Oregon Government Ethics Law

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Oregon Revised Statutes 244

- Government Ethics Law
- Enacted in 1974 in response to Watergate
- Applies to all government officials equally
- Government official is personally responsible for violations, not the governing body.

OREGON GOVERNMENT ETHICS COMMISSION

- Formed to regulate government ethics law
- Board is made up of 9 volunteer members.
- Jurisdiction
  - Oregon Government Ethics law
    - ORS Chapter 244
  - Lobby Regulation law
    - ORS 171.725 to ORS 171.785
  - Executive Session provisions of Public Meetings law
    - ORS 192.660 and ORS 192.685

OREGON GOVERNMENT ETHICS LAW

- ORS Chapter 244 - Overview
  - Public officials
  - Prohibited use of office
  - Gifts
  - Conflicts of interest
  - Violations/Sanctions

"PUBLIC OFFICIAL" DEFINED

- A Public Official is defined by ORS 244.020(15) as:
  - The First Partner and 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 as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

PROHIBITED USE OF OFFICE

- ORS 244.040(1) provides:
  - A public official may not use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment for the public official, a relative or member of the household of the public official, or any business with which the public official or a relative or member of the household of the public official is associated, if the financial gain or avoidance of financial detriment would not otherwise be available but for the public official's holding of the official position or office.

PROHIBITED USE OF OFFICE - EXAMPLES

- Personal use of City credit card
- Personal use of City backhoe
  - Christmas Day example

RULE OF THUMB

- Would I have this opportunity if I was NOT a public official?
  - If no, then ORS 244.040 probably prohibits the opportunity

PERMITTED FINANCIAL GAIN

- Official Compensation Package
  - Specifically approved by your public body
- Honoraria that is less than $50 aggregate
  - Does not include fees for services or stipends
- Reimbursement of Expenses
  - If pre-authorized and incurred as part of your official duties with your public body
- Awards for Professional Achievement
  - Must be unsolicited
  - Be offered to recognize an achievement of a public official
- Contributions to a Legal Defense Fund
  - For the benefit of a public official

GIFTS

- ORS 244.025
- General rule is that public officials may accept gifts.
- However, there are restrictions as to when, what and from whom a public official may accept them from.
- Possible reporting requirements under statement of economic interest

GIFTS CONTINUED

- Gift is defined in ORS 244.020(6)(a) as:
  - Something 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 who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or
  - For valuable consideration less than that required from others who are not public officials or candidates.

GIFTS CONTINUED

- Whether or not a public official can accept a gift can be determined by whether the giver has a Legislative or Administrative Interest
  - Legislative or Administrative Interest is defined as:
    - An 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 the candidate who, if elected, would be acting in the capacity of a public official.
    - ORS 244.020(10)

GIFTS CONTINUED

- To know whether gifts are unlimited or limited
  - Must determine if decisions made by you as public official have a distinct impact on the source making the offer
    - If source receives a financial gain or avoid a financial cost by decision you make, then you can only receive a gift from them for no more than $50 (aggregate) per calendar year.
    - If source receives no financial gain or loss from any decision you make, then there is no limit to gift you can receive. ORS 244.040(2)(f)

GIFT EXCEPTIONS (REGARDLESS OF LEGISLATIVE OR ADMINISTRATIVE INTENT)

- ORS 244.020(6)(b)
  - Campaign contributions
  - Gifts from relatives
  - Tokens of appreciation
  - Publications, subscriptions or other informational materials
  - Contributions to a legal expense defense fund (approved by ethics commission in advance)
  - Waivers or discounts related to continuing education
  - Travel expenses paid by another public official (as part of official duties)
  - Usual or customary business practice and gift bears no relationship on person's office
  - Reasonable educational trip expenses paid to a public school employee

CONFLICTS OF INTEREST

- Two types of conflicts set forth in ORS 244.020(1), (13)
  - Actual Conflict of Interest
  - Potential Conflict of Interest

ACTUAL CONFLICT OF INTEREST

- Any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated.
  - ORS 244.020(1)

EXAMPLE OF ACTUAL CONFLICT OF INTEREST

- A city councilor is employed by a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who is employed by the building supply business, while participating in a meeting, would be met with an actual conflict of interest when the request to pay the invoice from the business that employs the councilor is presented to the city council for official action.

