

Ethics Awareness

Understanding Your Legal Obligations



Goals

- Learn about the law
- Who is in charge
- Jurisdiction
- Topics:
 - Gifts
 - Prohibited Use of Office
 - Conflicts of Interest
 - Nepotism
 - Outside Employment

Oregon Government Ethics Law

Today's focus:

Oregon Revised Statute chapter 244
& Administrative Rule chapter 199

**All public officials in Oregon must
comply with the Oregon
Government Ethics Law.**



“Public Official”

Any person * * * serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the service.”

TL;DR

If you are a city elected official, staff member, employee, or volunteer → you are a public official.

Who Administers the Ethics Law?

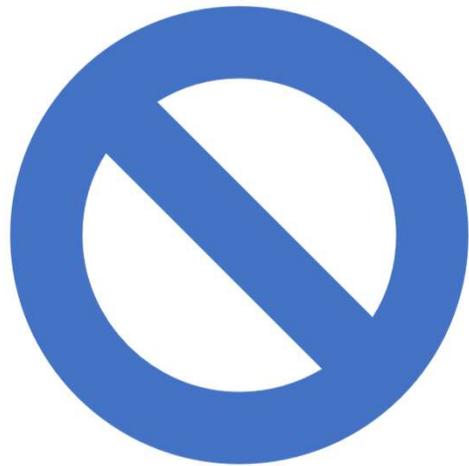


Oregon Government Ethics
Commission:

- Review and Investigation
- Resolution
- Advice

<https://www.oregon.gov/ogec/public-records/Pages/Advice-and-Opinions.aspx>

What is NOT Under the Jurisdiction of the OGEC



- Moral compass
- Demeanor
- Misinformation
- Financial management
- Campaign finance

The OGEC only oversees violations of the **state** ethics laws.

Gifts

What is a Gift?



TL;DR

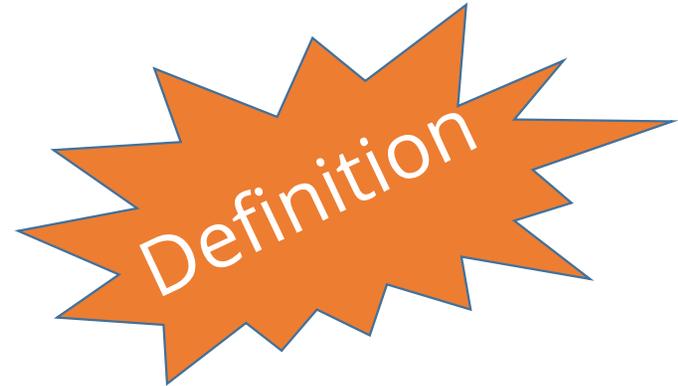
If you received an item or discount that wasn't available to members of the general public under the same terms and conditions, it's probably a gift

"[S]omething of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

- Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others on the same terms and conditions; **or**
- For valuable consideration less than that required from others who are not public officials or candidates."

“Relative”

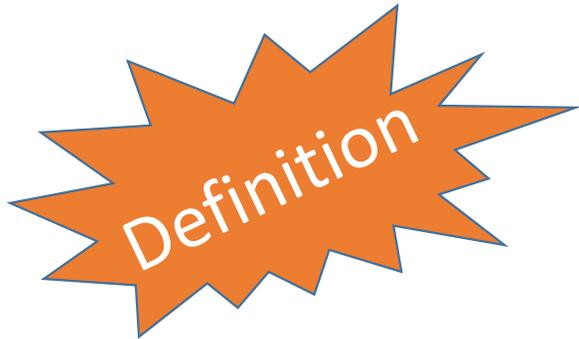
- Spouse;
- Child or child-in-law;
- Parents and stepparents
- Siblings and stepsiblings;
- Same members of the official’s in-laws (spouse’s child, spouse’s parent, spouse’s sibling);
- Anyone for whom the public official has a legal support obligation;
- Anyone receiving benefits of the public official’s public employment; and/or
- Anyone from whom the candidate receives benefits arising from that individual’s employment.



