

BARLOW WATER

IMPROVEMENT DISTRICT

Phone (541) 544-2920 · Fax (541) 544-2005

11 S. County Rd #B · Tygh Valley, OR 97063-9749

November 22, 2017

Case # 17-157DG

Ronald Bersin, Diane Gould:

In regards to your letter dated Nov 14, 2017, I will try to address all issues of complaint #17-157DG individually. Please be aware that the Board of Directors for Barlow Water Improvement District are all unpaid volunteers working to support and better our community. We are a small rural community trying our best to follow guidelines set forth in SDAO handbook of ELECTED OFFICIAL GUIDE.

Item 1) Board Chair continued to hold executive sessions during monthly meetings without identifying the authorization to hold an executive session.

Response: Since before my time on BWID Board, "identified authorization" to hold executive sessions has never been done. Mr Herlocker is the person responsible for creating meeting agendas and has failed to provide this information. This and all past Boards were unaware of this requirement. At last Board meeting, 4 members in attendance were knowledgeable of this deficiency and prepared with copies of handouts to inform current Board members of this requirement. Board is looking into this requirement and will correct any deficiencies starting with December 2017 Board meeting. Several meetings including November 2017 did not have an executive session.

Item 2) The Board has consistently held discussions and adopted criteria and policy directives in executive session which the public was not given the opportunity to comment on criteria and policy directives.

Response: This complaint is totally false. Items of executive sessions have always been to only discuss member and employee issues where confidential personal information has been shared. In the last 2 years the majority of executive sessions have been to discuss District Manager employee issues.

Item 3) The Board Chair called an executive session at the April 9, 2016 monthly Board meeting in which the Board Chair gave the District Manager an evaluation based on agency goals, objectives, operations or programs. The performance review in question is located in my personnel file which I have not been given access to.

Response: Mr Herlocker and the entire Board were aware of the topic of this executive session in advance as normal. Mr Herlocker has always been the sole creator of the Board meeting agenda's the entire time he has been employed by BWID. He has always put "executive session" as a stand alone item even when given topics from Board members. Mr Herlocker has also failed to provide meeting agendas 3 days in advance requested multiple times from Gary Olin (Board member). Mr Herlocker was given a employee evaluation on this date, asked to sign which he did, and was given a copy to place in his employee file which he did not. Mr Herlocker statement "The performance review in question is located in my personnel file which I have not been given access to" is completely false. Mr Herlocker kept and maintained his own personnel file in BWID office along with his wife's file while she was an employee under Mr Herlocker's direct supervision. When Board Chair discovered Mr Herlocker failed to place copies of his 2 employee evaluations and letter of reprimand in his file, Mr Herlocker again was given copies and instructed to place in his file again which he did.

Item 4) Mr Herlocker states "I was also given a reprimand for attending a SDAO Board Training held in the Dalles which was approved at a prior Board meeting by all Board members because I did not specifically get his permission to attend".

Response: False. Mr Herlocker was not given a "reprimand" for attending SDAO Board training class, he was asked why he attended when he was expected to be performing on site job duties instead. Mr Herlocker was not approved by any Board member to attend SDAO Board training, he went solely on his own without authorization. Mr Herlocker also failed to notify at least 1 Board member when he left Pine Hollow area to attending training session as required per BWID Operations Manual and Board directions.

Item 5) Mr Herlocker states "I was instructed to sign the reprimand or there would be consequences".

Response: False, Mr Herlocker has been asked to sign both employee evaluations and letter of reprimand and as stated on the bottom of each, given 5 work days to submit a rebuttal in writing, which he has declined. He has never been told "there would be consequences" for not signing.

Mr Herlocker was terminated at BWID and denied unemployment benefits by Oregon State for valid reasons. It is the belief of this Board member that Mr Herlocker is filing frivolous complaints and lawsuits in retaliation for his dismissal.

FYI, Gary Hackett and Sandi Chamberlin both resigned from BWID Board on 12/10/2016.

Sincerely,

Daily Holman
BWID Board Chair

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-158XDG

DATE: June 20, 2018

RESPONDENT: HACKETT, Gary, former Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Five Violations of ORS 192.660(1) and Three (3) Violations of ORS 192.660(2)

1 **SYNOPSIS:** Gary Hackett served as member of the Board of Directors for the Barlow
2 Water Improvement District and participated in executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8

9 A review of information available indicates that Gary Hackett participated as a member of
10 the Board of Directors in executive sessions on five occasions when the presiding officer
11 failed to announce the statutory authority or lawful basis for convening the executive
12 session as required by ORS 192.660(1). In addition, during three of those executive
13 sessions, Mr. Hackett participated as a member of the Board when topics not permitted
14 by ORS 192.660(2) were discussed.

1 **RELEVANT LAWS AND RULES:** The following Oregon Revised Statutes and Oregon
2 Administrative Rules are applicable to the issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media
5 representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **199-040-0020 Permitted topics for executive session.**

7 (2) Compensation, including salaries and benefits, must not be discussed or
8 negotiated during an executive session under ORS 192.660(2)(a), (b) or (i)....
9

10 **199-040-0030 Notice to public official under ORS 192.660(2)(b) or (i).**

11 (1) In order to afford to the chief executive officer of any public body, a public
12 officer, employee, staff member or individual agent the opportunity to request an
13 open hearing under ORS 192.660(2)(b) or (i), the public official must receive
14 written notice of the meeting no less than one business day or 24 hours, whichever
15 is greater, in advance of the meeting.

16 (2) At a minimum, the written notice shall include:

17 (a) Identification of the governing body before which the matter will be
18 considered;

19 (b) The time, date and location of the meeting;

20 (c) The purpose for which the governing body proposes to convene the
21 executive session, including the citation to the applicable section of ORS
22 192.660 and the fact that the governing body will be considering the
23 dismissal or disciplining of, hearing complaints or charges against, or
24 reviewing and evaluating the performance of the public official receiving the
25 notice;

26 (d) Information on how the public official may make a request for an open
27 hearing.
28

29 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
30 a preliminary review based on a signed complaint from John Herlocker, former Manager
31 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that

1 Gary Hackett, member of the Board of Directors for the BWID, and eight other Board
2 Members, may have violated the executive session provisions of ORS 192.660 by
3 participating in multiple executive sessions held in 2016 and 2017 at which topics not
4 authorized for executive session were discussed or statutory prerequisites were not met
5 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
6 information developed in the preliminary review. The investigation focused on whether
7 there is enough information to find by a preponderance of the evidence that the nine
8 members of the BWID Board of Directors violated the executive session provisions of
9 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
10 respondents and complainants have been notified of Commission actions in this matter.
11 They have been invited to provide any information that would assist the Commission in
12 conducting this investigation.

13

14 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
15 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
16 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17 (#PR1; #INV1).
17 The BWID minutes also indicate that Mr. Hackett participated in all of the executive
18 sessions held in 2016.

19

20 Meeting minutes for the 12/10/16 Board meeting show that Mr. Hackett resigned effective
21 that meeting. (#PR1; #INV1). In a conversation with Commission staff, Mr. Hackett
22 confirmed his resignation (#PR3).

23

24 During preliminary review and investigation, the BWID office was contacted in an attempt
25 to obtain records pertaining to the executive sessions themselves. In a telephone
26 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,
27 explained that she is the person who takes the meeting minutes, and she said that she
28 had been instructed that meeting minutes could not be taken for executive session
29 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
30 herself from the room when the Board convenes an executive session and returns when
31 the executive session is finished. Ms. Denney was present at eight of the nine public

1 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
2 her experience, the presiding officer of the Board does not publicly announce any
3 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
4 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio
5 recordings are not available for the meetings (#INV2).

6
7 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
8 specifically made statements indicating that it was never BWID Board practice to identify
9 the proper statutory authorization prior to convening executive session:

10
11 "...Since before my time on BWID Board, 'identified authorization' to hold executive
12 sessions has never been done.... This and all past Boards were unaware of this
13 requirement...." (Holman)

14
15 "I have been on the board with 3 different chairpersons, never did we spell out
16 what was going to be discussed in the executive session if we had one."
17 (Gordon)

18
19 "...To my knowledge, the BWID Boards, both past and present, have never used
20 identifying authorizations and were unaware that we needed to post these."
21 (Warren). (#INV3)

22
23 As for executive session details, all of the 2017 and two of the 2016 meeting minutes
24 (10/8/16, 12/10/16, 1/14/17, 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17,
25 and 9/9/17) refer only to the fact that an executive session took place and the length of it.
26 Below is an example of a typical entry from the 2/11/17 meeting minutes:

27
28 "The regular session was adjourned at 11:42am, followed by an executive
29 session. Open meeting was reconvened at 12:42pm and adjourned at 12:43pm."

30
31 Only three of the fourteen meeting minutes included in the complaint contain any detail

1 as to topic(s) discussed in executive session; they are excerpted below:

2

3 The 4/9/16 meeting minutes have the following entry:

4 "The regular meeting was adjourned at 11:37 followed by an executive session to
5 discuss BWID personnel and customer billing issues. Open meeting was re-
6 convened at 12:34....

7 [O]pen meeting was adjourned to Executive session at 1:55. During session,
8 District manager was given 2016, Q1 performance evaluation. Executive session
9 was adjourned and open session was re-convened at 2:15. The regular 4/9/16
10 meeting was adjourned at 2:16pm."

11

12 The 9/10/16 meeting minutes have the following entry:

13 "The regular meeting was adjourned at 11:35 followed by an executive session to
14 allow John M. to report on his training assignment the past month. He gave John
15 H. high marks on the training process and information he learned which will allow
16 him to function as a backup to John H. in the future.... Open meeting was re-
17 convened at 12:15 and adjourned at 12:16 with no further discussion."

18 The 11/19/16 meeting minutes have the following entry:

19 "The regular meeting was adjourned at 1:00pm followed by a short executive
20 session to discuss staff job duties and office hours.

- 21
- 22 • Per request from John H., the board decided to formalize the existing board
23 duties and responsibilities and have all board members and employees sign
24 that document which will then be re-posted on the BWID website. Violations
25 of such guidelines may be grounds for disciplinary actions by the board.
 - 26 • The board discussed the need to have current scorecard goals for staff with
27 quarterly evaluations completed and used during annual performance
28 reviews. Manager annual review to be completed and approved by board
29 before year end. John will update his 2016 scorecard for board
30 performance review (target prior to next meeting). John requested that
31 Daily, Gary H., and Sandi participate in his performance review.
 - John formally requested the board to change his annual vacation from 2 to

1 3 weeks per year based on his 6+ years of service. He also requested sick
2 time accrual of 4 hours per month (not to carry over a max accrual of 48
3 hours/yr). Decision on requested changes deferred until Daily can complete
4 review of comparable employers.

5 Open meeting was re-convened at 2:08 and adjourned at 2:09 with no further
6 discussion.”

7
8 The open public meeting portion of the 12/10/16 BWID meeting minutes contain the
9 following entry:

10 “John Herlocker made a formal request to have his 2016 performance review
11 completed by the board during the regular meeting, under new business and to
12 record that review. Performance reviews are normally completed during executive
13 session as confidential and personal information can be part of the review process.
14 After considerable discussion among board members, and feelings that such an
15 addition should not be made to the agenda (new business) without advance notice,
16 a motion was made to defer his 2016 appraisal for 90 days. All board members
17 voted for the delay except Gary H. who abstained from voting.” (#PR1; #INV1).

18
19 Subsequent minutes for the 1/14/17 and 2/11/17 meetings make note of the fact that the
20 board agreed that the wording of the above paragraph be amended to read: “Gary said
21 he did not recall anyone deferring John’s performance review for 90 days.” (#PR1;
22 #INV1).

23
24 When Mr. Hackett contacted Commission staff during preliminary review, he stated that
25 he had served on the board of the BWID for many years prior to his resignation at the end
26 of 2016. He explained that during his time on the board, they endeavored to take care of
27 business and abide by all the laws and best practices they were aware of and any
28 mistakes they may have made pertaining to executive session protocol was unintentional.
29 He has no personal knowledge of board operations in 2017. (#PR3)

30
31 Fellow Board members who were also named in the complaint, including Board Chair

1 Daily Holman, Steve Gordon, Gary Olin, and Larry Warren, made statements indicating
2 that it was never BWID Board practice to identify the proper statutory authorization prior
3 to convening executive session. (#INV3)

4
5 **CONCLUSIONS:** Gary Hackett was a member of the Board of Directors of the BWID
6 during the period relevant to this investigation. Under the definitions in ORS 192.610,
7 BWID is a public body, and the Board of Directors is its governing body. As a Board
8 member, Mr. Hackett is required to comply with the executive session provisions of
9 Oregon Public Meetings law. The Commission is authorized to investigate complaints of
10 violations of ORS 192.660 alleged to have been committed by public officials. ORS
11 192.685.

12
13 An executive session is a meeting or a part of a meeting of a governing body that is closed
14 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
15 allows a governing body to hold an executive session to discuss specific topics once
16 certain conditions and prerequisites are met.

17
18 For all but three of the executive sessions held during this time (on 4/9/16, 9/10/16,
19 11/19/16 as discussed below), BWID records indicate simply that an executive session
20 was held and state nothing regarding the authorization, purpose, or what was discussed.

21
22 Per ORS 192.660(1), the governing body of a public body may hold an executive session
23 during a regular, special or emergency meeting, "after the presiding officer has identified
24 the authorization under ORS 192.610 to 192.690 for holding the executive session."
25 Regarding the relevant time frame at issue (April 2016 – September 2017), none of the
26 fourteen Board minutes or agendas reflects that a specific statutory authorization or lawful
27 basis was announced prior to the BWID Board entering an executive session. Ms.
28 Denney, the current BWID office assistant, explained that in her experience of taking the
29 minutes at the public portion of the Board meetings in 2017, the presiding officer of the
30 Board does not publicly announce any statutory authorization or lawful basis prior to
31 convening the executive sessions. BWID Board members, Holman, Gordon, and Warren

1 personally confirmed to the Commission in their written submissions that the Board
2 routinely held executive sessions without first publicly identifying the lawful basis for their
3 executive sessions, because they were unaware of the requirement to do so. Information
4 appears sufficient to constitute a preponderance of evidence that the Board failed to
5 comply with ORS 192.660(1) prior to convening the fourteen executive sessions relevant
6 to this case, and that Gary Hackett participated in five of these executive sessions.

7
8 Over the course of the public meeting on 4/9/16, the Board convened in executive session
9 twice—the first time to discuss “personnel and customer billing issues;” the other to
10 conduct a “2016, Q1 performance evaluation” of BWID’s District Manager (the
11 complainant, Mr. Herlocker). Even if it is assumed that the Board’s meeting in executive
12 session to discuss “personnel” was permissible under one of ORS 192.660(2)’s relevant
13 subsections (a) (relating to employment), (b) (relating to discipline), or (i) (relating to
14 performance evaluation), the information provided indicates that the others were not.

15
16 Customer billing is not a permissible topic to discuss in executive session under ORS
17 192.660. With regard to water distribution, ORS 192.660(2)(n) only permits relevant
18 governing bodies to meet in executive session “to discuss information about review or
19 approval of programs relating to...[g]eneration, storage or conveyance of... [w]ater,”
20 which does not include customer billing.

21
22 Furthermore, with regard to the District Manager’s 2016, Q1 performance evaluation in
23 the second executive session on 4/9/16, the minutes of the 12/10/16 Board meeting
24 indicate that the Board did not meet the prerequisite for holding an executive session
25 under that subsection, because the Board was not aware that employees should be given
26 an opportunity to request an open hearing instead of the executive session.

27
28 During an open public meeting held on 9/10/16, the Board convened in executive session
29 to hear a BWID staff member’s report on a “training assignment” in which the staff
30 member appears to have been learning to serve as backup to the BWID’s District
31 Manager (the complainant). Hearing a report on an employee’s job training is not a

1 permissible purpose for convening an executive session under ORS 192.660. Even if the
2 Board had attempted to enter executive session under ORS 192.660(2)(i) "to review and
3 evaluate the employment-related performance of... [a] staff member who does not
4 request an open hearing," it would not have been sufficient. There is a difference between
5 hearing a report and reviewing and evaluating performance as required by the statute.
6 Moreover, there is no indication that the Board would have met the prerequisite for holding
7 an executive session under that subsection, because there is no indication that the
8 employee was given an opportunity to request an open hearing instead of the executive
9 session.

10
11 During the open public meeting held on 11/19/16, the Board convened in executive
12 session to discuss staff job duties and office hours, during which time Board members
13 formalized "existing board duties and responsibilities," discussed "scorecard goals...
14 quarterly evaluations... annual performance reviews (for staff)," and considered the
15 District Manager's request to expand his vacation and sick-time. Even standing alone,
16 none of these things are among the permissible topics for convening an executive session
17 under ORS 192.660. Even if the Board had attempted to enter executive session under
18 ORS 192.660(2)(i) "to review and evaluate the employment-related performance of... [a]
19 staff member who does not request an open hearing," it would not have been sufficient.
20 For one, the Board did not discuss the performance-related matters of an individual
21 employee, but rather the Board and staff as a whole. ORS 192.660(8) specifies that ORS
22 192.660(2)(i) may not be used "to conduct a general evaluation of an agency goal,
23 objective or operation or any directive to personnel concerning agency goals, objectives,
24 operations or programs." To the extent that the District Manager's vacation and sick-time
25 request was discussed, it too was improperly considered—199-040-0020(2) states that
26 "benefits...must not be discussed or negotiated during an executive session under ORS
27 192.660(2)(a), (b) or (i)".

28
29 As described above, it appears by a preponderance of evidence that Gary Hackett
30 violated the executive session provisions of ORS 192.660(1) on five occasions and ORS
31 192.660(2) on three occasions by participating in executive sessions when the

1 prerequisites were not met and/or topics not permitted by law were discussed.

2


3 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
4 preliminary finding that Gary Hackett participated, as a Barlow Water Improvement
5 District Board Member, in five executive sessions when the presiding officer failed to first
6 announce the statutory authority or lawful basis for convening the session, in violation of
7 192.660(1), and that on three of those occasions, topics not authorized for executive
8 session were discussed, in violation of ORS 192.660(2). [Motion 10]

9

10 **ASSOCIATED DOCUMENTS:**

11 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
12 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
13 Office Assistant, Barlow Water Improvement District.
14 #PR3 Investigator's 12/4/17 memo summarizing contact with Gary Hackett.
15 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
16 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
17 #INV2 Communication from BWID staff (Dawn Denney), received via email on
18 6/11/18.
19 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
20 Larry Warren.

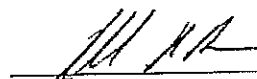
PREPARED BY



Hayley Weedn
Investigator

6/21/18
Date

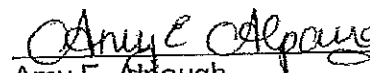
APPROVED BY



Ronald A. Bersin
Executive Director

6/21/18
Date

REVIEWED BY



Amy E. Alpaugh
Assistant Attorney General

6/21/18
Date

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-159XDG

DATE: June 20, 2018

RESPONDENT: OLIN, Gary, Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Thirteen Violations of ORS 192.660(1) and Three Violations of ORS 192.660(2)

1 **SYNOPSIS:** Gary Olin served as member of the Board of Directors for the Barlow Water
2 Improvement District and participated in executive sessions relevant to this investigation.
3 The focus of this investigation was to determine if there was a preponderance of evidence
4 to indicate that the members of the Barlow Water Improvement District Board 1) failed to
5 satisfy prerequisites for holding an executive session and/or 2) discussed topics not
6 permitted by the executive session provisions of Oregon Public Meetings law.

7

8 A review of information available indicates that Gary Olin participated as a member of the
9 Board of Directors in executive sessions on thirteen occasions when the presiding officer
10 failed to announce the statutory authority or lawful basis for convening the executive
11 session as required by ORS 192.660(1). In addition, during three of those executive
12 sessions, Mr. Olin participated as a member of the Board when topics not permitted by
13 ORS 192.660(2) were discussed.

14 //

1 **RELEVANT LAWS AND RULES:** The following Oregon Revised Statutes and Oregon
2 Administrative Rules are applicable to the issues addressed herein:

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9 192.690 for holding the executive session.

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12 or individual agent.

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14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **199-040-0020 Permitted topics for executive session.**

7 (2) Compensation, including salaries and benefits, must not be discussed or
8 negotiated during an executive session under ORS 192.660(2)(a), (b) or (i)....
9

10 **199-040-0030 Notice to public official under ORS 192.660(2)(b) or (i).**

11 (1) In order to afford to the chief executive officer of any public body, a public
12 officer, employee, staff member or individual agent the opportunity to request an
13 open hearing under ORS 192.660(2)(b) or (i), the public official must receive
14 written notice of the meeting no less than one business day or 24 hours, whichever
15 is greater, in advance of the meeting.

16 (2) At a minimum, the written notice shall include:

17 (a) Identification of the governing body before which the matter will be
18 considered;

19 (b) The time, date and location of the meeting;

20 (c) The purpose for which the governing body proposes to convene the
21 executive session, including the citation to the applicable section of ORS
22 192.660 and the fact that the governing body will be considering the
23 dismissal or disciplining of, hearing complaints or charges against, or
24 reviewing and evaluating the performance of the public official receiving the
25 notice;

26 (d) Information on how the public official may make a request for an open
27 hearing.
28

29 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
30 a preliminary review based on a signed complaint from John Herlocker, former Manager
31 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that

1 Gary Olin, member of the Board of Directors for the BWID, and eight other Board
2 Members, may have violated the executive session provisions of ORS 192.660 by
3 participating in multiple executive sessions held in 2016 and 2017 at which topics not
4 authorized for executive session were discussed or statutory prerequisites were not met
5 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
6 information developed in the preliminary review. The investigation focused on whether
7 there is enough information to find by a preponderance of the evidence that the nine
8 members of the BWID Board of Directors violated the executive session provisions of
9 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
10 respondents and complainants have been notified of Commission actions in this matter.
11 They have been invited to provide any information that would assist the Commission in
12 conducting this investigation.

13

14 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
15 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
16 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17. The BWID
17 minutes also indicate that Mr. Olin participated in all but one of the executive sessions
18 listed above, the one exception being the session on 9/9/17. (#PR1; #INV1)

19

20 During preliminary review and investigation, the BWID office was contacted in an attempt
21 to obtain records pertaining to the executive sessions themselves. In a telephone
22 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,
23 explained that she is the person who takes the meeting minutes, and she said that she
24 had been instructed that meeting minutes could not be taken for executive session
25 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
26 herself from the room when the Board convenes an executive session and returns when
27 the executive session is finished. Ms. Denney was present at eight of the nine public
28 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
29 her experience, the presiding officer of the Board does not publicly announce any
30 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
31 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio

1 recordings are not available for the meetings (#INV2).

2

3 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
4 specifically made statements indicating that it was never BWID Board practice to identify
5 the proper statutory authorization prior to convening executive session:

6

7 "...Since before my time on BWID Board, 'identified authorization' to hold executive
8 sessions has never been done.... This and all past Boards were unaware of this
9 requirement...." (Holman)

10

11 "I have been on the board with 3 different chairpersons, never did we spell out
12 what was going to be discussed in the executive session if we had one."
13 (Gordon)

14

15 "...To my knowledge, the BWID Boards, both past and present, have never used
16 identifying authorizations and were unaware that we needed to post these."
17 (Warren). (#INV3)

18

19 As for executive session details, all of the 2017 and two of the 2016 meeting minutes
20 (10/8/16, 12/10/16, 1/14/17, 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17,
21 and 9/9/17) refer only to the fact that an executive session took place and the length of it.
22 Below is an example of a typical entry from the 2/11/17 meeting minutes:

23

24 "The regular session was adjourned at 11:42am, followed by an executive session.
25 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm."

26

27 Only three of the fourteen meeting minutes included in the complaint contain any detail
28 as to topic(s) discussed in executive session; they are excerpted below:

29

30 The 4/9/16 meeting minutes have the following entry:

31

"The regular meeting was adjourned at 11:37 followed by an executive session to

1 discuss BWID personnel and customer billing issues. Open meeting was re-
2 convened at 12:34....

3 [O]pen meeting was adjourned to Executive session at 1:55. During session,
4 District manager was given 2016, Q1 performance evaluation. Executive session
5 was adjourned and open session was re-convened at 2:15. The regular 4/9/16
6 meeting was adjourned at 2:16pm.”

7
8 The 9/10/16 meeting minutes have the following entry:

9 “The regular meeting was adjourned at 11:35 followed by an executive session to
10 allow John M. to report on his training assignment the past month. He gave John
11 H. high marks on the training process and information he learned which will allow
12 him to function as a backup to John H. in the future.... Open meeting was re-
13 convened at 12:15 and adjourned at 12:16 with no further discussion.”

14
15 The 11/19/16 meeting minutes have the following entry:

16 “The regular meeting was adjourned at 1:00pm followed by a short executive
17 session to discuss staff job duties and office hours.

- 18 • Per request from John H., the board decided to formalize the existing board
19 duties and responsibilities and have all board members and employees sign
20 that document which will then be re-posted on the BWID website. Violations
21 of such guidelines may be grounds for disciplinary actions by the board.
- 22 • The board discussed the need to have current scorecard goals for staff with
23 quarterly evaluations completed and used during annual performance
24 reviews. Manager annual review to be completed and approved by board
25 before year end. John will update his 2016 scorecard for board
26 performance review (target prior to next meeting). John requested that
27 Daily, Gary H., and Sandi participate in his performance review.
- 28 • John formally requested the board to change his annual vacation from 2 to
29 3 weeks per year based on his 6+ years of service. He also requested sick
30 time accrual of 4 hours per month (not to carry over a max accrual of 48
31 hours/yr). Decision on requested changes deferred until Daily can complete

1 review of comparable employers.

