

Oregon Government Ethics

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CITY OF GLADSTONE**

Beery, Elsner & Hammond, LLP
1804 NE 45th Ave
Portland, OR 97213
503. 226.7191
www.gov-law.com

OREGON GOVERNMENT ETHICS

After the Watergate scandal in 1974, Oregon voters adopted a comprehensive ethics law for public officials. The law attempts to ensure that government officials promote general public interests rather than private financial interests. The policy states, "that service as a public official is a public trust, and that, as one safeguard for that trust, the people require all public officials to comply with the applicable provisions of this chapter." ORS 244.010(1).

ORS chapter 244 has six major parts: (1) abuse of office, (2) reporting requirements, (3) conflicts of interest, (4) nepotism, (5) the ethics commission and (6) penalties. The first four parts are of major importance to public officials and employees.

The 2007 Legislature amended ORS 244 in several significant ways, among them changing the commission name back to the Oregon Government Ethics Commission (OGEC). The most significant changes, however, were to broaden the definition of "relative", add "members of household" to the reporting requirements for gifts and income, add an aggregate gift value limit from those with an administrative or legislative interest, and impose new quarterly filing requirements. While voicing many concerns and submitting some resignations, most public officials complied with the reporting requirements while waiting and working for legislative changes in 2009 that have now been realized. The 2009 Legislature further amended ORS 244 repairing many, if not all, of the perceived problems that arose from the 2007 session including annual filing requirements rather than quarterly.

1. Abuse of Office

A. Who does the ethics law apply to?

The law applies to all "public officials" and in some cases to candidates for public office. The definition of "public officials" is broad and includes any person who serves state or local government as an officer, employee or agent. It includes council, committee and commission members, city attorneys, city employees and persons who work for the city on contract. It applies whether or not a public official is paid. ORS 244.020(14).

B. What does the ethics law prohibit?

i) Use of position

Public officials may not use or attempt to use their position to obtain financial gain or avoid financial detriment that would not otherwise be available but for the holding of the official position. This applies to public officials and "relatives" of public officials, which includes (1) the spouse, parent, step-parent, child, sibling, step-sibling, son-in-law and daughter-in-law of a public official; (2) the parent, step-parent, child, sibling, son-in-law and daughter in law of the spouse of a public official; (3) any individual that the public official has a legal obligation to support; and (4) any individual to whom or from whom the official provides or receives benefits from employment. ORS 244.020(15).

It is improper for a public official to lobby council, committee or commission members or public employees to award a contract to a business with which the official or any member of the household of the official is associated. Member of household is defined as any person who resides with the public official. ORS 244.020(10). In addition, public officials may not use their positions to avoid taxes, charges or fees paid by other residents.

The state law does not apply to official compensation, honoraria, reimbursement of expenses, or unsolicited award for professional achievement for a public official or relative. ORS 244.040(2).

Official compensation is not defined by the statutes. The OGEC has interpreted official compensation package as “wages and other benefits provided to the public official.” To be part of the package, the wages and benefits must be specifically and formally approved by the public body. The benefits provided by contract or personnel policies must generally apply to public employees or other public officials. Official compensation also includes direct public body payment of a public official’s expenses. OAR 199-005-0035(3).

Example: An SAIF official purchased a personal car as an "add-on" to the SAIF fleet purchase and saved about \$1300. There was no additional cost to SAIF and no cost to the vehicle vendor.

Held: Ethical violation because official "availed himself of" financial benefit accessible only because of his status as a public official. Person would not have been benefited “but for” the official position. *Davidson v. Oregon Government Ethics Commission*, 300 Or 415 (1985).

Example: Public employees’ personal use of employer’s telephones, cellular phones, and computers (including Internet access).

Held: (a) Personal use of public telephones is not an ethical violation because “it is normal practice by both public and private employers to permit employees to use business telephones...” for personal business. However, personal long distance calls, even if employee reimburses public employer may be an ethical violation. (b) Use of a public computer on employee’s own time may not be ethical violation. However, public computer use by employee to avoid a financial detriment is legally prohibited. This may include personal use to avoid private purchase of computer hardware or software. (c) Personal use of a public cellular phone does not violate ethics code where use is **directly** related to official duties, such as phone use to inform family of a late meeting or schedule change. However, personal uses beyond those necessary for public business or emergency would violate ethics code. This is the result even where an employee reimburses the employer for personal use. *Oregon Government Standards and Practices Commission*, Technical Advisory Opinion 98A-1003 (July 1998).

ii) Gifts

The law prohibits public officials, relatives of public officials and members of a public official’s household from soliciting or receiving any gifts over **\$50 TOTAL** in a calendar year from any source that has, or could reasonably be expected to have, a legislative or administrative interest in the public official’s decisions or votes. ORS 244.025; OAR 199-005-0003.

