

## **Board Member Ethics and Conflicts of Interest**

No Board member will use his/her official position or office to obtain personal financial benefit or to avoid financial detriment for him or herself, relatives or household members, or for any business with which the Board member, household member or a relative is associated.

This prohibition does not apply to any part of an official compensation package, honorarium allowed by ORS 244.042, reimbursement of expenses, or unsolicited awards of professional achievement. Further, this prohibition does not apply to gifts from one without a legislative or administrative interest. Nor does it apply if the gift is under the annual \$50 gift limit from one who has a legislative or administrative interest in any matter subject to the decision or vote of the Board member. ESD-provided meals at board meetings are acceptable under the reimbursement of expenses exception.

### **I. Conflicts of Interest**

“Business” means any corporation, partnership, proprietorship, enterprise, association, franchise, firm, organization, self-employed individual or any legal entity operated for economic gain. This definition excludes any income-producing tax exempt 501(c) not-for-profit corporation with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

“Business with which a Board member or relative is associated” means any private business or closely held corporation of which a Board member or relative is a director, officer, owner, employee or agent or any private business or closely held corporation in which a Board member or relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding year; any publicly held corporation in which a Board member or relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; or any publicly held corporation of which a Board member or relative is a director or officer.

“Relative” means: the spouse<sup>1</sup>, parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the Board member; or the parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the spouse of the Board member. Relative also includes any individual for whom the Board member has a legal support obligation, whose employment provides benefits<sup>2</sup> to the Board member, or who receives any benefit from the Board member’s public employment.

“Member of the household” means any person who resides with the public official.

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<sup>1</sup>The term spouse includes domestic partner.

<sup>2</sup>Examples of benefits may include, but not be limited to, elements of an official compensation package including benefits such as insurance, tuition or retirement allotments.

No Board member will solicit or receive, either directly or indirectly, any pledge or promise of future employment based on any understanding that the Board member's vote, official action or judgment would be thereby influenced.

No Board member will attempt to use or use for personal gain any confidential information gained through his/her official position or association with the ESD. A Board member will respect individuals' privacy rights when dealing with confidential information gained through association with the ESD.

If a Board member participates in the authorization of a public contract, the Board member may not have a direct beneficial financial interest in that public contract for two years after the date the contract was authorized.

Individual Board members and the Board as a public entity are bound by the ethics laws for public officials as stated in Oregon law.

### **Potential Conflict of Interest**

"Potential conflict of interest" means any action or any decision or recommendation by a Board member that could result in a financial benefit or detriment for self or relatives or for a business with which the Board member or relatives are associated, unless otherwise provided by law.

A Board member must publicly declare a potential conflict of interest. A Board member may, after declaring his/her potential conflict of interest, either vote or abstain on the issue. Abstaining from a vote does not meet the legal requirement of publicly stating a potential conflict.

### **Actual Conflict of Interest**

"Actual conflict of interest" means any action or any decision or recommendation taken by a Board member that would result in a financial benefit or detriment to self or relatives or for any business with which the Board member or relatives are associated, unless otherwise provided by law.

A Board member must publicly declare an actual conflict of interest. The Board member may not vote lawfully if an actual conflict of interest exists unless a vote is needed to meet a minimum requirement of votes to take official action. Such a vote does not allow the Board member to participate in any discussion or debate on the issue out of which an actual conflict arises.

### **Class Exception**

It will not be a conflict of interest if the Board member's action would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged. For example, if a Board member's spouse is a member of the collective bargaining unit, the Board member may vote to approve the contract, as it will affect all members of that class to the same degree. However, if the collective bargaining unit is very small, the class exception may not apply. Similarly, if the contract contains special provisions that might apply only to particular persons, then the class exception may not apply. For example, if a Board member's spouse is the only one in the bargaining unit that has a doctorate and there is a pay differential for the employees with doctorates in the collective bargaining agreement, the Board member should not vote on the contract.