2 Open meeting was re-convened at 2:08 and adjourned at 2:09 with no further
3 discussion.”

4

5 The open public meeting portion of the 12/10/16 BWID meeting minutes contain the
6 following entry:

7 “John Herlocker made a formal request to have his 2016 performance review
8 completed by the board during the regular meeting, under new business and to
9 record that review. Performance reviews are normally completed during executive
10 session as confidential and personal information can be part of the review process.
11 After considerable discussion among board members, and feelings that such an
12 addition should not be made to the agenda (new business) without advance notice,
13 a motion was made to defer his 2016 appraisal for 90 days. All board members
14 voted for the delay except Gary H. who abstained from voting.” (#PR1; #INV1)

15 Subsequent minutes for the 1/14/17 and 2/11/17 meetings make note of the fact that the
16 board agreed that the wording of the above paragraph be amended to read: “Gary said
17 he did not recall anyone deferring John’s performance review for 90 days.” (#PR1; #INV1)

18

19 Gary Olin submitted a response to the complaint, which is provided in its entirety to the
20 Commissioners, and is excerpted below:

21

22 “...Many of the Executive sessions that were held, dealt with confidential customer
23 billing/lack of payment issues that Mr. Herlocker would bring to the Board for
24 potential guidance. Mr. Herlocker participated in these Executive Sessions....”

25

26 “...I have served on the Barlow Water Improvement District water Board for over
27 18 years, in service to this small community.... After studying ORS 192.660 in
28 further detail, it is clear that the Board needs to redifine [sic] how we are using the
29 Executive session provision in our monthly Board Meetings. We should not have
30 a Carte Blanc statement ‘Executive Session’ on every agenda...” (#PR3)

31 //

1 **CONCLUSIONS:** Gary Olin was a member of the Board of Directors of the BWID during
2 the period relevant to this investigation. Under the definitions in ORS 192.610, BWID is a
3 public body, and the Board of Directors is its governing body. As a Board member, Mr.
4 Olin is required to comply with the executive session provisions of Oregon Public
5 Meetings law. The Commission is authorized to investigate complaints of violations of
6 ORS 192.660 alleged to have been committed by public officials. ORS 192.685.

7
8 An executive session is a meeting or a part of a meeting of a governing body that is closed
9 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
10 allows a governing body to hold an executive session to discuss specific topics once
11 certain conditions and prerequisites are met.

12
13 For all but three of the executive sessions held during this time (on 4/9/16, 9/10/16,
14 11/19/16 as discussed below), BWID records indicate simply that an executive session
15 was held and state nothing regarding the authorization, purpose, or what was discussed.

16
17 Per ORS 192.660(1), the governing body of a public body may hold an executive session
18 during a regular, special or emergency meeting, "after the presiding officer has identified
19 the authorization under ORS 192.610 to 192.690 for holding the executive session."
20 Regarding the relevant time frame at issue (April 2016 – September 2017), none of the
21 fourteen Board minutes or agendas reflects that a specific statutory authorization or lawful
22 basis was announced prior to the BWID Board entering an executive session. Ms.
23 Denney, the current BWID office assistant, explained that in her experience of taking the
24 minutes at the public portion of the Board meetings in 2017, the presiding officer of the
25 Board does not publicly announce any statutory authorization or lawful basis prior to
26 convening the executive sessions. BWID Board members, Holman, Gordon, and Warren
27 personally confirmed to the Commission in their written submissions that the Board
28 routinely held executive sessions without first publicly identifying the lawful basis for their
29 executive sessions, because they were unaware of the requirement to do so. Information
30 appears sufficient to constitute a preponderance of evidence that the Board failed to
31 comply with ORS 192.660(1) prior to convening the fourteen executive sessions relevant

1 to this case, and that Gary Olin participated in thirteen of these executive sessions.

2
3 Over the course of the public meeting on 4/9/16, the Board convened in executive session
4 twice—the first time to discuss “personnel and customer billing issues;” the other to
5 conduct a “2016, Q1 performance evaluation” of BWID’s District Manager (the
6 complainant, Mr. Herlocker). Even if it is assumed that the Board’s meeting in executive
7 session to discuss “personnel” was permissible under one of ORS 192.660(2)’s relevant
8 subsections (a) (relating to employment), (b) (relating to discipline), or (i) (relating to
9 performance evaluation), the information provided indicates that the others were not.

10
11 Customer billing is not a permissible topic to discuss in executive session under ORS
12 192.660. With regard to water distribution, ORS 192.660(2)(n) only permits relevant
13 governing bodies to meet in executive session “to discuss information about review or
14 approval of programs relating to...[g]eneration, storage or conveyance of... [w]ater,”
15 which does not include customer billing.

16
17 Furthermore, with regard to the District Manager’s 2016, Q1 performance evaluation in
18 the second executive session on 4/9/16, the minutes of the 12/10/16 Board meeting
19 indicate that the Board did not meet the prerequisite for holding an executive session
20 under that subsection, because the Board was not aware that employees should be given
21 an opportunity to request an open hearing instead of the executive session.

22
23 During an open public meeting held on 9/10/16, the Board convened in executive session
24 to hear a BWID staff member’s report on a “training assignment” in which the staff
25 member appears to have been learning to serve as backup to the BWID’s District
26 Manager (the complainant). Hearing a report on an employee’s job training is not a
27 permissible purpose for convening an executive session under ORS 192.660. Even if the
28 Board had attempted to enter executive session under ORS 192.660(2)(i) “to review and
29 evaluate the employment-related performance of... [a] staff member who does not
30 request an open hearing,” it would not have been sufficient. There is a difference between
31 hearing a report and reviewing and evaluating performance as required by the statute.

1 Moreover, there is no indication that the Board would have met the prerequisite for holding
2 an executive session under that subsection, because there is no indication that the
3 employee was given an opportunity to request an open hearing instead of the executive
4 session.

5
6 During the open public meeting held on 11/19/16, the Board convened in executive
7 session to discuss staff job duties and office hours, during which time Board members
8 formalized "existing board duties and responsibilities," discussed "scorecard goals...
9 quarterly evaluations... annual performance reviews (for staff)," and considered the
10 District Manager's request to expand his vacation and sick-time. Even standing alone,
11 none of these things are among the permissible topics for convening an executive session
12 under ORS 192.660. Even if the Board had attempted to enter executive session under
13 ORS 192.660(2)(i) "to review and evaluate the employment-related performance of... [a]
14 staff member who does not request an open hearing," it would not have been sufficient.
15 For one, the Board did not discuss the performance-related matters of an individual
16 employee, but rather the Board and staff as a whole. ORS 192.660(8) specifies that ORS
17 192.660(2)(i) may not be used "to conduct a general evaluation of an agency goal,
18 objective or operation or any directive to personnel concerning agency goals, objectives,
19 operations or programs." To the extent that the District Manager's vacation and sick-time
20 request was discussed, it too was improperly considered—199-040-0020(2) states that
21 "benefits...must not be discussed or negotiated during an executive session under ORS
22 192.660(2)(a), (b) or (i)".

23
24 As described above, it appears by a preponderance of evidence that Gary Olin violated
25 the executive session provisions of ORS 192.660(1) on thirteen occasions and ORS
26 192.660(2) on three occasions by participating in executive sessions when the
27 prerequisites were not met and/or topics not permitted by law were discussed.

28
29 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
30 preliminary finding that Barlow Water Improvement District Board Director Gary Olin
31 participated, as a Barlow Water Improvement District Board Member, in thirteen executive

1 sessions when the presiding officer failed to first announce the statutory authority or lawful
2 basis for convening the session, in violation of 192.660(1), and that on three of those
3 occasions, topics not authorized for executive session were discussed, in violation of
4 ORS 192.660(2). [Motion 10]


5

6 **ASSOCIATED DOCUMENTS:**


7

- 8 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
9 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
10 Office Assistant, Barlow Water Improvement District.
11 #PR3 Gary Olin's statement to Commissioners in response to the complaint,
12 received via email dated 11/26/17.
13 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
14 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
15 #INV2 Communication from BWID staff (Dawn Denney), received via email on
16 6/11/18.

PREPARED BY



Hayley Weedn
Investigator

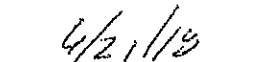


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APPROVED BY

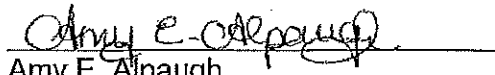


Ronald A. Bersin
Executive Director

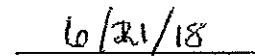


Date

REVIEWED BY



Amy E. Alpaugh
Assistant Attorney General



Date

From: golin3@frontier.com
To: GOULD Diane * OGFC
Subject: Response to Case No. 17-159DG
Date: Sunday, November 26, 2017 4:27:28 PM
Attachments: Exhibit #111252017 0001.pdf
Exhibit #211252017 0001.pdf

To: Mr. Ronald A. Bersin, Executive Director; c/o Diane Gould

This letter is in response to Case No. 17-159DG as dated November 14, 2017.

After reading the complaint, I have divided the complaint paragraph in three parts and will respond to each one individually as follows:

Part #1--First (8) lines ending with "... criteria and policy objectives.":

--Mr. Herlocker, as Barlow Water Improvement District (BWID) Manager, had the responsibility to prepare the monthly Board Meeting Agendas in a timely manor (first draft requested out by Wednesday, at latest, prior to Saturday Board Meeting). Timeliness was a problem, as many times the Meeting Agendas were finalized by Mr. Herlocker on Saturday morning, just prior to the Board Meeting. Please note that the duty of Mr. Herlocker assembling the agenda, preceded the tenure of the current Board Chair; not just during the last three years as stated in the complaint.

Mr. Herlocker routinely included "Executive Session" at the end of the regular Board Meeting Agenda. The Board relied on Mr. Herlocker to determine when an Executive Session would be required, if nobody on the Board made a specific request. Many of the Executive sessions that were held, dealt with confidential customer billing/lack of payment issues, that Mr. Herlocker would bring to the Board for potential guidance. Mr. Herlocker participated in these Executive Sessions.

In retrospect, it is my feeling that Mr. Herlocker knew the requirements of ORS 192.660 based on his comments in an email reply (see Exhibit #1 attached) to my question regarding his draft agenda, for the February, 2014, Board Meeting, that had item: "9. Executive Session--Litigation matter". His reply, in second paragraph, at top of Exhibit #1, says "...I wanted to follow the protocols of public meeting conduct." If Mr. Herlocker knew that, why wouldn't he apply this protocol to all meetings?

Part #2--Next five lines starting with "The Board Chair..." and ending with ..."not been given access to."

It is acknowledged that Mr. Herlocker was given a Performance Evaluation, with a separate Written Reprimand for Failure to Meet Performance Expectations, on April 9, 2017 at the Board Meeting, in Executive Session. I believe that session falls under ORS 192.660, (2)(b), rather than Mr. Herlocker's quote of ORS 192.660, (8), he used in his complaint.

Regarding access to his personnel file, the BWID office, that Mr. Herlocker worked in, consists of one room which includes all filing cabinets that were maintained by Mr. Herlocker. He has been asked to participate in an exit interview for the purpose of exchanging any and all intellectual and personal materials, but has rescheduled several times, and to my knowledge this hasn't yet happened.

Part #3--Last lines beginning with the sentence "I was also given a reprimand for attending a SDAO Board Training held in The Dalles which was approved at a prior Board Meeting."

There are two misstatements in this sentence; 1) there was not a "reprimand", only a discussion that the Board did not know Mr. Herlocker signed himself up for the seminar. The BWID Board members were surprised when Mr. Herlocker entered the SDAO Seminar approximately 30 minutes late. 2) approval was NOT given by the BWID Board for Mr. Herlocker to attend the SDAO Board Training Session in The Dalles; (See Exhibit #2 attached, Item 2. under "New Business"). A "note" was added to the minutes to indicate that Mr. Herlocker had signed up BWID Board members for the SDAO Board Training, but no indication he had signed himself up, as he indicated was "approved" by the Board in his complaint.

Regarding the last sentence, Mr. Herlocker was NOT "instructed", or threatened with "consequences" if he didn't sign the reprimand. He was reluctant, but did sign of his own volition.

In summary, I have served on the Barlow Water Improvement District water Board for over 18 years, in service to this small community. We currently have a productive and diverse Board who work well together.

I was asked to join the Board for my centrifugal pump engineering background and have been able to assist in many pump related issues and problems through the years.
After studying ORS 192.660 in further detail, it is clear that the Board needs to redefine how we are using the Executive Session provision in our monthly Board Meetings. We should not have a Carte Blanc statement "Executive Session" on every agenda.
The ""Public Meeting" subject was the last segment of the SDAO training session, and was cut short due to a conflict in the instructors schedule.
Thank you, and please let me know if I can clarify any of the above.

Sincerely,
Gary Olin
503-639-0555

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-160XDG

DATE: June 20, 2018

RESPONDENT: VEENKER, Frank, Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Ten Violations of ORS 192.660(1) and Two Violations of ORS 192.660(2)

1 **SYNOPSIS:** Frank Veenker served as member of the Board of Directors for the Barlow
2 Water Improvement District and participated in ten of the fourteen executive sessions
3 relevant to this investigation. The focus of this investigation was to determine if there was
4 a preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8
9 A review of information available indicates that Frank Veenker participated as a member
10 of the Board of Directors in executive sessions on ten occasions when the presiding
11 officer failed to announce the statutory authority or lawful basis for convening the
12 executive session as required by ORS 192.660(1). In addition, during two of those
13 executive sessions, Mr. Veenker participated as a member of the Board when topics not
14 permitted by ORS 192.660(2) were discussed.

1 **RELEVANT LAWS AND RULES:** The following Oregon Revised Statutes and Oregon
2 Administrative Rules are applicable to the issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media
5 representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **199-040-0030 Notice to public official under ORS 192.660(2)(b) or (i).**

7 (1) In order to afford to the chief executive officer of any public body, a public
8 officer, employee, staff member or individual agent the opportunity to request an
9 open hearing under ORS 192.660(2)(b) or (i), the public official must receive
10 written notice of the meeting no less than one business day or 24 hours, whichever
11 is greater, in advance of the meeting.

12 (2) At a minimum, the written notice shall include:

13 (a) Identification of the governing body before which the matter will be
14 considered;

15 (b) The time, date and location of the meeting;

16 (c) The purpose for which the governing body proposes to convene the
17 executive session, including the citation to the applicable section of ORS
18 192.660 and the fact that the governing body will be considering the
19 dismissal or disciplining of, hearing complaints or charges against, or
20 reviewing and evaluating the performance of the public official receiving the
21 notice;

22 (d) Information on how the public official may request an open hearing.
23

24 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
25 a preliminary review based on a signed complaint from John Herlocker, former Manager
26 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that
27 Frank Veenker, member of the Board of Directors for the BWID, and eight other Board
28 Members, may have violated the executive session provisions of ORS 192.660 by
29 participating in multiple executive sessions held in 2016 and 2017 at which topics not
30 authorized for executive session were discussed or statutory prerequisites were not met
31 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the

1 information developed in the preliminary review. The investigation focused on whether
2 there is enough information to find by a preponderance of the evidence that the nine
3 members of the BWID Board of Directors violated the executive session provisions of
4 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
5 respondents and complainants have been notified of Commission actions in this matter.
6 They have been invited to provide any information that would assist the Commission in
7 conducting this investigation.

8
9 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
10 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
11 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17. The BWID
12 minutes also indicate that Mr. Veenker participated in ten of the executive sessions listed
13 above, the exceptions being 10/8/16, 11/19/16, 4/8/17 and 7/8/17. (#PR1; #INV1).

14
15 During preliminary review and investigation, the BWID office was contacted in an attempt
16 to obtain records pertaining to the executive sessions themselves. In a telephone
17 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,
18 explained that she is the person who takes the meeting minutes, and she said that she
19 had been instructed that meeting minutes could not be taken for executive session
20 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
21 herself from the room when the Board convenes an executive session and returns when
22 the executive session is finished. Ms. Denney was present at eight of the nine public
23 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
24 her experience, the presiding officer of the Board does not publicly announce any
25 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
26 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio
27 recordings are not available for the meetings (#INV2).

28
29 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
30 specifically made statements indicating that it was never BWID Board practice to identify
31 the proper statutory authorization prior to convening executive session:

1 "...Since before my time on BWID Board, 'identified authorization' to hold executive
2 sessions has never been done.... This and all past Boards were unaware of this
3 requirement...." (Holman)

4
5 "I have been on the board with 3 different chairpersons, never did we spell out
6 what was going to be discussed in the executive session if we had one."
7 (Gordon)

8
9 "...To my knowledge, the BWID Boards, both past and present, have never used
10 identifying authorizations and were unaware that we needed to post these."
11 (Warren). (#INV3)

12
13 As for executive session details, all of the 2017 and two of the 2016 meeting minutes
14 (10/8/16, 12/10/16, 1/14/17, 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17,
15 and 9/9/17) refer only to the fact that an executive session took place and the length of it.
16 Below is an example of a typical entry from the 2/11/17 meeting minutes:

17
18 "The regular session was adjourned at 11:42am, followed by an executive session.
19 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm."

20
21 Only three of the fourteen meeting minutes included in the complaint contain any detail
22 as to topic(s) discussed in executive session; they are excerpted below:

23
24 The 4/9/16 meeting minutes have the following entry:

25 "The regular meeting was adjourned at 11:37 followed by an executive session to
26 discuss BWID personnel and customer billing issues. Open meeting was re-
27 convened at 12:34....

28 [O]pen meeting was adjourned to Executive session at 1:55. During session,
29 District manager was given 2016, Q1 performance evaluation. Executive session
30 was adjourned and open session was re-convened at 2:15. The regular 4/9/16
31 meeting was adjourned at 2:16pm."

1 The 9/10/16 meeting minutes have the following entry:

2 "The regular meeting was adjourned at 11:35 followed by an executive session to
3 allow John M. to report on his training assignment the past month. He gave John
4 H. high marks on the training process and information he learned which will allow
5 him to function as a backup to John H. in the future.... Open meeting was re-
6 convened at 12:15 and adjourned at 12:16 with no further discussion."
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8 The 11/19/16 meeting minutes have the following entry:

9 "The regular meeting was adjourned at 1:00pm followed by a short executive
10 session to discuss staff job duties and office hours.

- 11 • Per request from John H., the board decided to formalize the existing board
12 duties and responsibilities and have all board members and employees sign
13 that document which will then be re-posted on the BWID website. Violations
14 of such guidelines may be grounds for disciplinary actions by the board.
- 15 • The board discussed the need to have current scorecard goals for staff with
16 quarterly evaluations completed and used during annual performance
17 reviews. Manager annual review to be completed and approved by board
18 before year end. John will update his 2016 scorecard for board
19 performance review (target prior to next meeting). John requested that
20 Daily, Gary H., and Sandi participate in his performance review.
- 21 • John formally requested the board to change his annual vacation from 2 to
22 3 weeks per year based on his 6+ years of service. He also requested sick
23 time accrual of 4 hours per month (not to carry over a max accrual of 48
24 hours/yr). Decision on requested changes deferred until Daily can complete
25 review of comparable employers.

26 Open meeting was re-convened at 2:08 and adjourned at 2:09 with no further
27 discussion."
28

29 The open public meeting portion of the 12/10/16 BWID meeting minutes contain the
30 following entry:

31 "John Herlocker made a formal request to have his 2016 performance review

1 completed by the board during the regular meeting, under new business and to
2 record that review. Performance reviews are normally completed during executive
3 session as confidential and personal information can be part of the review process.
4 After considerable discussion among board members, and feelings that such an
5 addition should not be made to the agenda (new business) without advance notice,
6 a motion was made to defer his 2016 appraisal for 90 days. All board members
7 voted for the delay except Gary H. who abstained from voting." (#PR1; #INV1)

8
9 Subsequent minutes for the 1/14/17 and 2/11/17 meetings make note of the fact that the
10 board agreed that the wording of the above paragraph be amended to read: "Gary said
11 he did not recall anyone deferring John's performance review for 90 days." (#PR1; #INV1)
12 Frank Veenker submitted a response to the complaint, which is provided in its entirety to
13 the Commissioners, and is excerpted below:

14
15 "...First of all, there was never an intent of malice during the use of executive
16 session....Executive session was always used for discussion of private sensitive
17 issues. No decisions or votes were held during executive sessions. If we
18 violated 'identifying the authorization to hold an executive session', the Board of
19 Directors plans on correcting this oversight [sic] in the future." (#PR3).

20
21 Fellow Board members who were also named in the complaint, including Board Chair
22 Daily Holman, Steve Gordon, Gary Olin, and Larry Warren, made statements indicating
23 that it was never BWID Board practice to identify the proper statutory authorization prior
24 to convening executive session. (#INV3)

25
26 **CONCLUSIONS:** Frank Veenker was a member of the Board of Directors of the BWID
27 during the period relevant to this investigation. Under the definitions in ORS 192.610,
28 BWID is a public body, and the Board of Directors is its governing body. As a Board
29 member, Mr. Veenker is required to comply with the executive session provisions of
30 Oregon Public Meetings law. The Commission is authorized to investigate complaints of
31 violations of ORS 192.660 alleged to have been committed by public officials. ORS

1 192.685.

2

3 An executive session is a meeting or a part of a meeting of a governing body that is closed
4 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
5 allows a governing body to hold an executive session to discuss specific topics once
6 certain conditions and prerequisites are met.

7

8 For all but three of the executive sessions held during this time (on 4/9/16, 9/10/16,
9 11/19/16 as discussed below), BWID records indicate simply that an executive session
10 was held and state nothing regarding the authorization, purpose, or what was discussed.

11

12 Per ORS 192.660(1), the governing body of a public body may hold an executive session
13 during a regular, special or emergency meeting, "after the presiding officer has identified
14 the authorization under ORS 192.610 to 192.690 for holding the executive session."
15 Regarding the relevant time frame at issue (April 2016 – September 2017), none of the
16 fourteen Board minutes or agendas reflects that a specific statutory authorization or lawful
17 basis was announced prior to the BWID Board entering an executive session. BWID
18 Board members, Holman, Gordon, and Warren personally confirmed to the Commission
19 in their written submissions that the Board routinely held executive sessions without first
20 publicly identifying the lawful basis for their executive sessions, because they were
21 unaware of the requirement to do so. Also, Ms. Denney, the current BWID office
22 assistant, explained that in her experience of taking the minutes at the public portion of
23 the Board meetings in 2017, the presiding officer of the Board does not publicly announce
24 any statutory authorization or lawful basis prior to convening the executive sessions.
25 Information appears sufficient to constitute a preponderance of evidence that the Board
26 failed to comply with ORS 192.660(1) prior to convening the fourteen executive sessions
27 relevant to this case, and that Frank Veenker participated in ten of these executive
28 sessions.

29

30 Over the course of the public meeting on 4/9/16, the Board convened in executive session
31 twice—the first time to discuss "personnel and customer billing issues;" the other to

1 conduct a "2016, Q1 performance evaluation" of BWID's District Manager (the
2 complainant, Mr. Herlocker). Even if it is assumed that the Board's meeting in executive
3 session to discuss "personnel" was permissible under one of ORS 192.660(2)'s relevant
4 subsections (a) (relating to employment), (b) (relating to discipline), or (i) (relating to
5 performance evaluation), the information provided indicates that the others were not.

6
7 Customer billing is not a permissible topic to discuss in executive session under ORS
8 192.610 – 192.690. With regard to water distribution, ORS 192.660(2)(n) only permits
9 relevant governing bodies to meet in executive session "to discuss information about
10 review or approval of programs relating to...[g]eneration, storage or conveyance of...
11 [w]ater," which does not include customer billing.

12
13 Furthermore, with regard to the District Manager's 2016, Q1 performance evaluation in
14 the second executive session on 4/9/16, the minutes of the 12/10/16 Board meeting
15 indicate that the Board did not meet the prerequisite for holding an executive session
16 under that subsection, because the Board was not aware that employees should be given
17 an opportunity to request an open hearing instead of the executive session.

18
19 During an open public meeting held on 9/10/16, the Board convened in executive session
20 to hear a BWID staff member's report on a "training assignment" in which the staff
21 member appears to have been learning to serve as backup to the BWID's District
22 Manager (the complainant). Hearing a report on an employee's job training is not a
23 permissible purpose for convening an executive session under ORS 192.660. Even if the
24 Board had attempted to enter executive session under ORS 192.660(2)(i) "to review and
25 evaluate the employment-related performance of... [a] staff member who does not
26 request an open hearing," it would not have been sufficient. There is a difference between
27 hearing a report and reviewing and evaluating performance as required by the statute.
28 Moreover, there is no indication that the Board would have met the prerequisite for holding
29 an executive session under that subsection, because there is no indication that the
30 employee was given an opportunity to request an open hearing instead of the executive
31 session.

1 Mr. Veenker was not present at the BWID meeting held on 11/19/16.

2

3 As described above, it appears by a preponderance of evidence that Frank Veenker
4 violated the executive session provisions of ORS 192.660(1) on ten occasions and ORS
5 192.660(2) on two occasions by participating in executive sessions when the
6 prerequisites were not met and/or topics not permitted by law were discussed.

7

8 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
9 preliminary finding that Frank Veenker participated, as a Barlow Water Improvement
10 District Board Member, in ten executive sessions when the presiding officer failed to first
11 announce the statutory authority or lawful basis for convening the session, in violation of
12 192.660(1), and that on two of those occasions, topics not authorized for executive
13 session were discussed, in violation of ORS 192.660(2). [Motion 10]

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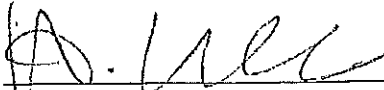
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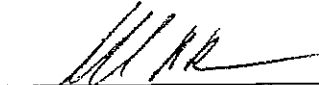
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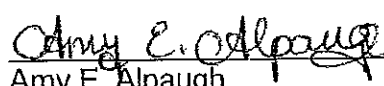
31 //

1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
3 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
4 Office Assistant, Barlow Water Improvement District.
5 #PR3 Frank Veenker's statement to Commissioners in response to the
6 complaint, received via email dated 11/27/17.
7 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
8 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
9 #INV2 Communication from BWID staff (Dawn Denney), received via email on
10 6/11/18.
11 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
12 Larry Warren.

PREPARED BY  6/21/18
Hayley Weedn Date
Investigator

APPROVED BY  4/21/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  6/21/18
Amy E. Alpaugh Date
Assistant Attorney General

November 26, 2017

Re: Case # 17-157DG

Government Ethics Commission

ogec.mail@oregon.gov

Ronald Bersin, Diane Gould:

- 1) Board Chair continued to hold executive sessions during monthly meetings without identifying the authorization to hold an executive session.

