

Ethics and Transparency: Finding Your Way to Sunshine

Karen Smith
OCCA General Counsel
October 29, 2011

Let the Sun Shine In

- ▶ Public officials must avoid financial conflicts of interest when they are serving in their official capacity.
 - Oregon Ethics Law – ORS 244
- ▶ Deliberations and decisions of public bodies and public officials should be made in the open.
 - Oregon Public Meetings and Public Records Law – ORS 192

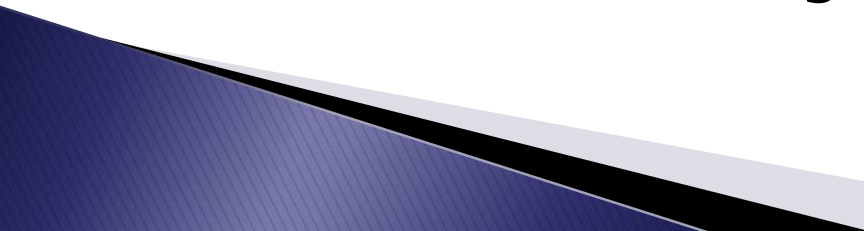
Oregon Ethics Law – ORS 244

- ▶ Applies to all **public officials** defined as:
 - Elected board members,
 - Administrators,
 - College faculty and staff,
 - Volunteers,
 - Agents (people performing government function for college such as a contractor)

Prohibition on Financial Gain

- ▶ A public official may not use official position for financial gain or to avoid financial detriment.
 - “But for” test
- ▶ Example – A college employee borrows a power washer owned by the college to wash the exterior of his personal residence before painting it.

Exceptions to Prohibition on Gain

- ▶ Official compensation
 - ▶ Reimbursement of expenses
 - ▶ Unsolicited awards for professional achievement
 - ▶ Allowable honorarium – less than \$50 value
 - ▶ Gifts – less than \$50 value or expressly excluded
 - ▶ Contributions to legal defense fund
- 

Conflicts of Interest

- ▶ Financial conflicts only – **actual** and **potential**
 - “would” versus “could”
- ▶ Must be disclosed publicly before action or vote taken
- ▶ If **actual** conflict, disclose and take no further official action (no discussion or vote)
- ▶ If **potential** conflict, disclose and continue to participate in official action

You Be the Judge

- ▶ A College board member owns a sheetrock contracting business. The college is planning construction project that will include soliciting bids for specified work including sheetrock that needs to be installed. Board members are discussing and acting on invitation for bids for sheetrock installation.
- ▶ Is this an actual or potential conflict?
 - ▶ POTENTIAL

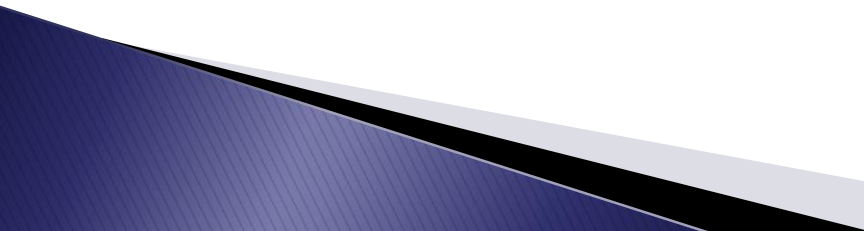
Gifts – Defined

- ▶ A gift is something of economic value given to a public official, a relative, or a member of the household of the public official:
 - Without valuable consideration and which is not offered to others who are not public officials, or
 - For valuable consideration less than that required from others who are not public officials.
- ▶ Includes meals, beverages, and entertainment

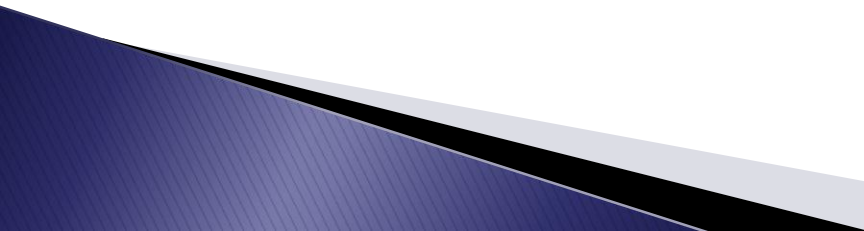
Gift Limits – 2007 & 2009 Reforms


- ▶ Annual limit for gifts given to a public official is **\$50** from a single source if the gift giver has a legislative or administrative interest in the public official to whom the gift is given.
- ▶ **A legislative or administrative interest** is defined as an economic interest distinct from the general public in any matter subject to the decision or vote of a public official acting in their official capacity.

