

OREGON GOVERNMENT ETHICS COMMISSION

DIVISION 5

GIFTS

OAR 199-005-0005

Determining the Value Received by Public Officials

(1) Purpose. The purpose of this rule is to guide public officials, candidates and others in determining the value of items or services received by public officials to ensure accurate reporting in ORS 244.100 and to comply with gift and honoraria limits in ORS 244.025 and ORS 244.042.

(2) The fair market value of the merchandise, goods, or services received shall 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.

(a) In calculating the benefit or value conferred to a public official, any portion of the benefit transferred to an entity that is tax-exempt under section 501(c) of the Internal Revenue Code shall not be included as part of the benefit or value to the public official, if the public official does not claim the charitable contribution on personal tax returns.

(b) In calculating the per person cost at receptions or meals the payor of the public official's admission or meal shall include all costs other than any amount donated to a charity.

(c) The following example demonstrates how the value of a charitable dinner would be calculated. 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 public official is \$25. This example requires that the public official does not claim the charitable contribution on personal tax returns.

(3) For receptions and meals with multiple attendees, but with no price established to attend, the source of the public official's meal or reception shall 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 public official.

(4) Upon request by the public official, the source shall give notice of the value of the merchandise, goods, or services received.

(5) Attendance at receptions that qualify as an exception to the gift definition under ORS 244.020(5)(b)(L) is permitted without regard to the fair market value of the food and beverage provided.

OAR 199-005-0010

Resale Value of Unsolicited Tokens or Awards

(1) The purpose of this rule is to assist public officials in determining the resale value of items provided under ORS 244.020(5)(b)(C).

(2) Engraved or otherwise personalized items that include a public official's name are deemed to have a resale value under \$25, unless the personalized item is made from gold or some other valuable material that would have value over \$25 as a raw material.

OAR 199-005-0015

Attendance at Receptions, Meals or Meetings under ORS 244.020(5)(b)(E)

(1) The purpose of this exception is to allow public officials 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. The following list of factors may indicate whether expenditures are permitted under this exception, although the event may qualify even if not every factor is met:

- (a) A large number of people or groups are invited. For example, all members of an organization are invited.
- (b) The invitations or programs are sent in advance.
- (c) The event is publicized.
- (d) The reception, meal, or meeting is open to the public.
- (e) Written materials such as a printed program are available.
- (f) The public official delivers a planned speech or remarks to the entire audience.
- (g) The public official participates in a formal question and answer session before the entire audience.

(2) The following definitions apply to this rule.

- (a) "Organization" means any public body, corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust, or other entity other than an individual.
- (b) "Speak" means to give a speech or otherwise formally address or converse with the members of the organization or participants at a reception, meal, or meeting. Self introductions or other perfunctory remarks do not constitute speaking for purposes of this exception.
- (c) "Answer Questions" means to engage in formal discussion, such as on a panel or some other arrangement, where a moderator or the participants of the reception, meal, or meeting ask questions to a public official.
- (d) "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.

OAR 199-005-0020

Gift Exceptions in ORS 244.020(5)(b)(F) and (H)

(1) The purpose of this rule is to provide definitions and clarification for two of the gift exceptions that permit public officials to accept payment for travel conducted in the public official's official capacity, for certain limited purposes. Travel that meets the requirements of ORS 244.020(5)(b)(F) or (H) and this rule may be either within the United States or international.

(2) As this term is used in ORS 244.020(5)(b)(F) and (H), "representing" a unit of government (state, local or special government body) means that the public official is making an authorized appearance in an official capacity on behalf of the public body. Unless the employing public body determines otherwise in advance of the travel, the following is sufficient to constitute prior authorization:

- (a) A supervisor may approve the public official's representation;
- (b) A governing board or commission of a public body may approve the representation of the governing board members or commissioners, respectively;
- (c) An appointed committee of legislators may approve the representation of individual legislators; or
- (d) Individual elected officials, such as the governor, judges, district attorneys or local or statewide elected officials, may authorize their own appearances.

(3) As the term is used in ORS 244.020(5)(b)(F), a "not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code and that receives less than five percent of its funding from for-profit organizations or entities" is determined to qualify as an eligible not-for-profit corporation meeting the 5% threshold by the information on the most recent tax return filed by the organization prior to the time the expenses for authorized travel were incurred.

(4) For purposes of ORS 244.020(5)(b)(H),

(a) A "fact finding mission" is any activity related to a cultural or educational purpose, or any activity aimed at providing intergovernmental assistance, such as for the purpose of international aid or sharing best practices, or developing intergovernmental relationships directly related to the public official's duties. The sponsor of a fact finding mission should be directly and immediately associated with the event or location being visited.

(b) "Trade Promotion" means an activity for the purpose of encouraging or developing commerce or the buying and selling of goods and services.

(c) "Economic Development Activities" mean activities undertaken for the purpose of strengthening, expanding, or enhancing the economy, or activities that provide community development or cultural enhancement. Specific activities include, but are not limited to: promoting tourism; promoting a favorable investment climate to strengthen businesses; creating jobs; raising real wages; assisting Oregon communities to build a capacity to retain, expand or attract business; improving national and global competitiveness of Oregon companies; improving transportation access; and marketing products, services, or opportunities.