Response: First of all, there was never an intent of malice during the use of executive session. John Herlocker wrote the agenda for all of our meetings and included the executive sessions at every meeting. Executive session was always used for discussion of private sensitive issues. No decisions or votes were held during executive sessions. If we violated "identifying the authorization to hold an executive session", the Board of Directors plans on correcting this oversight in the future.

- 2) The Board has consistently held discussions and adopted criteria and policy directives in executive session which the public was not given the opportunity to comment on criteria and policy directives.

Response: Executive sessions were always used for discussion of private sensitive issues. No decisions or votes were held during executive sessions. We always came out of executive session and returned to the regular meeting to make a decision or to take a vote.

- 3) The Board Chair called an executive session at the April 9, 2016, monthly meeting in which the Board Chair gave the District Manager an evaluation based on agency goals, objectives, operations or programs. The performance review in question is located in my personnel file which I have not been given access to.

Response: The evaluation in question was an employee evaluation based on John Herlocker's performance; not agency goals, objectives, operations, or programs. John Herlocker was instructed to put his performance evaluation (which was given to him at the April 9, 2016, monthly meeting) into his personnel file. I know that he was reminded to place the evaluation in his file.

- 4) Mr. Herlocker stated "I was also given a reprimand for attending a SDAO Board Training held in The Dalles which was approved at a prior Board meeting by all Board members because I did not specifically get his permission to attend."

Response: When we attended the SDAO Board meeting held in The Dalles, I asked the Board Chair, Daily Holman, if John Herlocker was to be attending that Training. His response was, "No, it is for Board Members only." To which I replied, "Well, he just walked in the door behind you." It was never discussed among the Board Directors that John Herlocker attend that Training.

5) Mr. Herlocker states " I was instructed to sign the reprimand or there would be consequences."

Response: He was never told that there would be consequences. As I remember, he declined to sign the reprimand, but signed after Gary Olin pointed out that by signing, John would show good faith.

Sincerely,

Frank Veenker

BWID Board Member

OREGON GOVERNMENT ETHICS COMMISSION
INVESTIGATION

CASE NO: 17-161XDG

DATE: June 20, 2018

RESPONDENT: MCELHERAN, John, Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Fourteen Violations of ORS 192.660(1) and Three Violations of ORS 192.660(2)

1 **SYNOPSIS:** John McElheran served as member of the Board of Directors for the Barlow
2 Water Improvement District and participated in executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8
9 A review of information available indicates that John McElheran participated as a member
10 of the Board of Directors in executive sessions on fourteen occasions when the presiding
11 officer failed to announce the statutory authority or lawful basis for convening the
12 executive session as required by ORS 192.660(1). In addition, during three of those
13 fourteen executive sessions, Mr. McElheran participated as a member of the Board when
14 topics not permitted by ORS 192.660(2) were discussed.

1 **RELEVANT LAWS AND RULES:** The following Oregon Revised Statutes and Oregon
2 Administrative Rules are applicable to the issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media
5 representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **199-040-0020 Permitted topics for executive session.**

7 (2) Compensation, including salaries and benefits, must not be discussed or
8 negotiated during an executive session under ORS 192.660(2)(a), (b) or (i)....
9

10 **199-040-0030 Notice to public official under ORS 192.660(2)(b) or (i).**

11 (1) In order to afford to the chief executive officer of any public body, a public
12 officer, employee, staff member or individual agent the opportunity to request an
13 open hearing under ORS 192.660(2)(b) or (i), the public official must receive
14 written notice of the meeting no less than one business day or 24 hours, whichever
15 is greater, in advance of the meeting.

16 (2) At a minimum, the written notice shall include:

17 (a) Identification of the governing body before which the matter will be
18 considered;

19 (b) The time, date and location of the meeting;

20 (c) The purpose for which the governing body proposes to convene the
21 executive session, including the citation to the applicable section of ORS
22 192.660 and the fact that the governing body will be considering the
23 dismissal or disciplining of, hearing complaints or charges against, or
24 reviewing and evaluating the performance of the public official receiving the
25 notice;

26 (d) Information on how the public official may make a request for an open
27 hearing.
28

29 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
30 a preliminary review based on a signed complaint from John Herlocker, former Manager
31 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that

1 John McElheran, member of the Board of Directors for the BWID, and eight other Board
2 Members, may have violated the executive session provisions of ORS 192.660 by
3 participating in multiple executive sessions held in 2016 and 2017 at which topics not
4 authorized for executive session were discussed or statutory prerequisites were not met
5 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
6 information developed in the preliminary review. The investigation focused on whether
7 there is enough information to find by a preponderance of the evidence that the nine
8 members of the BWID Board of Directors violated the executive session provisions of
9 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
10 respondents and complainants have been notified of Commission actions in this matter.
11 They have been invited to provide any information that would assist the Commission in
12 conducting this investigation.

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16 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17. The BWID
17 minutes also indicate that Mr. McElheran participated in each executive session on the
18 dates noted above. (#PR1; #INV1).

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20 During preliminary review and investigation, the BWID office was contacted in an attempt
21 to obtain records pertaining to the executive sessions themselves. In a telephone
22 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,
23 explained that she is the person who takes the meeting minutes, and she said that she
24 had been instructed that meeting minutes could not be taken for executive session
25 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
26 herself from the room when the Board convenes an executive session and returns when
27 the executive session is finished. Ms. Denney was present at eight of the nine public
28 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
29 her experience, the presiding officer of the Board does not publicly announce any
30 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
31 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio

1 recordings are not available for the meetings (#INV2).

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3 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
4 specifically made statements indicating that it was never BWID Board practice to identify
5 the proper statutory authorization prior to convening executive session:

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7 "...Since before my time on BWID Board, 'identified authorization' to hold executive
8 sessions has never been done.... This and all past Boards were unaware of this
9 requirement...." (Holman)

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11 "I have been on the board with 3 different chairpersons, never did we spell out
12 what was going to be discussed in the executive session if we had one."
13 (Gordon)

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15 "...To my knowledge, the BWID Boards, both past and present, have never used
16 identifying authorizations and were unaware that we needed to post these."
17 (Warren). (#INV3)

18

19 As for executive session details, all of the 2017 and two of the 2016 meeting minutes
20 (10/8/16, 12/10/16, 1/14/17, 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17,
21 and 9/9/17) refer only to the fact that an executive session took place and the length of it.
22 Below is an example of a typical entry from the 2/11/17 meeting minutes:

23

24 "The regular session was adjourned at 11:42am, followed by an executive session.
25 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm."

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27 Only three of the fourteen meeting minutes included in the complaint contain any detail
28 as to topic(s) discussed in executive session; they are excerpted below:

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"The regular meeting was adjourned at 11:37 followed by an executive session to

1 discuss BWID personnel and customer billing issues. Open meeting was re-
2 convened at 12:34....

3 [O]pen meeting was adjourned to Executive session at 1:55. During session,
4 District manager was given 2016, Q1 performance evaluation. Executive session
5 was adjourned and open session was re-convened at 2:15. The regular 4/9/16
6 meeting was adjourned at 2:16pm.”

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8 The 9/10/16 meeting minutes have the following entry:

9 “The regular meeting was adjourned at 11:35 followed by an executive session to
10 allow John M. to report on his training assignment the past month. He gave John
11 H. high marks on the training process and information he learned which will allow
12 him to function as a backup to John H. in the future.... Open meeting was re-
13 convened at 12:15 and adjourned at 12:16 with no further discussion.”

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15 The 11/19/16 meeting minutes have the following entry:

16 “The regular meeting was adjourned at 1:00pm followed by a short executive
17 session to discuss staff job duties and office hours.

- 18 • Per request from John H., the board decided to formalize the existing board
19 duties and responsibilities and have all board members and employees sign
20 that document which will then be re-posted on the BWID website. Violations
21 of such guidelines may be grounds for disciplinary actions by the board.
- 22 • The board discussed the need to have current scorecard goals for staff with
23 quarterly evaluations completed and used during annual performance
24 reviews. Manager annual review to be completed and approved by board
25 before year end. John will update his 2016 scorecard for board
26 performance review (target prior to next meeting). John requested that
27 Daily, Gary H., and Sandi participate in his performance review.
- 28 • John formally requested the board to change his annual vacation from 2 to
29 3 weeks per year based on his 6+ years of service. He also requested sick
30 time accrual of 4 hours per month (not to carry over a max accrual of 48
31 hours/yr). Decision on requested changes deferred until Daily can complete

1 review of comparable employers.
2 Open meeting was re-convened at 2:08 and adjourned at 2:09 with no further
3 discussion.”
4

5 The open public meeting portion of the 12/10/16 BWID meeting minutes contain the
6 following entry:

7 “John Herlocker made a formal request to have his 2016 performance review
8 completed by the board during the regular meeting, under new business and to
9 record that review. Performance reviews are normally completed during executive
10 session as confidential and personal information can be part of the review process.
11 After considerable discussion among board members, and feelings that such an
12 addition should not be made to the agenda (new business) without advance notice,
13 a motion was made to defer his 2016 appraisal for 90 days. All board members
14 voted for the delay except Gary H. who abstained from voting.” (#PR1; #INV1)
15

16 Subsequent minutes for the 1/14/17 and 2/11/17 meetings make note of the fact that the
17 board agreed that the wording of the above paragraph be amended to read: “Gary said
18 he did not recall anyone deferring John’s performance review for 90 days.” (#PR1; #INV1)
19

20 **CONCLUSIONS:** John McElheran was a member of the Board of Directors of the BWID
21 during the period relevant to this investigation. Under the definitions in ORS 192.610,
22 BWID is a public body, and the Board of Directors is its governing body. As a Board
23 member, Mr. McElheran is required to comply with the executive session provisions of
24 Oregon Public Meetings law. The Commission is authorized to investigate complaints of
25 violations of ORS 192.660 alleged to have been committed by public officials. ORS
26 192.685.
27

28 An executive session is a meeting or a part of a meeting of a governing body that is closed
29 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
30 allows a governing body to hold an executive session to discuss specific topics once
31 certain conditions and prerequisites are met.

1 Per ORS 192.660(1), the governing body of a public body may hold an executive session
2 during a regular, special or emergency meeting, "after the presiding officer has identified
3 the authorization under ORS 192.610 to 192.690 for holding the executive session."
4 Regarding the relevant time frame at issue (April 2016 – September 2017), none of the
5 fourteen Board minutes or agendas reflects that a specific statutory authorization or lawful
6 basis was announced prior to the BWID Board entering an executive session. Ms.
7 Denney, the current BWID office assistant, explained that in her experience of taking the
8 minutes at the public portion of the Board meetings in 2017, the presiding officer of the
9 Board does not publicly announce any statutory authorization or lawful basis prior to
10 convening the executive sessions. BWID Board members, Holman, Gordon, and Warren
11 personally confirmed to the Commission in their written submissions that the Board
12 routinely held executive sessions without first publicly identifying the lawful basis for their
13 executive sessions, because they were unaware of the requirement to do so. Information
14 appears sufficient to constitute a preponderance of evidence that the Board failed to
15 comply with ORS 192.660(1) prior to convening the fourteen executive sessions relevant
16 to this case, and that John McElheran participated in each of these executive sessions.

17
18 For all but three of the executive sessions held during this time, BWID records indicate
19 simply that an executive session was held and state nothing regarding the authorization,
20 purpose, or what was discussed. Although these executive sessions may fall short of the
21 legal requirements for notice under ORS 192.640, the Oregon Government Ethics
22 Commission's jurisdiction is limited to review under ORS 192.660—that is, whether the
23 presiding Board officer announced a permissible purpose for convening, and whether the
24 Board properly limited the subject of discussion to a permissible purpose per ORS
25 192.660(2).

26
27 As a result of the limited information provided in BWID Board minutes and agendas, and
28 because no recorded audio of these meetings exists, there is insufficient information to
29 determine the topics discussed during the BWID executive sessions held between April
30 2016 and September 2017, with the exception of three executive sessions for which
31 sufficient information was provided regarding the subject matter discussed: 4/9/16,

1 9/10/16, and 11/19/16.

2

3 Over the course of the public meeting on 4/9/16, the Board convened in executive session
4 twice—the first time to discuss “personnel and customer billing issues;” the other to
5 conduct a “2016, Q1 performance evaluation” of BWID’s District Manager (the
6 complainant, Mr. Herlocker). Even if it is assumed that the Board’s meeting in executive
7 session to discuss “personnel” was permissible under one of ORS 192.660(2)’s relevant
8 subsections (a) (relating to employment), (b) (relating to discipline), or (i) (relating to
9 performance evaluation), the information provided indicates that the others were not.

10

11 Customer billing is not a permissible topic to discuss in executive session under ORS
12 192.660. With regard to water distribution, ORS 192.660(2)(n) only permits relevant
13 governing bodies to meet in executive session “to discuss information about review or
14 approval of programs relating to...[g]eneration, storage or conveyance of... [w]ater,”
15 which does not include customer billing.

16

17 Furthermore, with regard to the District Manager's 2016, Q1 performance evaluation in
18 the second executive session on 4/9/16, the minutes of the 12/10/16 Board meeting
19 indicate that the Board did not meet the prerequisite for holding an executive session
20 under that subsection, because the Board was not aware that employees should be given
21 an opportunity to request an open hearing instead of the executive session.

22

23 During an open public meeting held on 9/10/16, the Board convened in executive session
24 to hear a BWID staff member’s report on a “training assignment” in which the staff
25 member appears to have been learning to serve as backup to the BWID’s District
26 Manager (the complainant). Hearing a report on an employee’s job training is not a
27 permissible purpose for convening an executive session under ORS 192.660. Even if the
28 Board had attempted to enter executive session under ORS 192.660(2)(i) “to review and
29 evaluate the employment-related performance of... [a] staff member who does not
30 request an open hearing,” it would not have been sufficient. There is a difference between
31 hearing a report and reviewing and evaluating performance as required by the statute.

1 Moreover, there is no indication that the Board would have met the prerequisite for holding
2 an executive session under that subsection, because there is no indication that the
3 employee was given an opportunity to request an open hearing instead of the executive
4 session.

5
6 During the open public meeting held on 11/19/16, the Board convened in executive
7 session to discuss staff job duties and office hours, during which time Board members
8 formalized "existing board duties and responsibilities," discussed "scorecard goals...
9 quarterly evaluations... annual performance reviews (for staff)," and considered the
10 District Manager's request to expand his vacation and sick-time. Even standing alone,
11 none of these things are among the permissible topics for convening an executive session
12 under ORS 192.660. Even if the Board had attempted to enter executive session under
13 ORS 192.660(2)(i) "to review and evaluate the employment-related performance of... [a]
14 staff member who does not request an open hearing," it would not have been sufficient.
15 For one, the Board did not discuss the performance-related matters of an individual
16 employee, but rather the Board and staff as a whole. ORS 192.660(8) specifies that ORS
17 192.660(2)(i) may not be used "to conduct a general evaluation of an agency goal,
18 objective or operation or any directive to personnel concerning agency goals, objectives,
19 operations or programs." To the extent that the District Manager's vacation and sick-time
20 request was discussed, it too was improperly considered—199-040-0020(2) states that
21 "benefits...must not be discussed or negotiated during an executive session under ORS
22 192.660(2)(a), (b) or (i)".

23
24 As described above, it appears by a preponderance of the evidence that John McElheran
25 violated the executive session provisions of ORS 192.660(1) on fourteen occasions and
26 ORS 192.660(2) on three occasions by participating in executive sessions when the
27 prerequisites were not met and/or topics not permitted by law were discussed.


28
29 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
30 preliminary finding that Barlow Water Improvement District Board Director John
31 McElheran participated in fourteen executive sessions when the presiding officer failed to

1 first announce the statutory authority or lawful basis for convening the session, in violation
2 of 192.660(1), and that on three of those occasions, topics not authorized for executive
3 session were discussed, in violation of ORS 192.660(2). [Motion 10]
4

5 **ASSOCIATED DOCUMENTS:**

- 6 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
7 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
8 Office Assistant, Barlow Water Improvement District.
9 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
10 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
11 #INV2 Communication from BWID staff (Dawn Denney), received via email on
12 6/11/18.
13 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
14 Larry Warren.

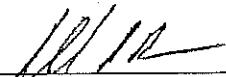
PREPARED BY



Hayley Weedn
Investigator

6/21/18
Date

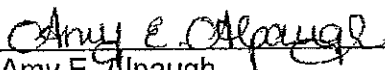
APPROVED BY



Rorald A. Bersin
Executive Director

6/21/18
Date

REVIEWED BY



Amy E. Alpaugh
Assistant Attorney General

6/21/18
Date

OREGON GOVERNMENT ETHICS COMMISSION

INVESTIGATION

CASE NO: 17-162XDG

DATE: June 20, 2018

RESPONDENT: CHAMBERLAIN, Sandi, former Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Three Violations of ORS 192.660(1) and Two Violations of ORS 192.660(2)

1 **SYNOPSIS:** Sandi Chamberlain served as member of the Board of Directors for the
2 Barlow Water Improvement District and participated in executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8

9 A review of information available indicates that Sandi Chamberlain participated as a
10 member of the Board of Directors in executive sessions on three occasions when the
11 presiding officer failed to announce the statutory authority or lawful basis for convening
12 the executive session as required by ORS 192.660(1). In addition, during two of those
13 executive sessions, Ms. Chamberlain participated as a member of the Board when topics
14 not permitted by ORS 192.660(2) were discussed in executive session.

1 **RELEVANT LAWS AND RULES:** The following Oregon Revised Statutes and Oregon
2 Administrative Rules are applicable to the issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media
5 representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **199-040-0020 Permitted topics for executive session.**

7 (2) Compensation, including salaries and benefits, must not be discussed or
8 negotiated during an executive session under ORS 192.660(2)(a), (b) or (i)....
9

10 **199-040-0030 Notice to public official under ORS 192.660(2)(b) or (i).**

11 (1) In order to afford to the chief executive officer of any public body, a public
12 officer, employee, staff member or individual agent the opportunity to request an
13 open hearing under ORS 192.660(2)(b) or (i), the public official must receive
14 written notice of the meeting no less than one business day or 24 hours, whichever
15 is greater, in advance of the meeting.

16 (2) At a minimum, the written notice shall include:

17 (a) Identification of the governing body before which the matter will be
18 considered;

19 (b) The time, date and location of the meeting;

20 (c) The purpose for which the governing body proposes to convene the
21 executive session, including the citation to the applicable section of ORS
22 192.660 and the fact that the governing body will be considering the
23 dismissal or disciplining of, hearing complaints or charges against, or
24 reviewing and evaluating the performance of the public official receiving the
25 notice;

26 (d) Information on how the public official may make a request for an open
27 hearing.
28

29 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
30 a preliminary review based on a signed complaint from John Herlocker, former Manager
31 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that

1 Sandi Chamberlain, member of the Board of Directors for the BWID, and eight other
2 Board Members, may have violated the executive session provisions of ORS 192.660 by
3 participating in multiple executive sessions held in 2016 and 2017 at which topics not
4 authorized for executive session were discussed or statutory prerequisites were not met
5 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
6 information developed in the preliminary review. The investigation focused on whether
7 there is enough information to find by a preponderance of the evidence that the nine
8 members of the BWID Board of Directors violated the executive session provisions of
9 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
10 respondents and complainants have been notified of Commission actions in this matter.
11 They have been invited to provide any information that would assist the Commission in
12 conducting this investigation.

13
14 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
15 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
16 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17. The BWID
17 minutes also indicate that Ms. Chamberlain participated in three of the executive sessions
18 listed above: 9/10/16, 10/8/16, and 11/19/16 (#PR1; #INV1).

19
20 Meeting minutes for the 12/10/16 Board meeting show that Ms. Chamberlain resigned
21 effective that meeting (#PR1; #INV1).

22
23 During preliminary review and investigation, the BWID office was contacted in an attempt
24 to obtain records pertaining to the executive sessions themselves. In a telephone
25 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,
26 explained that she is the person who takes the meeting minutes, and she said that she
27 had been instructed that meeting minutes could not be taken for executive session
28 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
29 herself from the room when the Board convenes an executive session and returns when
30 the executive session is finished. Ms. Denney was present at eight of the nine public
31 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in

1 her experience, the presiding officer of the Board does not publicly announce any
2 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
3 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio
4 recordings are not available for the meetings (#INV2).

5
6 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
7 specifically made statements indicating that it was never BWID Board practice to identify
8 the proper statutory authorization prior to convening executive session:

9
10 “...Since before my time on BWID Board, 'identified authorization' to hold executive
11 sessions has never been done.... This and all past Boards were unaware of this
12 requirement....” (Holman)

13
14 “I have been on the board with 3 different chairpersons, never did we spell out
15 what was going to be discussed in the executive session if we had one.”
16 (Gordon)

17
18 “...To my knowledge, the BWID Boards, both past and present, have never used
19 identifying authorizations and were unaware that we needed to post these.”
20 (Warren). (#INV3)

21
22 As for executive session details, all of the 2017 and two of the 2016 meeting minutes
23 (10/8/16, 12/10/16, 1/14/17, 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17,
24 and 9/9/17) refer only to the fact that an executive session took place and the length of it.
25 Below is an example of a typical entry from the 2/11/17 meeting minutes:

26
27 “The regular session was adjourned at 11:42am, followed by an executive session.
28 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm.”

29
30 Only three of the fourteen meeting minutes included in the complaint contain any detail
31 as to topic(s) discussed in executive session; they are excerpted below:

1 The 4/9/16 meeting minutes have the following entry:

2 "The regular meeting was adjourned at 11:37 followed by an executive session to
3 discuss BWID personnel and customer billing issues. Open meeting was re-
4 convened at 12:34....

5 [O]pen meeting was adjourned to Executive session at 1:55. During session,
6 District manager was given 2016, Q1 performance evaluation. Executive session
7 was adjourned and open session was re-convened at 2:15. The regular 4/9/16
8 meeting was adjourned at 2:16pm."

9
10 The 9/10/16 meeting minutes have the following entry:

11 "The regular meeting was adjourned at 11:35 followed by an executive session to
12 allow John M. to report on his training assignment the past month. He gave John
13 H. high marks on the training process and information he learned which will allow
14 him to function as a backup to John H. in the future.... Open meeting was re-
15 convened at 12:15 and adjourned at 12:16 with no further discussion."

16
17 The 11/19/16 meeting minutes have the following entry:

18 "The regular meeting was adjourned at 1:00pm followed by a short executive
19 session to discuss staff job duties and office hours.

- 20 • Per request from John H., the board decided to formalize the existing board
21 duties and responsibilities and have all board members and employees sign
22 that document which will then be re-posted on the BWID website. Violations
23 of such guidelines may be grounds for disciplinary actions by the board.
- 24 • The board discussed the need to have current scorecard goals for staff with
25 quarterly evaluations completed and used during annual performance
26 reviews. Manager annual review to be completed and approved by board
27 before year end. John will update his 2016 scorecard for board
28 performance review (target prior to next meeting). John requested that
29 Daily, Gary H., and Sandi participate in his performance review.
- 30 • John formally requested the board to change his annual vacation from 2 to
31 3 weeks per year based on his 6+ years of service. He also requested sick

1 time accrual of 4 hours per month (not to carry over a max accrual of 48
2 hours/yr). Decision on requested changes deferred until Daily can complete
3 review of comparable employers.

4 Open meeting was re-convened at 2:08 and adjourned at 2:09 with no further
5 discussion."
6

7 The open public meeting portion of the 12/10/16 BWID meeting minutes contain the
8 following entry:

9 "John Herlocker made a formal request to have his 2016 performance review
10 completed by the board during the regular meeting, under new business and to
11 record that review. Performance reviews are normally completed during executive
12 session as confidential and personal information can be part of the review process.
13 After considerable discussion among board members, and feelings that such an
14 addition should not be made to the agenda (new business) without advance notice,
15 a motion was made to defer his 2016 appraisal for 90 days. All board members
16 voted for the delay except Gary H. who abstained from voting." (#PR1; #INV1)
17

18 Subsequent minutes for the 1/14/17 and 2/11/17 meetings make note of the fact that the
19 board agreed that the wording of the above paragraph be amended to read: "Gary said
20 he did not recall anyone deferring John's performance review for 90 days." (#PR1; #INV1)
21

22 Sandi Chamberlain submitted a response to the complaint on 11/26/17, which is provided
23 in its entirety to the Commissioners, and is excerpted below:
24

25 "...I am no longer a board member of bwid. I resigned...due to the illegal doings
26 of this current board and the disrespect of most of the board.... This board has had
27 executive sessions after every meeting and the majority of them has been talking
28 about John [Herlocker]. We have never had a single issue until this board came
29 together. They have been warned by John [Herlocker] a long time ago about
30 executive sessions.... This board has also had private meetings away from the
31 office that I was never involved with." (#PR3)

1 Ms. Chamberlain also contacted Commission staff by phone during the preliminary review
2 period and said that she resigned from the board in the summer. When told that the
3 BWID records show that she resigned effective 12/10/16, she agreed. Ms. Chamberlain
4 explained that some of the board members micromanaged Mr. Herlocker, which she felt
5 was unwarranted. She said that she hoped this complaint would result in current board
6 members reforming their practices. (#PR3a)

7
8 Fellow Board members who were also named in the complaint, including Board Chair
9 Daily Holman, Steve Gordon, Gary Olin, and Larry Warren, made statements indicating
10 that it was never BWID Board practice to identify the proper statutory authorization prior
11 to convening executive session. (#INV3)

12
13 **CONCLUSIONS:** Sandi Chamberlain was a member of the Board of Directors of the
14 BWID during the period relevant to this investigation. Under the definitions in ORS
15 192.610, BWID is a public body, and the Board of Directors is its governing body. As a
16 Board member, Ms. Chamberlain is required to comply with the executive session
17 provisions of Oregon Public Meetings law. The Commission is authorized to investigate
18 complaints of violations of ORS 192.660 alleged to have been committed by public
19 officials. ORS 192.685.

20 An executive session is a meeting or a part of a meeting of a governing body that is closed
21 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
22 allows a governing body to hold an executive session to discuss specific topics once
23 certain conditions and prerequisites are met.

24
25 For all but three of the executive sessions held during this time (on 4/9/16, 9/10/16,
26 11/19/16 as discussed below), BWID records indicate simply that an executive session
27 was held and state nothing regarding the authorization, purpose, or what was discussed.

