the Oregon Government Ethics Commission. The ballot measure also established a set of laws (ORS Chapter 244) requiring financial disclosure by certain officials and creating a process to deal with the inevitable question of conflict of interest. The drafters of the original laws recognized that "conflicts of interest" are indeed, inevitable in any government that relies on citizen lawmakers.

In 1993, the Legislature changed the name of the commission and one of the chapters of law it enforces to "Government Standards and Practices." This manual will refer to the commission as the GSPC (Government Standards and Practices Commission), and to the laws as GS&P (Government Standards and Practices).

In Oregon, thousands of people are elected to office in hundreds of jurisdictions -- from cities of 100,000 to tiny water districts. Citizens serve on the boards of small school districts as well as in the Oregon Legislature where decision-making affects the entire state.

The vast majority of these elected officials serve for little or no financial compensation. Their principal income derives not from the official position they hold, but from other employment in government or private business.

Because these public servants are active members of their community, it is not unusual for the elected body on which they serve to make decisions that will affect a business in which they or one of their relatives has an interest. For example, a school district may enter into a contract with a business that is owned by or employs a school board member. A utility district may consider purchasing property owned by a board member's relative. A proposed ordinance may affect the value of a city council member's real estate.

The smaller the district, the more likely it is that such an overlap of interest will occur. For example, in a community of 5,000 people, the city council members

may be the owners of the local bank, the hardware store and the service station, making it difficult for the city government to avoid dealing with businesses owned by council members.

Appointed officials and employees of state and local governments may encounter similar situations. Many public employees have responsibility over purchasing supplies and hiring services. In some instances, these employees may face the need to make a decision involving a business owned by a relative, or by someone with whom they have a business interest outside of their government job.

Oregon Government Standards and Practices laws are not designed to prevent such situations from occurring. Instead, the laws require **public disclosure** of such circumstances.

Public officials are required to not vote and to not take other official actions that would result in financial gain or detriment to that individual or a relative, or to a business with which the official or relative is associated. Public employees and other appointed public officials not serving on boards or commissions are required to give **written notification** to their supervisors of conflicts of interest and request that the supervisor take the matter out of that employee's hands.

In the same spirit of disclosure, statements of economic interest must be filed regularly, not to prevent elected officials and government employees from maintaining an active role in business and other income-raising activities, but to make such information available to the public.

There are **potential** conflicts of interest and **actual** conflicts of interest.

A potential conflict of interest arises when a public official takes official action that **could** financially impact the public official, the official's relatives, or a business with which the public official or a relative is associated.

An **actual** conflict of interest arises when a public official takes official action that **would** financially impact the official, a relative or an associated business.

The distinction is important because in the first case, the official is required to disclose the potential conflict of interest, but may take action on the issue. In the second case, the official must both disclose the actual conflict of interest and refrain from taking official action.

This booklet contains guidelines for determining when a circumstance presents a "potential," versus an "actual" conflict of interest. The distinction

between the two may be difficult for a public official to determine. Accordingly, officials may want to consult with the GSPC in advance of taking action.

Government Standards and Practices laws clearly prohibit some activities and regulate others. For example, the "revolving door" section prohibits certain officials from becoming an employee of, or a lobbyist for, private entities over which the former public official exercised authority for a specified period of time.

Government Standards and Practices Laws: What They Don't Do

Oregon Revised Statutes (ORS) Chapter 244 applies to a very narrow set of activities. It deals only with the issues of financial disclosure, prohibition against the use of office for personal financial gain and public disclosure of conflicts of interest.

Other Oregon statutes regulate the behavior of elected officials and public employees in a number of areas outside the jurisdiction of the Government Standards and Practices Commission. For example:

- The Elections Division of the Secretary of State's Office regulates campaign finance and campaign activities.
- Alleged **criminal activity** of any type would fall under the jurisdiction of law enforcement.
- The Oregon Bureau of Labor and Industries investigates cases involving employment-related sexual harassment or discrimination on the basis of race, religion or gender.

There are many issues that may be considered improper that are not covered by ORS Chapter 244. For example, while deliberate deception and lying are not considered proper conduct, Oregon statutes do not generally regulate the speech of public officials.

Oregon's Government Standards and Practices statutes cannot be used against an elected official for making promises or claims that are not acted upon, or making statements about his or her beliefs that are not true.

In addition, Government Standards and Practices laws do not cover the personal behavior of elected officials or public employees except in very specific areas. ORS Chapter 244 only regulates their actions with regard to their official duties within the narrow framework of conflicts of interest and personal financial gain.

The Government Standards and Practices Commission

The GSPC has seven volunteer members. The Governor, upon recommendation of the Democratic and Republican leaders of the Oregon House and Senate, appoints four members. The Governor selects three additional members directly. The Senate must confirm all members. No more than four of the members may be from the same political party. The law allows members to serve only one four-year term.

The commission selects an executive director to administer the agency. The commission also employs investigators and other support personnel who are appointed by the executive director.

The manner in which the GSPC reviews alleged violations of law is prescribed in detail in ORS 244.260. While it is subject to statutory requirements, the GSPC process is not intended to be rigid or intimidating.

GSPC employees are available for questions and discussions about statutes, administrative rules and the commission's process. Public officials are encouraged to contact GSPC staff at any time.

The GSPC members and staff consider that they are doing their job most successfully if they can help public officials avoid conduct that violates the GS&P statutes. They encourage people to inquire into any point of the statutes **prior** to taking any action that may violate ORS 244.

The GSPC Guide for Public Officials

This guide includes some of the most commonly asked questions that public officials have about Government Standards and Practices laws. Also included are examples of actual and hypothetical cases considered by the GSPC that can provide guidance to officials facing similar circumstances.