Limitations on Gifts

A public official, relative or household member may not:

- Solicit or receive any gift;
- With a value exceeding \$50;
- From any single source; and
- Reasonably known to have a legislative or administrative interest.



“Legislative or Administrative Interest”

“[A]n economic interest, distinct from that of the general public, in:

Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or

Any matter that would be subject to the decision or vote of a candidate who, if elected, would be acting in the capacity of a public official.

What are Not Gifts?

- Gifts from relatives or household members.
- Admission provided to or the cost of food and beverage consumed by the public official, relative, household member, or staff member accompanying the official at a reception, meal or meeting while representing the city.
- Reasonable food, travel or lodging expenses provided to a public official, relative, household member, or staff member of a public official accompanying the official while official is representing the city on an officially sanctioned trade promotion or fact-finding mission or in officially designated negotiations or economic development activities where the receipt of expenses is approved in advance.
- Food or beverage consumed by the public official or candidate at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.

What are Not Gifts?

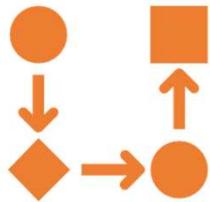
- Entertainment provided to the public official, candidate, or relative or household member that is incidental to the main purpose of the event.
- Entertainment provided to the public official, relative, or household member where the public official is acting in an official capacity while representing the city for a ceremonial purpose.
- Reasonable expenses paid by a unit of government, a membership organization in which a public body pays membership dues, or a not-for-profit 501(3)(c) corporation for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is delivering a speech, making a presentation, participating on a panel or representing the city.
- Expenses provided by one public official to another for travel inside Oregon to or from an event that bears a relationship to the receiving official's office and at which the official participates in an official capacity.
- Informational or program material, publications or subscriptions related to the recipient's performance of official duties.

What are Not Gifts?

- Waiver or discount of registration expenses or materials provided at a continuing education event that the public official or candidate may attend to satisfy a professional licensing requirement.
- Unsolicited tokens or awards in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.
- Anything of economic value offered, solicited or received by the public official, candidate, relative or household member as part of the usual and customary practice or the official's private capacity that bears no relationship to the public official's or candidate's official position or public office.
- Contributions to a legal expense trust fund established for the benefit of the public official.

See ORS 244.020(7)(b) for more.

What to Ask Yourself Before Accepting a Gift



- Is it a “gift” within the definition under ORS 244.020?
- Do any exceptions apply?
- Does the source have a legislative or administrative interest in my position?
- Is the value greater than \$50?

Gift Hypothetical #1



A mayor's residence recently suffered property damage due to flooding. Members of the public have set up a donation drive for the mayor.

May the mayor accept the donations?

Gift Hypothetical #2



At a nationwide conference exclusively for city officials, a city official buys a raffle ticket and wins an all-inclusive paid trip to Hawaii.

May the official accept the trip?

Gift Hypothetical #3



You are a city staff member and it's your manager's birthday. The two of you have known each other for years and are close friends. You decide to purchase a nice birthday present.

**May your manager
accept your gift?**

Prohibited Use of Office



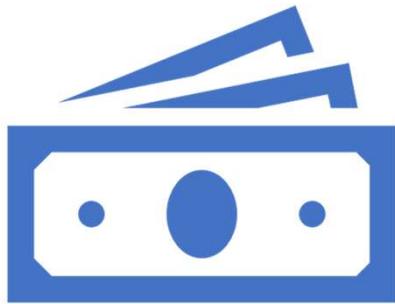
Prohibited Use of Office - The “But For” Prohibition

Public officials cannot use their public positions for:

- Financial Gain or Avoidance
- Promise of Future Employment
- Use of Confidential Information Gained Through Public Office
- Representation Before the Governing Body for Fee

ASK: But for my position as a public official, would I have been provided with or offered the same opportunity?