28
29 Per ORS 192.660(1), the governing body of a public body may hold an executive session
30 during a regular, special or emergency meeting, "after the presiding officer has identified
31 the authorization under ORS 192.610 to 192.690 for holding the executive session."

1 Regarding the relevant time frame at issue (April 2016 – September 2017), none of the
2 fourteen Board minutes or agendas reflects that a specific statutory authorization or lawful
3 basis was announced prior to the BWID Board entering an executive session. Ms.
4 Denney, the current BWID office assistant, explained that in her experience of taking the
5 minutes at the public portion of the Board meetings in 2017, the presiding officer of the
6 Board does not publicly announce any statutory authorization or lawful basis prior to
7 convening the executive sessions. BWID Board members, Holman, Gordon, and Warren
8 personally confirmed to the Commission in their written submissions that the Board
9 routinely held executive sessions without first publicly identifying the lawful basis for their
10 executive sessions, because they were unaware of the requirement to do so. Information
11 appears sufficient to constitute a preponderance of evidence that the Board failed to
12 comply with ORS 192.660(1) prior to convening the fourteen executive sessions relevant
13 to this case, and that Sandi Chamberlain participated in three of these executive sessions.

14

15 Ms. Chamberlain was not present at the BWID meeting held on 4/9/16.

16

17 During an open public meeting held on 9/10/16, the Board convened in executive session
18 to hear a BWID staff member's report on a "training assignment" in which the staff
19 member appears to have been learning to serve as backup to the BWID's District
20 Manager (the complainant). Hearing a report on an employee's job training is not a
21 permissible purpose for convening an executive session under ORS 192.660. Even if the
22 Board had attempted to enter executive session under ORS 192.660(2)(i) "to review and
23 evaluate the employment-related performance of... [a] staff member who does not
24 request an open hearing," it would not have been sufficient. There is a difference between
25 hearing a report and reviewing and evaluating performance as required by the statute.
26 Moreover, there is no indication that the Board would have met the prerequisite for holding
27 an executive session under that subsection, because there is no indication that the
28 employee was given an opportunity to request an open hearing instead of the executive
29 session.

30

31 During the open public meeting held on 11/19/16, the Board convened in executive

1 session to discuss staff job duties and office hours, during which time Board members
2 formalized "existing board duties and responsibilities," discussed "scorecard goals...
3 quarterly evaluations... annual performance reviews (for staff)," and considered the
4 District Manager's request to expand his vacation and sick-time. Even standing alone,
5 none of these things are among the permissible topics for convening an executive session
6 under ORS 192.660. Even if the Board had attempted to enter executive session under
7 ORS 192.660(2)(i) "to review and evaluate the employment-related performance of... [a]
8 staff member who does not request an open hearing," it would not have been sufficient.
9 For one, the Board did not discuss the performance-related matters of an individual
10 employee, but rather the Board and staff as a whole. ORS 192.660(8) specifies that ORS
11 192.660(2)(i) may not be used "to conduct a general evaluation of an agency goal,
12 objective or operation or any directive to personnel concerning agency goals, objectives,
13 operations or programs." To the extent that the District Manager's vacation and sick-time
14 request was discussed, it too was improperly considered—199-040-0020(2) states that
15 "benefits...must not be discussed or negotiated during an executive session under ORS
16 192.660(2)(a), (b) or (i)".

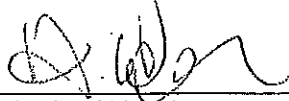
17
18 As described above, it appears by a preponderance of evidence that Sandi Chamberlain
19 violated ORS 192.660(1) on three occasions and ORS 192.660(2) on two occasions by
20 participating in executive sessions when the prerequisites were not met and/or topics not
21 permitted by law were discussed.

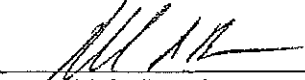
22
23 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
24 preliminary finding that Sandi Chamberlain participated, as a Barlow Water Improvement
25 District Board Member, in three executive sessions when the presiding officer failed to
26 first announce the statutory authority or lawful basis for convening the session, in violation
27 of 192.660(1), and that on two of those occasions, topics not authorized for executive
28 session were discussed, in violation of ORS 192.660(2). [Motion 10]

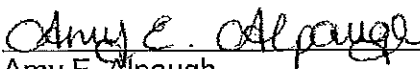
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1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
3 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
4 Office Assistant, Barlow Water Improvement District.
5 #PR3 Sandi Chamberlain's statement to Commissioners in response to the
6 complaint, received via email dated 11/26/17.
7 #PR3a Investigator's 12/8/17 memo summarizing contact with Ms. Chamberlain.
8 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
9 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
10 #INV2 Communication from BWID staff (Dawn Denney), received via email on
11 6/11/18.
12 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
13 Larry Warren.

PREPARED BY  _____ 6/21/18
Hayley Weedn _____
Investigator Date

APPROVED BY  _____ 6/21/18
Ronald A. Bersin _____
Executive Director Date

REVIEWED BY  _____ 6/21/18
Amy E. Alpaugh _____
Assistant Attorney General Date

From: Sandi Chamberlain
To: GOULD Diane * OGEC
Subject: Case # 17-162DG
Date: Sunday, November 26, 2017 9:42:41 AM

I am no longer a board member of bwid. I resigned this past summer due to the illegal doings of this current board and the disrespect of most of the board. I have been on the board longer than the members in question except for Gary Olin. This board has had executive sessions after every meeting and the majority of them has been talking about John. We have never had a single issue until this board came together. They have been warned by John a long time ago about the executive sessions. They also have been warned again this past meeting by previous chairman of the wamic fire protection dist. Bill Arino. This board has also had private meetings away from the office that I was never involved with.

My mail was opened by dawn. My address is 291 s Molly Ann rd. Tygh valley or 97063.
Phone # 541-544-2345

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OREGON GOVERNMENT ETHICS COMMISSION
INVESTIGATION

CASE NO: 17-163XDG

DATE: June 20, 2018

RESPONDENT: GORDON, Steve, Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Nine Violations of ORS 192.660(1) and Two Violations of ORS 192.660(2)

1 **SYNOPSIS:** Steve Gordon served as member of the Board of Directors for the Barlow
2 Water Improvement District and participated in executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8
9 A review of information available indicates that Steve Gordon participated as a member
10 of the Board of Directors in executive sessions on nine occasions when the presiding
11 officer failed to announce the statutory authority or lawful basis for convening the
12 executive session as required by ORS 192.660(1). In addition, during two of those
13 executive sessions, Mr. Holman participated as a member of the Board when topics not
14 permitted by ORS 192.660(2) were discussed.

15 //

1 **RELEVANT LAWS AND RULES:** The following Oregon Revised Statutes and Oregon
2 Administrative Rules are applicable to the issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media
5 representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **199-040-0020 Permitted topics for executive session.**

7 (2) Compensation, including salaries and benefits, must not be discussed or
8 negotiated during an executive session under ORS 192.660(2)(a), (b) or (i)....
9

10 **199-040-0030 Notice to public official under ORS 192.660(2)(b) or (i).**

11 (1) In order to afford to the chief executive officer of any public body, a public
12 officer, employee, staff member or individual agent the opportunity to request an
13 open hearing under ORS 192.660(2)(b) or (i), the public official must receive
14 written notice of the meeting no less than one business day or 24 hours, whichever
15 is greater, in advance of the meeting.

16 (2) At a minimum, the written notice shall include:

17 (a) Identification of the governing body before which the matter will be
18 considered;

19 (b) The time, date and location of the meeting;

20 (c) The purpose for which the governing body proposes to convene the
21 executive session, including the citation to the applicable section of ORS
22 192.660 and the fact that the governing body will be considering the
23 dismissal or disciplining of, hearing complaints or charges against, or
24 reviewing and evaluating the performance of the public official receiving the
25 notice;

26 (d) Information on how the public official may make a request for an open
27 hearing.
28

29 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
30 a preliminary review based on a signed complaint from John Herlocker, former Manager
31 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that

1 Steve Gordon, member of the Board of Directors for the BWID, and eight other Board
2 Members, may have violated the executive session provisions of ORS 192.660 by
3 participating in multiple executive sessions held in 2016 and 2017 at which topics not
4 authorized for executive session were discussed or statutory prerequisites were not met
5 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
6 information developed in the preliminary review. The investigation focused on whether
7 there is enough information to find by a preponderance of the evidence that the nine
8 members of the BWID Board of Directors violated the executive session provisions of
9 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
10 respondents and complainants have been notified of Commission actions in this matter.
11 They have been invited to provide any information that would assist the Commission in
12 conducting this investigation.

13
14 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
15 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
16 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17. The BWID
17 minutes also indicate that Mr. Gordon participated in nine of the fourteen executive
18 sessions listed above, the exceptions being the sessions on 4/9/16, 10/8/16, 4/8/17,
19 7/8/17, and 8/12/17. (#PR1; #INV1)

20
21 During preliminary review and investigation, the BWID office was contacted in an attempt
22 to obtain records pertaining to the executive sessions themselves. In a telephone
23 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,
24 explained that she is the person who takes the meeting minutes, and she said that she
25 had been instructed that meeting minutes could not be taken for executive session
26 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
27 herself from the room when the Board convenes an executive session and returns when
28 the executive session is finished. Ms. Denney was present at eight of the nine public
29 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
30 her experience, the presiding officer of the Board does not publicly announce any
31 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).

1 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio
2 recordings are not available for the meetings (#INV2).

3
4 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
5 specifically made statements indicating that it was never BWID Board practice to identify
6 the proper statutory authorization prior to convening executive session:

7
8 " ... Since before my time on BWID Board, 'identified authorization' to hold executive
9 sessions has never been done.... This and all past Boards were unaware of this
10 requirement...." (Holman)

11
12 "I have been on the board with 3 different chairpersons, never did we spell out
13 what was going to be discussed in the executive session if we had one."
14 (Gordon)

15
16 "... To my knowledge, the BWID Boards, both past and present, have never used
17 identifying authorizations and were unaware that we needed to post these."
18 (Warren): (#INV3)

19
20 As for executive session details, all of the 2017 and two of the 2016 meeting minutes
21 (10/8/16, 12/10/16, 1/14/17, 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17,
22 and 9/9/17) refer only to the fact that an executive session took place and the length of it.
23 Below is an example of a typical entry from the 2/11/17 meeting minutes:

24
25 "The regular session was adjourned at 11:42am, followed by an executive session.
26 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm."

27
28 Only three of the fourteen meeting minutes included in the complaint contain any detail
29 as to topic(s) discussed in executive session; they are excerpted below:

30
31 The 4/9/16 meeting minutes have the following entry:

1 "The regular meeting was adjourned at 11:37 followed by an executive session to
2 discuss BWID personnel and customer billing issues. Open meeting was re-
3 convened at 12:34....

4 [O]pen meeting was adjourned to Executive session at 1:55. During session,
5 District manager was given 2016, Q1 performance evaluation. Executive session
6 was adjourned and open session was re-convened at 2:15. The regular 4/9/16
7 meeting was adjourned at 2:16pm."
8

9 The 9/10/16 meeting minutes have the following entry:

10 "The regular meeting was adjourned at 11:35 followed by an executive session to
11 allow John M. to report on his training assignment the past month. He gave John
12 H. high marks on the training process and information he learned which will allow
13 him to function as a backup to John H. in the future.... Open meeting was re-
14 convened at 12:15 and adjourned at 12:16 with no further discussion."
15

16 The 11/19/16 meeting minutes have the following entry:

17 "The regular meeting was adjourned at 1:00pm followed by a short executive
18 session to discuss staff job duties and office hours.

- 19 • Per request from John H., the board decided to formalize the existing board
20 duties and responsibilities and have all board members and employees sign
21 that document which will then be re-posted on the BWID website. Violations
22 of such guidelines may be grounds for disciplinary actions by the board.
- 23 • The board discussed the need to have current scorecard goals for staff with
24 quarterly evaluations completed and used during annual performance
25 reviews. Manager annual review to be completed and approved by board
26 before year end. John will update his 2016 scorecard for board
27 performance review (target prior to next meeting). John requested that
28 Daily, Gary H., and Sandi participate in his performance review.
- 29 • John formally requested the board to change his annual vacation from 2 to
30 3 weeks per year based on his 6+ years of service. He also requested sick
31 time accrual of 4 hours per month (not to carry over a max accrual of 48

1 hours/yr). Decision on requested changes deferred until Daily can complete
2 review of comparable employers.

3 Open meeting was re-convened at 2:08 and adjourned at 2:09 with no further
4 discussion.”

5
6 The open public meeting portion of the 12/10/16 BWID meeting minutes contain the
7 following entry:

8 “John Herlocker made a formal request to have his 2016 performance review
9 completed by the board during the regular meeting, under new business and to
10 record that review. Performance reviews are normally completed during executive
11 session as confidential and personal information can be part of the review process.
12 After considerable discussion among board members, and feelings that such an
13 addition should not be made to the agenda (new business) without advance notice,
14 a motion was made to defer his 2016 appraisal for 90 days. All board members
15 voted for the delay except Gary H. who abstained from voting.” (#PR1; #INV1).

16
17 Subsequent minutes for the 1/14/17 and 2/11/17 meetings make note of the fact that the
18 board agreed that the wording of the above paragraph be amended to read: “Gary said
19 he did not recall anyone deferring John’s performance review for 90 days.” (#PR1;
20 #INV1).

21
22 Steve Gordon submitted a response to the complaint on 11/24/17 which is provided in
23 its entirety to the Commissioners, and is excerpted below:

24
25 “Let me first say that the members of the Board of Directors for Barlow Water
26 Improvement District are volunteers, not paid employees. We donate our time to
27 improve our community, and do our best to adhere to the guidelines in the SDAO
28 handbook of Elected Official Guide...”

29
30 “I have been on the board with 3 different chairpersons, never did we spell out
31 what was going to be discussed in the executive session if we had one.”

1
2 "John says we held discussions and adopted criteria and policy directives in
3 executive session, and that is not true, we always did that in regular session."
4

5 "Mr. Herlocker did not request an open hearing...[on 4/9/16]. Mr. Herlocker's
6 evaluation was for job performance not a general evaluation of an agency goal,
7 objective or operation or any directive to personnel concerning agency goals,
8 objectives, operations or programs...." (#PR3)
9

10 **CONCLUSIONS:** Steve Gordon was a member of the Board of Directors of the BWID
11 during the period relevant to this investigation. Under the definitions in ORS 192.610,
12 BWID is a public body, and the Board of Directors is its governing body. As a Board
13 member, Mr. Gordon is required to comply with the executive session provisions of
14 Oregon Public Meetings law. The Commission is authorized to investigate complaints of
15 violations of ORS 192.660 alleged to have been committed by public officials. ORS
16 192.685.
17

18 An executive session is a meeting or a part of a meeting of a governing body that is closed
19 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
20 allows a governing body to hold an executive session to discuss specific topics once
21 certain conditions and prerequisites are met.
22

23 For all but three of the executive sessions held during this time (on 4/9/16, 9/10/16,
24 11/19/16 as discussed below), BWID records indicate simply that an executive session
25 was held and state nothing regarding the authorization, purpose, or what was discussed.
26

27 Per ORS 192.660(1), the governing body of a public body may hold an executive session
28 during a regular, special or emergency meeting, "after the presiding officer has identified
29 the authorization under ORS 192.610 to 192.690 for holding the executive session."
30 Regarding the relevant time frame at issue (April 2016 – September 2017), none of the
31 Board minutes or agendas reflects that a specific statutory authorization was announced

1 prior to the BWID Board entering an executive session. Mr. Gordon personally confirmed
2 to the Commission in his written submissions that during his tenure under three different
3 presiding officers, the Board routinely held executive sessions without first publicly
4 identifying the lawful basis for their executive sessions. Also, Ms. Denney, the current
5 BWID office assistant, explained that in her experience of taking the minutes at the public
6 portion of the Board meetings in 2017, the presiding officer of the Board does not publicly
7 announce any statutory authorization or lawful basis prior to convening the executive
8 sessions. Information appears sufficient to constitute a preponderance of evidence that
9 the Board failed to comply with ORS 192.660(1) prior to convening the fourteen executive
10 sessions relevant to this case, and that Steve Gordon participated in nine of these
11 executive sessions.

12
13 Mr. Gordon was not present at the BWID meeting held on 4/9/16.

14
15 During an open public meeting held on 9/10/16, the Board convened in executive session
16 to hear a BWID staff member's report on a "training assignment" in which the staff
17 member appears to have been learning to serve as backup to the BWID's District
18 Manager (the complainant). Hearing a report on an employee's job training is not a
19 permissible purpose for convening an executive session under ORS 192.660. Even if the
20 Board had attempted to enter executive session under ORS 192.660(2)(i) "to review and
21 evaluate the employment-related performance of... [a] staff member who does not
22 request an open hearing," it would not have been sufficient. There is a difference between
23 hearing a report and reviewing and evaluating performance as required by the statute.
24 Moreover, there is no indication that the Board would have met the prerequisite for holding
25 an executive session under that subsection, because there is no indication that the
26 employee was given an opportunity to request an open hearing instead of the executive
27 session.

28
29 During the open public meeting held on 11/19/16, the Board convened in executive
30 session to discuss staff job duties and office hours, during which time Board members
31 formalized "existing board duties and responsibilities," discussed "scorecard goals..."

1 quarterly evaluations... annual performance reviews (for staff)," and considered the
2 District Manager's request to expand his vacation and sick-time. Even standing alone,
3 none of these things are among the permissible topics for convening an executive session
4 under ORS 192.660. Even if the Board had attempted to enter executive session under
5 ORS 192.660(2)(i) "to review and evaluate the employment-related performance of... [a]
6 staff member who does not request an open hearing," it would not have been sufficient.
7 For one, the Board did not discuss the performance-related matters of an individual
8 employee, but rather the Board and staff as a whole. ORS 192.660(8) specifies that ORS
9 192.660(2)(i) may not be used "to conduct a general evaluation of an agency goal,
10 objective or operation or any directive to personnel concerning agency goals, objectives,
11 operations or programs." To the extent that the District Manager's vacation and sick-time
12 request was discussed, it too was improperly considered—199-040-0020(2) states that
13 "benefits...must not be discussed or negotiated during an executive session under ORS
14 192.660(2)(a), (b) or (i)".


15
16 As described above, it appears by a preponderance of evidence that Steve Gordon
17 violated the executive session provisions of ORS 192.660(1) on nine occasions and ORS
18 192.660(2) on two occasions by participating in executive sessions when the
19 prerequisites were not met and/or topics not permitted by law were discussed.

20
21 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
22 preliminary finding that Steve Gordon participated, as a Barlow Water Improvement
23 District Board Member, in nine executive sessions when the presiding officer failed to first
24 announce the statutory authority or lawful basis for convening the session, in violation of
25 192.660(1), and that on two of those occasions, topics not authorized for executive
26 session were discussed, in violation of ORS 192.660(2). [Motion 10]

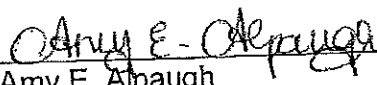
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ASSOCIATED DOCUMENTS:

- 1 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
- 2
- 3 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
- 4 Office Assistant, Barlow Water Improvement District.
- 5 #PR3 Steve Gordon's statement to Commissioners in response to the complaint,
- 6 received via email dated 11/24/17.
- 7 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
- 8 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
- 9 #INV2 Communication from BWID staff (Dawn Denney), received via email on
- 10 6/11/18.
- 11 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
- 12 Larry Warren.

PREPARED BY  6/21/18
Hayley Weedn Date
Investigator

APPROVED BY  4/21/18
Ronald A. Bersin Date
Executive Director

REVIEWED BY  6/21/18
Amy E. Alpaugh Date
Assistant Attorney General

Barlow Water Improvement District
11 South County Road, #B
Tygh Valley, Oregon

Date: November 23, 2017

Re: Case # 17-157DG

Mr. Bersin and Ms. Gould,

Let me first say that the members of the Board of Directors for Barlow Water Improvement District are volunteers, not paid employees. We donate our time to improve our community, and do our best to adhere to the guidelines in the SDAO handbook of Elected Official Guide. These are my responses to the topics in your letter dated Nov 14, 2017, in case #17-157DG.

- 1.) Board Chair continued to hold executive sessions during monthly meetings without identifying the authorization to hold an executive session.

Response: I have been on the board with 3 different chairpersons, never did we spell out what was going to be discussed in the executive sessions if we had one. John has been the District Manager the whole time. John is the person that makes the agenda each month and has always put down executive session on every agenda.

- 2.) The Board has consistently held discussions and adopted criteria and policy directives in executive session which the public was not given the opportunity to comment on criteria and policy directives.

Response: John says we held discussions and adopted criteria and policy directives in executive session, and that is not true, we always did that in regular session.

- 3.) The Board Chair called an executive session at the April 9, 2016 monthly Board meeting in which the Board Chair gave the District Manager an evaluation based on agency goals, objectives, operations or programs. The performance review in question is located in my personnel file which I have not been given access to.

Response: Actually John's complaint falls under ORS192.660(2)(b) which states: "The governing body of a public body may hold an executive session to consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing."

Mr. Herlocker did not request an open hearing at this time. Mr. Herlocker's evaluation was for job performance not a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs. John said he does not have access to his personal file? This is blatantly false claim. John is the one that kept all personal files, including his own, and for a long time he was the only one with a key to that file cabinet. We had to ask him several times to get keys made so that the Board Chair could have access to the files. John did not put a copy of his performance review in his file as he was instructed to do.

- 4.) Mr. Herlocker states "I was also given a reprimand for attending a SDAO Board Training held in The Dalles which was approved at a prior Board meeting by all Board members because I did not specifically get his permission to attend".

Response: Mr. Herlocker was not reprimanded for going to an SDAO Board Training session. John did not ask to go, and it wouldn't have been the intention of the Board to send him to this class, as the title of the class was "Board training"; John is not on the board.

- 5.) Mr. Herlocker states "I was instructed to sign the reprimand or there would be consequences".

Response: Mr. Herlocker states "I was instructed to sign the reprimand or there would be consequences". Totally False! He was never told he would be reprimanded, he was told "it would show good faith if you signed it"

Thank you,

Steven Gordon
BWID Board Treasurer

OREGON GOVERNMENT ETHICS COMMISSION
INVESTIGATION

CASE NO: 17-164XDG

DATE: June 20, 2018

RESPONDENT: WARREN, Larry, Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Eight Violations of ORS 192.660(1)

1 **SYNOPSIS:** Larry Warren served as member of the Board of Directors for the Barlow
2 Water Improvement District and participated in executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8

9 A review of information available indicates that Larry Warren participated as a member of
10 the Board of Directors in executive sessions on eight occasions when the presiding officer
11 failed to announce the statutory authority or lawful basis for convening the executive
12 session, as required by ORS 192.660(1). However, there is insufficient evidence to
13 indicate that a topic was discussed which was not authorized under ORS 192.660(2) in
14 the BWID executive sessions, in which Larry Warren participated as a Board member,
15 between April 2016 and September 2017.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
2 issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media**
5 **representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

20 (f) To consider information or records that are exempt by law from public
21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use executive session for purposes of evaluating a
2 chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.
5

6 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
7 a preliminary review based on a signed complaint from John Herlocker, former Manager
8 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that
9 Larry Warren, member of the Board of Directors for the BWID, and eight other Board
10 Members, may have violated the executive session provisions of ORS 192.660 by
11 participating in multiple executive sessions held in 2016 and 2017 at which topics not
12 authorized for executive session were discussed or statutory prerequisites were not met
13 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
14 information developed in the preliminary review. The investigation focused on whether
15 there is enough information to find by a preponderance of the evidence that the nine
16 members of the BWID Board of Directors violated the executive session provisions of
17 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
18 respondents and complainants have been notified of Commission actions in this matter.
19 They have been invited to provide any information that would assist the Commission in
20 conducting this investigation.
21

22 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
23 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
24 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17. The BWID
25 minutes indicate that Mr. Warren participated in eight of the nine executive sessions held
26 in 2017 (the exception being the first session held in 2017). He did not participate in any
27 executive sessions during 2016. (#PR1; #INV1)
28

29 During preliminary review and investigation, the BWID office was contacted in an attempt
30 to obtain records pertaining to the executive sessions themselves. In a telephone
31 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,

1 explained that she is the person who takes the meeting minutes, and she said that she
2 had been instructed that meeting minutes could not be taken for executive session
3 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
4 herself from the room when the Board convenes an executive session and returns when
5 the executive session is finished. Ms. Denney was present at eight of the nine public
6 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
7 her experience, the presiding officer of the Board does not publicly announce any
8 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
9 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio
10 recordings are not available for the meetings (#INV2).

11

12 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
13 specifically made statements indicating that it was never BWID Board practice to identify
14 the proper statutory authorization prior to convening executive session:

15

16 "...Since before my time on BWID Board, 'identified authorization' to hold executive
17 sessions has never been done.... This and all past Boards were unaware of this
18 requirement...." (Holman)

19

20 "I have been on the board with 3 different chairpersons, never did we spell out
21 what was going to be discussed in the executive session if we had one."

22

(Gordon)

23

24 "...To my knowledge, the BWID Boards, both past and present, have never used
25 identifying authorizations and were unaware that we needed to post these."

26

(Warren). (#INV3)

27

28 As for executive session details, all of the 2017 and two of the 2016 meeting minutes refer
29 only to the fact that an executive session took place and the length of it. Below is an
30 example of a typical entry from the 2/11/17 meeting minutes:

31 //

1 "The regular session was adjourned at 11:42am, followed by an executive session.
2 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm."
3

4 Only three of the fourteen meeting minutes contain any detail as to topic(s) discussed in
5 executive session, and all of those were in 2016, before Mr. Warren became a member
6 of the board. During the time that Mr. Warren participated in executive sessions in 2017,
7 the available records do not indicate the purpose of any of those executive sessions.
8 (#PR1; #INV1)
9

10 Larry Warren submitted a response to the complaint, which is provided in its entirety to
11 the Commissioners, and is excerpted below:
12

13 "...To my knowledge, the BWID Boards, both past and present, have never used
14 identifying authorizations and were unaware that we needed to post these.
15 Executive Sessions are strictly used to discuss highly confidential matters like
16 financial issues concerning a member of the community or employee matters
17 which we were informed from [Special Districts Association of Oregon] were not to
18 be discussed in open sessions. If we... were wrong, we will correct this
19 immediately. To discuss a member's financial issues in a small community like
20 this one in open session... or discuss water department personnel matters in open
21 session seems like it would be a bigger violation of privacy."
22

23 "...Mr. Herlocker asserts that the Board consistently held discussions and adopted
24 policy directives in executive session and the public was not given an opportunity
25 to comment. This is false. I assure...Executive sessions were only held to discuss
26 highly confidential customer and employee matters." (#PR3)
27

28 **CONCLUSIONS:** Larry Warren was a member of the Board of Directors of the BWID
29 during the period relevant to this investigation. Under the definitions in ORS 192.610,
30 BWID is a public body, and the Board of Directors is its governing body. As a Board
31 member, Mr. Warren is required to comply with the executive session provisions of

1 Oregon Public Meetings law. The Commission is authorized to investigate complaints of
2 violations of ORS 192.660 alleged to have been committed by public officials. ORS
3 192.685.