This manual is an advisory opinion as described in ORS 244.280(3). If a public official takes action accurately based on the information contained in this manual, the individual may not be prosecuted by the GSPC for violating government standards and practices law by that action.

However, not all situations can be anticipated, nor can all questions be answered with a simple yes or no. Public officials may still find it necessary to use the formal or informal inquiry processes available through the GSPC, and staff are usually available to answer questions or prepare advisory opinions.

After consulting this guide and GSPC staff, if you still are not comfortable about the status of an activity under the GS&P statutes, **caution is always the best approach**. To protect yourself from a potential violation of the law, it is always best to refrain from doubtful activities.

II. PUBLIC OFFICIALS

Who is considered a public official under Oregon Government Standards and Practices laws?

ORS 244.020(15) defines a public official 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 of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services."

A public official as used in the statute covers a broad spectrum of positions -- from volunteer members of a soil and water conservation board to the full-time chancellor of higher education, to the Governor, to a clerk in a branch office of a state agency. It also includes persons who serve the state or a political subdivision by performing government services under a contract.

It is important to note that a person who was a public official at the time of an alleged violation will be subject to the authority of the GSPC, for a period of four years after the alleged violation, regardless of whether or not the person is still a public official at the time a complaint is filed.

Are all public officials subject to the same regulations?

All public officials are prohibited from using public office for personal financial gain. However, other statutes address different jobs with different obligations.

For example, not all public officials are required to file statements of economic interest (see ORS 244.050 in the appendix to this manual for a complete list of those required to file). Elected public officials are subject to different requirements for disclosing conflicts of interest than are other public officials.

Who are considered relatives and household members of public officials for the purposes of the GS&P statutes?

A "relative" includes the public official's spouse and the parents, children, brothers and sisters of either the public official or the official's spouse. A "member of a household" is any relative, as defined above, who resides with the public official.

III. ACTUAL AND POTENTIAL CONFLICTS OF INTEREST

1. What is a conflict of interest?

The Oregon Government Standards and Practices laws define "potential conflict of interest" and "actual conflict of interest".

As the term implies, a **potential** conflict of interest occurs when a public official takes official action that **could** affect the financial interests of the public official, or the official's relatives or businesses with which they are associated.

An **actual** conflict of interest occurs when a public official takes official action that definitely **would** have such an effect.

Before taking an official action, a public official should first:

- a) Determine if an action **could** result in financial benefit or avoidance of financial detriment to the official, a relative or a business with which the official or a relative is associated. If the answer is "no," proceed with the action.
- b) Determine if taking action actually **would** result in financial gain or avoidance of financial detriment to the official, a relative or a business with which the official or a relative is associated. If you are unable to determine which of the above applies, contact the staff of the GSPC for assistance before you take official action. If it is not possible to contact the GSPC before taking official action, avoid the risk of violating the law by declaring the conflict and then by not discussing, voting or participating in any way concerning the matter in question.

2. Why is the distinction between "actual" and "potential" conflicts of interest important?

For certain officials, the law prescribes different actions depending on whether a conflict of interest is "potential" or "actual."

3. What is a potential conflict of interest?

A potential conflict of interest exists when an official takes action that reasonably could be expected to have a financial impact on that official, a relative or a business with which the official or official's relative is associated.

This would be the case when an official is asked to take action (recommend, debate, vote on or make an administrative decision or recommendation) that might affect property or a business with which the official or any relative of the official is associated, or is asked to make a recommendation that will be re-evaluated by another committee or official for formal action.

In these and other circumstances, the public official's action **could** have an impact on the personal finances of the official, a relative or an associated business. However, the results of the actions are not certain. It is not clear if or how a land use decision on adjacent property will affect a parcel. It is not certain that the decision maker will follow a recommendation. (See examples below describing appropriate actions).

4. What is an actual conflict of interest?

According to the statute, the difference between a potential and actual conflict of interest is determined by the words "could" and "would." An actual conflict of interest occurs when the action is reasonably certain to result in a financial benefit or detriment. It will occur when an action is taken that directly and specifically affects land, a business, or any other financial interest of the office holder or office holder's relative.

Examples listed below demonstrate differences between potential and actual conflicts. However, in many cases, the distinction may be hard to determine. When in doubt, check with the GSPC.

5. What must a public official do when faced with an action that gives rise to a potential or actual conflict of interest?

Allowable actions vary depending on the public official's role.

Elected officials and appointed members of boards and commissions:

An elected official or a person appointed to a board or commission must publicly declare a potential or actual conflict of interest **prior** to abstaining, discussing, recommending, voting or taking other official action on an issue. The

official also must explain the nature of the conflict. The declaration and the nature of the conflict must be noted in the minutes.

(Abstaining instead of disclosing a conflict of interest does not fulfill statutory requirements because the act of abstaining is an official action and the law requires disclosure *before* action is taken.)

With a potential conflict of interest, an official may participate in the action, once the nature of the conflict has been announced.

In the case of an actual conflict of interest, the person must:

- a) Announce the nature of the conflict; and
- b) Not take any official action on the issue.

At each session or meeting at which the issue is addressed, the official must make the same public disclosure. However, the official is required to make that announcement **only once at each meeting**, even if the issue involves a series of votes.

EXAMPLE: A planning commission member owns property adjacent to a parcel for which the commission is considering a conditional use permit. The change in use of the debated parcel may or may not impact the value of the commissioner's property, but the possibility exists. The commissioner must declare a potential conflict of interest and announce the nature of the conflict. Then the commissioner may enter into debate and proceed to vote or take other official action.