A gift is anything of economic value, but the definition excludes things such as:

- gifts from relatives or members of the household of the public official;
- food / lodging / travel reimbursed by the public body when representing the public body;
- food / lodging / travel reimbursed by another government agency, organization, company or person when the official is representing the public body and under specific limited circumstances;¹
- campaign and legal expense fund contributions;
- gifts in the form of tokens, plaques, trophies, or mementos with a resale value less than \$25;
- publications, subscriptions, or other informational material related to the official's duties;
- waivers or discounts for continuing education for professional licensing;
- entertainment incidental to the main purpose of an event or when the official is acting in an official capacity and representing the public body for a ceremonial purpose.² ORS 244.020(6);
- gifts received as part of one's private business, employment or volunteerism; and
- gifts received that bear no relation to one's position or public office.

Example: A mayor, council president and city manager traveled to New York City to present the city's bond proposal to an investment rating service. The travel expenses of the officials' spouses were paid by the financial institution that prepared the city bond package.

Held: The food, lodging, and travel exemption does not apply to family household members. Payments of these expenses were illegal gifts because they were not "extended to others who are not public officials." Officials were fined twice the value of the reimbursed expenses. *Keller v. Oregon Government Ethics Commission*, 94 Or App 462 (1988), 106 Or App 727 (1991).

iii) Confidential information

Public officials may not further or attempt to further personal gain through use of confidential information gained in the course of or by reason of their official positions or activities in any way. Public officials often receive information that is not available to the general public. It is improper for an official to sell such information for use by another or to make use of such information for personal gain. ORS 244.040(4).

iv) Employment

A public official may not solicit or receive promises of future employment when there is any relationship or understanding that the promise will influence the official's actions. ORS 244.040(3).

¹ The law was amended in 2007 and 2009. Under ORS 244.020(6)(b), reimbursement or payment of expenses for reasonable food, travel or lodging to a city official, and in some cases a relative, household member or staff member accompanying a city official, representing city government is not a gift, depending on the facts as they relate to ORS 174.111, 174.116 and 174.117.

² Reimbursement or payment of entertainment expenses to public officials, their relatives or household member are sometimes defined as gifts and in those instances, are allowed under ORS 244.025(4).

2. Reporting Requirements

The regulation of the receiving of gifts, honorariums, expense reimbursements and certain forms of income is governed by a set of laws that apply to public officials, as defined in ORS 244.020(14), and includes “an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.” However, state law only imposes the associated reporting requirements on some of these public officials including elected city officials, members of planning, zoning, and development commissions, the city administrator and as of April 15, 2010 each current candidate for any of these offices or positions. The remaining members of the staff and governing commissions and committees are not subject to the reporting requirements. ORS 244.050.

A. Annual Verified Statement of Economic Interest

The Annual Verified Statement of Economic Interest (SEI) must be filed by April 15 of each year and becomes a public record. The SEI is best characterized as a declaration of income, holdings, and business associations. The information to be included changed in 2009 and a brief description is:

- the businesses controlled or affiliated with the public official and members of their household;
- the sources of income for the official’s household that produce 10% or more of the total annual household income;
- any real property owned by the household within the geographic boundaries of the jurisdiction of the public body with the exception of the primary residence. ORS 244.060;
- any expenses reimbursed with an aggregate value exceeding \$50 and the name of the organizations or governments from which they were received;
- all honoraria received with a value exceeding \$15; and
- each source of income in excess of \$1,000 from an individual or business that could have a legislative or administrative interest in the public body. ORS 244.100.

A further requirement of the SEI only applies to those individuals or businesses that have done, or could reasonably be expected to do, business with the public body and has an administrative or legislative interest in the public body. If the foregoing is found to exist, then the official must also report the following as they relate to those individuals or businesses only:

- debts owed by the official in the amount of \$1,000 or more;
- beneficial interest or investment by stocks or bonds by the official in excess of \$1,000; and
- any fee for services in excess of \$1,000. ORS 244.070.

3. Conflicts of Interest

A. What is an actual conflict of interest?

An actual conflict of interest exists whenever the effect of any action, decision or recommendation by a person acting as a public official **would** cause private pecuniary benefit or detriment for the

person or the person's relative or any business with which the person or a relative is associated. ORS 244.020(1). If public officials approve or recommend approval of applications involving their own land, award contracts or make purchases from persons to whom they owe money, or approve employment agreements with organizations for whom spouses work, then there is an actual conflict of interest. A conflict exists even if the official would lose money by taking a particular action. When an official's relative or a business associated with a relative would be affected by an official decision, there is also an actual conflict of interest.

B. What is a potential conflict of interest?

A potential conflict of interest exists whenever the effect of any action, decision or recommendation by a person acting as a public official **could** cause private pecuniary benefit or detriment for the person or person's relative or any business with which the person or a relative is associated. ORS 244.020(12).

Excluded from the definition of "business" is any nonprofit IRC 501(c) corporations where the associated public officials receive no remuneration. ORS 244.020(2). The statute excludes from the definition of potential conflict of interest "membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code". ORS 244.020(12)(c).