4
5 An executive session is a meeting or a part of a meeting of a governing body that is closed
6 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
7 allows a governing body to hold an executive session to discuss specific topics once
8 certain conditions and prerequisites are met.

9
10 For all but three of the executive sessions held during this time, BWID records indicate
11 simply that an executive session was held and state nothing regarding the authorization,
12 purpose, or what was discussed. Per ORS 192.660(1), the governing body of a public
13 body may hold an executive session during a regular, special or emergency meeting,
14 "after the presiding officer has identified the authorization under ORS 192.610 to 192.690
15 for holding the executive session." Regarding the relevant time frame at issue (April 2016
16 – September 2017), none of the fourteen Board minutes or agendas reflects that a specific
17 statutory authorization or lawful basis was announced prior to the BWID Board entering
18 an executive session. BWID Board members, Holman, Gordon, and Warren personally
19 confirmed to the Commission in their written submissions that the Board routinely held
20 executive sessions without first publicly identifying the lawful basis for their executive
21 sessions, because they were unaware of the requirement to do so. Also, Ms. Denney,
22 the current BWID office assistant, explained that in her experience of taking the minutes
23 at the public portion of the Board meetings in 2017, the presiding officer of the Board does
24 not publicly announce any statutory authorization or lawful basis prior to convening the
25 executive sessions. Information appears sufficient to constitute a preponderance of
26 evidence that the Board failed to comply with ORS 192.660(1) prior to convening the
27 executive sessions relevant to this case, and that Davon Hodgen participated in four of
28 those executive sessions.

29
30 As described above, it appears by a preponderance of the evidence that Larry Warren
31 violated the executive session provisions of ORS 192.660(1) on eight occasions when he


1 participated in executive sessions as a BWID Board member during the time period
2 covering April 2016 to September 2017. It cannot be determined by a preponderance of
3 the evidence that Larry Warren violated the executive session provisions of ORS
4 192.660(2) when he participated in executive sessions as a BWID Board member during
5 the relevant time period in 2017.

6
7 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
8 preliminary finding that Larry Warren participated, as a Barlow Water Improvement
9 District Board Member, in eight executive sessions when the presiding officer failed to
10 first announce the statutory authority or lawful basis for convening the session, in violation
11 of 192.660(1). [Motion 10]

12
13 **ASSOCIATED DOCUMENTS:**

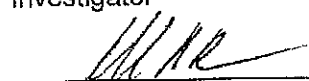
- 14 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
15 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
16 Office Assistant, Barlow Water Improvement District.
17 #PR3 Larry Warren's statement to Commissioners in response to the complaint,
18 received via email dated 11/22/17.
19 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
20 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
21 #INV2 Communication from BWID staff (Dawn Denney), received via email on
22 6/11/18.
23 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
24 Larry Warren.

PREPARED BY


Hayley Weedn
Investigator

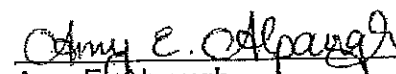
6/21/18
Date

APPROVED BY


Ronald A. Bersin
Executive Director

4/21/18
Date

REVIEWED BY


Amy E. Alpaugh
Assistant Attorney General

6/21/18
Date

From: LA Warren
To: GOULD Diane * OGEC
Subject: Oregon Ethics Compliant 17-157DG
Date: Wednesday, November 22, 2017 10:37:00 AM

Ronald Bersin, Diane Gould,

This is in regards to your letter concerning issues of Executive Sessions held by the Board of Directors for Barlow Water Improvement District. We are a very small community of a couple of hundred full time residents, with the vast majority of property owners being part time for recreational and vacation homes. The Board members are all volunteers and mostly made up of retired citizens. We have tried our best to follow the guidelines set forth in the SDAO handbook for Elected Official Guide.

Mr Herlocker states the Board Chair continued to hold executive sessions at monthly meetings without identifying the authorization to hold an executive session. To my knowledge, the BWID Boards, both past and present, have never used identifying authorizations and were unaware that we needed to post these. Executive Sessions are strictly used to discuss highly confidential matters like financial issues concerning a member of the community or employee matters which we were informed from SDAO were not to be discussed in open sessions. If we and all the past Boards were wrong, we will correct this immediately. To discuss a member's financial issues in a small community like this one in open session and violate their privacy or discuss water department personnel matters in open session seems like it would be a bigger violation of privacy.

I can assure you this Board will follow any recommendations from the Ethics Commission in the matter.

Mr Herlocker asserts that the Board consistently held discussions and adopted policy directives in executive session and the public was not given an opportunity to comment. This is false. Mr Herlocker was never at an executive session, unless called in to answer a question. I assure you and the Commission, executive sessions were only held to discuss highly confidential customer and employee matters.

Mr Herlocker states he was not given access to his personnel file. Since Mr Herlocker was the keeper of those files, he had continual access to his own file the entire time he was employed by the district. He was told to place his performance reviews in his file, which he did not. When the Board found out that Mr Herlocker was leaving things out of his file, he was given copies and instructed, once again, to place them in his file.

Mr Herlocker was terminated because of deceitful behavior, unethical practices like hiring his wife and kids, using District equipment for non-work related purposes, bullying of Board members and not fulfilling his duties.

If the Board has not complied with a statute or ethics requirement, it was not done intentionally. We may be volunteers in a small community, but we still strive to serve our Water District and the people who depend on our oversight with the most ethical of standards.

Thank you,

Larry Warren
Co Chair of Board BWID

OREGON GOVERNMENT ETHICS COMMISSION
INVESTIGATION

CASE NO: 17-165XDG

DATE: June 20, 2018

RESPONDENT: HODGEN, Davon, Director of the Board, Barlow Water Improvement District

COMPLAINANT: HERLOCKER, John, Former Manager, Barlow Water Improvement District

RECOMMENDED ACTION: Make a Preliminary Finding of Four Violations of ORS 192.660(1)

1 **SYNOPSIS:** Davon Hodgen served as member of the Board of Directors for the Barlow
2 Water Improvement District and participated in executive sessions relevant to this
3 investigation. The focus of this investigation was to determine if there was a
4 preponderance of evidence to indicate that the members of the Barlow Water
5 Improvement District Board 1) failed to satisfy prerequisites for holding an executive
6 session and/or 2) discussed topics not permitted by the executive session provisions of
7 Oregon Public Meetings law.

8
9 A review of information available indicates that Davon Hodgen participated as a member
10 of the Board of Directors in executive sessions on four occasions when the presiding
11 officer failed to announce the statutory authority or lawful basis for convening the
12 executive session, as required by ORS 192.660(1). However, there is insufficient
13 evidence to indicate that a topic was discussed which was not authorized under ORS
14 192.660(2) in the BWID executive sessions, in which Davon Hodgen participated as a
15 Board member, between April 2016 and September 2017.

1 **RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to the
2 issues addressed herein:

3
4 **192.660 Executive sessions permitted on certain matters; procedures; news media**
5 **representatives' attendance; limits.**

6 (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body
7 from holding executive session during a regular, special or emergency meeting,
8 after the presiding officer has identified the authorization under ORS 192.610 to
9 192.690 for holding the executive session.

10 (2) The governing body of a public body may hold an executive session:

11 (a) To consider the employment of a public officer, employee, staff member
12 or individual agent.

13 (b) To consider the dismissal or disciplining of, or to hear complaints or
14 charges brought against, a public officer, employee, staff member or
15 individual agent who does not request an open hearing...

16 (d) To conduct deliberations with persons designated by the governing body
17 to carry on labor negotiations.

18 (e) To conduct deliberations with persons designated by the governing body
19 to negotiate real property transactions.

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21 inspection...

22 (h) To consult with counsel concerning the legal rights and duties of a public
23 body with regard to current litigation or litigation likely to be filed.

24 (i) To review and evaluate the employment-related performance of the chief
25 executive officer of any public body, a public officer, employee or staff
26 member who does not request an open hearing.

27 (j) To carry on negotiations under ORS chapter 293 with private persons or
28 businesses regarding proposed acquisition, exchange or liquidation or
29 public investments...

30 (n) To discuss information about review or approval of programs relating
31 to...[g]eneration, storage or conveyance of... [w]ater.

1 (3) Labor negotiations shall be conducted in open meetings unless negotiators for
2 both sides request that negotiations be conducted in executive session. Labor
3 negotiations conducted in executive session are not subject to the notification
4 requirements of ORS 192.640.

5 (4) Representatives of the news media shall be allowed to attend executive
6 sessions other than those held under subsection (2)(d) of this section relating to
7 labor negotiations or executive session held pursuant to ORS 332.061 (2) but the
8 governing body may require that specified information be undisclosed.

9 (5) When a governing body convenes an executive session under subsection
10 (2)(h) of this section relating to conferring with counsel on current litigation or
11 litigation likely to be filed, the governing body shall bar any member of the news
12 media from attending the executive session if the member of the news media is a
13 party to the litigation or is an employee, agent or contractor of a news media
14 organization that is a party to the litigation.

15 (6) No executive session may be held for the purpose of taking any final action or
16 making any final decision.

17 (7) The exception granted by subsection (2)(a) of this section does not apply to:

18 (a) The filling of a vacancy in an elective office.

19 (b) The filling of a vacancy on any public committee, commission or other
20 advisory group.

21 (c) The consideration of general employment policies.

22 (d) The employment of the chief executive officer, other public officers,
23 employees and staff members of a public body unless:

24 (A) The public body has advertised the vacancy;

25 (B) The public body has adopted regular hiring procedures;

26 (C) In the case of an officer, the public has had the opportunity to
27 comment on the employment of the officer; and

28 (D) In the case of a chief executive officer, the governing body has
29 adopted hiring standards, criteria and policy directives in meetings
30 open to the public in which the public has had the opportunity to
31 comment on the standards, criteria and policy directives.

1 (8) A governing body may not use an executive session for purposes of evaluating
2 a chief executive officer or other officer, employee or staff member to conduct a
3 general evaluation of an agency goal, objective or operation or any directive to
4 personnel concerning agency goals, objectives, operations or programs.

5
6 **INVESTIGATION:** The Oregon Government Ethics Commission (Commission) initiated
7 a preliminary review based on a signed complaint from John Herlocker, former Manager
8 of the Barlow Water Improvement District (BWID), on 11/12/17. Mr. Herlocker alleged that
9 Davon Hodgen, member of the Board of Directors for the BWID, and eight other Board
10 Members, may have violated the executive session provisions of ORS 192.660 by
11 participating in multiple executive sessions held in 2016 and 2017 at which topics not
12 authorized for executive session were discussed or statutory prerequisites were not met
13 (#PR1). The Commission found cause to investigate on 1/5/18 after considering the
14 information developed in the preliminary review. The investigation focused on whether
15 there is enough information to find by a preponderance of the evidence that the nine
16 members of the BWID Board of Directors violated the executive session provisions of
17 ORS 192.660 at any of its meetings held from April 2016 to September 2017. The
18 respondents and complainants have been notified of Commission actions in this matter.
19 They have been invited to provide any information that would assist the Commission in
20 conducting this investigation.

21
22 BWID minutes indicate that executive sessions were held on the following dates: 4/9/16
23 (two executive sessions were held), 9/10/16, 10/8/16, 11/19/16, 12/10/16, 1/14/17,
24 2/11/17, 3/11/17, 4/8/17, 5/13/17, 6/10/17, 7/8/17, 8/12/17, and 9/9/17.

25
26 The BWID minutes also indicate that Mr. Hodgen participated in four executive sessions
27 held in 2017: 6/10/17, 7/8/17, 8/12/17, and 9/9/17. He did not participate in any executive
28 sessions during 2016. (#PR1; #INV1)

29
30 During preliminary review and investigation, the BWID office was contacted in an attempt
31 to obtain records pertaining to the executive sessions themselves. In a telephone
32 conversation with Commission staff on 11/21/17 Ms. Denney, BWID's Office Assistant,

1 explained that she is the person who takes the meeting minutes, and she said that she
2 had been instructed that meeting minutes could not be taken for executive session
3 meetings, and she was not allowed to attend those sessions. Ms. Denney excuses
4 herself from the room when the Board convenes an executive session and returns when
5 the executive session is finished. Ms. Denney was present at eight of the nine public
6 meetings held in 2017 for which records were provided. Ms. Denney confirmed that in
7 her experience, the presiding officer of the Board does not publicly announce any
8 statutory authorization or lawful basis prior to convening the executive sessions. (#PR2).
9 In a subsequent conversation with Ms. Denney, she informed Commission staff that audio
10 recordings are not available for the meetings (#INV2).

11

12 Several Board members, including Daily Holman, Steve Gordon, and Larry Warren,
13 specifically made statements indicating that it was never BWID Board practice to identify
14 the proper statutory authorization prior to convening executive session:

15

16 "...Since before my time on BWID Board, 'identified authorization' to hold executive
17 sessions has never been done.... This and all past Boards were unaware of this
18 requirement...." (Holman)

19

20 "I have been on the board with 3 different chairpersons, never did we spell out
21 what was going to be discussed in the executive session if we had one."
22 (Gordon)

23

24 "...To my knowledge, the BWID Boards, both past and present, have never used
25 identifying authorizations and were unaware that we needed to post these."
26 (Warren). (#INV3)

27

28 As for executive session details, all of the 2017 and two of the 2016 meeting minutes refer
29 only to the fact that an executive session took place and the length of it. Below is an
30 example of a typical entry from the 2/11/17 meeting minutes:

31

32 "The regular session was adjourned at 11:42am, followed by an executive session.

1 Open meeting was reconvened at 12:42pm and adjourned at 12:43pm.”

2
3 Only three of the fourteen meeting minutes contain any detail as to topic(s) discussed in
4 executive session, and all of those were in 2016, before Mr. Hodgen became a member
5 of the board. During the time that Mr. Hodgen participated in the four executive sessions
6 in 2017, the available records do not indicate the purpose of any of those executive
7 sessions. (#PR1; #INV1)

8
9 **CONCLUSIONS:** Davon Hodgen was a member of the Board of Directors of the BWID
10 during the period relevant to this investigation. Under the definitions in ORS 192.610,
11 BWID is a public body, and the Board of Directors is its governing body. As a Board
12 member, Mr. Hodgen is required to comply with the executive session provisions of
13 Oregon Public Meetings law. The Commission is authorized to investigate complaints of
14 violations of ORS 192.660 alleged to have been committed by public officials. ORS
15 192.685.

16
17 An executive session is a meeting or a part of a meeting of a governing body that is closed
18 to certain persons for deliberation on certain matters. ORS 192.610(2). ORS 192.660
19 allows a governing body to hold an executive session to discuss specific topics once
20 certain conditions and prerequisites are met.

21
22 For all but three of the executive sessions held during this time, BWID records indicate
23 simply that an executive session was held and state nothing regarding the authorization,
24 purpose, or what was discussed. Per ORS 192.660(1), the governing body of a public
25 body may hold an executive session during a regular, special or emergency meeting,
26 “after the presiding officer has identified the authorization under ORS 192.610 to 192.690
27 for holding the executive session.” Regarding the relevant time frame at issue (April 2016
28 – September 2017), none of the fourteen Board minutes or agendas reflects that a specific
29 statutory authorization or lawful basis was announced prior to the BWID Board entering
30 an executive session. Also, Ms. Denney, the current BWID office assistant, explained
31 that in her experience of taking the minutes at the public portion of the Board meetings in
32 2017, the presiding officer of the Board does not publicly announce any statutory

1 authorization or lawful basis prior to convening the executive sessions. BWID Board
2 members, Holman, Gordon, and Warren personally confirmed to the Commission in their
3 written submissions that the Board routinely held executive sessions without first publicly
4 identifying the lawful basis for their executive sessions, because they were unaware of
5 the requirement to do so. Information appears sufficient to constitute a preponderance
6 of evidence that the Board failed to comply with ORS 192.660(1) prior to convening the
7 executive sessions relevant to this case, and that Davon Hodgen participated in four of
8 those executive sessions.

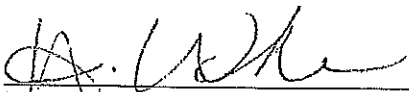
9
10 As described above, it appears by a preponderance of the evidence that Davon Hodgen
11 violated the executive session provisions of ORS 192.660(1) on four occasions when he
12 participated in executive sessions as a BWID Board member during the time period
13 covering April 2016 to September 2017. It cannot be determined by a preponderance of
14 the evidence that Davon Hodgen violated the executive session provisions of ORS
15 192.660(2) when he participated in executive sessions as a BWID Board member during
16 the relevant time period.

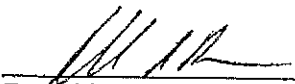
17
18 **RECOMMENDATIONS:** The Oregon Government Ethics Commission should make a
19 preliminary finding that Davon Hodgen participated, as a Barlow Water Improvement
20 District Board Member, in four executive sessions when the presiding officer failed to first
21 announce the statutory authority or lawful basis for convening the session, in violation of
22 192.660(1). [Motion 10]


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1 **ASSOCIATED DOCUMENTS:**

- 2 #PR1 Complaint filed electronically by John Herlocker, received 11/12/17.
- 3 #PR2 Investigator's 11/21/17 memo summarizing contact with Dawn Denney,
4 Office Assistant, Barlow Water Improvement District.
- 5 #INV1 Minutes and agendas for all BWID meetings (April 2016 – September
6 2017), received via email from BWID staff (Dawn Denney) on 6/1/18.
- 7 #INV2 Communication from BWID staff (Dawn Denney), received via email on
8 6/11/18.
- 9 #INV3 Responses from BWID Board members Daily Holman, Steve Gordon, and
10 Larry Warren.

PREPARED BY  6/21/18
Hayley Weedn / Date
Investigator

APPROVED BY  6/21/18
Ronald A. Bersin / Date
Executive Director

REVIEWED BY  6/21/18
Amy E. Alpaugh / Date
Assistant Attorney General



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Kate Brown, Governor

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May 18, 2018

Sheryl Zimmerer
Executive Director
LOGOS Public Charter School
400 Earhart Street
Medford, OR 97501

Advice 18-1301

Dear Ms. Zimmerer:

This letter of advice is provided in response to your request received on May 15, 2018 which presented a question regarding the application of the conflict of interest provisions of Oregon Government Ethics law to the situation described below. This analysis and advice is being offered under the authority provided in ORS 244.284 as guidance on how the current provisions of Oregon Government Ethics law may apply to the specific circumstances you have presented.

Summary of Facts as Presented

1. Logos public charter school currently has no uniform salary schedule for its teachers and wishes to develop a salary schedule.
2. The 4 person finance committee, which is comprised of three board members and the business manager, is developing the salary schedule.
3. Once the salary schedule is developed, it will go before the full board for adoption.
4. One member of the finance committee is the spouse of a Logos teacher, and this finance committee member is also a member of the board.

Question 1: How do the provisions of Oregon Government Ethics law apply to a situation in which a school board member is met with taking official actions in his capacity as a board member or a member of the finance committee that would or could financially impact his spouse, a Logos teacher?

Question 2: Is there a "class exception" to the conflict of interest provisions in this situation?

The provisions in ORS Chapter 244 apply to public officials, including school board members, whether acting in their official capacity as a school board member or as a member of a board advisory committee, such as the finance



committee. A public official's spouse is a statutorily defined relative. [ORS 244.020(15)(16)]

Conflict of Interest

ORS 244.020(1) defines an actual conflict of interest and ORS 244.020(13) defines a potential conflict of interest. A public official is met with either an actual or potential conflict of interest when participating in an official capacity, in any action, decision, or recommendation, if the effect would or could be to the private pecuniary benefit or detriment of the public official, the public official's relative, or any business with which either are associated, unless an exception applies. [ORS 244.020(13)]

The difference between an actual and potential conflict of interest is determined by the certainty of the private financial impact. An **actual conflict** of interest occurs when a public official participates in an official action that **would** have a direct financial impact on that official, the official's relative or any business with which either are associated. A **potential conflict** of interest occurs when a public official's action, decision or recommendation **could** have a financial impact on the official, the official's relative or any business with which either are associated.

ORS 244.120 directs public officials how to resolve a conflict of interest, depending on the type of public position they hold. Elected officials, or those appointed to a Board or Commission, when met with a conflict of interest, must on each occasion, publicly announce the nature of their conflict, regardless of whether it is an actual or potential conflict of interest. Then, if the conflict is actual, they must also refrain from any discussion, debate or vote on the issue giving rise to the conflict. If the conflict is potential, they may participate in official actions following their public disclosure. [ORS 244.120(2)]

Application of the Class Exception to the Conflict of Interest provisions

Exceptions to the conflict of interest statutes apply and you asked specifically about the possible application of the "class exception" to this situation. In relevant part, this exception applies when the private pecuniary benefit or detriment arises out of any action in the person's official capacity which 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's relative is a member or is engaged. Only the Commission may limit the minimum size of, or otherwise establish criteria for or

identify, the smaller classes that qualify under the class exception. [ORS 244.020(13)(b) and 244.290(3)(a)]

According to the information you have provided, it appears that when acting as a member of the finance committee, the board member would be participating in creating distinct categories or classes of teachers through a salary structure, which by nature, would financially affect every current Logos teacher to a different degree. For example, the committee may decide to include or weigh such factors as education level, years as a teacher, years at Logos, bilingual capabilities, subject matter taught, or many other possible factors when setting a salary schedule. In choosing the factors to be included, the finance committee members will be effectively sorting each current teacher, including the spouse of the finance committee member, into a slot on the salary schedule, thereby determining their current and possible future salaries. An example of a "class exception" would be if a public official were asked to approve a 2% cost-of-living raise for all teachers at Logos, an action that would affect all members of the class to the same proportional degree, and therefore be an exception to the conflict of interest.

Finance committee member and application of conflict of interest provisions

The board member, when sitting on the finance committee, would be met with a potential conflict of interest when determining the salary schedules for LOGOS teachers because the effect of his official actions in creating the salary schedule could result in a financial impact on his spouse. The reason that this is only a potential conflict of interest is because the finance committee is an advisory committee and not the final decision maker on the adoption of the salary schedule. The full board will decide whether the salary schedule is adopted. When met with a potential conflict of interest, the public official must publicly announce the nature of his conflict prior to taking official actions on the matter giving rise to the conflict. The official must make the public announcement once on each occasion that the matter arises.

Board member and application of conflict of interest provisions

The public official would be met with an actual conflict of interest when acting in his capacity as a member of the full board to adopt or reject the teacher salary schedule recommended by the finance committee, because the effect of his official action would result in a certain and specific financial impact on his spouse. When met with an actual conflict of interest, the public official must publicly announce the nature of his conflict and then refrain from participating in

any discussion, debate, or vote when the salary schedule comes to the full board for adoption.

Prohibited use of office

ORS 244.040(1) prohibits a public official from using or attempting to use his position or office to obtain a private financial gain or avoid a financial detriment for himself, his relative, or any business with which he or his relative is associated, if the financial benefit would not otherwise be available but for his holding the official position. A public official may be found in violation of this statute regardless of whether they properly disclosed a conflict of interest. [ORS 244.040(7)]

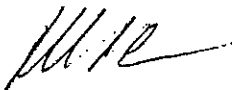
Application of prohibited use of office provisions to finance committee member's actions

A person married to a Logos teacher would not be able to participate in creating their spouse's salary schedule, and neither would the person in this situation "but for" holding his position on the finance committee. Therefore, it appears that while he may only be met with a potential conflict of interest when creating the salary schedule, he could still be in violation of ORS 244.040(1) by participating as a finance committee member in those official actions.

In conclusion, the public official with the conflict of interest should refrain from participating as a finance committee member in creating the teacher salary schedule because it may violate ORS 244.040(1) and, in his capacity as a board member, he should announce the nature of his actual conflict of interest publicly when the board meets to approve or reject the salary schedule, and then refrain from discussion, debate, or vote on the issue.

If you have any additional questions regarding the application of Oregon Government Ethics law, please feel free to contact me directly.

Sincerely,



Ronald A. Bersin
Executive Director

RAB/dg

*****DISCLAIMER*****

This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.



LOGOS PUBLIC CHARTER SCHOOL

Innovative Education Kindergarten to Career

400 EARHART STREET • MEDFORD OR, 97501 • LOGOSCHARTER.COM • P: 541.842.3658

May 9, 2018

Oregon Government
Ethics Commission
3218 Pringle Rd SE, Ste. 220
Salem, OR 97302

RECEIVED
MAY 15 2018
OREGON GOVERNMENT
ETHICS COMMISSION

To Whom It May Concern:

Our school's finance committee is creating a new salary schedule for our teachers. One member of our finance committee is married to one of our teachers. Logos Public Charter School wants to be confident in determining whether he should be allowed to participate on this committee or not, due to this circumstance. We are requesting that the OGEC issue us an advisory opinion determining whether the conflict of interest class exception (at ORS 244.020(13)(b) applies to us in this circumstance.

The school has not had a salary schedule for any employees up to this point. We have given raises as we had the ability to give raises. We want to put a salary schedule in place but have to develop it. This member of the finance committee would help us develop our first-ever salary schedule that would apply to all teachers. There would be four people on this committee: 3 board members and our business manager. They would develop the schedule that would then go to the board to be considered by the full board.

Thank you for all of your time and consideration. I look forward to your response regarding this matter.