## II. Gifts

Board members are public officials and therefore will not solicit or accept a gift or gifts with an aggregate value in excess of \$50 from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision or vote of the Board member. All gift related provisions apply to the Board member, their relatives and members of their household. The \$50 gift limit applies separately to the Board member and to the Board member's relatives or members of household, meaning that the Board member, each member of their household and their relative can accept up to \$50 each from the same source/gift giver. "Gift" means something of economic value given to a Board member without valuable consideration of equivalent value, which is not extended to others who are not public officials on the same terms and conditions.

"Relative" means: the spouse<sup>3</sup>; parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the Board member; or the parent, step-parent, child, sibling, step-sibling, son-in-law or daughter-in-law of the spouse of the Board member. Relative also includes any individual for whom the Board member has a legal support obligation, whose employment provides benefits<sup>4</sup> to the Board member, or who receives any benefit from the Board member's public employment.

"Member of the household" means any person who resides with the Board member.

### **Determining the Source of Gifts**

Board members should not accept gifts in any amount without obtaining information from the gift giver as to who is the source of the gift. It is the Board member's personal responsibility to ensure that no single source provides gifts exceeding an aggregate value of \$50 in a calendar year, if the source has a legislative or administrative interest in any matter subject to the decision or vote of the Board member. If the giver does not have a legislative/administrative interest, the ethics rules on gifts do not apply and the Board member need not keep track of it, although they are advised to do so anyway in case of a later dispute.

### **Determining Legislative and Administrative Interest**

A legislative or administrative interest means an economic interest distinct from that of the general public, in any action subject to the decision or vote of a person acting in the capacity of a Board member. For example, everyone within a county has a general interest in the fire department, but the person who sells the uniforms to the fire department has a legislative/administrative interest in the fire department that is distinct from the general public.

### **Determining the Value of Gifts**

The fair market value of the merchandise, goods, or services received will be used to determine benefit or value.

"Fair market value" is the dollar amount goods or services would bring if offered for sale by a person who desired, but was not obligated, to sell and purchased by one who is willing, but not obligated, to buy. Any portion of the price that was donated to charity, however, does not count toward the fair market value of

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<sup>3</sup>Ibid. p. 1

<sup>4</sup>Ibid. p. 1

the gift if the Board member does not claim the charitable contribution on personal tax returns. Below are acceptable ways to calculate the fair market value of a gift:

1. In calculating the per person cost at receptions or meals the payor of the Board member's admission or meal will include all costs other than any amount donated to a charity.

For example, a person with a legislative or administrative interest buys a table for a charitable dinner at \$100 per person. If the cost of the meal was \$25 and the amount donated to charity was \$75, the benefit conferred on the Board member is \$25. This example requires that the Board member does not claim the charitable contribution on personal tax returns;

2. For receptions and meals with multiple attendees, but with no price established to attend, the source of the Board member's meal or reception will use reasonable methods to determine the per person value or benefit conferred. The following examples are deemed reasonable methods of calculating value or benefit conferred:
  - a. The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons whom the payor reasonably expects to attend the reception or dinner;
  - b. The source divides the amount spent on food, beverage and other costs (other than charitable contributions) by the number of persons who actually attend the reception or dinner; or
  - c. The source calculates the actual amount spent on the Board member.
3. Upon request by the Board member, the source will give notice of the value of the merchandise, goods, or services received;
4. Attendance at receptions where the food or beverage is provided as an incidental part of the reception is permitted without regard to the fair market value of the food and beverage provided.

### **Value of Unsolicited Tokens or Awards: Resale value**

Board members may accept unsolicited tokens or awards that are engraved or are otherwise personalized items. Such items are deemed to have a resale value under \$25 (even if the personalized item cost the source more than \$50), unless the personalized item is made from gold or some other valuable material that would have value over \$25 as a raw material.

### **Entertainment**

Board members may not solicit or accept any gifts of entertainment over \$50 in value from any single source in a calendar year that has a legislative or administrative interest in any matter subject to the decision or vote of the Board member unless:

1. The entertainment is incidental to the main purpose of another event (i.e. a band playing at a reception). Entertainment that involves personal participation is not incidental to another event (such as a golf tournament at a conference); or
2. The Board member is acting in their official capacity for a ceremonial purpose.

