



EthicsMatters

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Conflicts of Interest: Actual or Potential

Oregon Government Ethics law defines two types of conflicts of interest: actual conflicts of interest (ORS 244.020(1)) and potential conflicts of interest (ORS 244.020(13)).

A public official is met with a conflict of interest when, acting in their official capacity, they participate in making a decision or recommendation or taking an action which would (actual conflict of interest) or could (potential conflict of interest) result in a financial benefit or detriment for the public official, a relative of the public official, or any business with which the public official or their relative is associated.

The distinction between an actual conflict of interest and a potential conflict of interest rests on the certainty of the financial impact. If the decision, recommendation or action would have a certain financial impact (positive or negative), then the conflict of interest is actual. If the decision, recommendation or action could have a financial impact, but it is not certain, then the conflict of interest is potential.

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Conflicts of Interest: Actual or Potential (Continued)

Examples:

- City Council votes to sell a surplus vehicle to the Mayor's brother. The Mayor would have an **actual conflict of interest** because the effect of this vote would have a certain financial impact on the Mayor's brother as he would have to pay for the vehicle and would gain the value of the vehicle.
- The husband of a member of a City's Budget Committee is a City employee. The Budget Committee votes to recommend a budget for adoption by the City Council. When participating in discussions and voting on the budget recommendation, this member of the Budget Committee would have a **potential conflict of interest** because the effect of their discussions and recommendations could have a financial impact on their relative, whose salary is part of the City budget. It is potential because the financial impact is not certain, as the recommended budget could be changed or rejected by the City Council.
- County Commissioner votes to award a County paving contract to an asphalt company. The Commissioner's son works for the company's residential division. The Commissioner would have an **actual conflict of interest** because the effect of his vote to award the contract would have a certain financial impact on the company, and since his son is employed there, it is a business with which the Commissioner's relative is associated.


Actual or Potential?

In each of the following scenarios, can you identify if the conflict of interest is actual or potential?

- a. Member of advisory committee votes to recommend a project to the school board, one which, if adopted, they could bid on.
- b. City building official approves building plans for parents' house.
- c. Regulatory agency board votes to adopt a training textbook required for its licensees. The textbook was co-written by one of the board members.
- d. Road District Commission votes to issue an invitation for bids for gravel/grading. A commissioner works for a company that provides such services.
- e. Fire District Board Members vote to approve the Budget that includes stipends for volunteer firefighters. A Board Member's son is a volunteer firefighter.

Answers: (a) potential; (b) actual; (c) actual; (d) potential; (e) actual.

Key Performance Measures



Thank you to everyone who took the time to respond to our customer service satisfaction survey. We take your responses to the survey seriously and use the results to help calculate some of our key performance measures (KPM). In addition to the survey, we analyze the time our investigations and advice letters take, as well as our investigators' performance. We also look at the number of trainings completed in the year and how successful the trainings were.

Every year we report on our agency's progress to meeting our KPM goals and share the results with the Legislature and on our website. You can view our latest KPM report [here](#). We also publish previous years' reports on our website for your [viewing](#).

Thank you for giving our agency feedback so we can improve our processes!

The Class Exception



A public official has a potential or actual conflict of interest if they make a decision or recommendation or take action that could or would have a financial impact on themselves, their relatives, or on any businesses with which they or their relatives are associated.

But if the class exception applies, there is not a conflict of interest.

What is the class exception?

The class exception in ORS 244.020(13)(b) means that if the public official is part of an identifiable group or “class,” the official does not have a conflict of interest if the decision, recommendation or action being considered or taken would affect the public official (or their relatives or any businesses with which they or their relatives are associated) to the same degree as all other members of the class to which they belong.

What is a class?

A class can be as large as all the residents of the State of Oregon, or it can be a smaller class consisting of an industry, occupation or other group, such as a number of people bound together by a community of interest, purpose or function. To determine whether the class exception in ORS 244.020(13)(b) applies, the Commission assesses the number of persons in a proposed class and whether all of those persons will be affected to the same degree.

What does “affected to the same degree” mean?

The phrase “to the same degree” means that all members of the class would have to be affected equally, or at least proportionately, in order for the class exception to apply.

How do I find out if I’m in a class and if the class exception applies?

If you want the safe harbor provided by ORS 244.280, you can ask the Commission for an advisory opinion on whether the class exception applies to your situation, but this process takes time. There is no safe harbor if you proceed on your own and the Commission later determines that the class exception does not apply to your situation.

Staff are available by phone or email to discuss conflicts of interest and how the class exception works. You can reach us at mail@ogec.oregon.gov or 503-378-5105.

Class Exception Applies:

- **University Board of Trustees votes to increase undergraduate tuition by 1%. One Board Member is an undergraduate student and two others have children who are undergraduate students. The class exception applies because all members of the class (undergraduate students) will be affected to the same degree or proportionately by the tuition increase.**

Class Exception Does Not Apply:

- **City Councilor votes to request ODOT re-route a state highway around the City’s downtown district. The downtown district businesses include several shops, a sit-down coffee shop owned by the Councilor, and a drive-thru espresso stand. Re-routing the highway would affect the drive-thru espresso stand to a greater degree than other downtown businesses. Therefore the class exception does not apply.**

Disclosing Conflicts of Interest

When met with a conflict of interest, there are different disclosure requirements depending on the nature of the public official's position.