EXAMPLE: The same planning commissioner has approached the planning department for a conditional use permit on his property. The permit comes before the planning commission.

Because the outcome of the decision clearly would have a financial impact on the commissioner's property, the commissioner must declare an actual conflict of interest, and he may not take any official action on the permit application.

EXAMPLE: A city council is about to approve a contract authorizing a councilor's husband's brother to be principal contractor on a new city building. Such an action would be a clear financial benefit to a relative of the councilor and would constitute an actual conflict of interest.

The councilor would be required to announce an actual conflict of interest and refrain from any further official action.

EXAMPLE: A school board has asked a special panel of teachers to recommend three consultants from a large applicant pool. One of the teachers is married to one of the consultants who has applied. The panel recommends three names for a decision by the full school board. The teacher is required to declare a potential conflict of interest, and then the teacher is permitted to vote on moving the slate of consultants to the board for final selection. The teacher is not sure of the outcome, therefore, the potential for financial gain exists, but it is not a certainty.

Legislators:

Legislators should consult the rules of the chamber in which they serve as to when and how potential or actual conflicts of interest are to be disclosed.

A legislator is required to vote on every piece of legislation that arises when they are present in committee or on the floor. Therefore, even when faced with an actual conflict of interest, the legislator must vote. Official action taken by a legislator usually affects all persons in the state or a large group of persons in the state to the same degree. Accordingly, legislators are often exempt because of the "class exception." [See ORS 244.020(7)(b)]

Judges:

Judges must either remove themselves from cases giving rise to conflicts or advise the parties about the nature of the conflict of interest.

Other appointed public officials:

An appointed official, including public employees, must disclose the actual or potential conflict of interest **in writing** to the person who appointed the official (the "appointing authority"), disclose the nature of the conflict and ask that person to dispose of the matter giving rise to the conflict such as by assigning the matter to another employee.

EXAMPLE: A county worker is in charge of disposing of surplus property. The employee's brother is a contractor interested in purchasing a piece of heavy equipment that the county is selling. Normally, the county employee has the flexibility to negotiate payment terms with prospective purchasers.

Because the payment terms agreed on will clearly impact the finances of the employee's relative, this circumstance is an actual conflict of interest. The county employee must notify the appointing authority in writing of the actual conflict of interest and request the appointing authority to dispose of the matter.

In this example, the appointing authority -- the supervisor who hired the county worker -- could take over negotiations with the employee's brother, or assign responsibility for negotiating to another employee.

6. How can a public official assure that a declared conflict of interest has gone into the official record?

The statute requires that a disclosure of potential or actual conflicts of interest be noted in the official records of the public body. A public official should make sure that the meeting minutes or any other official records make note of the announcement. In case an action is questioned, the minutes will verify that the appropriate declaration has been made.

Be sure that the announcement is made clearly and is very explicit. **Even if you know or believe that other officials and any members of the public in the room all are aware of the official's relationship to the issue at hand, it is essential to state for the record that there is a potential or actual conflict of interest and to describe the nature of the conflict.**

7. Must a public official disclose financial amounts when announcing a potential or actual conflict of interest?

No. The statute requires only that the nature of the conflict be disclosed.

8. What is a "class" exception to the statutes relating to potential and actual conflicts of interest?

The law has identified certain circumstances creating what is called a "class exception" from the definitions of actual and potential conflicts of interest

Sometimes an official may take action that would have a financial effect on that official, a relative or a business with which the official or the official's relative is associated. But when other people are also "affected to the same degree" by that action, the official may be exempt from conflict of interest on the basis of a class exemption.

The law says that a "class" can be comprised of all inhabitants of the state or a smaller group, such as an industry or occupation.

If the official, official's relative or associated business is found to be a member of a class, no actual or potential conflict of interest is involved so long as the action would affect everyone in the class in the same manner.

Only the GSPC is authorized by law to determine the existence of a class for the purpose of compliance with ORS Chapter 244.

There is no hard and fast rule that identifies a class. For example, in a town of 5,000, where virtually all residents work for or are otherwise financially associated with a single business, the GSPC may find that the public officials are members of a class. However, in a community of 150,000, 5,000 people with a common financial interest may not be considered a "class."

If you are uncertain whether you as an official are a member of a class if a potential or actual conflict may exist otherwise, you should contact the GSPC. The following examples may help you, as well:

EXAMPLE: A good example of a class is property taxpayers. Most public officials are property owners and therefore property taxpayers. An action that would affect property tax rates in a taxing district would therefore affect most or all of the elected officials serving the decision-making body. In most cases, the commission would consider the officials as a member of a class of taxpayers, and would find that there is no conflict of interest.

EXAMPLE: A city council may consider using public funds to develop a series of parks on property that currently consisted of eyesores and condemned buildings. The result of such action would be to raise property values throughout much of the community -- "affecting to the same degree" a significant number of other people.

Again, because most public officials are property owners, the officials would be considered members of a class of property owners, as everyone in the community who owns property -- not just the officials -- would benefit from the investment.

However, if a public official owned the particular property to be improved, he or she would not be considered a member of a class. The result would be an actual conflict of interest. The official would be required to declare a conflict and refrain from taking action.

EXAMPLE: A member of a school board was faced with a decision on whether or not the board should buy property owned by the member's spouse.

The GSPC advised the member that because the member's spouse was the only individual owning the property, the spouse was not a member of a class. This situation presented an actual conflict of interest.