Entertainment is ceremonial when a Board member appears at an entertainment event for a “ceremonial purpose” at the invitation of the source of the entertainment who requests the presence of the Board member at a special occasion associated with the entertainment. Examples of an appearance by a Board member at an entertainment event for a ceremonial purpose include throwing the first pitch at a baseball game, appearing in a parade and ribbon cutting for an opening ceremony.

## Exceptions

The following are exceptions to the ethics rules on gifts:

1. Campaign contributions are not considered gifts under the ethics rules;
2. Gifts from “relatives” and “members of the household” to the Board member are permitted in an unlimited amount; they are not considered gifts under the ethics rules;
3. Informational or program material, publications, or subscriptions related to the recipient’s performance of official duties;
4. Contributions made to a legal expense trust fund if certain requirements are met;
5. Food, lodging, and travel generally count toward the \$50 aggregate amount per year from a single source with a legislative/administrative interest, with the following exceptions:
  - a. *Organized Planned Events.* Board members are permitted to accept payment for travel conducted in the Board member’s official capacity, for certain limited purposes:
    - (1) Reasonable expenses (i.e., food, lodging, travel, fees) for attendance at a convention, fact-finding mission or trip, or other meeting do not count toward the \$50 aggregate amount IF:
      - (a) The Board member is scheduled to deliver a speech, make a presentation, participate on a panel, or represent the ESD; AND
        - i) The giver is a unit of a:
          - a) Federal, state, or local government;
          - b) An Oregon or federally recognized Native American Tribe; OR
          - c) Nonprofit corporation.
        - (b) The Board member is representing the ESD:
          - i) On an officially sanctioned trade-promotion or fact-finding mission; OR
          - ii) Officially designated negotiations or economic development activities *where receipt of the expenses is approved in advance by the Board.*
      - (2) The purpose of this exception is to allow Board members to attend organized, planned events and engage with the members of organizations by speaking or answering questions, participating in panel discussions or otherwise formally discussing matters in

their official capacity. This exception to the gift definition does not authorize private meals where the participants engage in discussion.

6. Food or beverage, consumed at a reception, meal, or meeting IF held by an organization and IF the Board member is representing the ESD. Again, this exception does not authorize private meals where the participants engage in discussion.

“Reception” means a social gathering. Receptions are often held for the purpose of extending a ceremonial or formal welcome and may include private or public meetings during which guests are honored or welcomed. Food and beverages are often provided, but not as a plated, sit-down meal;

7. Food or beverage consumed by Board member acting in an official capacity in the course of financial transactions between the public body and another entity described in ORS 244.020(6)(b)(I)(i);
8. Waiver or discount of registration expenses or materials provided to Board member at a continuing education event that the Board member may attend to satisfy a professional licensing requirement;
9. A gift received by the Board member as part of the usual or customary practice of the Board member’s private business, employment or position as a volunteer that bears no relationship to the Board member’s holding of public office.

### **Honoraria**

A Board member may not solicit or receive, whether directly or indirectly, honoraria for the Board member or any relative or member of the household of the Board member, if the honoraria are solicited or received in connection with the official duties of the Board member.

The honoraria rules do not prohibit the solicitation or receipt of an honorarium or a certificate, plaque, commemorative token, or other item with a value of \$50 or less; or the solicitation or receipt of an honorarium for services performed in relation to the private profession, occupation, avocation, or expertise of the Board member or candidate.

END OF POLICY

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### **Legal Reference(s):**

[ORS 162.015 to -162.035](#)  
[ORS 162.405 to -162.425](#)

[ORS 244.010 to -244.400](#)  
[ORS 332.055](#)

[OAR 199-005-0001 to -199-010-0150](#)

38 OR. ATTY. GEN. OP. 1995 (1978)

OR. ETHICS COMM’N, OR. GOV’T ETHICS LAW, A GUIDE FOR PUBLIC OFFICIALS.

### **Cross Reference(s):**

BBF - Board Member

BBFB - Board Member Ethics and Nepotism

DJ - ESD Purchasing