There is a class exemption to the definition of a potential conflict of interest. Whenever the public official's action would affect other members of a large class the same way it affects the official, there is no legal potential conflict of interest. For example, if a city considers a storm water charge, then city officials who are city customers would have a potential conflict of interest were it not for the "class exemption." There are enough members of the class that the interest of each official is small compared to all the other members of the class. On the other hand, if the city official owns property about to be rezoned with other properties, a conflict of interest exists because the number of other property owners who are members of the class is small. ORS 244.020(12)(b).

C. What do I do if I have an actual or potential conflict of interest?

The simple answer is to disclose, disclose, disclose. Elected and appointed public officials serving on the council, committees, or commissions must announce publicly any potential conflicts of interest prior to taking any action. When there is an actual conflict, the official must announce publicly the nature of the actual conflict and refrain from participating as a public official in any discussion or debate on that issue. This official must not vote on the issue. ORS 244.120(2). An actual or potential conflict of interest must be declared at any meeting where the issue is acted upon, discussed, or considered in any manner.

The public body must record the actual or potential conflicts of interest in its public records when a public official gives notice of an actual or potential conflict. The notice and how it was disposed of may be provided to the OGEC within a reasonable period. ORS 244.130(1).

A council, committee, or commission member may not participate in any proceeding or action in which the following have a direct or substantial financial interest:

- member or spouse, brother, sister, child, parent, father-in-law, mother-in-law;
- any business in which the member is currently serving or has served within two years; and
- any business in which the member is negotiating or has an understanding concerning future partnership or employment.

Any actual or potential conflict of interest must be disclosed at the meeting where the action is being taken. ORS 244.135.

Appointed public officials must notify in writing the person who appointed them to office of the nature of the conflict. Notification must include a request that the appointing authority dispose of the matter giving rise to the conflict. The appointing authority then has the obligation to assign the matter to another person, or to prescribe a manner for the public official to dispose of the matter. ORS 244.120(1)(c).

4. Nepotism

This law applies to all public officials, members of household and relatives as previously defined under the law relating to gifts and expense reimbursement. Nepotism is favoritism based on kinship. The law states that a public official may not participate in the appointment, employment, promotion, discharge, firing, or demoting of a relative or member of the household. A public official must not participate in preliminary discussion of or interviews regarding any of these activities. There is an exception to these requirements for unpaid volunteer positions, but not for the public body the official serves. Reimbursable expenses for volunteers do not constitute nepotism. ORS 244.177.

Much like the law governing conflicts of interest, the public body is not prohibited from any of these activities provided the public official to whom the individual is related or is a member of a common household does not participate. ORS 244.177(4).

Public officials may not directly supervise a relative or member of the household either, with the same exceptions regarding unpaid volunteers and reimbursable expenses. A public body may adopt policies specifying further exceptions. ORS 244.179.

5. Oregon Government Ethics Commission

The Governor appoints all seven members of the Commission who are confirmed by the Senate. The Commission selects an executive director to administer the Commission and the Oregon Department of Justice provides legal counsel. ORS 244.250. The Commission's duties include training, advice, compliance and investigation. ORS 244.290. Advice is divided into staff advice, staff advisory opinions and commission advisory opinions.

Training is one of the highest priorities of the Commission and is available in presentations, the internet, topical written materials, and guidance in response to inquiries.

Advice can be requested and received in various forms, depending on the level of advice sought. Telephone, email, letters and written requests for written opinions are all accepted. Staff advice

takes all of these forms, originates with Commission staff or the executive director and affords a public official some protection should a penalty later be considered for an action taken on the advice received. ORS 244.284. Staff advisory opinions come from the executive director upon written request, may take 30 to 60 days to receive and generally afford an official with more protection than staff advice. ORS 244.282. Commission advisory opinions originate with the Commission itself based on adoption by a vote, may take 60 to 120 days to receive and provide an official with absolute protection if the advice is followed completely and the facts were accurately reported to the Commission in the initial request. ORS 244.280.

Another duty of the Commission is compliance and it refers to the review of the approximately 6,000 people and entities that must file annual and quarterly reports.

Investigations are in response to the receipt of written complaints alleging violations of Oregon Government Ethics law and follow strict procedure to determine whether wrongdoing has occurred. The process begins with a consideration of whether there is reason to believe there has been a violation. Next, there is a preliminary review phase to determine whether there is a finding of cause to initiate further investigation. The investigatory phase follows and the culmination of a case is a contested hearing if requested by the public official. ORS 244.260.

6. Penalties

Violations of public ethics laws may result in a civil penalty of up to \$5,000 imposed by the Commission. This fine is in addition to any other penalty or sanction that may be imposed by any other law, including removal from office. ORS 244.350. If the OGEC finds a violation has occurred, the finding is prima facie evidence of unfitness where removal is authorized for cause by law. ORS 244.270.

In addition, public officials who financially benefit from a violation of any provision of ORS chapter 244 may be required to forfeit twice the amount of that profit. ORS 244.360.

Specific criminal statutes may also apply to public officials including receipt of a bribe by a public official, ORS 162.025, and misuse of confidential information for personal financial benefit, ORS 162.425.