EXAMPLE: A more subtle distinction was made by the GSPC in the case of a county commissioner. The commissioner was a part owner of a commercial building in a pedestrian mall. The county commission was asked to open a portion of the thoroughfare through the mall to vehicle traffic. The GSPC advised that the commissioner was a member of a class of other property owners who would be similarly affected. No conflict of interest was found.

EXAMPLE: The Advisory Committee on Historic Preservation has many members personally committed to preserving old buildings. The committee was asked to vote on recommendations concerning nominations to the historic register, placement on which is accompanied by a tax freeze.

Some of the members owned property being considered for acceptance on the register (and the resulting tax break). The GSPC found that these individuals were considered members of a class, along with several thousand other property owners "where all the people or businesses in the class are affected to the same degree" by the board action. Therefore, they were not required to declare a conflict of interest.

However, if they were asked to vote on a specific property application owned by a voting member, a "yes" vote by that member would result in financial benefit for that particular individual, which would represent an actual conflict of interest. The member would be required to announce a conflict of interest and refrain from voting.

9. Are there other exceptions to ORS 244.020, the definition of "conflict of interest"?

Yes, there are several.

ORS 244.020(7)(a) exempts individuals when the conflict arises from "an interest or membership in a particular business, industry, occupation, or other class **required by law as a prerequisite to the holding by the person of the office or position.**"

EXAMPLE: Half the members of the same Advisory Committee on Historic Preservation are required by law to be people who are recognized as professionals in the areas of history, architectural history, architecture, archeology, museum management or be cultural or ethnic minorities. There may

be times when the committee would take action that would affect the occupation, in general, of one or more of the members.

In this case, actions they take would be exempt from conflict of interest requirements, because their membership in a specific occupation is required for membership on the commission. The nature of that occupation naturally would lead to what otherwise might be conflicts of interest.

10. What is the law with regard to affiliation with non-profit organizations?

The statute says that officials need not declare a potential or actual conflict of interest when the potential or actual conflict of interest arises from "membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code". However, the official's relationship with the non-profit entity must be unpaid.

EXAMPLE: A school board member is presented with a decision to approve a contract for mental health services to a local non-profit organization on which the board member is also a board member. The board member is not required to declare an actual or potential conflict of interest and is able to take action on the contract.

11. What if a public body would be one short of the minimum number of votes necessary to take action if a person failed to vote because of a conflict of interest?

The statute requires that when a member's vote is necessary for the voting body to meet a required minimum number of votes necessary to take official action, the member must declare an actual conflict of interest and may cast a vote, but may not participate as a public official in any discussion of the topic.

EXAMPLE: The water district board is asked to approve a low-bid contract with a plumbing contractor. An employee of the contractor sits on the board.

Ordinarily, the employee would be required to declare an actual conflict of interest and refrain from voting or taking other action. This particular night, because several board members are out with the flu, the board member's vote is necessary for the board to meet the required minimum number of votes necessary to take action. The board member must declare an actual conflict of interest and may then vote without entering into any debate or taking any other official action on the motion.

IV. USE OF OFFICIAL POSITION OR OFFICE TO OBTAIN FINANCIAL GAIN.

1. How does Oregon law help ensure that public officials do not use public office for personal financial gain?

ORS 244.040 states that:

"No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office..."

This prohibition does not include acceptance of official salary, reimbursement of expenses, honoraria and unsolicited awards for professional achievement.

2. When is a public official in violation of the law prohibiting use of official position or office to obtain financial gain?

If people are able to gain financially **only** because they hold a public office, and the same opportunity is not available to persons who are not public officials, they are violating the law.

Some examples are very clear. Others are less obvious. An out-and-out exchange of cash in return for a certain vote or administrative decision certainly would be use of official position or office to obtain financial gain. The office holder would not have received the money if that person were not a public official.

Similarly, an official who makes a decision in favor of a company **in exchange for a promise of a job** is violating the law. The official is also violating the statute if the official suggests or solicits that type of agreement.

Again, that official is offered the job not just because of skills, talents or experience, but because that person is in an official position to do a favor for that company in exchange for future employment.

The statute prohibits public officials from using public equipment for personal purposes. It also prohibits an official from asking or allowing publicly paid staff to

do personal tasks for the official on public time or to make decisions that will benefit the official financially.

A variety of examples follow. Some are based on actual GSPC cases and others are hypothetical.

EXAMPLE: A city councilor is a real estate agent. On the agent's business card are his name, occupation, phone number and the fact of being a council member.

While the actual impact of this may be minimal, the implication is that the real estate agent, by virtue of sitting on the council, may be able to "get things done" for clients of the councilor's realty service. By connecting the council position to the occupation, the councilor can be considered to be **attempting to use** official position or office for financial gain, a violation of law.

EXAMPLE: A county road department employee is assigned a cell phone. The employee uses the county phone for both business and personal calls. Each month, when the county receives the bills for its cell phones, the bill for the phone assigned to the employee is given to the employee. The employee then checks off the calls that were "personal" and reimburses the county for the airtime costs for those calls.

The employee is in violation of the prohibition against using official position for personal financial gain. While the employee may be paying the airtime costs for personal calls, the county paid the cost of the cell phone and is paying the monthly service fee to the cellular carrier. The employee is using official position to avoid a financial detriment.

EXAMPLE: A state legislator has a consulting business. The legislator proposes to do work for a company that has an interest in legislative issues. The legislator invites the prospective client into the legislator's office in the State Capitol to discuss the consulting contract.

The message the legislator sends is that the legislator's official position is beneficial in performing services under the personal business contract.

There is no prohibition against a legislator privately working for organizations that have an interest in legislation. In fact, with Oregon's "citizen" Legislature, it would be very difficult to find people who are not employed in businesses that have some interest in legislation. The law does not disqualify a person from any type of public service based merely on membership in some occupation or profession.