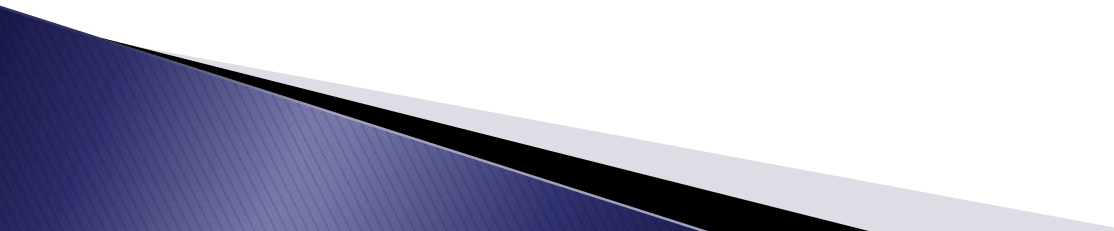
Gift Limit Exceptions

- ▶ Campaign contributions
 - ▶ Gifts from relatives or members of your household
 - ▶ Unsolicited tokens or awards of appreciation if value is less than \$25
 - ▶ Admission and meals provided to you when you are invited to attend a reception, meal or meeting held by organization when you are attending as representative of the college
- 

- ▶ Informational material, publications or subscriptions related to your position

 - ▶ Expenses paid by a government entity, membership organization to which the college pays dues, or a non-profit corporation for attendance at a convention, fact-finding trip, or other meeting if you are delivering a speech, making a presentation, participating in a panel, or representing your college
 - “Representing” your college means that you are participating in an event on behalf of the college in your capacity as a public official
- 

- ▶ Food, travel or lodging expenses paid to you, a relative, member of your household, or staff when you are representing your college on an “officially sanctioned” trade–promotion or fact–finding mission, or in official negotiations or economic development activities
 - ▶ Expenses provided by a public official to you for travel in state to and from an event that is related to your official office and in which you participate in your official capacity
 - ▶ Food and beverage provided at a reception (e.g. social gathering) where the food and beverage are an incidental part of the reception
- 

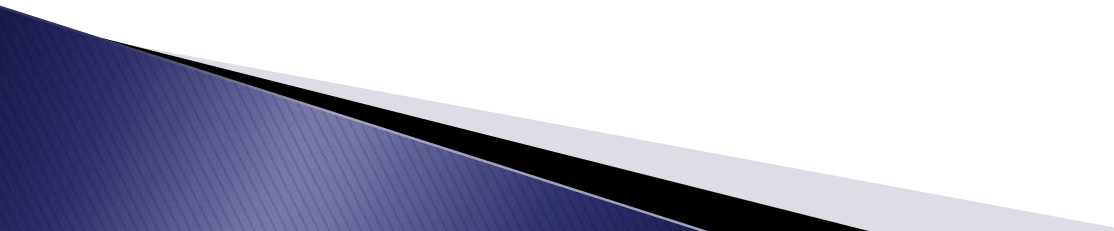
- ▶ Entertainment that is an incidental part of another event or in which you have been invited to participate in your official capacity (i.e., throwing out the first ball at a baseball game)
 - ▶ Gifts offered as part of the usual and customary practice of a person's private business, employment or volunteer position that bears no relationship to the public official's official position
- 

You Be the Judge

- ▶ A college board member attends a conference that is not open to the general public. An exhibitor that does business with the college offers the board member a basket of gifts valued at over \$100.
- ▶ Is this a gift?
- ▶ Yes.
 - ▶ Can board member accept the basket?
 - ▶ No. Gift exceeds \$50 limit (and violates financial gain prohibition).

Public Meetings – ORS 192

- ▶ Public decisions to be made in public.
- ▶ Generally, the Oregon law applies to meetings of a governing body “for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.”
- ▶ Must meet the notice requirements of the law unless there is a specific exception provided (e.g. executive sessions).

- ▶ Committees, subcommittee and advisory groups are considered a governing body if they have authority to make consensus recommendation or decision for public body.
 - ▶ On-site inspections and purely social gatherings are exempt from the law.
 - ▶ If in doubt, provide notice and post agenda. Presumption toward openness in ORS and court cases.
- 

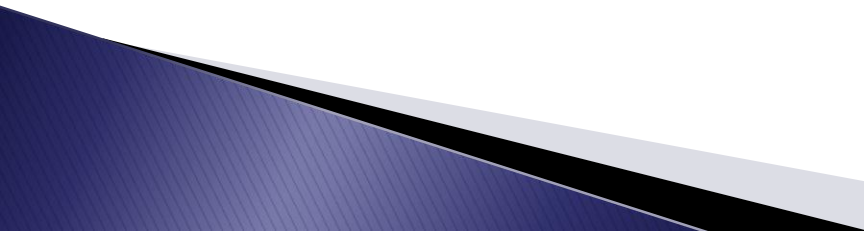
Executive Sessions

- ▶ Exception to open meeting requirements for specific situations outlined in statute.
- ▶ The board chair must identify the section and subsection of ORS 192.660 that define the subject matter for which the executive session is authorized.
- ▶ News media permitted to attend in almost all cases.
- ▶ No final decision/action permitted.

Lessons from Dumdi v. Handy

- ▶ Email – “electronic communication”
- ▶ Serial Conversations – when no quorum present
- ▶ Willful Misconduct – liability of individual board members

Public Records – ORS 192

- ▶ AG Kroger and SB 41
 - Timelines
 - Cost recovery
 - Exemption simplification
 - ▶ Education and training
 - ▶ Oregon law favors disclosure
 - ▶ Email as a public record
- 

Finding Your Way to Sunshine

▶ Do:

- Declare conflicts of interest on record prior to taking action
- Keep track of gifts received – value and giver
- Deliberate and discuss issues in open and properly noticed board meetings
- Remember that what you write in an email is public record

▶ Don't:

- Hit “reply” or “reply all” to email message from other board members
- Engage in “parking lot” discussions
- Discuss issues outside of scope of executive session stated purpose
- Put anything in an email that you wouldn't want to see on front page of paper

- ▶ Questions?
- ▶ Contact Karen at ksmith@occa17.com or 503-399-9912