Sincerely,

Sheryl Zimmerer
Executive Director

LUTZ Virginia * OGEC

From: BERSIN Ron A * OGEC
Sent: Monday, June 04, 2018 1:51 PM
To: LUTZ Virginia * OGEC
Subject: FW: Advisory Opinion Reply
Attachments: Bersin Ltr ORS OAR 22 May 18.pdf

Please attached to the letter sent by our office. Thanks

Ronald A. Bersin

Executive Director
Oregon Government Ethics Commission
(503) 378-5105

***The Oregon Government Ethics Commission believes your comments are important to our success. We would appreciate you taking a few minutes to participate in a brief survey. [Click here to access customer survey.](#)

From: Sen Boquist [mailto:Sen.BrianBoquist@state.or.us]
Sent: Thursday, May 31, 2018 1:22 PM
To: BERSIN Ron A * OGEC <Ron.A.Bersin@oregon.gov>
Subject: Advisory Opinion Reply

Mr. Bersin:

Sorry for my delay but was out of town but I find your letter of May 22, 2018 very odd to say the least.

ORS 244.280 clearly states an advisory opinion may be issued for 'any proposed transaction or action or any actual or hypothetical circumstance.' Then in your adopted OAR the Ethics Commission removed the "actual" from the law claiming it would not issue an advisory option on "actual events." Appears the OGEC thinks it can ignore laws passed by the Legislature while creating its own. I know this is not the intent of the Commission. I think.

The notion a person is supposed to wait, or an official wait, more than two months to take a questionable action while the Commission ponders whether it will or will not prepare an advisory opinion then months for its preparation is irresponsible in the 21st Century reality of government. Believe you noted many of the questions are in fact hypothetical. What it really appears to be is the Commission either skirting its responsibly, or leaving itself in a position not to provide limited immunity under ORS 244.280 (3) should it find we need to avoid the circumstances outlined in the advisory opinion request.

Let me remind the Commission, the appointees are from a variety of backgrounds and political parties to be able to advise, opine and rule on the entire spectrum of individuals who should be under the Oregon ethics laws. Believe if we researched OGEC past opinions we would find some that covered 'actual' events as the event would have happened before the months long timelines required for the Commission to respond.

To be clear, as stated in the request, the intent is to get a solid advisory opinion to determine if the legislature should make changes to ensure statewide officials are covered by ethical laws as the common public assumes applies now. If the OGEC wants to be part of the problem, instead of part of the solution, this can be easily resolved. We can simply invert what we hoped would be a cooperative non-retribution path to enhancing our ethics laws into an outright complaint. This is not our intent. However, if the Commission refuses to assist with an advisory opinion then the 'circumstances' will be changed into an 'actual' complaint.

I have requested Legislative Counsel review ORS 244.280. Recall I have been in the legislature when we have cleaned up this law. I know the intent of those actions since I was present. Also know the legal definition of 'actual' as ruled by the courts. Plus I have asked for legal remedies to the problem you have raised, and the issues we hoped an advisory opinion would help craft, or not, a legislative change.

Let me remind you the last primary election was the lowest turnout in decades. It is not apathy. It is the average citizen has lost faith in government. That includes the ability of the Oregon Government Ethics Commission to function as an ethical watchdog of government officials. And yes, the average citizen thinks no better of legislators. We need to work jointly to improve citizen concerns and perceptions. If not, then unilateral action will be taken either by citizens themselves, or others to attempt to maintain civilized society, or not.

Likewise, the Missouri Governor just stepped down under Legislative investigation. Oregon's legislature has no such investigative nor audit nor authority to oversee statewide officials. Oregonians think the Oregon Government Ethics Commission is that authority. You are clearly recommending the Commission believes it does not have the authority ORS 244.280 implies. That begs the public question as to whether the Commission itself needs reformed or another process adopted. I'd prefer the Commission.

Please reconsider your recommendation, or assume my advisory opinion is an actual complaint. Your choice how you present it to the Commission.

Sincerely,

Brian J. Boquist
State Senator

Member
Senate Rules Committee

2017 ORS 244.280¹

Commission advisory opinions

• effect of reliance on opinion

- (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.
- (2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.
- (3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 (Civil penalties) or 244.360 (Additional civil penalty equal to twice amount of financial benefit) on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 (Civil penalties) or 244.360 (Additional civil penalty equal to twice amount of financial benefit) on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]

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Oregon Government Ethics Commission

Chapter 199

Division 1 PROCEDURAL RULES

199-001-0030 Advisory Opinions

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(1) The Oregon Government Ethics Commission may, upon the written request of any person, or upon its own motion, issue opinions on the requirements of ORS Chapter 244 and of ORS 171.725 to 171.785.

(2) The Oregon Government Ethics Commission will issue an Advisory Opinion based on real or hypothetical facts or circumstances but not upon actual events that have already occurred.

(3) The Oregon Government Ethics Commission shall issue an Advisory Opinion only after approval from a majority of Commissioners at a regular meeting of the Commission.

(4) An Advisory Opinion shall contain:

(a) A short and plain statement of the real or hypothetical facts or circumstances on which it is based;

(b) Relevant statutes;

(c) A short and plain statement of the question presented;

(d) A short and plain statement of the opinion of the Commission based on the real or hypothetical facts in answer to the question. The opinion of the Commission may cite relevant statutes of the State of Oregon, opinions of the Oregon appellate courts, opinions of the Attorney General of Oregon, and previous opinions of the Oregon Government Ethics Commission;

(e) A typed notice in uppercase letters not less than 10 point that states the following:

"THIS OPINION IS ISSUED BY THE OREGON GOVERNMENT ETHICS COMMISSION PURSUANT TO (INSERT ORS 171.776 OR 244.280). A PERSON SHALL NOT BE LIABLE UNDER (INSERT ORS CHAPTER 244 OR ORS 171.725 TO 171.785) FOR ANY GOOD FAITH ACTION OR TRANSACTION CARRIED OUT IN ACCORDANCE WITH THIS OPINION. THIS OPINION IS LIMITED TO THE FACTS SET FORTH HEREIN".

(5) All draft Advisory Opinions shall be reviewed and signed by the Commission's legal counsel before being submitted to the Commission for adoption.

(6) When issued, an Advisory Opinion shall be assigned a sequential number. Thereafter, the Opinion may be cited as "Oregon Government Ethics Commission Advisory Opinion No. _____".

(7) An Advisory Opinion of the Oregon Government Ethics Commission shall have precedential effect. A person shall not be liable under ORS Chapter 244 or under 171.725 to 171.785 for any good faith action or transaction carried out according to an Advisory Opinion of the Oregon Government Ethics Commission.

(8) In addition to an Advisory Opinion of the Oregon Government Ethics Commission, the Director may issue informal written opinions of the staff on actual or hypothetical facts or circumstances when requested by any person. The informal written opinion of the Director shall have no precedential effect and the Oregon Government Ethics Commission shall not be bound by any informal written opinion of the Director. The opinion of the Director shall be clearly labeled as such and that it is not issued under authority of the Commission, but is only the informal opinion of the Director. At the next regular meeting of the Commission, all informal written opinions of the Director shall be reported to the Commission and the Commission on its own motion may thereafter issue an Advisory Opinion of the Commission on the same facts or circumstances.

(9) The issuance of an advisory opinion by the Oregon Government Ethics Commission is at its discretion and the failure of the Commission to issue an Advisory Opinion shall have no precedential effect.



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

E-mail: ogec.mall@oregon.gov

Website: www.oregon.gov/ogec

May 22, 2018

Senator Brian J. Boquist
Oregon State Senate
900 Court Street, S-305
Salem, OR 97301

Dear Senator Boquist:

This letter is provided in response to your correspondence received May 21, 2018, in which you requested that the Oregon Government Ethics Commission (Commission) issue a Commission advisory opinion concerning the application of provisions in ORS Chapter 244 to official actions taken by the Governor and other public officials pertaining to the May 21, 2018 special session of the Oregon Legislative Assembly.

The Commission is required to issue an advisory opinion or a written denial of the request within 60 days. The Commission may not issue advisory opinions upon actual events that have already occurred. [ORS 244.280 and OAR 199-001-0030]

In order to answer your request, the Commission would be required to opine on actual events that had already occurred at the time your request was received, which is prohibited by administrative rule. The Commission next meets on June 29, 2018, and your request will be on the agenda. For the reason cited, I will be recommending that the Commission deny your request to issue an opinion.

Sincerely,

Ronald A. Bersin
Executive Director

RAB/dg

BRIAN J. BOQUIST
STATE SENATOR
DISTRICT 12



OREGON STATE SENATE

May 18, 2018

Mr. Ron Bersin
Oregon Government Ethics Commission
3218 Pringle Road SE, Ste 220
Salem, Oregon 97302-1544

Dear Commissioners:

This is a formal request to the entire commission for an Advisory Opinion regarding the actions by the Governor leading up to, and participating, in a special session she called under what many believe are unconstitutional grounds, not for the purpose of public policy, but for furthering her reelection campaign using public resources. Merited or not, this is the belief of many today.

This is not a complaint as there appears to be a loop hole large enough to drive a freight train through in Oregon's elections and ethics laws. While legislators, judges and normal public employees appear covered under a variety of Oregon Revised Statutes, it appears the five statewide officials are not covered: Governor, Secretary of State, Treasurer, Attorney General, and Labor Commissioner.

We note that the Governor called a special session after considering SB 1528, a tax bill the Democrats claim is not a revenue bill despite generating \$1.3 billion in new revenue. This constitutional issue, if not crisis, will be decided in the courts shortly. The Governor claims she received immense input from citizens, businesses, and accountants that she should correct a 2013 law, thus a special session was called. We have filed a public records request to ensure that the public understands who are these requesters, and the relationship to the Executive Branch, or potentially to her reelection campaign. The Governor claimed in writing, and a public hearing, that this was a fairness issue that had to be done by declaring an emergency session based on an extraordinary occasion, because, if the legislature waited it could not be done efficiently next year. Legislators

have been advised otherwise by our own legal counsel which is supported by legislative history.

There are three Oregon Constitutional Articles governing legislative sessions. Likewise, the Oregon Supreme Court under *Priest*, which is in line of reference to *Bobo* and *Seattle* which got us to this weird unexplainable special session, tells us the definition of 'extraordinary occasion' is defined in the time, place, and circumstances at Statehood in 1859. Needing a tax cut on small businesses to raise polling numbers for reelection is not an 'extraordinary occasion.' Using public staff for the aforementioned purpose would, and does, raise serious questions on the adequacy of our ethics and elections laws. Then, the calling of the special session by the Governor, for five days established by the majority Democrats, prohibits the Republican candidate for Governor from raising campaign contributions while leaving the Democrat candidate to raise funds. To be clear, Republican legislative leadership has called for a one-day session only, while Democrat legislative leaders are attempting to extend the days for whatever reason, but is it political? This then begs the question: is it to aid the reelection of the Governor and her fundraising? To be clear, the media in the Fourth Estate has documented these same claims statewide that need answered. If not for today, and this situation, then for future action by the legislature to establish fair equitable elections and ethics laws.

To underscore the importance of an advisory opinion, the OGEC should note in the chain of Supreme Court rulings *Bobo* and *Seattle* leading to this situation, two justices warned in the opinions of just this situation. Justice Story warned the extraordinary use or perverse power would destroy the equilibrium that preserves the constitution if not checked a legislative process. Justice Wolverton warned against the practice of legislative hodge-podge and log-rolling in opining his thoughts on the constitution. These exact failings have brought us to the present situation in the legislature, and legislative process including the Governor's actions.

To reiterate, this request is for an advisory opinion, it is not a complaint. The advisory opinion will be used for further action, though undetermined, but most likely to present legislation closing loopholes that appear to exist exempting the five statewide elected officials in the Executive Branch from elections and ethical standards common of others.

A formal advisory opinion on the following is requested:

Is using public employees and funds to lobby for a bill in the self proclaimed special session to support a Governor's reelection permissible? Reference Sec of State passing buck to Ethics. Reference ORS 260.432, Restrictions on Political Campaigning by Public Officials, page 9.

Is a duly formed political action committee formed for election or reelection 'business' under Oregon elections and ethics laws as it is under other statutes? Reference ORS 244.020(3), OGEC Public Official Guide page 8.

Is there misuse of position of office if a Governor to calls a special session to gain support for reelection? Are there any limits on the Governor for use of position or office under ORS 244.040 or other Ethics Commission authority? Reference ORS 244.020, OGEC Public Official Guide page 9.

Are public employees working for the Governor, and employed by a reelection campaign, either paid or volunteer, restricted under the 'Private Employment of Public Official' in any manner? Please clarify the impact if a Governor, or her staff, are owners of a State PTE who would benefit from the bill proposed for the special session? Reference ORS 244.040, OGEC Public Official Guide page 16. Note, we do not believe this is situation is present but need clarification of what restrictions exist.

Is there a conflict of interest in a Governor calling a special session in their public position to support their private position as a candidate under her political action committee that in some legal circumstances are already considered a business under other state and federal laws? This is related to an aforementioned question as to the 'business' statues of a campaign committee. Are there any circumstances a Governor, or other Executive Branch electee, have a conflict of interest as there is no mention of the five statewide elected officials in OGEC Public Official Guide? Reference ORS 244.020, OGEC Guide page 21-24.

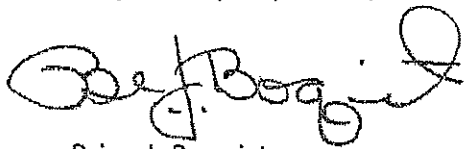
Are there other potential ethical pitfalls or violations under the facts presented covered in the 'Guide for Public Officials' adopted in October 2010 by the Oregon Government Ethics Commission?

Is the Governor liable for the expenses of the special session expended by the Legislature, Executive Branch's (Gov, AG, Sec of State, Treasury & BOLI), and revenue expenses if the Oregon Government Ethics Commission found the Governor violated

any of laws under the power and authority of the Commission? We are aware a Court could adjudicate liability under ORS 294.100 against the misuse of funds by an elected official. Asking about the OGEC authority.

Again, this is request for an advisory opinion not a complaint. The advisory opinion will be used for further action, though undetermined, but most likely to present legislation closing loopholes that appear to exist exempting the five statewide elected officials in the Executive Branch from elections and ethical standards common of others.

Respectfully requested,

A handwritten signature in black ink, appearing to read "Brian J. Boquist". The signature is fluid and cursive, with the first name "Brian" and last name "Boquist" clearly legible.

Brian J. Boquist
State Senator

Enclosed references:

OGEC Advisory Opinion Overview
OGEC Guide for Public Officials Extract
OSOS Restrictions on Political Campaigning by Public Officials Extract
Constitutional Reference Page
Fourth Estate Media Article List & Article
Public Records Request
ORS 244.280

Oregon Government Ethics Commission



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Advisory Opinions

A **Staff Opinion** is an informal opinion that addresses only the application of Oregon Government Ethic law or Lobbying Regulation law to the facts stated in the request. Any relevant information, which was not included by the requester of this opinion in the stated facts, could completely change the outcome of this opinion. Other laws or requirements may also apply. The opinion does not exempt a public official from liability under the applicable law for any action or transaction carried out in accordance with the opinion. The opinion is the personal assessment of the executive director of the Oregon Government Ethics Commission. (opinion number contains an "S")

An **Advisory Opinion** is issued by the Oregon Government Ethics Commission (Commission) pursuant to ORS 17L.776 and ORS 244.280. A public official or business with which a public official is associated shall not be liable under Lobby Regulation law or Oregon Government Ethic law for any action or transaction carried out in accordance with this opinion. The opinion is limited to the facts set forth in the request. (opinion number contains an "A")

The following charts contain information through 2016. Beginning January 1, 2017 all Commission advice will be accessible by clicking on the "Search Advice and Case Outcomes" navigation link located on the left hand side of this page.

The opinions are in PDF format.

- [Listing by opinion category](#)

(To view the full text of the opinions listed on the following charts, please note the opinion number and the code number listed on the chart, then go to the corresponding code on the category chart above and click on the opinion number.

- [Advisory Opinions \(xls\)](#)
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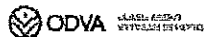
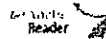
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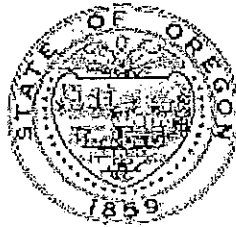
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OREGON
GOVERNMENT ETHICS
LAW

A GUIDE FOR PUBLIC OFFICIALS



Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544
Telephone: 503-378-5105
Fax: 503-373-1456
Web address: www.oregon.gov/ogec

Adopted October 2010

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- Excluded from this definition are income-producing organizations that are not-for-profit and tax exempt under section 501(c) of the Internal Revenue Code, if a public official or a relative of the public official holds membership or an unpaid position as a member of the board of directors.
- It is important to remember that state and local government or special district entities are not formed for the purpose of producing income, which means they are not businesses.

ORS 244.020(3)⁴ provides the definition of a “**business with which the person is associated,**” paraphrased as follows:

In brief, a public official or the relative of the public official is associated with a business in the following circumstances:

- When, during the preceding calendar year, a public official or relative has held a position as director, officer, owner, employee or agent of a private business or a closely held corporation in which the public official or relative held or currently holds stock, stock options, equity interest or debt instrument over \$1,000.
- When, during the preceding calendar year, the public official or relative has owned or currently owns stock, equity interest, stock options or debt instruments of \$100,000 or more in a publicly held corporation.
- When the public official or relative is a director or officer of a publicly held corporation.
- When a public official is required by ORS 244.050⁵ to file an Annual Verified Statement of Economic Interest form and the business is listed as a source of household income.

USE OF POSITION OR OFFICE

What are the provisions of law that prohibit a public official from using the position or office held for financial gain?

As defined earlier, public officials become public officials through employment, appointment, election or volunteering. ORS 244.040(1)⁶ prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available **but for the position held by the public official**. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which the public official, a relative, or a member of the public official's household is associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. ORS 244.040(4)⁷ specifically prohibits public officials from attempting to use confidential information gained because of the position held or by carrying out assigned duties to further the public official's personal gain. ORS 244.040(5)⁸ also prohibits a former public official from attempting to use confidential information for personal gain if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

ORS 244.040(6)⁹ also has a single provision to address circumstances created when public officials, who are members of the governing body of a public body, own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firm, may encounter circumstances in which this provision may apply. For example, a member of a city council who is an architect has a developer as a client of the architect's business. If the developer has a proposed subdivision to be approved by the city council, the architect may not appear before the city council on behalf of the client developer. Another person representing the client developer on behalf of the architect's business may appear, but not the councilor/architect.

PRIVATE EMPLOYMENT OF PUBLIC OFFICIAL

Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?

No. As mentioned earlier, many public officials are volunteers, meaning there is little or no compensation for the public position. Other public officials may receive compensation, but choose to seek additional sources of income. Some work for a private business and others establish a private business of their own. **NOTE: This guide does not address other statutes or agency policies that may limit private employment for public officials.**

ORS 244.040(3)²³ prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also ensure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.
4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
 - o Employees of governmental agencies must give written notice to their appointing authority.
 - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

CONFLICTS OF INTEREST

How does a public official know when they are met with a conflict of interest and, if met with one, what must they do?

Oregon Government Ethics law identifies and defines two types of conflicts of interest. An **actual conflict of interest** is defined in ORS 244.020(1)³² and a **potential conflict of interest** is defined in ORS 244.020(12)³³. In brief, a public official is met with a conflict of interest when participating in official action which could or would result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either is associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could." A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated. The following hypothetical circumstances are offered to illustrate the difference between actual and potential conflicts of interest:

A city councilor is employed by a building supply business from which the city public works director purchases building materials. City payments on invoices must be submitted to the city council and approved by a vote. The city councilor, who is employed by the building supply business, while participating in a meeting, would be met with an **actual conflict of interest** when the request to pay the invoice from the business that employs the councilor is presented to the city council for official action.

A member of a fire district board of directors owns a sheetrock contracting business. The fire district is planning to remodel a fire station in the district. To reduce cost, the district will manage the project and solicit bids from contractors for specified work, such as the sheetrock that needs to be installed. The member on the board of directors, who is the contractor, while participating in a meeting of the board of directors, would be met with a **potential conflict of interest** when the members discuss or act on the invitation for bids on the sheetrock installation.

What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

Legislative Assembly:

Members must announce the nature of the conflict of interest in a manner pursuant to the rules of the house in which they serve. The Oregon Attorney General has determined that only the Legislative Assembly may investigate and sanction its members for violations of conflict of interest disclosure rules in ORS 244.120(1)(a)³⁴. [49 Op. Atty. Gen. 167 (1999) issued on February 24, 1999]

Judges:

Judges must remove themselves from cases giving rise to the conflict of interest or advise the parties of the nature of the conflict of interest. [ORS 244.120(1)(b)]³⁵

Public Employees:

Public officials in public bodies who are appointed, employed or volunteer must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met. [ORS 244.120(1)(c)]³⁶

Elected Officials or Appointed Members of Boards and Commissions:

Except for members of the Legislative Assembly, these public officials must publicly announce the nature of the conflict of interest before participating in any official action on the issue giving rise to the conflict of interest. [ORS 244.120(2)(a) and ORS 244.120(2)(b)]³⁷

- Potential Conflict of Interest: Following the public announcement, the public official may participate in official action on the issue that gave rise to the conflict of interest.
- Actual Conflict of Interest: Following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict of interest. [ORS 244.120(2)(b)(A)]³⁸

If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote. The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)]³⁹ These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the number of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position. [ORS 244.020(12)(a)]⁴⁰ For example, if a member of a state board is required by law to be employed in a specific occupation, such as an accountant or a doctor, then the official actions taken by the board member that affect all accountants or doctors to the same degree would be exempt from the conflict of interest disclosure requirements and participation restrictions.
- If the financial impact of the official action would impact the public official, relative or business of the public official to the same degree as other members of an identifiable group or "class". The Commission has the authority to identify a group or class and determine the minimum size of that "class." [ORS 244.020(12)(b)]⁴¹ and [ORS 244.290(3)(a)]⁴² For example, if a county commissioner votes to approve a contract to improve or maintain a county road that leads to the property the commissioner owns, but the improvements would also benefit many other property owners to the same degree, the commissioner would be exempt from the conflict of interest disclosure requirements and participation restrictions. The number of persons affected to the same degree as the public official will help to determine whether this exception applies.
- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c) of the Internal Revenue Code. [ORS 244.020(12)(c)]⁴³ For example, a city councilor is also an unpaid board member or member at the local YMCA. The decision, as a city councilor, to award a grant to that YMCA would be exempt from the conflict of interest disclosure requirements and participation restrictions.

How is the public announcement of the nature of a conflict of interest recorded?

- The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records (minutes, audio/video recording) of the public body. [ORS 244.130(1)]⁴⁴

Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?

- The announcement needs to be made on each occasion when the public official is met with the conflict of interest. Each time a public official is met with a conflict of interest the nature must be disclosed. For example, an elected member of the city council would have to make the public announcement one time when met with the conflict of interest, but only one time in each meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. Another example would involve an

employee in a city planning department who would have to give a separate written notice before each occasion they encounter a matter that gives rise to a conflict of interest. [ORS 244.120(3)]⁴⁵


If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?

- No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest [ORS 244.130(2)]⁴⁶. However, the public official faces the potential of personal liability for the violation.

Restrictions on Political Campaigning by Public Employees - ORS 260.432

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Lobbying and Legal Challenges

Legal Challenges by Public Jurisdictions

Public employee's work involvement in legal court challenges as part of their regular job duties is not a violation of ORS 260.432.

- ex** Examples of legal challenges include whether an initiative petition meets constitutional requirements, whether a ballot title complies with statutory standards, etc.

Legislation and Lobbying

Legislative bills are not covered by ORS 260.432. Therefore it is allowable, under election law, for public employees to lobby governing bodies. Once a referral has been certified to the ballot, political advocacy is restricted by ORS 260.432.

- i** For more information about lobbying, contact the Oregon Government Ethics Commission.

Public Property

If a governing body makes their property available for advocacy activities, they must grant equal access for all political groups to use public property. This includes charging the same fee or requiring the same permit.

If a candidate (or group supporting or opposing a recall, measure, initiative, etc.) requests to use public property for political purposes, then the government agency must allow the same access at the same price (if any) to any other candidate.

Public agencies may have policies that regulate the use of public property. The policy may be more restrictive than the requirements of ORS 260.432.

- i** ORS 294.100 provides a limited remedy for possible inappropriate use of public resources. That statute is not within the jurisdiction of the Elections Division, and therefore we cannot give advice about compliance with that statute.

An elected official is not required to grant equal access to their office or equipment, even if it is in a public building.

Contact Lists

If lists are available to the public, a public employee must grant equal access to anyone who requests the list. This includes any list that the public body administers. The public body must charge the same fee, if any.

A candidate may not use any list administered by a public body that is not available to all other candidates. Candidates may use contact lists that they created (including constituent contacts collected as an elected official) without granting equal access to other candidates.

- ex** This issue commonly arises with the use of personnel lists, public utility lists, email lists, voter lists, etc. Public bodies must allow equal access to these lists.

Government Logos

A governing body must allow equal access to logos for political purposes, meaning that if any candidate is allowed to use the logo, all candidates must be allowed. It is not allowable to allow certain candidates (or other political groups), such as incumbents, to use logos but prohibit another candidate from doing the same.

Government agencies are encouraged to have written policies about use of their logos.

Oregon Legislative Constitutional References:

Article IV, Section 12 of the Oregon Constitutions reads:

Governor may convene legislature. He may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened.

Article IV, Section 10 of the Oregon Constitution reads:

Section 10. Annual regular sessions of the Legislative Assembly; organizational session; extension of regular sessions. (1) The Legislative Assembly shall hold annual sessions at the Capitol of the State. Each session must begin on the day designated by law as the first day of the session. Except as provided in subsection (3) of this section:

(a) A session beginning in an odd-numbered year may not exceed 160 calendar days in duration; and

(b) A session beginning in an even-numbered year may not exceed 35 calendar days in duration.

(2) The Legislative Assembly may hold an organizational session that is not subject to the limits of subsection (1) of this section for the purposes of introducing measures and performing the duties and effecting the organization described in sections 11 and 12 of this Article. The Legislative Assembly may not undertake final consideration of a measure or reconsideration of a measure following a gubernatorial veto when convened in an organizational session.

