

Annual Board Ethics and Public Meeting
Training
Tuesday, December 5, 2023 5:00 PM

Dr. Matthew Prophet Education Center
501 N. Dixon St.
Portland, OR 97227

Agenda

1. 5:00 pm - Annual Board Ethics and Public Meeting Training

Public Meetings, Records, and Ethics Laws for Public Officials: Developments and Best Practices

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Portland Public Schools

December 5, 2023

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**
- **Convening, Deliberating, and Meeting**
- **Executive Session Challenges**
- **Training and Enforcement**

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





Convening, Deliberating, and Meeting

Enrolled
House Bill 2805

- Retains definition of “Meeting”:
 - “convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter”



Convening, Deliberating, and Meeting

Enrolled
House Bill 2805

- New definition “Convening”:

- (1) “Convening” means:**
 - (a) Gathering in a physical location;**
 - (b) Using electronic, video or telephonic technology to be able to communicate contemporaneously among participants;**
 - (c) Using serial electronic written communication among participants; or**
 - (d) Using an intermediary to communicate among participants.**



Convening, Deliberating, and Meeting

Enrolled
House Bill 2805

- New definition “Deliberation”:

(3) “Deliberation” means discussion or communication that is part of a decision-making process.



Convening, Deliberating, and Meeting

Enrolled
House Bill 2805

- Includes what is not a meeting:

(m) Communications between or among members of a governing body that are:

(A) Purely factual or educational in nature and that convey no deliberation or decision on any matter that might reasonably come before the governing body;

(B) Not related to any matter that, at any time, could reasonably be foreseen to come before the governing body for deliberation and decision; or

(C) Nonsubstantive in nature, such as communication relating to scheduling, leaves of absence and other similar matters.



Convening, Deliberating, and Meeting

- 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

Enforcement Example: OEC Case No. 22-054XSM

- Public body held an executive session “to review and evaluate the performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing”
- Board member discussed salary and benefits as part of the executive session
- Commission found a violation—a regulation describes that compensation and benefits may not be discussed or negotiated under the pertinent exemption



Training

- HB 2805 Requires the Oregon Government Ethics Commission to annually prepare training on public meeting requirements—or delegate training and approve it
- All members of a governing body of a public body with total expenditures of \$1 million per fiscal year must attend or view approved training at least once during member's term of office

Training

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



Practical Issues

- Confidential Information
- Personal Devices
- Mixed Business/Personal



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](https://www.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)

Enforcement Example: Conflict of Interest OEC Case No. 23-032EMW

- A grant review committee met and voted to award \$5,590 in grant funding to a limited liability corporation (LLC)
- A committee member was subject to Oregon Ethics Law because the committee was a public body. The committee member was also an administrative assistant for the LLC
- The committee member abstained from voting but participated in the discussion about the LLC's benefits
- The public official violated the conflict of interest and use of office for personal gain provisions of the Oregon Ethics Code



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

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

Examples



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

- 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

Common Exceptions

Enforcement Example: Gifts, OEC Case No. 23-024EHM

- School board member posted Venmo information on a Facebook page and asked for donations for support given alleged attacks from public
- Donations were solicited from anyone, and some sources reasonably should have been known to have a legislative or administrative interest in the board member's status as a board member
- As a result, the school board member violated the gift prohibition



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
- 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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