The problem here is using the implied promise of legislative influence in return for receiving compensation.

EXAMPLE: A state agency purchased a fleet of new cars at a deeply discounted government price. An agency administrator ordered an additional car to purchase personally and paid the government price for it with personal funds.

The Oregon Supreme Court found that this was a violation of the Oregon statutes. The court reasoned that the official gained financially (the \$1,300 the official saved by purchasing the new car at the fleet price) and that the only reason the official was able to save the money was because of the official position he held. The official would not have had the opportunity to save that money "**but for**" his position.

It is important to note here that while similar behavior may be commonplace and acceptable in private business, the state of Oregon holds its public officials to a higher standard. Public officials must act with caution whenever their personal financial interests overlap with those of the government entity they serve.

EXAMPLE: A city public works director had a boat and travel trailer that needed to be stored for the winter. There was space available in the city yards. The director used the space to store the boat trailer.

The GSPC found the employee in violation of using official position for personal financial gain. It was determined that, **but for** the holding of the official position, the director would not have been able to store the items at the city yards, which enabled the director to avoid the financial detriment of paying for commercial storage space.

EXAMPLE: A city's mayor owned an office supply store. The city regularly purchased items from the mayor's store.

The GSPC determined that the city could continue to do business with the mayor's store. There was no evidence that the mayor had taken any official actions concerning the city's purchases from the mayor's business or that the mayor had tried to influence the city or otherwise use official position for financial gain in any way.

EXAMPLE: A county employee learned through confidential agency documents that an investigation would result in the shutting down of a local bar. The employee arranged financing and, by using the confidential information, was

able to buy the bar at below market value before the original owner lost a liquor license.

The employee improved the employee's financial situation by purchasing a business at a very low price based on confidential information. Using confidential information that is obtained because of official position for personal financial gain is a specific violation of law.

EXAMPLE: A county employee heard from a co-worker about a piece of property that had been foreclosed on by the county because the property taxes had not been paid for several years. Official notices were printed in the newspaper and the county held an auction for that parcel. The employee was the successful bidder and purchased the property.

Provided the employee did not use confidential information on which to base the bid, and the employee was not responsible for any decisions concerning the auction, sale, or other related financial details, the employee was not prohibited from bidding on the property. In this situation, the employee did not benefit from official position and had no advantage that was not available to any other person.

V. GIFTS

The gift provisions of Government Standards and Practices laws apply to public officials receiving gifts both for **themselves and their relatives**. The application of these provisions depends on the source of the gift. The provisions apply **only** if the source has a "**legislative or administrative interest**" in the government agency in which a public official holds official position. The law defines a legislative or administrative interest as "**...an economic interest, distinct from that of the general public...in matters subject to the action or vote of a person acting in the capacity of a public official.**"

If a public official receives a gift from a source that does **not** have a legislative or administrative interest, and the gift is received **only** because of the official's position, the official would be in violation of the prohibition against using official position for personal financial gain as discussed in Section IV.

A gift is:

- Something of value that an official accepts for free or for which the official does not pay back equal value;

- The forgiveness of a debt, as well as the giving of some object or service; and
- Something received by a public official that is not available to the general public for the same price or on the same terms and conditions.

2. Can public officials ever accept items of value?

The law permits public officials to accept the following:

- Campaign contributions;
- Gifts from relatives;
- Gifts totaling less than \$100 in value during a calendar year from people or organizations with an administrative or legislative interest in the public body in which the recipient is an official;
- Food, lodging and travel for a public official associated with an appearance in an official capacity at an event related to the official's public office;
- Food and beverage, when consumed by the public official or the official's relatives in the presence of the purchaser or provider -- with no dollar limitation;
- Entertainment experienced by the official or official's relative in the presence of the purchaser or provider, up to a value of \$100 per person on a single occasion and not totaling a value of more than \$250 per person in a calendar year.

3. How is an official to know the value of a gift?

A public official should make every effort to determine the value of any gift provided by lobbyists or other individuals with an administrative or legislative interest in the area of the official's public responsibility.

Because the giving, as well as receiving, of gifts is regulated, both donor and recipient should be aware of the statutes and should keep track of the value of any gifts. When in doubt, ask.

EXAMPLE: A land developer with significant property holdings within a county invites a county commissioner and spouse to join the developer and spouse for dinner at a local restaurant. The developer pays for food and beverages consumed by the commissioner and spouse.

The developer is allowed to pay for the meals of both the commissioner and spouse. There is no dollar limit, nor is there a limit on how frequently this or similar meals may take place during a calendar year nor does it matter if the developer has issues pending before the board of commissioners.

EXAMPLE: A senator told a lobbyist how much the senator was looking forward to a vacation at the end of the legislative session. The lobbyist offered the senator a free weeklong stay at the lobbyist's luxury condominium at a coastal resort. The senator accepted the offer. The lobbyist normally rents out the condominium for \$200 per day.

The lobbyist and the senator **both** violated the \$100 yearly limitation on gifts. The exemption for food lodging and travel did not apply because the senator was vacationing. He was not appearing in an official capacity in an event related to his office.

EXAMPLE: A vendor's representative with an interest in supplying mechanical equipment to a parks and recreation district offered to sell the district's manager a \$450 lawn mower for the wholesale price of \$300. The manager bought the mower at the discounted price.

The \$150 discount was a gift worth more than \$100 in value. The vendor's rep violated the law that limits the value of gifts to \$100 a year by making the offer. The director also violated the law by accepting the offer.

The director might also be found to have used public office for personal financial gain for purchasing the discounted lawn mower.