**Members of the
Legislative Assembly**

Must announce publicly, pursuant to the rules of the house of which they are a member, the nature of the conflict before taking any action on the matter. [ORS 244.120(1)(a)]



Judges

Must be removed from the case giving rise to the conflict or must advise the parties of the nature of the conflict. [ORS 244.120(1)(b)]



**Any other appointed
official (including
public employees)**

Must notify their appointing authority, in writing, of the nature of the conflict and request that authority dispose of the matter giving rise to the conflict. The appointing authority shall designate an alternate to dispose of the matter or direct the official to dispose of it in a manner specified by the appointing authority. [ORS 244.120(1)(c)]



**Elected public officials
(other than legislators)
or appointed public
officials serving on a
board or commission**

Announce publicly the nature of the conflict of interest. Then:

- If it is a potential conflict of interest, they may continue to participate in the discussion, debate or vote on the matter.
- If it is an actual conflict of interest, they must refrain from participating in any discussion, debate or vote on the matter. [ORS 244.120(2)].

Minimum Votes Exception: If a public official's vote is necessary to meet a requirement of a minimum number of votes to take official action, an elected public official (or one serving on a board or commission) with an actual conflict of interest may be eligible to vote on the issue giving rise to their conflict of interest, but may not participate in any discussion or debate on the issue. [ORS 244.120(2)(b)(B)].

OGEC staff are available by phone or email to discuss how the minimum votes exception works. You can reach us at mail@ogec.oregon.gov or 503-378-5105.

Funding & Assessments

In 2007, the Legislature enacted a law that restructured the funding of OGEC. Previously, OGEC was a part of the General Fund but due to the public's request to create a more stable form of funding, the assessment model was created.

OGEC's biennial budget is split equally between state agencies and public bodies. State agencies and their assessments are calculated on a Full Time Employee (FTE) basis of \$20.74 per FTE. Public bodies' fees are based on the annual Secretary of State Municipal Audit fees. There are eight different levels within the Municipal Audit fees which determine the percentage rate used for each public body's assessment.

The assessment invoices are sent out via the Department of Administrative Services (DAS) in September and October. DAS also handles the collection of the assessments.

Questions can be directed to oregonethics.invoicing@das.oregon.gov

Additional resources can be found on our [website](#).

Request Advice



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Congratulations Monica Walker

Monica Walker was recently promoted to the position of Investigator. We asked Monica a few questions to get to know her.

Tell us about your background?

I have over 29 years of experience working for the State of Oregon. I began my career in 1991 as an accounting technician for the Oregon Health Licensing Office. I was later promoted to Licensing Specialist, Enforcement Coordinator, Board Liaison and Examination/Education

Coordinator. In 2002, I moved to the Oregon Board of Tax Practitioners, first as an Examination & Education Coordinator and then a Senior Compliance Specialist. In 2014 I took a position with the Department of Public Safety Standards and Training as a manager within the Professional Standards Division. Finally, I joined OGEC in 2018 as a Trainer/Program Analyst.

Why did you become an investigator?

I have always enjoyed and had a passion for compliance/investigatory work. The agency vacancy not only afforded me the chance to get back into a line of work I find motivating and rewarding, but it offered an opportunity to further my personal growth and serve the citizens of Oregon.

What do you like about working at OGEC?

I consider myself very fortunate to be a part of the OGEC team! My fellow team members are very knowledgeable and always willing and able to provide valuable insight, collaborate, be upfront and honest, brainstorm on issues, or lend a hand.

Commission Updates



Meet Commissioner Alicia McAuley, who joined our Commission in February 2022.

Would you tell us about yourself?

I've spent the last 21 years working for the Cow Creek Band

of Umpqua Tribe of Indians and currently serve as Deputy Director to the CEO for Tribal Government Operations. I represent the Tribe as Treasurer of the Oregon Tribal Gaming Alliance, sit on the Board of Directors for the Oregon Council on Problem Gambling and am currently a Commissioner on the Cow Creek Tribal Law Enforcement Commission.

While my professional career has brought me tremendous satisfaction, it will never compare to the joy of being a mama to three amazing kiddos: Austin (9), Angus (7) and Ava (7). My husband and I happily reside with our family in a small community east of Roseburg, Oregon where we enjoy and take advantage of all things outdoors.

What inspired you to apply to be a member of the Oregon Government Ethics Commission?

I have to be completely honest and say that I had never considered applying to a state board or commission, but when a colleague asked me if I would be interested in serving, I researched it and was excited about this opportunity, particularly because of the importance of this commission in maintaining the trust of the public in their state government. And while my time on the Commission has been short, it's been educational and rewarding and I would encourage others to look into how they can serve.

What aspect of the Commission are you most looking forward to?

The simple answer is learning. I recognize that I have so much to learn about State government and specifically ethics laws. I'm eager to engage with my fellow Commissioners and glean any knowledge I can from their expertise and experience.

Is there anything else you would like to share about yourself?

As an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians, born and raised in Oregon, I am committed to public service whether for my Tribe or my State and I believe that my personal and professional values align well with the skills needed for this commission. I am truly honored to serve the Oregon Government Ethics Commission for the next four years.

Welcome aboard Commissioner McAuley. We're looking forward to the next four years!

Upcoming
Commission
Meetings



- November 4, 2022
- December 16, 2022

Find out more under the
OGEC meeting section at
oregon.gov/ogec