

April 21, 2008

Government Ethics Alert

Oregon Government Ethics Commission Revises its “Guide for Public Officials”

On April 3, 2008, the Oregon Government Ethics Commission (Commission) unveiled its new edition of the “Guide for Public Officials.” ORS 224.320 requires the Commission to prepare and publish a manual on government ethics that explains the ethics statutes, and the Commission’s interpretation of those statutes, in terms understandable to public officials and the public. The revised edition of the Guide is available on the Commission’s website at http://www.oregon.gov/OGEC/forms_publications.shtml.

The new edition of the Guide is different in several respects from previous editions.

First, and most importantly, the current edition of the Guide, unlike previous editions, is not an advisory opinion of the Commission as described by ORS 244.280. Previous editions of the Guide specifically provided that they were advisory opinions. The revised edition of the Guide does not contain such a provision. As Commission advisory opinions, previous editions of the Guide offered public officials who followed the strictures of the Guide a safe harbor from Commission investigation and sanctions. In contrast, the revised Guide is likely the equivalent of a staff advisory opinion, and while the Commission may consider whether an action subject to penalty was taken in reliance on the Guide, the safe harbor provision no longer exists.

Second, the revised Guide contains an extensive discussion of what constitutes a “legislative or administrative interest” for purposes of the ethics statutes. ORS 244.020(8) defines “legislative or administrative interest” as “an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.” Among other examples of “legislative or administrative interest” the Guide provides that public employees may have a legislative or administrative interest in the actions of their own agency or supervisor because they may have an economic interest in those actions different from that of the general public.

The following is a list of observations related to statements contained in the Guide.

1. The Guide contains a list of allowed and prohibited activities by public officials. The list of prohibited activities should be read in conjunction with the list of allowed activities because the prohibited activities list does not take into account certain statutory exemptions. For example: the prohibited activities list provides that public officials may accept neither honoraria nor gifts of entertainment – both of which are allowed under certain circumstances.

GOVERNMENT ETHICS ALERT

Oregon Government Ethics Commission Revises its "Guide for Public Officials"

April 21, 2008

Page 2

- 2. The Guide provides that in order to take advantage of the gift exemption of ORS 244.020(5)(b)(K), (travel expenses provided by one public official to another) the two public officials must travel together. The statutory language does not support such an interpretation.
- 3. The Guide provides that public officials must file Quarterly Disclosure Forms even if the public official has no activity to report. The language of ORS 244.100 does not clearly support such an interpretation.
- 4. Finally, the Guide provides that the "rule of necessity" which allows a public official with an actual conflict to vote when that official's vote is necessary for action on a matter, does not apply "when there are insufficient votes because of a member's absence when the governing body is convened." According to the Guide, the rule of necessity only applies when a governing body cannot take official action only because too many of its members are faced with an actual conflict of interest. The language of ORS 244.120(2)(b)(B) does not clearly support such an interpretation.

The ethics laws can be very confusing and public officials should be careful about relying on any single source of information to interpret them. In order to determine whether an ethics issue exists, public officials should consult the ethics statutes, administrative rules, any appropriate filing forms and the Guide for Public Officials. Reliance on a single source may not provide an accurate picture of the public official's obligations under the ethics laws.

If you have further questions or we can be of assistance, please feel free to contact us.

HARRANG LONG GARY RUDNICK P.C.

Lauren Sommers
 (541) 485-0220
lauren.sommers@harrang.com

Bruce Bishop
 (503) 371-3330
bruce.a.bishop@harrang.com

Jerry Lidz
 (541) 485-0220
jerome.s.lidz@harrang.com

Jim Mountain
 (503) 242-0000
james.e.mountain@harrang.com

* * *

Our firm's Government Ethics Alerts are intended to provide general information regarding recent changes and developments in the government ethics area. These publications do not constitute legal advice, and the reader should consult legal counsel to determine how this information may apply to any specific situation.