EXAMPLE: The chief of a large fire department was planning to buy several million dollars worth of new fire engines. A representative of a fire apparatus manufacturer invited the chief to travel to the company's headquarters and manufacturing plant in the eastern United States in order to see various models of equipment demonstrated, etc. The representative also offered to have the company pay for the chief's food lodging and travel expenses associated with the trip. The chief accepted the offer and subsequently purchased equipment from that company.

Neither the chief nor the vendor's representative violated the law. While the vendor's representative and the company he represented both had an economic interest distinct from that of the public in the fire chief's purchase of new equipment, the trip was an event that was related to, and the chief "appeared" in, the chief's official capacity. The chief could not, however, accept an offer to have

the chief's spouse go on the trip at the manufacturer's expense, because the spouse is not a public official and makes no appearance in an official capacity.

EXAMPLE: A lobbyist invited a legislator and the legislator's spouse to accompany the lobbyist on charter boat ocean fishing trip. The legislator and spouse accepted the invitation. The lobbyist paid \$89 per person for the boat trip. After fishing, the lobbyist took the legislator and spouse to dinner at a cost of \$55 each.

The statutory gift limitations were not violated. The limit for entertainment is \$100 per occasion or \$250 in a calendar year each for the legislator and the spouse, provided the entertainment is "experienced" in the presence of the purchaser or provider. The fishing trip was the only entertainment the lobbyist had provided to that legislator or spouse during the year. There is no value limit on gifts of food and beverage as long as the food and beverage are consumed in the presence of the purchaser or provider.

VI. HONORARIA

1. What is meant by an honorarium?

The statute says that an honorarium is a payment or something of economic value given to a public official in exchange for services "upon which custom or propriety prevents the setting of a price."

Traditionally, an honorarium has been the granting of a sum of money to a public official in exchange for giving a speech or performing a service in an official capacity. The public official cannot dictate, negotiate or recommend the value of the honorarium.

2. What public officials may accept honoraria?

Some office holders and candidates for those offices may not accept honoraria.

Statewide elected officials and candidates for those offices may not accept honoraria for themselves or for their relatives.

State legislators and candidates for legislative office may only accept honoraria for appearances outside the State of Oregon when the Legislature is not in session. The honoraria may not exceed \$1,500 for each appearance.

State legislators and candidates for legislative office may accept honoraria for services related to their private professions or occupations.

There are no restrictions on honoraria that may be received by other public officials.

EXAMPLE: A city's mayor addressed a convention. Neither the host nor the mayor discussed any payment being made to the mayor for making the speech. At the conclusion of the speech, the mayor was offered \$100 cash for having made the speech. The payment was an honorarium, which the law permitted the mayor to accept.

EXAMPLE: A state legislator who chairs a subcommittee on liability limits was invited to speak, in Oregon, before a group of insurance industry representatives on the subject of his committee work. The legislator may not accept an honorarium for this appearance.

EXAMPLE: A city council member was invited to provide a public policy perspective on solid waste issues to an association of garbage haulers and recyclers. The councilor was offered an honorarium at the conclusion of the presentation.

The council member may accept the honorarium if he has not directed, suggested or dictated the amount involved or required an honorarium as a condition of his appearance.

VII. STATEMENTS OF ECONOMIC INTEREST

1. What is a statement of economic interest?

The statement of economic interest (SEI) is a form prepared by the Government Standards and Practices Commission that approximately 4,000 public officials are required to file with the GSPC.

The form asks information about **sources** of the official's household income, business interests, and other financial matters. Specific dollar amounts are not requested. The purpose of the form is to make general information about an official's income sources and business relationships available to the public.

The forms also ask for information about office-related food, lodging, travel and honoraria. The requirement for disclosure promotes accurate record-keeping by officials and special interest groups, and helps to maintain a higher level of public trust.

2. Who must file a statement of economic interest?

According to ORS 244.050, many elected and appointed officials are required to file a statement of economic interest. These officials include:

- a) All statewide elected officials (Governor, secretary of state, state treasurer, attorney general, commissioner of the Bureau of Labor and Industries, superintendent of public instruction)
- b) All county district attorneys
- c) All legislators
- d) "Judicial officers," including justices of the peace and municipal judges except municipal judges in exempt cities;
- e) Candidates for any of the offices listed above;
- f) The deputy attorney general;
- g) Numerous appointed officials working at the Oregon Legislature;
- h) Designated officials of the State System of Higher Education;
- i) Directors of state agencies listed in ORS 244.050;
- j) Certain members of the Governor's staff;
- k) Elected city and county officials, except in exempt cities and counties;
- l) Members of city or county planning, zoning or development commissions, except in exempt cities and counties;
- m) City and county executives or administrators;
- n) Boundary commission members;
- o) Metro councilors and the Metro president;

- p) Members of the board of directors of the State Accident Insurance Fund Corporation;
- q) Chief administrative officers and financial officers of school districts, education service districts and community college districts;
- r) Members of state boards, commissions and councils listed in ORS 244.050; and
- s) Anyone else listed under ORS 244.050.

See the copy of ORS Chapter 244 in the appendix to this manual for more details.

3. Are all elected officials in the state required to file statements of economic interest?

No. School board members are not required to file, nor are governing board members of special districts.

Also, local government officials in cities and counties where a majority of persons voted against the legislation in 1974 are not required to file. However, legislators from those counties must file SEIs. (Please contact the GSPC for a list of exempt cities and counties.)

Be aware that the Oregon Legislature usually amends the list of those required to file SEIs during every legislative session. If you receive a form for the first time, it may be because the Legislature has added your position to the statute.

