

**Government Ethics
Update**

OCAA Legal Issues Workshop
League of Oregon Cities
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Volunteers

- Responsible for specific duties.
- Duties are performed at a scheduled time and designated place.
- Volunteer is provided with the use of the public agency's resources and equipment.
- The duties performed would have a pecuniary impact on any person, business or organization served by the public agency.

Use of Official Position

ORS 244.040(1) - "But For" Test
Change in Analysis by OGEC:
"Primary focus on is on the use or attempted use of the position held by the public official rather than on the acceptance of a gift offered to a public official. Gifts are not acquired by a public official through the public official's use of a public body's resources or the position held."

Use of Official Position

ORS 244.040(1) - "But For" Test

Change in Analysis by OGEC:

"In general when the Commission applies Oregon Government Ethics law to "something of economic value" offered to a public official that meets the definition of gift it will be addressed as a gift in the analysis and application of the law."

Gifts

"Something of economic value" given to a public official, a relative of the public official or a member of the public official's household without payment or other consideration [ORS 244.020(6)(a)].

There are restrictions if the provider has a "legislative or administrative interest" in the decision or vote in which the official holds a position or has authority. [ORS 244.040(2)(e)]

Legislative or Administrative Interest

As defined by statute "Means 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".

What is a Decision?

Decision means:

An act that commits the public body to a particular course of action within the public official's scope of authority and that is connected to the source's economic interest.

Decision is not:

A recommendation or work performed in an advisory capacity.

Decision - Examples Reg. 199-005-0003

- (a) An employee makes a decision when issuing or denying a permit.
- (b) An enforcement employee makes decisions on whether to cite, warn or arrest.
- (c) An employee who approves contracts makes a decision on a contract.
- (d) An employee who commits their public body's funds for goods and services, such as office supplies, makes a decision.
- (e) Should a chief executive officer, director or manager with authority to make a final decision on a matter delegate the decision to a subordinate, the chief executive officer, director or manager would retain responsibility as the final decision maker. The subordinate has also made a decision.

Attendance at Receptions, Meals or Meetings

ORS 244.020(5)(b)(E) - The purpose of this exception is to allow public officials to attend organized, planned events and engage with the members of organizations when representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117. This exception to the gift definition does not authorize private meals where the participants engage in discussion.

Attendance at Receptions, Meals or Meetings

The following list of factors may indicate whether paid expenses may be accepted under this exception:

- (1) A large number of people or groups are invited. For example, all members of an organization are invited.
- (2) The invitations or programs are sent in advance.
- (3) The event is publicized.
- (4) The reception, meal, or meeting is open to the public.
- (5) Written materials such as a printed program are available.

ORS 244.020(6)(b)(H)

"Officially sanctioned or officially designated" means written approval by a state or local public body or by a person authorized by the public body to provide that approval. When the activity is officially designated as negotiations or economic activity, the written notice will include approval for the public official to accept the payment of reasonable expenses. **Unless the public body determines otherwise**, the written notice from the following is sufficient to constitute an officially sanctioned or officially designated activity under ORS 244.020(6)(b)(H):

ORS 244.020(6)(b)(H) cont.

- (A) A supervisor;
- (B) A governing body of a public body;
- (C) The President of the Senate, Speaker of the House, the designated majority or minority leaders of either chamber or appointed committees of the Legislative Assembly for any elected member;
- (D) Elected state officials holding the positions of Governor, Secretary of State, State Treasurer, Attorney General, Commissioner of the Bureau of Labor and Industries, and Superintendent of Public Instruction have authority to officially sanction or designate events for themselves;
- (E) Elected state court judges and district attorneys have authority to officially sanction or designate events for themselves;
- (F) Elected county sheriffs, surveyors, treasurers, assessors and justices of the peace have authority to officially sanction or designate events for themselves;
- (G) The chief administrators of state executive departments, commissions or boards have authority to officially sanction or designate events for themselves;
- (H) The chief administrator of a city or county government or a special district has authority to officially sanction or designate events for themselves.

