

Annual Board Ethics and Public Meetings Training
Tuesday, August 23, 2022 5:00 PM

Dr. Matthew Prophet Education Center -
Windows Cafeteria / Conference Room (Floor
2)
501 N. Dixon St.
Portland, OR 97227

Agenda

1. Annual Board Ethics and Public Meetings Training

Oregon Public Meetings and Records Laws and Ethics Laws Key Issues for Public Officials

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August 23, 2022



Oregon Public Meetings Law

Policy expressed through ORS 192.620: “The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which decisions were made. It is the intent of the [public meetings law] that decisions of governing bodies be arrived at openly.”

Oregon Public Meetings Law

[Oregon Attorney General's Public Records and Meetings Manual](#)

Bodies Subject to Law
Meetings and to Meet
Enforcement For Executive Session Violations
Executive Session Challenges

Bodies Subject to the Law

- “Public Body”
 - Authority to Make Decisions for a Public Body
 - Authority to Make Recommendations to a Public Body
 - Evaluate Advisory Committee Structure and Purpose

Meetings and to Meet

- *Handy v. Lane County*
 - *Serial communications*
 - *Purpose of deliberation/decision-making*

- Practical Implications
 - Avoid “reply to all”
 - Beware the accidental quorum
 - Thoughtful assessment of what might become a Board decision

Oregon Public Meetings Law

Common Executive Session Challenges

- Permitted Executive Sessions
 - Twelve “plus” executive session purposes
- Scope
 - Must stay within constraints of purpose

Real Life Example #1 – Executive Session

- Stipulated Final Order, May 2022
- School district board held executive session held to consider records “exempt by law from public inspection”
- Two items fell within the exemption – legal advice and certain medical conditions of an employee or employees;
- “In an executive session, Board members may only discuss topics expressly permitted by the statutory provisions cited and may not discuss other topics, even if those topics are related to the issue for which the executive session was convened.” OAR 199-040-0020(1).
- During the session, the Board discussed policies, how to implement them, and how to communicate policies. Although related to the topics, they exceeded the scope of the permitted executive session.
- Stipulation – this would be a violation but agreement acknowledging as much to avoid a fine.

Enforcement For Executive Session Violations

- Oregon Government Ethics Commission Enforcement
- Civil Penalty Up to \$1,000

Oregon Public Records Law

“Every person has the right to inspect any public record of a public body in this state, except as otherwise expressly [exempted].”ORS 192.314

Public Records

Key Board Issues

- Definition of public record – “*any* writing that contains information relating to the conduct of the public’s business * * * regardless of physical form or characteristics.”
- Practical issues:
 - Mixed messages
 - Privileged or otherwise confidential information
 - Personal devices

Oregon Ethics Law

Policy of Oregon Ethics laws: “The Legislative Assembly declares 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). “The Legislative Assembly recognizes that public officials should uphold the principles described in [the Oregon ethics laws], ever conscious of the public's trust.” ORS 244.010(8).

Overview

[Oregon Government Ethics Commission](#)

Oregon.gov/OGEC

[Oregon Ethics Commission Guide for Public Officials](#)

Use of Office Gifts Conflicts of Interest

Use of Office

- General rule: a public official may not use or attempt to use official position or office to obtain financial gain or avoid financial detriment
- This rule applies to:
 - Any person serving a public body as an officer, employee, or agent, irrespective of whether the person is compensated
 - Relative: spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of official
 - Business with which the official or relative is associated
 - Director, officer, employee, or agent
 - Publicly held corporation, officer or director, or stock (\$1,000 for private/closely held, \$100,000 publicly held)

Real Life Example #2 – Conflict of Interest

- Stipulated Final Order, May 2022
- Road district commission hired contractor to fix a ditch and construct a culvert.
- Repair allowed a commissioner to avoid personal financial detriment of making repairs or property modifications;
- Commissioner did not declare conflict of interest and participated in decision to hire contractor.
- Stipulation to avoid a civil penalty.

Use of Office

Common exceptions to general rule

- Official compensation
- Some “honorariums”
 - Certificate, plaque, commemorative token or other item with a value of \$50 or less
 - In relation to private business, profession, avocation, or expertise
- Reimbursement of expenses
- Exception to gift prohibition

Use of Office Examples

- Frequent flier/credit card benefits
- Volume discounts
- Compensation/“official salary”
- Benefits same terms and conditions as private sector

Gift Prohibition

General rule: Public official may not accept, directly or indirectly, gift or gifts worth over \$50 in calendar year from a single source which could have an “administrative or legislative interest”

Gifts: Common Exceptions

- Campaign contributions
- Relatives or member of household
- Unsolicited token/award <\$25
- Subscription related to performance of official duties
- Admission/food for official or member of household when representing public body
- Convention, fact finding, or other meeting
- Entertainment incidental to main purpose
- Expenses for public school employee accompanying students on educational trip

Real Life Example #3 – Gift Exception

- March 2022 Advisory Memorandum
- Elected official sought advice for participation in American Israel Education Foundation seminar
 - Broad definition of fact finding trip
 - Attendance in representative capacity
- Permitted – with reporting requirements

Conflicts of Interest

- Potential action decision or “could be” to the private pecuniary benefit, to person, relative, associated business
 - Limited exceptions
- Actual conflict: would result in private pecuniary benefit

Conflicts of Interest

- Declaration required
- Participation
 - May participate if potential
 - May not participate if actual (unless necessity)

Procedures and Penalties

- Official opinions
- Staff opinion
- \$5,000/2x financial benefit

Thank You

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