The GSPC may exempt a particular position from filing requirements, if the commission determines that the public official's duties are so limited or infrequent that financial disclosure is not necessary.

4. When is the filing deadline?

SEIs must be filed or postmarked no later than April 15 of each year.

5. Where can an SEI form be obtained?

If you have filed to run for any covered elective office or you are currently an official who is required to file, you should receive a form in the mail. **If you are**

required to file and you have not received a form by March 15, call the GSPC at (503) 378-5105.

Candidates in the November general election for any statewide office, district attorney or the Legislature who were not candidates in the May primary election should contact the GSPC if they do not receive a form within 21 days after the filing deadline for the general election.

When the form is completed, return it to the GSPC, 100 High Street SE, Suite 220, Salem, OR 97301-3607.

6. What if I do not file an SEI or if I provide inaccurate information?

Failure to file an SEI by the due date is basic evidence of a violation of the law. If an SEI is filed more than 20 days after the April 15 deadline the law provides for the automatic accrual of a civil penalty of five dollars for each additional day the SEI is late, up to a maximum of \$1,000.

The law also provides for a penalty of up to \$1,000 for the willful filing of an SEI that the person does not believe to be true and correct to every matter.

7. Are there additional filing requirements for some officials?

Certain employees of the State Treasury are required by ORS 244.055 to file additional information with the State Treasurer.

VIII. POST-EMPLOYMENT "REVOLVING DOOR" REGULATIONS

1. Are there restrictions on what public officials may do after they leave public office?

Yes. ORS 244.045 prohibits certain office holders from specific activities for periods of time after they leave office.

2. What officials are subject to restrictions?

The following regulatory officials:

- a) Public Utility Commissioner

- b) Director of the Department of Consumer and Business Services
- c) Administrator of the Division of Finance and Corporate Securities
- d) Administrator of the Insurance Division
- e) Administrator of the Oregon Liquor Control Commission
- f) Director of the Oregon State Lottery
- g) A person who has been a member of the Oregon State Police with gaming enforcement responsibilities

And the following other officials:

- a) State Treasurer
- b) Chief Deputy State Treasurer
- c) Deputy Attorney General or Assistant Attorney General

3. What types of restrictions apply?

The regulatory officials listed above may not:
Within one year of leaving the public position:

- Become an employee of or receive any financial gain from any private employer over which the person exercised any authority

Within two years of leaving the public position:

- Lobby or represent anyone to the agency over which the individual had authority as a public official; or
- Influence or try to influence the actions of that agency; or
- Disclose any confidential information gained as a public official.

The other officials listed above are subject to specific restrictions based on the nature of their official positions. ORS 244.045 (2) and (3) list restrictions on the activities that may be undertaken by the state treasurer, chief deputy state

treasurer, deputy attorney general or an assistant attorney general after leaving office. Anyone currently in these positions or considering entering such a position should become familiar with these sections.

IX. GOVERNMENT STANDARDS AND PRACTICES COMMISSION PROCESS

Questions, complaints, review and investigations

1. If I have a question about the government standards and practices statutes, what can I do?

The easiest course is to pick up the phone and call the staff of the Government Standards and Practices Commission (GSPC) at (503) 378-5105. You can also make an appointment to visit in person with a staff member. Some issues that are not clearly described in the statutes may be explained more fully in a brief conversation.

An informal answer by a staff member is not a legal protection against prosecution by the GSPC. Because a conversation with staff is not an official decision by the commission, it is not a guarantee of the commission's position.

However, GSPC staff people are knowledgeable about the statutes and quite familiar with past and current commission interpretations. Furthermore, they are committed to providing accurate advice and preventing violations of the statutes whenever possible.

2. Can I receive advice in writing from the GSPC?

Yes. The GSPC may issue an advisory opinion in response to a written question. An advisory opinion by the commission is binding. That is, the commission cannot later prosecute for an action that follows the directions in an advisory opinion.

The commission issues advisory opinions **only before** proposed official action occurs.

The commission does not provide a form for requesting an advisory opinion. Simply state your request in a letter delivered to the GSPC. Remember to include all of the facts concerning your situation.

Formal advisory opinions are discussed and approved by the full commission and are reviewed by an assistant attorney general. For staff to conduct the research and ask the commission to approve the opinion is a lengthy process. Advisory opinions take at least three months from the time a request is received.

Under certain circumstances, the commission may choose not to issue an advisory opinion. For instance, if the situation is similar to one in which an advisory opinion has already been issued, the commission may not authorize a formal advisory opinion. The commission will direct staff to respond in a letter and refer to existing opinions.

A public official may also ask for a written informal staff opinion. This advice is not binding, as it does not come from the full commission. However, on many simple issues an informal staff response can provide the necessary information. Commission staff can generally respond within two to four weeks.

3. What if I am still not certain after receiving a response?

When in doubt, don't. If you are uncertain about the legality of an action after receiving a response from the GSPC, your best move is to refrain from the action in question.

If you have questions about an action, it is likely that others will have similar concerns. The best way to protect yourself from review, investigation and penalties -- as well as the related publicity and public scrutiny -- is to avoid any action that potentially violates GS&P laws.

4. If I ask for advice in any manner, will I trigger an inquiry into my conduct?

Not if the request relates to official action that has not yet taken place. If the facts presented indicate that a violation of the statutes has occurred, the commission may initiate a preliminary review.

5. What should I do if I suspect a public official of a GS&P violation?

Write to the GSPC outlining the possible violation and providing as much detail as possible.

When possible, provide documentation. For example, if the charge is failure to declare a potential conflict of interest, include meeting minutes that record the discussion preceding the vote in question.