ORS 244.020(6)(b)(H) cont.

Sample resolution to permit council members to accept an offer to pay for expenses incurred during officially sanctioned trade promotions or fact-finding trips or missions or officially designated negotiations or economic development activities is available here:

<http://www.orcities.org/AZIndex/tabid/810/itemid/15/language/en-US/Default.aspx>

Usual and Customary Practice

"Usual and customary practice" means an offer that is part of a historical or established custom. Such offers are long standing traditions that embody ordinary or expected practices resulting in economic benefits for those that are not public officials or candidates. As this term is used in ORS 244.020(6)(b)(O), anything of economic value offered or solicited as a "usual and customary practice" must bear no relationship to a public position or office held by the public official or candidate.

Usual and Customary Practice

Examples of usual and customary practice may include:
(a) A pharmacist is elected and becomes a member of the Oregon Legislative Assembly. In the past, as with other pharmacists, the pharmacist and her spouse were invited to dinners hosted by representatives of pharmaceutical manufacturers to discuss products and services. The pharmacist, now a legislator, and her spouse would be able to continue the usual and customary practice of accepting or soliciting these paid expenses for meals received in the practice of her private employment as long as the offer or solicitation bears no relationship to the position held in the Oregon Legislative Assembly and is made to other pharmacists who are not public officials.

Usual and Customary Practice

Examples of usual and customary practice may include:
(b) A county commissioner owns a lumber mill. In the past, as owner of the lumber mill, sales representatives of equipment manufacturers have offered to pay food, lodging and travel expenses for the owner to view new products and observe manufacturing processes as is offered to other lumber mill owners. Although a county commissioner, the lumber mill owner would be able to continue the usual and customary practice of accepting or soliciting these paid expenses for food, lodging and travel received in the conduct of his private business as long as the offer or solicitation bears no relationship to the position held as a county commissioner and is made to other lumber mill owners who are not public officials.

Usual and Customary Practice

Examples of usual and customary practice may include:
(c) A member of the board of directors for a local chapter of the American Red Cross is elected to the city council. For the past 15 years the local chapter has provided all board members and their spouses paid food, lodging and travel expenses to attend an annual leadership retreat. The board member, now a city councilor, and his spouse would be able to continue with the other board members in the usual and customary practice of accepting or soliciting these paid expenses for food, lodging and travel expenses in the conduct of his volunteer duties as long as the offer or solicitation bears no relationship to the position held as a city councilor and is made to other board members who are not public officials.

Usual and Customary Practice

Examples of usual and customary practice may include:
(d) A cattle rancher is a volunteer youth leader in a local 4-H club and was recently appointed to the county fair board. Prior to serving on the fair board, the rancher accompanied 4-H members to livestock competition at the county fair and would receive paid admission and parking passes for her and her family members for each day of the county fair. Although a fair board member, the rancher would be able to continue with the other volunteer youth leaders in the usual and customary practice of accepting or soliciting these paid expenses for herself and her family to attend the county fair while continuing her volunteer position with the 4-H as long as the offer or solicitation bears no relationship to the position held as a fair board member and is made to other youth leaders who are not public officials.

Penalties

- 199-001-0014 - Multiple Violations - Multiple violations of same nature treated as one violation with subsequent infractions treated as aggravating factors.
- 199-001-0015 - Guidelines on Sanctions - Chart available from OGE.

Potential Ethics Legislation

- There is likely to be some ethics changes during the 2011 Legislative session.
- At a minimum it is expected, based on press reports and indications from legislative leadership, that legislation will be introduced to change some of the gift exceptions that apply to employees in the Treasurer's office.
- Other potential changes may occur as well.

Ethics Training

Ways to make ethics training stick:

- Don't just recite the rules - discuss ethical decision-making in addition to statutory requirements
- Use real life examples
- Break up trainings into topics - conflicts, gifts, nepotism, etc... - at different times of the year
- Use reminders throughout the year to reinforce the need for ethical leadership