(d) "Officially Sanctioned" means approved by a state or local public body in writing by a person authorized by the public body to provide that approval, or at a public meeting by the governing

body to the public body. Unless the public body determines otherwise, the following is sufficient to constitute officially sanctioned:

(A) A supervisor may approve expenses for an employee;

(B) A governing board or commission of a public body may approve expenses for governing board members or commissioners, respectively;

(C) An appointed committee of legislators may approve expenses for individual legislative officials; or

(D) Individual elected officials, such as the governor, judges, district attorneys or local or statewide elected officials may authorize their own expenses.

(E) Local or statewide executive department heads who do not report to a supervisor may authorize their own expenses.

(e) "Expenses Approved in Advance" means expenses approved by the public body, either in writing by a person authorized by the public body to provide that approval, or at a public meeting by the governing body to the public body before the time of the activity. Unless the public body determines otherwise, the following is sufficient to constitute authorization:

(A) A supervisor may approve expenses for an employee;

(B) A governing board or commission of a public body may approve expenses for governing board members or commissioners, respectively;

(C) An appointed committee of legislators may approve expenses for individual legislative officials; or

(D) Individual elected officials, such as the governor, judges, district attorneys or statewide elected officials, may authorize their own expenses.

OAR 199-005-0025

Receptions and Entertainment permitted under ORS 244.020(5)(b)(L), (M) and (N)

(1) The purpose of this rule is to clarify terms used in the three gift exceptions in ORS 244.020(5)(b)(L), (M) and (N).

(2) A "reception" means a social gathering as defined in OAR 199-005-0015(2)(d).

(3) "Incidental" means secondary or minor, but associated to something more important. Entertainment that is incidental to the main purpose of another event is provided in conjunction with a primary event (such as a singer or band at an awards dinner). Incidental entertainment is secondary in importance and in time devoted to the entertainment compared to the primary, non-entertainment event. Entertainment that involves personal participation is not incidental to another event (such as a golf tournament at a conference).

(4) "Entertainment" means amusement or diversion. Entertainment may be provided by others (such as athletes at sporting events) but also includes events where the public official, relative, or member of household personally participates. Examples of entertainment include, but are not limited to concerts, plays, movies, operas, sporting events, participating in sports (golf, skiing, hunting or fishing, etc), comedy shows, and similar events.

(5) A public official appears at an entertainment event for a "ceremonial purpose" when the source of the entertainment requests the presence of the public official at a special occasion

associated with the entertainment. Staff members accompanying a public official may also attend if they are performing official duties. An example of an appearance by a public official at an entertainment event for a ceremonial purpose includes, but is not limited to, throwing the first pitch at a professional or college baseball game, appearing in a parade, and ribbon cutting for an opening ceremony. To qualify, the entertainment must be provided by the source of the entertainment, and the public official must have an official role in the entertainment event.

(6) “Representing” state, local or special government bodies has the meaning defined in OAR 199-005-0020(2).

OAR 199-005-0030

Determining the Source of Gifts

(1) ORS 244.025 and ORS 244.040(2)(e) limit the offering and receipt of gifts from sources that could reasonably be known to have a legislative or administrative interest in the governmental agency over which the public official holds any official position or over which the official exercises any authority. This rule is intended to clarify how a public official determines who the source of the gift is. Public officials need to be aware of the source of any gifts they receive (or those that are received by their relatives or members of their household), regardless of amount, to make sure that they comply with the \$50 limit on gifts from a single source in a calendar year. To that end, public officials should not accept gifts in any amount without obtaining information from the person or entity offering the gift as to who is the source of the gift. It is the public official’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.

(2) The source of any gift provided to a public official is the ultimate payor(s) of the expense.

(3) The \$50 gift limit in ORS 244.025 applies separately to the public official or candidate, and to the public official or candidate’s relatives or members of household. Each such individual may accept gifts from a single source of a total of \$50 per calendar year.

OAR 199-005-0035

Guidelines for compliance with ORS 244.020(5), ORS 244.025, ORS 244.040, ORS 244.042 and ORS 244.047

(1) The purpose of this rule is to define certain terms and to clarify substantive provisions of ORS 244.020(5), ORS 244.025, ORS 244.040, ORS 244.042 and ORS 244.047.

(2) The terms “official capacity” or “official duties”, means that the public official’s actions are directly related to serving the state of Oregon or any of its political subdivisions or any other public body as a public official.

(3) An “official compensation package” means the wages and other benefits provided to the public official. To be part of the public official’s “official compensation package”, the wages and benefits must have been specifically approved by the public body in a formal manner, such as

through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. “Official compensation package” also includes the direct payment of a public official’s expenses by the public body, in accordance with the public body’s policies.

(4) As used in ORS 244.040(2)(c), “reimbursement of expenses” means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment. Expenses paid by the public body to their own public officials need not be reported by the public official under ORS 244.100.

(5) “Confidential information” means any record that is exempt from public disclosure or inspection under state law, or any information obtained in the course of or by reason of holding position as a public official that is not publicly disclosed. The record or information is no longer confidential if it has been voluntarily disclosed by the public body, or been disclosed through a public records disclosure order or court order.

(6) As used in ORS 244.047, a public contract is “authorized by” a public official if the public official performed a significant role in the selection of a contractor or the execution of the contract. *A significant role can include* recommending approval or signing of the contract, including serving on a selection committee or team, or having the final authorizing authority for the contract.

(7) As defined in ORS 244.020(13), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent or otherwise.” An “agent or otherwise” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted consistently with *Attorney General Opinion No. 8214* (1990).