Financial Gain or Avoidance



- Public Officials are prohibited from using or attempting to use their official position or office to:
 - Obtain financial gain, or
 - Avoid financial detriment.
- For themselves, a relative or a household member

No matter how minimal

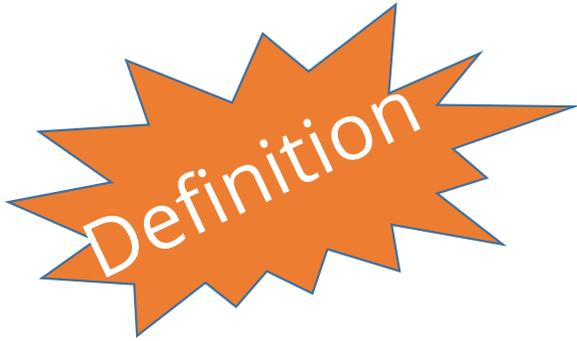
Gifts as an Exception to Use of Office Prohibition

If a public official or relative accepts a lawful gift, or a lawful financial benefit that qualifies as an exception to the definition of a gift, ORS 244.040(1) does not prohibit the acceptance.

“Unlike gifts, which come from outside sources, [the prohibited use of office provision] focuses on the public official’s own action.”

Exceptions – What is *NOT* Financial Gain

- Official compensation package
- **Honorarium** related to the public official's position with a max value of \$50 or related to a private occupation/avocation/expertise.
- Reimbursement of approved expenses.
- Unsolicited awards for professional achievement.
- Contributions to a legal expense trust fund.



“Honorarium”



- Payment or something of economic value given in exchange for services upon which custom or propriety prevents the setting of a price.
- Services include: speeches or other services rendered in connection with an event.
- The offer of a payment or something of economic value cannot be arranged or agreed to before the public official provides service.
- The services provided by the public official must precede the offer of payment or something of economic value.
- The payment or something of economic value must be delivered in return for and following the delivery of services.

Financial Gain Hypothetical #1



A public works employee stores her parents' motor home in an otherwise empty city storage facility typically used for storing heavy equipment. The storage facility is only accessible to city staff.

May the employee do this?

Financial Gain Hypothetical #2



A volunteer firefighter is preparing the exterior of his house for painting. The fire department has a power washer available to loan out to the general public.

May the firefighter borrow the power washer?

**Financial
Gain
Hypothetical
#3**



A city councilor has a private business and used the city's computer to conduct the activities of the private business.

May the councilor do this?

Promise of Future Employment

A public official may not solicit or receive, either directly or indirectly, and a person may not offer or give to any public official any pledge or promise of future employment, based on any understanding that the vote, official action or judgment of the public official would be influenced by the pledge or promise.



Use of Confidential Information Gained Through Public Office



- A public official may not attempt to further their personal gain through the use of confidential information gained in the course of or by reason of holding their position or the activities of the public official.
- This includes any attempt after the public official ceases to be a public official.

Representing a Client Before a Governing Body For a Fee

A person may not attempt to represent or represent a client for a fee before the governing body of the public body of which the person is a member. This prohibition does not apply to the person's employer, business partner or other associate.

A city councilor would like to engage in a private business endeavor wherein the councilor would help landowners and developers plan their developments by assembling the teams of experts needed for a project, such as lawyers, architects, civil engineers, surveyors; preparing the application required to be submitted to the appropriate land use body; and representing the owner where authorized and necessary.

The councilor proposes to represent clients before the Planning Commission; however, if any decision is to be made by the City Council, either quasi-judicial or legislative in nature, where the councilor may appear to have a personal interest, the councilor will step down and leave the Council chambers.

Can the councilor represent a firm before the Planning Commission?

Conflicts of Interest



What is a Conflict of Interest?

Participation in an official action that *would or could* result in a financial benefit to the public official, a relative or a business in which either are associated.

- Potential conflict: when the action taken by the public official *could* have a financial impact on that official, relative or business.
- Actual conflict: when the action taken by the public official *would* have a financial impact on that official, relative or business.

Potential vs. Actual Conflicts of Interest



Potential Conflicts of Interest

The public official must announce or disclose the conflict.