(3) A regular session, as described in subsection (1) of this section, may be extended for a period of five calendar days by the affirmative vote of two-thirds of the members of each house. A session may be extended more than once. An extension must begin on the first calendar day after the end of the immediately preceding session or extension except that if the first calendar day is a Sunday, the extension may begin on the next Monday. [Constitution of 1859; Amendment proposed by S.J.R. 41, 2010, and adopted by the people Nov. 2, 2010]

ARTICLE X-A, Section 1 of the Oregon Constitution reads:

CATASTROPHIC DISASTERS

Section 1. Definitions; declaration of catastrophic disaster; convening of Legislative Assembly.

(1) As used in this Article, "catastrophic disaster" means a natural or human-caused event that:

(a) Results in extraordinary levels of death, injury, property damage or disruption of daily life in this state; and

(b) Severely affects the population, infrastructure, environment, economy or government functioning of this state.

(2) As used in this Article, "catastrophic disaster" includes, but is not limited to, any of the following events if the event meets the criteria listed in subsection (1) of this section:

- (a) Act of terrorism.
- (b) Earthquake.
- (c) Flood.
- (d) Public health emergency.
- (e) Tsunami.
- (f) Volcanic eruption.
- (g) War.

(3) The Governor may invoke the provisions of this Article if the Governor finds and declares that a catastrophic disaster has occurred. A finding required by this subsection shall specify the nature of the catastrophic disaster.

(4) At the time the Governor invokes the provisions of this Article under subsection (3) of this section, the Governor shall issue a proclamation convening the Legislative Assembly under section 12, Article V of this Constitution, unless:

- (a) The Legislative Assembly is in session at the time the catastrophic disaster is declared; or
- (b) The Legislative Assembly is scheduled to convene in regular session within 30 days after the date the catastrophic disaster is declared.

(5) If the Governor declares that a catastrophic disaster has occurred, the Governor shall manage the immediate response to the disaster. The actions of the Legislative Assembly under sections 3 and 4 of this Article are limited to actions necessary to implement the Governor's immediate response to the disaster and to actions necessary to aid recovery from the disaster.
[Created through H.J.R. 7, 2011, and adopted by the people Nov. 6, 2012]

Fourth Estate Media Articles:

May 17, 2018: A Swath of Democratic Socialists and Allied Activists Will Protest Gov. Kate Brown's Special Session Next Week – Nigel Jaquiss, Willamette Week

May 17, 2018: Uncertainty looms as Oregon legislators prep for special session – Hillary Borrud, The Oregonian

May 16, 2018: Small Business Taxes: What Happened & What's Next? – Anthony Smith (Oregon NFIB), Oregon Business Report

May 16, 2018: Hearing exposes lawmakers' divergent goals for special session tax bill – Connor Radnovich, Statesman Journal

May 16, 2018: Knute Buehler: Include teacher oversight reforms to special session – Hillary Borrud, The Oregonian

May 15, 2018: Newspapers critical of Special Session – M. Martin, Oregon Business Report

May 11, 2018: Editorial: Gov. Kate Brown's election-year epiphany – The Oregonian Editorial Board

May 9, 2018: Kate Brown forges ahead with special session tax plan amid uncertainty - By Hillary Borrud, The Oregonian

May 9, 2018: Brown officially calls special session of Legislature – Gary Warner, The Bulletin

May 9, 2018: Governor proclaims special session for tax bill – Claire Withycombe, Capital Bureau

May 8, 2018: Editorial: Tax plan could lead to mischief – Mike McNally, Albany Democrat-Herald

May 7, 2018: Gov. Kate Brown's Proposed Tax Break Causing Tension in Her Own Party – Dirk Vanderhart and Lauren Dake, OPB

May 2, 2018: Brown calls legislators back for special session – Alyssa Sutton, The Observer

May 1, 2018: Kate Brown's tax plan would mostly benefit higher income earners - By Hillary Borrud, The Oregonian

April 30, 2018: As Tax Cut Estimates Shift, Oregon Legislators Consider New Bills For Special Session – Dirk VanderHart and Lauren Dake, OPB

April 30, 2018: Editorial: More pressing issues for Oregon – The East Oregonian Editorial Board

April 25, 2018: Oregon Governor Calls for May Special Session On Business Tax – Dirk VanderHart, OPB

April 25, 2018: Editorial: Political? Of course. – The Register-Guard Editorial Board

April 24, 2018: Kate Brown calls May 21 special session to extend business tax break – Hillary Borrud, The Oregonian

April 24, 2018: Gov. Brown calls legislators back for May 21 special session on tax code – Connor Radnovich, Statesman Journal

April 24, 2018: Gov. Brown calls special session for small business tax cut – Gary Warner, The Bulletin

April 17, 2018: Editorial: Did Gov. Brown pick the right priority for a special session? – The Bulletin Editorial Board

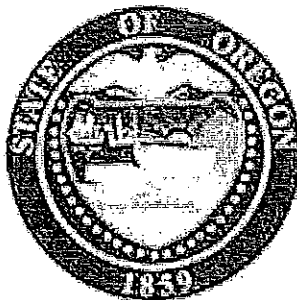
April 12, 2018: Gov. calls for Special Session. Now what? – Oregon Business Report

April 9, 2018: Some question necessity of special session – Claire Withycombe, Capital Bureau

April 6, 2018: Kate Brown calls for special session to extend business tax break – Hillary Borrud, The Oregonian

April 6, 2018: Oregon Governor Will Sign Controversial Tax Bill, Call Special Session – Dirk VanderHart, OPB

April 6, 2018: Gov. Kate Brown Will Sign Tax Bill, But Calls for Special Session to Placate Some Small Businesses – Nigel Jaquiss, Willamette Week



from the offices of

**SENATOR BRIAN BOQUIST
&
SENATOR HERMAN BAERTSCHIGER**

FOR IMMEDIATE RELEASE
May 17, 2018

Tayloranne Gillespie
Communications Director
541-554-6631

**Statement from Senators Boquist and Baertschiger on
merit of special session**

Salem, Ore. - Following yesterday's meeting of the Joint Committee on Sole Proprietors, Senator's Brian Boquist (R-Dallas) and Herman Baertschiger (R-Grants Pass) released the following statements regarding Governor Brown's politically motivated special session:

"The Oregon Constitution allows the Governor to convene a Special Session only upon 'extraordinary occasions.' What is the extraordinary occasion here? Where is the so-called 'emergency' prompting the Governor to call all 90 legislators into special session? All I see is a political sham, a waste of taxpayer money, and an abuse of power. If Governor Brown truly cared about small business she would have vetoed the \$1.3 billion small business tax increase she just signed last month." - Senator Herman Baertschiger

"Governor Brown is setting a dangerous precedent by convening a special session during legislative days. In 2010 the Oregon voters approved annual sessions: one month in even numbered years, 5 months in odd numbered years. Now, we are being convened quarterly with legislative days under so-called 'special sessions?' The Democrats just created a full-time legislature in direct violation of the Oregon Constitution and the will of the people. The length the Governor and her legislative cronies will go to prop her up politically is astounding. Giving small business a dollar after you just took a hundred is not leadership-it's gamesmanship and cynical politics at its worst, not to mention the violence it does to our constitutional system.

So-called emergency sessions can only be called upon 'extraordinary occasions' under the meaning at the time of Statehood in 1859. The Oregon Supreme Court has set precedence for determining legal definitions, and the dictionary of the time does not say reelection is an emergency. An extraordinary occasion in 1859 would have required Senator Bentz to take a steamer from Ontario to The Dalles, then rent a horse to Oregon City, taking more than a week of travel. Likewise, Senator Linthicum would have saddled his horse upon receiving the telegram then traveled more than ten days to the Capitol. What merited extraordinary occasions in the past; Governor Gibbs called the legislature into session to adopt an anti-slavery constitutional amendment, Governor Moody called for a special session to replace a dead U.S. Senator, and Governor Olcott called a session to deal with 'fiendish homicides.' Fiendish may be the right term for calling an emergency for a \$11 million dollar tax cut emergency with the stated intention of the Democrat majority to repeal next year. Especially after raising taxes on the same small business by \$258 million 3-months ago." - Senator Brian Boquist

Note:

Article IV, Section 12 of the Oregon Constitutions reads:

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(3) A regular session, as described in subsection (1) of this section, may be extended for a period of five calendar days by the affirmative vote of two-thirds of the members of each house. A session may be extended more than once. An extension must begin on the first calendar day after the end of the immediately preceding session or extension except that if the first calendar day is a Sunday, the extension may begin on the next Monday. [Constitution of 1859; Amendment proposed by S.J.R. 41, 2010, and adopted by the people Nov. 2, 2010]

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Section 1. Definitions; declaration of catastrophic disaster; convening of Legislative Assembly. (1) As used in this Article, "catastrophic disaster" means a natural or human-caused event that:

(a) Results in extraordinary levels of death, injury, property damage or disruption of daily life in this state; and

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(2) As used in this Article, "catastrophic disaster" includes, but is not limited to, any of the following events if the event meets the criteria listed in subsection (1) of this section:

(a) Act of terrorism.

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(c) Flood.

(d) Public health emergency.

(e) Tsunami.

(f) Volcanic eruption.

(g) War.

(3) The Governor may invoke the provisions of this Article if the Governor finds and declares that a catastrophic disaster has occurred. A finding required by this subsection shall specify the nature of the catastrophic disaster.

(4) At the time the Governor invokes the provisions of this Article under subsection (3) of this section, the Governor shall issue a proclamation convening the Legislative Assembly under section 12, Article V of this Constitution, unless:

(a) The Legislative Assembly is in session at the time the catastrophic disaster is declared; or

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(5) If the Governor declares that a catastrophic disaster has occurred, the Governor shall manage the immediate response to the disaster. The actions of the Legislative Assembly under sections 3 and 4 of this Article are limited to actions necessary to implement the Governor's immediate response to the disaster and to actions necessary to aid recovery from the disaster. [Created through H.J.R. 7, 2011, and adopted by the people Nov. 6, 2012]

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BRIAN J. BOQUIST
STATE SENATOR
DISTRICT 12



OREGON STATE SENATE

May 17, 2019

Public Records Request

Honorable Kate Brown
Governor of the State of Oregon
900 Court Street NE
Salem, Oregon 97301

Governor Brown:

Your letter to Secretary Richardson dated April 6, 2018 attached outlines conversations 'with dozens of businesses, taxpayers, accountants and policymakers' regarding SB 1528 and the decision to call for a special session. You repeated this yesterday in the so-called public hearing in Hearing Room A.

This is a formal public records request for all recording including but not limited to all emails, letters, texts, schedules, and releasable documentation regarding the referenced conversations in paragraph one, the decision process related to SB 1528, and the calling of the special session. This request includes all such public records between your public staff and campaign staff for your reelection committee, and the public. Other than scheduling staff, this request on the public employees is for the Governor, Chief of Staff, and two Deputy Chiefs.

Please note as you mentioned yesterday, while we disagree on the policy, it appears the relating clause was changed at the request of your staff to ensure some of the issues we raised with your staff could not fit in an amendment. Please provide any related public records not covered by attorney client privilege related to the decision to change the relating clause in addition to the records in paragraph one and two. However, we would like to know if attorney client privilege documents exist that you do not provide in response to this public records request.

We do appreciate the courtesy extended by you and your staff during the discussion of the special session to us generally, and understand the circumstances for the changing situation, none-the-less, we are in disagreement. As I expressed yesterday, there is no understanding of the 'extraordinary circumstance' for a special session but this event is leading us to a constitutional crisis. Given the charade called a public hearing yesterday, none of which is your doing nor under your control, it is now clear the public needs to know how we got to this point.

Respectfully,

A handwritten signature in black ink, appearing to read "Brian J. Boquist".

Brian J. Boquist
State Senator

Office: 900 Court St S-305 Salem, OR 97301 - Phone (503) 986-1712 - Fax: (503) 986-1568 - Email: sen.brianboquist@state.or.us



KATE BROWN
Governor

April 6, 2018

The Honorable Dennis Richardson
Oregon Secretary of State
900 Court Street NE
Salem, OR 97301

Dear Secretary Richardson,

I have a deep interest in developing a state budget that invests in a thriving Oregon; one that is resilient and sustains the well-being of current and future generations and where all Oregonians have opportunities to reach our full potential. At the same time, achieving this vision is nearly impossible with a tax system that is unstable and fundamentally out of balance. I have spent the last month evaluating and considering how Senate Bill 1528 bill fits into broader efforts to balance our budget and make the investments we need for our future.

Revenue reform has a difficult history in all states, but particularly so in Oregon. We have learned two simple truths to the success of any revenue reform legislation: it must have broad support; and it must grow our economy.

I have worked with these two principles in mind for the past three years with success. The transportation funding package passed last year was based on the broadly accepted understanding that Oregon's economy must have a strong infrastructure system to continue its record growth. We worked with the healthcare industry and across the aisle to fund the Oregon Health Plan, because we all believe that every Oregonian deserves access to care. And because we all agree that debt must not hobble our education system, we worked together to develop and capitalize a new fund that helps schools put more money into the classroom while paying down their PERS unfunded liability at the same time.

The passage of federal tax reform in December 2017 created a situation that Oregonians didn't ask for. This isn't the first time the federal government has created a mess for the states to fix. This latest example has been particularly messy. I disagree strongly with many aspects of the bill Congress passed, particularly the outsized effect it will have on growing the federal debt and increasing income inequality in this country. Because Oregon's tax system is heavily reliant upon the income tax, and our tax code automatically connects to federal tax changes, we must evaluate the effects of this federal reform on Oregon's tax system.

254 STATE CAPITOL, SALEM OR 97301-4047 (503) 378-3111 FAX (503) 378-8970
WWW.GOVERNOR.OREGON.GOV



Secretary Richardson
April 6, 2018
Page 2

Oregon already has a preferred rate structure for pass-through entities (businesses structured to pay taxes at the personal rather than corporate level). The federal tax changes include a similar tax break at the national level, which is then mirrored yet again in our tax code. That means without any action at the state level, a third and unnecessary tax break would be inadvertently created for some pass-through entities. And that is inherently unfair to all other taxpayers. To be clear, SB 1528 guarantees that Oregon pass-through entities will certainly receive their federal tax break and their Oregon special business rate. SB 1528 simply prevents a third unanticipated tax break for pass-through entities.

By so doing, SB 1528 preserves funding for important state services, prioritizing education, services for seniors, and public safety. As one prominent accountant shared with me: in this era of low unemployment, the biggest challenge for Oregon businesses - his clients - is not taxes but finding educated, skilled workers. As I promised in my State of the State address earlier this year, I remain committed to significantly increasing funding to reduce the skills gap by funding important job training, apprenticeship and hands-on learning opportunities for Oregonians.

Finally, SB 1528 also protects Oregon's budget from the potential for haphazard changes or interpretations to this policy by Congress and the IRS. We have already seen significant errors in the federal tax plan that have had to be addressed, with the potential for more to come. We cannot have our revenue system dependent on this.

For the reasons I listed above, I will be signing SB 1528.

However, this is not the end of the story for me. Through my review and analysis it has become apparent that Oregon's existing preferred rate structure for pass-through entities, which is relatively new, is not perfect and has some inequities in it. With the benefit of several additional weeks for evaluation, as well as conversations with dozens of businesses, taxpayers, accountants and policymakers, it is clear to me that sole proprietors ought to be allowed to participate in this preferred rate structure. Currently, they are prohibited from participating.

These small businesses need certainty, and I see no reason to wait to make these changes so that the thousands of sole proprietors who would be eligible for these reduced tax rates can receive them. Because of this, I have already reached out to the presiding officers and caucus leaders to convene a special session on this specific issue no later than June 2018. While giving thousands of pass-through entities a third, unexpected tax break is not fair, it is also unfair that sole proprietors don't receive the same tax treatment as other, mostly larger pass-through entities. I look forward to working with legislators from both parties who, like me, care about our small businesses, to see this unfairness in our tax code addressed.

Sincerely,



Governor Kate Brown

2017 ORS 244.280¹

Commission advisory opinions

• effect of reliance on opinion

- (1) Upon the written request of any person, or upon its own motion, the Oregon Government Ethics Commission, under signature of the chairperson, may issue and publish written commission advisory opinions on the application of any provision of this chapter to any proposed transaction or action or any actual or hypothetical circumstance. A commission advisory opinion, and a decision by the commission to issue an advisory opinion on its own motion, must be approved by a majority of the members of the commission. Legal counsel to the commission shall review a proposed commission advisory opinion before the opinion is considered by the commission.
- (2) Not later than 60 days after the date the commission receives the written request for a commission advisory opinion, the commission shall issue either the opinion or a written denial of the request. The written denial shall explain the reasons for the denial. The commission may ask the person requesting the advisory opinion to supply additional information the commission considers necessary to render the opinion. The commission, by vote of a majority of the members of the commission, may extend the 60-day deadline by one period not to exceed 60 days.
- (3) Except as provided in this subsection, unless the commission advisory opinion is revised or revoked, the commission may not impose a penalty under ORS 244.350 (Civil penalties) or 244.360 (Additional civil penalty equal to twice amount of financial benefit) on a person for any good faith action the person takes in reliance on an advisory opinion issued under this section. The commission may impose a penalty under ORS 244.350 (Civil penalties) or 244.360 (Additional civil penalty equal to twice amount of financial benefit) on the person who requested the advisory opinion if the commission determines that the person omitted or misstated material facts in making the request. [1974 c.72 §15; 1975 c.543 §9; 1977 c.588 §8; 1987 c.566 §19; 1991 c.272 §2; 1993 c.743 §13; 2007 c.865 §12; 2007 c.877 §25a]



Oregon

Kate Brown, Governor

Government Ethics Commission

3218 Pringle Rd SE, Ste 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

E-mail: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

June 12, 2018

Gary Leif
2370 SE Eagles Rest Ave.
Roseburg, OR 97470

Representative Leif:

The Oregon Government Ethics Commission will consider your request to establish a Legal Expense Trust Fund at its regular meeting scheduled for June 29, 2018. Commission meetings are open to the public and you may attend if you choose.

The meeting will begin at 9:00 a.m. and will be located in the 2nd floor conference room in the Morrow Crane building at 3218 Pringle Rd SE, #220, Salem, Oregon.

You will be notified following the meeting of what action the Commission takes. If you have questions, please feel free to call.

Respectfully,

Ronald A. Bersin
Executive Director



THE GARY LEIF
LEGAL EXPENSE TRUST FUND

THIS AGREEMENT, dated the last date executed below, shall constitute a Trust Agreement between State Representative, Gary L. Leif (hereinafter called the "Grantor") and Allen Russell (hereinafter called the "Trustee").

This Agreement establishes the Gary L. Leif Legal Expense Trust Fund (the "Trust").
RECITALS

A. Grantor, who is a State Representative, has incurred and is responsible for expenses in connection with a Tort Claim filed by Jessica Hansen in Douglas County in 2017,

B. It is the desire of the Grantor to create a trust for the purpose of accepting funds and making expenditures in connection with legal expenses incurred by the Grantor in connection with a Tort Claim filed in Douglas County in 2017 against Gary L. Leif, as listed as one of the defendants in the complaint, Case No.: 17CV34310.

NOW, THEREFORE, in accordance with the above, the parties agree as follows:

Trust Property. The Grantor does hereby assign to the Trustee funds payable to or contributed to the Trust, which shall hereinafter come into his possession. Negotiable instruments made payable to "Gary L. Leif Legal Expense Fund" shall be considered as being donated to the Trust.

Trust Purposes. The sole purpose of this Trust is to receive funds and to pay all expenses reasonably related to the legal representation of the Grantor in connection with the matter described in Paragraph B, relating to or arising by virtue of the Grantor's service as a Elected and serving as a Douglas County.

Trustee Duties. This Trust will be established, administered, and terminated in a manner consistent with and in compliance with ORS 244.205 to 244.221, which are incorporated by reference herein. The Trustee will operate as a fiduciary in relation to the Trust property and the Trust purposes. The Trustee may be compensated from the Trust per hour spent in administration of this Trust in accordance with his usual hourly rate for professional services.

IN WITNESS WHEREOF, said Grantor and said Trustee have signed this instrument, intending to be legally bound hereby on the day, month and year written below.

Gary Leif 6-5-18
Grantor - Gary Leif Date

Allen Russell 5-31-18
Trustee - Allen Russell Date

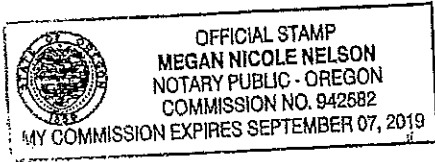
Therese Zander 4/8/19
Witness Date

John Clark 5-31-18
Witness Date

State of Oregon)
County of Douglas) ss

On this 5th day of June, 2018, before me personally appeared Gary L. Leif to me known, and known to me to be the individual described in and who executed the foregoing Trust as Grantor and who acknowledged the execution of the same to be his free act and deed.

SUBSCRIBED AND SWORN TO before me on June 5, 2018.

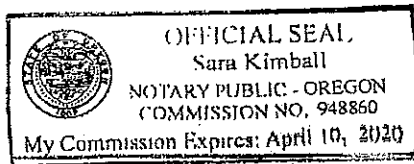


Megan Nicole Nelson
Notary Public for Oregon
My Commission expires: 9/7/2019

State of Oregon ~~90~~)
Oregon) ss
County of Douglas)

On this 31st day of May, 2018, before me personally appeared Allen Russell to me known, and known to me to be the individual described in and who executed the foregoing Trust as Trustee and who acknowledged the execution of the same to be his free act and deed.

SUBSCRIBED AND SWORN TO before me on May 31st, 2018.



Sara Kimball
Notary Public for Oregon
My Commission expires: April 10, 2020

AFFIDAVIT OF GARY LEIF

State of Oregon)
) ss
County of Douglas)

I, Gary L. Leif, of full age, being first duly sworn and upon my oath according to law, depose and say:

1. I am a State Representative for House District 2, seeking to establish a Legal Expense Trust Fund.
2. This fund is necessitated by, and intended to defray, legal expenses and related expenses incurred in connection with Tort Claim filed in Douglas County in 2017 against Gary Leif, as listed as one of the defendants in the complaint, Case No.: 17CV34310. These legal expenses arose by virtue of, and were related to, my service as an elected official and as a Douglas County Commissioner. Douglas County did an investigation, I was granted "defense and indemnify" for my time after I took office as a County Commissioner. However, some or all of my legal expenses incurred by my personal attorney were not paid by Douglas County, but were necessary to avoid a default judgment by the Plaintiff.
3. As a beneficiary of the trust fund, I will be bound by the provisions of ORS 244.205 to ORS 244.221, which govern the establishment, administration and termination of legal expense trusts.
4. Although a trustee of the Trust has been designated, I agree to bear ultimate responsibility for the proper administration of the Legal Expense Trust Fund in conformity with the aforesaid regulations.

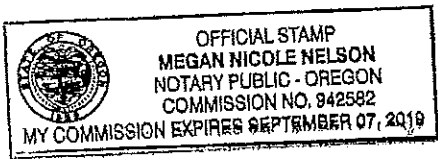
Gary L. Leif

Gary L. Leif

SUBSCRIBED AND SWORN TO before me on June 6, 2018.

Megan Nicole Nelson

Notary Public for Oregon
My Commission expires: 9/7/2019




AFFIDAVIT OF ALLEN RUSSELL

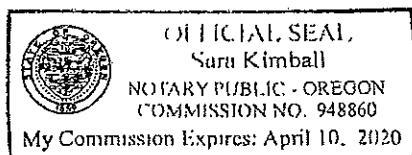
State of Oregon)
) ss
County of Douglas)

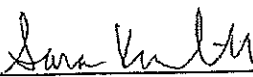
I, Allen Russell of full age, being first duly sworn and upon my oath according to law, depose and say:

1. I am the designated Trustee of the Gary L. Leif Legal Expense Trust Fund, a Trust created for the purpose of receiving contributions to defray the legal expenses and related expenses incurred in connection with Tort Claim that included Gary Leif as a defendant in the Case No.: 17CV34310, filed in Douglas County, Oregon.
2. I have read and understand the provisions of ORS 244.205-221, which govern the establishment, administration and termination of legal expense trusts. Furthermore, I consent to administer the Gary L. Leif Expense Trust Fund in conformity with those regulations.


Allen Russell

SUBSCRIBED AND SWORN TO before me on May 31, 2018.




Notary Public for Oregon
My Commission expires: April 10, 2020



Internal Policies and Procedures

Subject: Ethics and Conflict of Interest
Policy Number: EMP-01
Policy Owner: Human Resources Manager
Effective Date: July 1, 2018

Approved: _____
Janine Benner, Director

Applicability:

This policy applies to all employees of the Oregon Department of Energy.

Purpose:

The purpose of this policy is to help employees understand expectations for ethical behavior in their positions as public officials and avoid conduct that violates Oregon Government Ethics law (ORS 244) or may create the appearance of impropriety or undue influence.

Definitions:

Actual Conflict of Interest: Any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private financial benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the financial benefit or detriment arises out of circumstances described in the definition of **Potential Conflict of Interest** below.

Administrative Interest: An economic interest in any matter subject to the recommendation or decision of an employee.

Business: Any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under 501(c) of the Internal Revenue Code 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.

Employee: Any person on the ODOE payroll, whether permanent, temporary, limited duration, full-time or part-time.

Member of the household: Any person who resides with the employee. This includes both relatives and non-relatives.

Official compensation: Any wages or other benefits that are provided by law or formally approved and written as an agency policy or employment contract.

Potential Conflict of Interest: Any action or any decision or recommendation by an employee, the effect of which could be to the private financial benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the financial benefit or detriment arises out of the following:

- (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

- (b) Any action in the person's official capacity which 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. In order to rely on this class exception, see "Procedures for Handling Actual or Potential Conflicts of Interests" section of this policy.
- (c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

Relative:

- (a) The spouse of the employee, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter in law of the employee;
- (b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the employee;
- (c) Any individual for whom the employee has a legal support obligation;
- (d) Any individual for whom the employee provides benefits arising from the employee's public employment or from whom the employee receives benefits arising from that individual's employment.