Complaints may be filed in the form of a simple letter. For persons who prefer the convenience of a form, a complaint form may be obtained from the GSPC Website at www.gspc.state.or.us. The law requires that all complaints be signed.

If the GSPC receives no specific information, staff will request the person submitting the complaint to provide more information before action can be taken.

6. What happens when the GSPC receives a complaint?

When the GSPC staff receives a complaint, the executive director can start the process leading to review and investigation. The executive director first reviews the complaint to determine if the alleged violation falls within the GSPC's jurisdiction. If the complaint is not within the commission's jurisdiction, the executive director sends the complainant a letter to advise that the commission cannot take action.

If the matter does appear to be within the commission's jurisdiction, the director notifies the public official named in the complaint.

About 90 percent of the cases reviewed by the commission are initiated as a result of written complaints. The balance of cases are initiated by the commissioners, not the GSPC staff, at regular commission meetings as the result of information obtained from other sources, such as government agencies or media coverage.

Preliminary Review. When deciding to pursue an issue, the commission opens a case file and initiates a **preliminary review**. A decision to conduct a preliminary review means that the alleged violation appears to be within the commission's jurisdiction.

During the preliminary review, the GSPC staff may solicit information relating to the charges. Staff may ask for records and documents, take depositions and obtain statements under oath.

The preliminary review phase must be completed within 90 days of the filing of the complaint or initiation of action on the part of the commission. By the end of the 90-day period, the commission must either find "cause" to fully investigate the charges or dismiss the case. GS&P law defines "cause" as "...a substantial, objective basis for believing that an offense or violation **may** have been committed and the person who is the subject of an inquiry **may** have committed the offense or violation."

Investigative Phase. If the commission finds "cause" to pursue the case, the investigative phase begins. The commission has 120 days to investigate the issues, during which time it may issue subpoenas to obtain documents and oral testimony. In other words, the commission may now require individuals to present evidence before the commission.

Except in unusual circumstances described in the statutes, the commission must make a determination on the case within 120 days of starting the investigation phase. The commission may:

- Dismiss the case
- Continue the investigation for no more than 30 days
- Move to the contested case proceeding
- Seek a negotiated settlement or
- Take other appropriate action if justified.

Contested Case Hearing. When the commission moves a case to a contested case hearing, the commissioners make a preliminary finding of violation because they believe they have received substantial evidence of a violation. A hearings officer assigned by the Central Hearings Panel hears a contested case.

A contested hearing is less formal than a court proceeding. The assistant attorney general assigned to the GSPC presents evidence to the hearings officer on behalf of the commission. The public official or the public official's attorney makes a presentation responding to the GSPC's case. Both parties then make concluding statements.

The hearings officer then reviews the evidence submitted at the hearing and prepares a written document that includes conclusions of law, findings of fact and a proposed final order.

The GSPC may accept, change or reject the hearings officer's proposed order in making a final order.

Option for Circuit Court. A public official may elect to have the commission file a lawsuit against the official in the Marion County Circuit Court rather than hold a contested case hearing. The public official must notify the commission of that decision in writing within 21 days of receiving notice of the commission's action to move to the contested case hearing phase. The commission must file a circuit court suit within 30 days of receiving the public official's notice.

Appeal. People wishing to appeal a final order may do so in the Oregon Court of Appeals.

7. If I am the subject of a GSPC inquiry, may I have an attorney represent me?

Yes. An attorney can represent you at any time during the process. Attorneys are not required. However, the commission recommends that all persons obtain legal help if the case reaches the contested hearing stage.

8. Am I allowed to have contact with GSPC staff during a review or investigation?

Yes. People who are subject to inquiries or investigations are encouraged to talk with GSPC staff at any point during the process. Unlike a criminal or civil suit where all contact between opposing parties must be through attorneys, the GSPC process is considerably more flexible.

You are encouraged to provide any information or evidence that will help the GSPC decide your case. Furthermore you may ask about, and will receive, information on the status of the investigation at all times.

9. May I resolve my case without a hearing?

Yes. The GSPC encourages settlement of a case at any stage of the proceedings. About 90 percent of cases that are not dismissed prior to the contested case hearing phase are resolved by an agreement between the public official and the GSPC. The result is a "stipulated final order."

The stipulated final order contains facts agreed to by the official and the GSPC. It may also contain statements of fact by one side that the other side does not agree to.

A stipulated final order also contains terms of settlement. The settlement may require payment of a civil penalty as part of the final order. When payment of money is one of the terms of settlement, the amount is usually much smaller than the amount that would be imposed after a contested case hearing for the same violation.

10. What penalties may the GSPC apply?

The commission may impose fines up to \$1,000 each for violations of ORS 244. However, each violation of ORS 244.045 (the "revolving door" sections) may invoke a penalty up to \$25,000.

In addition, if the commission finds that an official has obtained personal financial gain by violating any section of ORS 244, the commissioners may require the official to forfeit twice the amount gained. Funds received by such forfeiture become part of the state general fund. A forfeiture is not restitution.

Failure to file a correct statement of economic interest carries separate penalties (see Chapter VII in this manual).

11. Is information about a GSPC case confidential?

During the preliminary review phase, the GSPC is required to maintain strict confidentiality. The only information staff or a commissioner may provide the public or the media during this phase is a simple "yes" or "no" answer if asked whether or not the GSPC received a complaint naming a particular person. The decision to move beyond the preliminary review phase is conducted in executive session.

At the end of the preliminary review, regardless of the determination, the commission must make all information available to the public. For the duration of the process, all information collected by or produced by GSPC staff is available to the public on request.