POTENTIAL CONFLICT OF INTEREST

- Any action or any decision or recommendation by a person acting in the capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated.
  - ORS 244.020(13)

EXAMPLE OF POTENTIAL CONFLICT OF INTEREST

- A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, could be met with a potential conflict of interest when the members discuss or act on the invitation for bids on the sheetrock installation.

POTENTIAL VERSUS ACTUAL

- Difference between the two is the certainty of the financial impact on the public official, relative or business that results from an official action of the public official.
- If financial impact could occur – potential conflict
- If financial impact would occur – actual conflict

HANDLING CONFLICTS OF INTEREST

- Disclosure methods differ depending upon type of public official. ORS 244.120
- Elected public official (not member of State Legislature) –
  - Announce publicly the nature of the conflict (for both potential and actual), and if actual conflict:
    - Refrain from participating as a public official in any discussion or debate or from voting on the issue.
  - Multiple meetings dealing with same issue? Must disclose at each meeting.
    - Regardless of whether actual or potential.

DISCLOSURE METHODS – NON-ELECTED PUBLIC OFFICIAL

- Must notify IN WRITING the person who appointed the public official to office of the nature of the conflict, and request that the appointing authority dispose of the matter giving rise to the conflict. Upon the receipt of the request, the appointing authority shall designate within a reasonable amount of time an alternate to dispose of the matter, or shall direct the official to dispose of the matter in a manner specified by the appointing authority.
    - ORS 244.120(1)(c)

DISCLOSURE ANNOUNCEMENT EXEMPTIONS

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position. ORS 244.020(12)(a)
  - Examples:
    - Attorney, CPA, Doctor
- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or "class." ORS 244.020(12)(b) and ORS 244.290(3)(a)
  - Commission has authority to determine class (don't assume).

ETHICS LAW VIOLATION PROCESS

- Overview of the process
  - Complaint
    - Written, signed complaint, or Own Motion
      - How we make Own Motion complaints
    - After complaint received, if jurisdiction and reasonable belief violation has occurred, the Commission will refer the matter to staff for Preliminary Review
    - Purpose of preliminary review is to clarify information in the complaint and determine if there is cause to believe a violation has occurred.
    - 2015 – Preliminary Review shortened from 135 days to 30 days.
    - Investigation is confidential and no subpoenas can be issued.

VIOLATIONS PROCESS CONTINUED

- If the preliminary review indicates a violation may have occurred, then the Commission refers the matter to staff for investigation.
  - Decision to investigate is NOT confidential and subpoenas may be issued.
- If a violation is determined, a settlement may be entered into or Contested Case Hearing may be held.

SANCTIONS

- Sanctions that may be imposed by the Commission
  - Civil Penalty – up to $5,000 per violation – ORS 244.350
  - Forfeiture – twice the amount of any financial benefit realized – ORS 244.360
  - Letters of reprimand, explanation or education – ORS 244.350(5)

YOUR FAVORITE OREGON REVISED STATUTE

- **30.285 Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees.** (1) The governing body of any public body shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.
- (2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.

WHAT DOES THAT MEAN?

- That if a public official or the public body is sued for the public official's actions or omissions taken in the course and scope of their employment, the City will defend them and pay any judgment entered against the public official.

DOES ORS 30.285 COVER ETHICS VIOLATIONS?

- Can a public official require the public body to defend and indemnify the official from ethics complaints?
- Can a City Attorney/County Counsel, give a public official advice on how to respond to an ethics complaint?
- Can a City Attorney/County Counsel represent a public official in front of the Ethics Commission?

OTHER ISSUES FOR CITY ATTORNEYS/COUNTY COUNSEL

- Representation of public officials in front of Ethics Commission.
- Advice to public officials regarding actual/potential conflicts of interest.

Questions?