Policy:

All ODOE employees are public officials, subject to Oregon government ethics law. As public officials, all employees hold a public trust. The citizens of Oregon must have confidence that we exercise our official powers and use the department's resources only to advance the public interest. Public perception of how we carry out our responsibilities is extremely important and ODOE employees must be perceived to carry out duties fairly, without bias or favoritism.

ODOE is committed to high standards of conduct and professional ethics. To ensure the department operates in a fair and objective manner, and the reputation of the department and its employees is protected, all employees must be aware of and comply with this policy.

No employee of ODOE shall use his/her position within the department for financial gain for themselves, relatives or members of the employee's household, or any business with which the public official, a relative, or household member is associated. In addition, to preserve public confidence in this agency and state government, employees of ODOE must avoid actions that create the appearance of impropriety or undue influence.

This policy is not intended to be a complete statement of provisions of the Oregon Government Ethics law applicable to ODOE employees, and ODOE has expectations for employees beyond the minimum legal thresholds set by the Oregon law on government ethics. Those expectations include, but are not limited to restrictions related to employees' relatives and members of households; a \$25 limit on gifts of a promotional nature; and a broad interpretation of the term "business with which a person is associated". Additional information about the ethics law and administrative rules, including definitions, may be obtained from the Oregon Government Ethics Commission at <http://www.oregon.gov/OGEC/index.shtml>.

Ethical and Professional Conduct

All ODOE employees are expected to:

- Conduct themselves in such a way as to promote the best interests of the department and support the values and mission of the department and those of Oregon state government.

- Where not inconsistent with whistle-blower protections, safeguard the confidentiality of information received in the course of the department's business and only access information needed to perform assigned duties; and copy, reproduce, or share such information only as required by position duties and with proper authorization.
- Uphold and comply with federal, state, and local laws and Department of Administrative Services' and ODOE's rules, policies, and procedures.
- Report potential fraud, waste, or abuse of public resources in the operation of ODOE to a manager, Human Resources manager, or director. In the alternative, report to the Oregon Secretary of State's Government Waste Hotline at 800-336-8218 or <http://sos.oregon.gov>.
- Provide notice of all actual or potential conflicts of interest as described in the "Procedures for Handling Actual or Potential Conflicts of Interest" section of this policy.

ODOE employees may not:

- Use or attempt to use their position or office to obtain financial gain or avoidance of financial detriment (other than official compensation and reimbursement of expenses from ODOE) for themselves, their relatives, members of their households, or for any business with which they or a relative or household member are associated.
- Be employed by or receive compensation in any form from any public, non-profit or private entity that conducts business with or contracts with the department. This applies to any program administered by ODOE and programs available to any member of the public.
- Be employed by, or receive compensation in any form, from any public, non-profit or private entity if the entity has an administrative interest in matters over which employees exercise any influence or control as part of their position with ODOE. In cases where the entity is an ODOE grantor (or the federal government), the employees shall consult the administrator of the Central Services Division for questions related to third party direct payment or reimbursement policies.
- Receive compensation from a source other than ODOE for work that constitutes a part of their responsibilities as state employees, i.e., employees must not be compensated by an entity for performing work that the entity is, or could be, receiving through the department.
- Obtain financial gain or avoidance of detriment if it would not be available but for the employees' holding of their positions, unless it is part of their official compensation or permitted under the "Gifts, Honoraria & Reimbursement of Expenses" section of this policy.
- Obtain personal or financial gain for themselves, relatives or members of their households, or for any business with which they or a relative or household member are associated, by using confidential information obtained in the course of, or by reason of, their official positions or activities.
- Solicit or receive, either directly or indirectly, any pledge or promise of future employment for themselves, their relatives or any members of their household, based on any understanding that any action taken in the course of their ODOE employment would be influenced by that pledge.
- Use state time, supplies, facilities, equipment, or personnel for the personal or financial gain of themselves, their relatives, members of their households, or for any business with which they or relatives or household members are associated.

- Participate in an evaluation of a contract or participate in procurement where they have a personal or financial relationship with one of the contractors or applicants.
- Participate in the review, preparation, and/or approval of SELP loan documents or activities where they have a personal or financial relationship with one of the applicants.
- Process their own application, or those of a relative, member of the household or entity where they have a personal financial relationship, for any incentive and/or loan benefits provided by ODOE.
- Perform paid or unpaid work outside ODOE, if such work interferes with the performance of duties assigned by ODOE.
- Receive compensation as an expert witness in matters directly related to their responsibilities or on topics relative to the business of the agency or on behalf of the agency.
- Act as a representative of a business or organization and at the same time, in their official capacity, negotiate or resolve disputes or claims between the business or organization and ODOE.

Gifts, Honoraria & Reimbursement of Expenses

Employees are responsible for knowing the identity of the source of a gift, honoraria and reimbursement of expenses and ensuring the manager, in conjunction with the Human Resources manager, is consulted whenever there is a question. However, please be aware that consultation with the Human Resources manager or other ODOE management will not shield employees from liability for any failure to comply with relevant provisions of Oregon Government Ethics law.

There are limited circumstances specified in ethics law ORS 244.020 (7)(b) in which a gift is acceptable. However, to avoid the appearance of impropriety, employees may not:

- Accept any gift(s), (including honoraria and reimbursements paid by anyone other than ODOE) whether to themselves or to a relative or member of their household, other than awards for appreciation and promotional items with a resale value reasonably expected to be less than \$25, from any entity which has an administrative interest in matters over which the department exercises any influence, decision, control, or vote as part of employees' positions with ODOE. The acceptance of any other gift is limited to an aggregate full market value of \$50 from a single source in each calendar year.

In addition employees may not:

- Solicit or receive honoraria or reimbursement of expenses (from anyone other than ODOE) for themselves, relatives, or members of the household in cash or cash equivalency when acting in their official capacity or when they are financially compensated simultaneously by ODOE. Any such honorariums or reimbursement of expenses received must either be returned or deposited into the ODOE account as miscellaneous revenue.
- Accept meals from any party with an administrative interest in agency activities. In situations where employees are on the premises of a regulated entity (such as siting, nuclear, possibly an energy incentives project) and it would be disruptive to leave for a meal, arrangements should be made for ODOE to reimburse the entity for the cost of employees' meals. If employees are attending an event sponsored by a regulated entity as part of their jobs and light refreshments (not a meal) are served as part of the event, the employees are permitted to participate.
- Attend an event sponsored by an entity with an administrative interest where others are charged and they are not because of their positions within the agency. If the manager feels it is in the agency's interest for employees to attend such a function, the manager will make arrangements for the agency to pay for attendance.

Meals, lodging, and travel received as part of a professional conference at which employees are participating are acceptable, as long as either ODOE would have otherwise paid their costs for attending or the paying entity is one of the following: a unit of government, a state or federally recognized indian tribe, a 501(c)(3) non-profit organization, or a membership organization to which a public body pays membership dues. However any direct reimbursement to employees from an outside source must be deposited into an ODOE account.

Gifts and honoraria given as usual and customary business practices bearing no relationship to their official positions may be accepted. In such cases, division management must be notified and the gift should be donated to a state sponsored charitable event, a school or other appropriate non-profit organization. The donation action must be documented. Employees may not claim the charitable contribution on personal tax returns.

Enforcement:

Employees are responsible for reading and complying with this policy and ethics laws. Employees must sign an acknowledgment form on hire and annually thereafter, indicating they understand and will abide by this policy.

Any potential or actual conflict of interest as defined above requires employees to follow the procedures section of this policy. However, properly handling a potential or actual conflict of interest will not shield the employees from liability for conduct that otherwise violates other sections of this policy or any other provisions of Oregon Government Ethics law.

Procedures for Handling Actual or Potential Conflicts of Interests:

1. Employee: Upon becoming aware of an actual or potential conflict of interest, report in writing to the immediate manager and the Human Resources manager (no later than the end of the employee's next full work shift) stating the nature of the conflict of interest, and then await a response on how to proceed. The report shall include:
 - Description of the actual or potential conflict of interest
 - Persons and businesses to be financially affected by the actual or potential conflict of interest, if known
 - Date of the actual or potential conflict of interest, if known, and date when the written report of the conflict of interest is submitted
 - Efforts to eliminate an actual or potential conflict of interest, if any, and
 - Request a response on how to handle the matter.

2. Division Management and Human Resources Manager Determine how to resolve the conflict and inform the employee of the decision. The employee may have duties reassigned to eliminate the conflict or any other reasonable action necessary to resolve the conflict may be taken. If division management and the Human Resources manager do not agree on a resolution, the matter will be forwarded to the director.

NOTE: If the potential conflict of interest is related to a class exception as described in (b) of the Potential Conflict of Interest definition, the Human Resources manager will work with the employee to request and obtain written confirmation of the class exception from the Oregon Government Ethics Commission.

Procedures for Reporting Other Employees' Actual or Potential Conflicts of Interests:

1. Employee

If an individual has reason to believe another employee may have an actual or potential conflict of interest, that employee should report in writing to the immediate supervisor and the Human Resources manager (no later than the end of the employee's next full work shift) stating the nature of the conflict of interest.

The report shall include:

- Description of the actual or potential conflict of interest
- Persons and businesses to be financially affected by the actual or potential conflict of interest, if known
- Date of the actual or potential conflict of interest, if known, and date when the written report of the conflict of interest is submitted, and
- Efforts to eliminate an actual or potential conflict of interest, if known.

2. Division
Management and
Human Resources
Manager

Investigate reported conflict of interest and determine how to resolve the conflict. If division management and Human Resources manager do not agree on resolution, the matter is forwarded to the director.

History:

- March 1, 2003: Policy established for Oregon Office of Energy, modeled after the Department of Consumer and Business Services conflict of interest policy.
- June 29, 2010: Policy updated to reflect the change of agency title to the Oregon Department of Energy and to add clarifying information.
- October 24, 2011: Policy updated to include special allowable provisions related to energy incentive tax credits and grants.
- July 1, 2018: Conflict of Interest policy EMP-01 and Ethics policy EMP-03 combined to become EMP-01 Ethics and Conflict of Interest policy; Special Allowable Provisions related to energy incentive tax credits and grants found in previous Conflict of Interest policy EMP-01 eliminated.

References:

ORS Chapter 244

Attachments:

None

From: BEILSTEIN Sally * ODOE
Sent: Friday, February 16, 2018 10:48 AM
To: WEEDN Hayley * OGEC <Hayley.WEEDN@oregon.gov>
Cc: BURES Linda S * ODOE <Linda.S.Bures@oregon.gov>
Subject: RE: Draft ODOE Ethics and Conflict of Interest Policy

Hi, Hayley,

Thanks for your reply. Our draft is attached for your review and action.

I look forward to hearing from you.

Thank you!
Sally

From: WEEDN Hayley * OGEC
Sent: Wednesday, February 14, 2018 9:37 AM
To: BEILSTEIN Sally * ODOE <Sally.Beilstein@oregon.gov>
Subject: RE: Draft ODOE Ethics and Conflict of Interest Policy

Good morning, Sally.

Feel free to send it to me, and I'll get to work on it!

Please be advised of the process: once I review and confer with you as to any changes, then I'll send it to OGEC's DOJ counsel for a final review, and the policy will be on our agenda for official approval by the Commission at its next meeting on March 30, 2018 at the earliest.

Let me know if you have any questions or concerns.

Best,

—
Hayley D. Weedn
Program Analyst/Trainer
Government Ethics Commission
3218 Pringle Rd SE, Ste. 220
Salem, OR 97302-1544
hayley.weedn@oregon.gov
ph: 503.378.8066
fx: 503.373.1456

****Disclaimer****

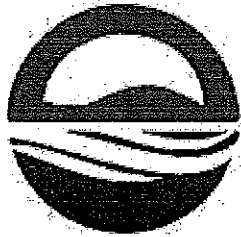
This staff advice is provided under the authority given in ORS 244.284(1). This opinion offers guidance on how Oregon Government Ethics law may apply to the specific facts described in your request. This opinion is based on my understanding and analysis of the specific circumstances you described and should not be applied to circumstances that differ from those discussed in this request.

From: BEILSTEIN Sally * ODOE
Sent: Monday, February 12, 2018 9:27 AM
To: WEEDN Hayley * OGEC <Hayley.WEEDN@oregon.gov>
Subject: Draft ODOE Ethics and Conflict of Interest Policy

Hi, Hayley. I hope you're doing well.

We have a draft ethics and conflict of interest policy ready for your agency's review. Please tell me who should receive it.

Thanks for your help,
Sally



OREGON
DEPARTMENT OF
ENERGY

Sally Beilstein
Human Resource Analyst
Oregon Department of Energy
550 Capitol Street N.E., 1st Floor
Salem, OR 97301
P: 503-373-2119
P: (In Oregon): 800-221-8035
name.name@oregon.gov

Oregon.gov/energy



Leading Oregon to a safe, clean, and sustainable energy future.

Mission Statement Draft

The Oregon Government Ethics Commission will impartially and effectively administer and enforce Oregon's government ethics laws for the benefit of Oregon's citizens. The Commission will equally emphasize education in achieving its mission.

The regulatory jurisdiction of the Oregon Government Ethics Commission covers provisions of ORS Chapter 244, Oregon Government Ethics law; ORS 171.725 to 171.785 and 171.992, Lobby Regulation law; and executive session provisions of Oregon Public Meetings law, ORS 192.660.

OREGON GOVERNMENT ETHICS COMMISSION

At the Commission meeting on May 11, 2018, the staff was directed to prepare a draft for discussion of a policy concerning responsibilities of Commissioners when speaking to the media.

Background

Currently there is no written policy on Commissioners and their contact with the media. Historically, the media spokesperson for the Commission has been the Executive Director. The only guidance concerning Commissioners and their outside contacts is found in a procedural rule first adopted in 1993:

“Ex-parte communications with Commissioners by persons other than the staff are not permitted. Documents must be submitted to the Commission through the Director. Oral and written communications to Commissioners concerning matters pending before the Commission other than during the course of formal Commission proceedings, are ex-parte communications.” [OAR 199-001-0010(3)(w)]

This rule prohibits “persons other than the staff” from communicating with the Commissioners outside of official meetings on matters pending before the Commission. A plain reading of this rule would apply to members of the media, as well. However, the rule does not address conduct of the Commissioners themselves.

EXAMPLES OF OTHER SIMILAR POLICIES

Higher Education Coordinating Commission

The duties of the Commission Chair include “being the primary spokesperson for the Commission to the press.”

“Commission members will not presume to speak for the Commission unless the Commission has arrived at a formal decision. Members should also be cautious about voicing personal opinions since those views may be interpreted as representing Commission opinion. Members should not, for example, write a letter to the editor on an Oregon higher education issue, unless the Commission has authorized it.”

“Commission members will have authority to act on behalf of the Commission only when legally in session. The Commission cannot be bound by statements or actions of individual Commission members or employees, except when such a statement or action is pursuant to policies of the Commission or as delegated by

the Commission.” [HECC website; about us; Commission Policies and Procedures, p. 5-6 and 9]

Portland State University Board of Trustees

“...[O]nly the board chair speaks for the board and ordinarily is presumed to be delegated the responsibility to address controversial issues or board decisions with the media. In a similar vein, the President ordinarily speaks for the institution.” [PSU website; board of trustees; policies; Responsibilities of Individual Trustees]

Tualatin Valley Water District Board – Board Communication with Public/Press

“Commissioners may publicly represent Board positions once a decision has been reached by the Board. Commissioners will not make statements on behalf of the District or Board without prior approval by the Board, unless the statement has already been published and attributable to the District. In all other circumstances, Commissioners must be clear that statements are the individual position of the Commissioner and not the Board or the District.” [p. 11 of 21]

Draft language for media policy for Oregon Government Ethics Commission:

Commissioners are fact-finders and as such, Commissioners shall refrain from communicating, outside of official meetings, with any person concerning a matter pending before the Commission. A case is considered pending before the Commission until a final order has been issued and appeal rights have been extinguished. Non-case matters are considered pending before the Commission until a final disposition has been made by the Commission’s governing body.

The Commission’s Executive Director is the authorized public spokesperson for the agency. The Commission Chair is the authorized public spokesperson for the Commission’s governing body. Other commissioners may make public statements representing their individual views on matters no longer pending before the Commission.

History: At its last meeting on 5/11/18, the Commission asked staff to outline possible issues with the current penalty matrix for discussion by Commissioners.

NOTE: The current penalty matrix is part of an administrative rule (OAR 199-001-0015) adopted by the Commission on 3/15/10. Any changes would have to be done through an administrative rule process, which takes time.

TABLE A

FACTORS	POINTS	244	171	192.660	DRAFT Proposed changes
Number of Violations	= 1	Apply	Apply	Apply	Add: another range of 16 + violations = 4 points
	= 2				
	= 3				
	= 4				
Number of Equivalent Actions ¹	= 1	Apply	Apply	Apply	Increased the ranges and eliminated three ranges.
	= 2				
	= 3				
	= 4				
Prior Violations	= 1	Apply	Apply	Apply	Keep as is
	= 0				
Aggregate Financial Benefit	= \$0	Apply	N/A	N/A	Keep as is
	= \$1K<				
	= \$1K to 5K				
	= \$5K to 10K				
	= \$10K to 50K				
	= \$50K to 100K				
	= \$100K to 200K				
= \$200K >					

Length of Time Actions Occurred	6 mo <=	=	1	Apply	Apply	Apply	Keep as is.
	6 mo to 1 yr	=	2				
	1 yr >	=	3				
Training Received in Relevant Law		=	1	Apply	Apply	Apply	Eliminate because it discourages training
Criminal Conviction		=	1	Apply	N/A	N/A	Keep as is
Confinement or Probation		=	-1	Apply	N/A	N/A	Keep as is
Restitution or Reimbursement		=	-1	Apply	N/A	N/A	Keep as is
Cooperation to Resolve Matter		=	-2	Apply	Apply	Apply	Keep as is
Advice Sought and Followed Prior to Violation	Agency Counsel	=	-1	Apply	Apply	Apply	Keep as is
	OGEC	=	-5				
Complied with Agency Policy ²		=	-1	Apply	N/A	Apply	Keep as is
Self-Report		=	-1	Apply	Apply	Apply	Keep as is
Action to Rectify Before Complaint		=	-1	Apply	Apply	Apply	Keep as is

¹ Equivalent action means an action that would constitute a distinct violation, but it has occurred repeatedly under the same circumstances. See OAR 199-001-0014.
² If a public official commits a violation and that violation occurred while the public official was complying with the government agency's policy, the compliance with the policy may be considered a mitigating factor.

POSSIBLE "FACTOR" to add that has been suggested by one or more Commissioners:

Responsibility Level Non-mgmt/non SEI filer = 1
Mgmt/Exec Serv/Governing Body/non SEI filer = 2
SEI Filer = 3

TABLE B

Total Points	Sanction
2 or Less	Letter of Reprimand or Education
3 to 5	1 to 20% of Maximum Civil Penalty for each Violation and 1 to 20% of Maximum Forfeiture
6 to 10	20 to 40% of Maximum Civil Penalty for Each Violation and 20 to 40% of Maximum Forfeiture
11 to 15	40 to 60% of Maximum Civil Penalty for Each Violation and 40 to 60% of Maximum Forfeiture
16 to 20	60 to 80% of Maximum Civil Penalty for Each Violation and 60 to 80% of Maximum Forfeiture
21 plus	80 to 100% of Maximum Civil Penalty for Each Violation and 80 to 100% of Maximum Forfeiture



Oregon

Kate Brown, Governor

Government Ethics Commission

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E-mail: ogec.mail@oregon.gov

Website: www.oregon.gov/ogec

June 20, 2018

TO: Ethics Commission Members
Alison Kean, Chair
Richard Burke
Karly Edwards
David Fiskum
Daniel Mason
Sean O'Day
Kamala Shugar
Nathan Sosa
Charles Starr

FROM: Ron Bersin 
Executive Director

SUBJECT: Meeting Schedule for 2019

The following is a list of meeting dates that have been scheduled for 2018. The dates we have proposed allow the investigators the greatest amount of time to complete their investigations within the 135-day (lobby cases) and 180-day investigative periods, and to avoid holidays.

Friday, January 25, 2019
Friday, March 8, 2019
Friday, April 19, 2019
Friday, May 31, 2019
Friday, July 12, 2019
Friday, August 23, 2019
Friday, October 4, 2019
Friday, November 22, 2019

We understand that you all have very busy lives, and it is our hope that you can all be at every meeting, but it may be difficult to accommodate everyone's schedule. Please remember that if you are not able to join any of the meetings in person, we can make arrangements for you to participate by telephone.

The schedule will be an agenda item at the June 29, 2018 meeting.

Thank you.





2019

☐ MEETING
△ MTG BOOK OUT
✕ Holidays

January

SUN	MON	TUE	WED	THU	FRI	SAT
		✕	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	△	18	19
20	✕	22	23	24	25	26
27	28	29	30	31		

February

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	✕	19	20	21	22	23
24	25	26	27	△		

March

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24 31	25	26	27	28	29	30

April

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	△	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

May

SUN	MON	TUE	WED	THU	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	△	24	25
26	✕	28	29	30	31	

June

SUN	MON	TUE	WED	THU	FRI	SAT
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23 30	24	25	26	27	28	29

July

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	△	✕	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

August

SUN	MON	TUE	WED	THU	FRI	SAT
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	△	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

September

SUN	MON	TUE	WED	THU	FRI	SAT
1	✕	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	△	27	28
29	30					

October

SUN	MON	TUE	WED	THU	FRI	SAT
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November

SUN	MON	TUE	WED	THU	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	✕	12	13	△	15	16
17	18	19	20	21	22	23
24	25	26	27	✕	✕	30

December

SUN	MON	TUE	WED	THU	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	✕	26	27	28
29	30	31				

Trainers' Report June 29, 2018

This report covers the time period of May14, 2018, through June 29, 2018.

Completion of training:

- Department of Consumer Business Services- Financial Regulation – ORS 244 (Salem)
- City of Sweet Home – ORS 244 (Sweet Home)
- Department of Land Conservation and Development – ORS 244 (Salem)
- Madrone Trail Public Charter School – ORS 244 (Medford)
- City of Monmouth – ORS 244 (OGEC)
- Institute of Internal Auditors – ORS 244 (Salem)
- Oregon Health Authority – ORS 244 (Salem)

Upcoming Trainings:

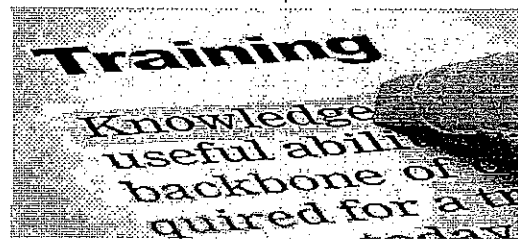
<u>Date</u>	<u>Time</u>	<u>Public Body (Topic)</u>	<u>Address</u>
7/9/2017	Multiple Sessions 10:00 – 12:00 PM & 1:30 – 3:30 PM	Columbia County (ORS 244)	St Helens High School 2375 Gable Rd. St. Helens OR 97051
7/11/2018	10:45 – 12:00 PM	Department of Administrative Services - New to Public Management (ORS 244)	Executive Building 155 Cottage St NE Conference Room A Salem OR 97301
7/25/2018	3:30 – 4:00 PM	Oregon Health Authority- New Employee Orientation (ORS 244)	Portland State Office Building 800 NE Oregon Street Room 1B Portland OR 97303

7/25/2018	3:45 – 5:00 PM	Oregon Association of School Business Officials (OASBO) (ORS 244)	Riverhouse Hotel and Convention Center 2850 NW Rippling River Ct Conference Room A Bend, OR 97703
8/13/2018	2:00 – 3:30 PM	Oregon Marine Board (ORS 244 & ORS 192.660)	Oregon Marine Board 435 Commercial Street NE STE 400 Salem OR 97301
8/21/2018	3:30 – 4:00 PM	Oregon Health Authority- New Employee Orientation (ORS 244)	Department of Human Services 500 Summer Street Room 137A Salem OR 97301
9/12/2018	9:00 – 10:30 AM	Metro (ORS 244)	Metro Regional Center 600 NE Grand Ave Portland OR 97232

Upcoming Conferences:

9/20/2018	1:00 – 2:45 PM	Oregon Association of Municipal Recorders (OAMR) (ORS 244 & EFS)	Holiday Inn @ PDX 8439 NE Columbia Blvd. Portland, OR 97220
9/27/2018	11:00 – 12:00 PM	Oregon Justice of the Peace Association	Linn County Fair Grounds Albany, OR

Training Staff: Tammy Hedrick 503-378-6802 tammy.r.hedrick@oregon.gov



July 2018

Oregon Government Ethics Commission AdobeConnect Webinar Training Calendar

Monday	Tuesday	Wednesday	Thursday	Friday
2	3	4	5	6
		Independence Day OGEC- Closed		
9	10	11	12	13
	New Employees: you're a public official, now what! 9:30 – 10:30 AM			Executive Session 10:30 – 11:30 AM
16	17	18	19	20
Gifts 2:30 – 3:30 PM		Conflicts of Interest 10:30 – 11:30 AM		
23	24	25	26	27
	Use of Position/Office 2:30 – 3:30 PM			
30	31			
	Lobby law 2:30 – 3:30 PM			

Email ogec.training@oregon.gov
to register for a webinar.

Executive Director's Report

June 29, 2018

- Budget
 - 2017-19 biennial budget
 - Biennial financial plan incorporated in monthly BRIO reports.
 - Currently projected with a \$160,481.00 surplus.
 - Expenditures through March, \$105,969.53 spent per month, \$118,429.39 average to spend per month.
 - Used a portion of the surplus to replace aged printer. Using lease agreement with Ricoh for new printer.
- Legislative Concepts
 - Filed and accepted by Governor's office.
 - Waiting on draft from Legislative Counsel.
- SEI
 - Continue to work non-filers.
 - Continue to work past year non-filers.
 - As of June 20, only 6 SEI filers have not filed.
- Other
 - Strategic Plan submitted for review.
 - Website redesign project continues. User Acceptance Testing (UAT) completed. Final stages are being planned.
 - 2019-21 budget due August 1.
 - Compliance Specialist 3 position filled, beginning process of hiring open positions.
 - New Commissioners Sean O'Day and Karly Edwards were confirmed by the Senate.
 - Setting up email accounts for Commissioners.