Actual Conflicts of Interest

The public official must announce or disclose the conflict and recuse themselves

How to Disclose a Conflict as an Elected Official



- Publicly announce the nature of the conflict.
- The notice must be recorded in the official records of the public body.
- An announcement of the conflict must be made at each meeting or on each occasion the issue is discussed or debated.
- This includes when the official is an appointed member of a board or commission.

How to Disclose a Conflict as a Public Employee



- Disclose the conflict in writing to the appointing or employing authority.
- Upon receipt of a request, the appointing authority must designate an alternate to dispose of the matter or direct the official to dispose of the matter in a manner specified by the appointing authority.

Exceptions:

- The conflict arises from a membership or interest held in a particular business, industry, occupation, or other class that was a prerequisite for holding the public position.
- The financial impact of the official action would impact the public official, relative or business to the same degree as other members of an identifiable group or class.*
- The conflict arises from a membership in or membership on the board of directors of a nonprofit section 501(c) corporation.

Rule of Necessity

- An actual conflict of interest exists but the public official's vote is necessary to meet the minimum number of votes required for official action.
- The public official may vote out of necessity.
- Does not apply when there are insufficient votes because of a member's absence.
 - **Only applies when a quorum is lacking solely because the member must refrain due to the conflict.**
- Must still disclose and refrain from any discussion on the matter.



RARE

Conflict of Interest Hypothetical #1



In her private capacity, a city councilor is employed as the executive director of a 501(c) nonprofit economic development organization that advocates for the healthy economic development of the southern Oregon region and provides its members with a common voice on shared issues.

The city council is considering whether to allocate and disburse funds to the organization such as approving the city's membership fees to the organization and authorizing city funds for staff and councilors to attend the organization's events and conferences.

May the councilor take any action, decision or vote on whether to allocate or disburse funds to the organization?

Conflict of Interest Hypothetical #2



A budget committee member has a spouse who is a city employee. The budget committee members make budget recommendations to the city council, which is the body that ultimately determines the budget.

Does the committee member have a conflict of interest?

What if the public official is not a budget committee member, but rather a city councilor?

Nepotism

Nepotism

Can do



- You and your relative **CAN** be employed by the same public employer at the same time or serve on the same governing body at the same time.

Cannot do



- Public officials **CANNOT** participate in any personnel action taken by the public body that would impact the employment of a relative or member of the public official's household.
- Public officials may not directly supervise

See OAR 199-005-0080

Private Employment by Public Officials



Guidelines for Private Employment

- Public officials are not to engage in private business activities on their city's time.
- A city's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
- The position as a public official is not to be used to take official action that could have a financial impact on a private business with which the public official, a relative or member of public official's household are associated.
- Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
- Watch for conflicts of interest.

Statement of Economic Interest



Annual Filing Requirement

- The SEI must be filed every year by all elected officials, the city manager (or principal administrator), municipal judges and planning commission members.
 - This is not an exclusive list! See ORS 244.050.
- Completed online.
- April 15 deadline.

What Does the SEI Disclose?

- Business interests;
- Sources of income;
- Ownership interests in real property other than the principal residence;
- Honorarium received in excess of \$15 in value;
- Names of compensated lobbyists with associated business interests;
- Name of entities in which the official received over \$50 to participate in conventions fact-finding missions, trips, negotiations, economic development activities or other meetings.

Complete list in ORS 244.060 and 244.070.

What are the Penalties for Not Timely Filing the SEI?

- Late filing fee of \$10 **for each** of the first 14 days after April 15th.
- Late filing fee of \$50 **for each day** after the first 14 days until the maximum penalty of \$5,000 is reached.

Resources

- Oregon Government Ethics Commission
 - Website: www.oregon.gov/OGEC
 - Email: ogec.mail@oregon.gov
 - Phone: 503-378-5105
 - “A Guide for Public Officials”
<https://www.oregon.gov/ogec/Pages/Guide-for-Public-Officials.aspx>
- Your City Attorney.
- The League of Oregon Cities.