

Executive Assistant

From: Megan Jensen <mjensen@occa17.com>
Sent: Tuesday, May 31, 2016 1:27 PM
To: Megan Jensen
Subject: OCCA Board Forum Topic: Recuse vs. Abstain
Attachments: Board Resouces - Ethics Quick Reference 2010.pdf

At the recent OCCA board forum, board members discussed the difference between recusal and abstention. Marcia Jensen, OCCA board president, asked that this information be sent to all Oregon community college board members and board assistants for future reference. You can also find information on our website here:

<http://www.occa17.com/board-members/ethics-public-meetings/>

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Marcia,

The focus of Oregon Public Meetings Law is on conflicts of interest and what to do in terms of participating in discussion and voting as an elected board member when you have a financial conflict of interest. In this sense, the terms “abstain” and “recuse” are used interchangeably to indicate when a person must declare a conflict and remove themselves from discussion and voting. Generally, when a board member has an **actual** conflict of interest under Oregon law (an action where they, a relative, or their business will benefit or avoid a financial detriment), they must declare this conflict on the record and may not participate in the discussion or vote on the matter. This declaration of conflict must be reflected in the minutes and **MUST** be stated at the beginning of the conversation. There is no requirement for the individual to physically remove themselves from the board table or room. This is the only situation under Oregon law when a person must abstain or recuse themselves from discussion and voting. If the person has a **potential** conflict of interest, they again must state this for the record at the beginning of the conversation. Once stated, they are allowed to continue to participate in the discussion and vote.

I have heard recently that there are some community college board members who are “abstaining” or not voting at all in board meetings – e.g. saying nothing during a vote. This is addressed briefly in the commentary in Attorney General’s Public Meetings Law Manual as follows,

“Members of boards, commissions or councils are obviously appointed to make decisions. To abstain is to fail to perform a most important function given to a board member. Absent compelling circumstances, for example, pecuniary conflict of interest problems, board members should not abstain from voting.”

The other issue related to abstentions is how they count towards quorum requirements and motions as this often causes some confusion. A board member who is present but abstains from voting can be counted as present for purposes of a quorum. Their vote, however, does not count as either an affirmative or negative vote for purposes of a motion.

I've attached a quick reference guide I prepared on the ins and outs of Oregon Ethics law including how to handle conflicts of interest. Please let me know if you have any further questions.

Best,

Karen Smith
OCCA General Counsel

Oregon's Ethics Law: Quick Reference Guide

Oregon's ethics law applies to all public officials including elected board members, presidents, administrators, college staff and volunteers. The focus of the law is on financial conflicts. There are several key areas of the law of which you should be aware.

PROHIBITION ON FINANCIAL GAIN

- Public officials are prohibited from using their official position or office to obtain financial gain or avoid financial detriment if the gain or avoidance of detriment would otherwise not be available but for the official's holding of the official position or office.
- This prohibition applies to relatives and members of your household, and any for-profit business with which you or a relative or member of your household are associated.
- This prohibition does NOT apply to the reimbursement of expenses, official compensation, allowable honorarium, and gifts that are specifically excluded from the gift limits.

CONFLICTS OF INTEREST

- A conflict of interest arises when a public official participates in an official action which could result in a financial benefit or avoidance of detriment to the public official, their relative or their business.
- There are two types of conflicts of interest defined in Oregon's law. The law requires different actions depending on the type of conflict.
 - **Actual Conflict**— action taken **WOULD** result in a financial benefit or avoidance of detriment to the public official, their relative or their business. An elected official with an actual conflict of interest must publicly announce the nature of the conflict and may **NOT** take any further official action on the matter.
 - **Potential Conflict**— action taken **COULD** result in a financial benefit or avoidance of detriment to the public official, their relative or their business. An elected official with a potential conflict of interest must publicly announce the nature of the conflict and may participate in any official action related to the issue.
- Disclosure of the nature of the conflict must be publicly announced and recorded in the board's public record.

GIFTS

- The annual limit for gifts given to a public official (includes board members, administrators, employees and some volunteers) 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.
- There are some **exceptions** to the gift limits*. They include:
 - Gifts from relatives or members of your household.
 - Unsolicited tokens or awards of appreciation if value is less than \$25.
 - Meals provided to you when you are invited to attend a reception, meal or meeting held by an organization when you are attending as representative of the college.
 - 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.
 - 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.

* For a complete list see OCCA's publication "Oregon's Ethics Law: What You Need to Know" posted at www.occa17.com.