



Southern Oregon University

Public Meeting Notice

November 12, 2014

TO: Board of Trustees of Southern Oregon University
FROM: Liz Shelby, SOU Chief of Staff
RE: Notice of Board Orientation Workshop on Legal Issues

Southern Oregon University will hold an orientation workshop on legal issues for members of the new Board of Trustees. Subject of the workshop will be an overview from Randy Geller of Harrang Long Gary Rudnick, Attorneys at Law, to include:

- Brief history of Higher Education Governance in Oregon
- Recent Oregon Statutes on Higher Education
- Role and Authority of the Board of Trustees, the Higher Education Coordinating Commission, and the Oregon Education Investment Board.
- Relationship with other Public Universities
- Overview of Public Meetings, Public Records, and Government Ethics
- Board Fiduciary Duties
- Transition Activities required by July 15, 2015
- Brief Discussion of Foundational Documents the Board will need to adopt.

The meeting will occur as follows:

Wednesday, November 19, 2014
12:00 PM to 5:00 PM
Hannon Library, Meese Room, 3rd Floor, Room #305

The Hannon Library is located at 1290 Ashland Street, on the campus of Southern Oregon University. **If special accommodations are required, please contact Jennifer Athanas at (541) 552-6111 at least 72 hours in advance.**

Board of Trustees

1250 Siskiyou Boulevard, Ashland, OR 97520 T (541) 552-6111 sou.edu/governance



Southern Oregon University

**Board of Trustees
November 19, 2014
Meese Room #305, Hannon Library, 3rd Floor
Ashland Oregon**

Orientation Agenda

- 11:30am** **Buffet Lunch**
Available for Trustees
DeBoer Boardroom, Hannon Library, 3rd Floor
- 12:00pm** **Welcome and Roll Call**
Meese Room #305, Hannon Library, 3rd Floor
- 12:15pm - 1:30pm** **Board of Trustees of Southern Oregon University**
Orientation on Legal Matters
Document: Board of Trustees of Southern Oregon University Orientation on Legal Matters
<http://governance.sou.edu/wp-content/uploads/sites/7/2013/10/Presentation-for-Trustee-Meeting-11-19-14.pdf>
Randy Geller
Harrang Long Gary Rudnick P.C., Eugene, Oregon
- 1:30pm – 1:45pm** **Break**
- 1:45pm – 3:15pm** **Continued....Orientation on Legal Matters**
Randy Geller
- 3:15pm – 3:30pm** **Break**
- 3:30pm – 5:00pm** **Continued....Orientation on Legal Matters**
Randy Geller

Presenter Biography

Randy Geller is Of Counsel with the law firm of Harrang Long Gary Rudnick P.C. with offices in Eugene, Portland and Salem. Randy has over 19 years of legal experience at two public research universities. From 2010 to 2014, Randy was the General Counsel to the University of Oregon. He was the Deputy General Counsel from 2006 to 2010 and Director of Policy and Legal Affairs from 2003 to 2006. While general counsel, Randy played a key role in drafting and negotiating Oregon Senate Bill 270 (2013) that established independent governing boards and independent authority for Oregon's public universities. Before his time at the UO, Randy was Associate University Counsel, Senior Associate University Counsel, and Acting University Counsel at the University of Idaho for a combined total of approximately eight years. Randy received his J.D. in 1992 from the University of Washington School of Law. He is a member of the Oregon State Bar, the United States Supreme Court, the United States Court of Appeals for the Ninth Circuit, and the National Association of College and University Attorneys.

Board of Trustees of Southern Oregon University

Orientation on Legal Matters



November 19, 2014
Presenter
Randy Geller

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Introduction

This material covers a variety of topics that you will encounter as a member of the historic first Board of Trustees of Southern Oregon University. Some of this information may seem overwhelming or just complicated. The good news is that you are not alone on a deserted island. SOU has a terrific staff that is available to assist you, and you have colleagues at the other public universities that have gone through this process or are going through it now. It is important, however, that you rely on official SOU channels for formal advice. Doing so protects you and the university.

The following will be covered to one degree or another in this presentation:

1. Why You Are Here and How This Happened
2. Brief History of Higher Education Governance in Oregon
3. Status of SOU Currently and as of July 1, 2015
4. Role of the Board of Trustees under SB 270
5. Role of the President and Faculty under SB 270
6. Role of the Oregon Education Investment Board and Higher Education Coordinating Commission
7. Overview of the Oregon Public Records Law
8. Overview of the Oregon Public Meetings Law
9. Overview of the Oregon Government Ethics Law
10. Annual Reporting of Economic Interests
11. Fiduciary Duties of Boards of Trustees of Colleges and Universities
12. Transition Activities Performed Between July 2013 and June 2014
13. Transition Activities Required Between Now and July 1, 2015
14. General Discussion of Foundational Documents

The details of some of these topics, including distribution and discussion of foundational documents and required transitional activities will be covered in-depth at future meetings.

Although your tasks may seem daunting, you should be comforted by the fact that you are on the same timeline as Oregon State University, Portland State University, and the University of Oregon were on last year, and many of the transition activities that you would otherwise need to accomplish were completed earlier this year.

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Finally, this is not legal advice. It is always advisable to consult legal counsel if you have any questions, concerns or doubt about the propriety of any conduct.

1. Why You Are Here and How This Happened

The Board of Trustees of Southern Oregon University exists by virtue of Senate Bill 270 passed in the 2013 regular session of the Oregon Legislative Assembly, and House Bill 4018 passed in the 2014 regular session of the Oregon Legislative Assembly.

SB 270 established independent governing boards and granted extensive authority and autonomy to Oregon State University, Portland State University, and the University of Oregon effective July 1, 2014. SB 270 also included provisions by which Southern Oregon University, Eastern Oregon University, Oregon Institute of Technology and Western Oregon University could be granted independent governing boards and the same authority and autonomy as OSU, PSU and UO.

HB 4018 amended SB 270 to change the process that had been set forth in SB 270 by which SOU, EOU, OIT and WOU could become independent of the Oregon University System. Each chose to seek its own governing board. Each of you, except the President (who is an ex-officio, non-voting member of the board by operation of law), was nominated by the Governor and subsequently confirmed by the Oregon Senate - and here you are.

2. Brief History of Higher Education Governance in Oregon

The State Board of Higher Education was established in 1929, and SOU has been governed by the State Board since then. The position of chancellor has existed since 1929, but the existence of the position and its duties were not set forth in law until many years later. The State Board and the Oregon University System were state agencies, as were the individual institutions.

The State Board of Higher Education became the governing board of Southern Oregon State Normal School in 1929 when the State Board was established. In 1932, the institution's name was changed to Southern Oregon Normal School. A normal school is essentially a teachers college. In 1939, the institution's name was changed to Southern Oregon College of Education and in 1957 to Southern Oregon College. In 1975, the college's name was changed to Southern Oregon State College and in 1997 to Southern Oregon University.

In 1995, the Legislative Assembly granted Oregon Health and Sciences University (OHSU) independence from OUS. OHSU ceased to be a state agency under the governance of the State Board. OHSU became an independent public corporation governed by a board of directors.

Also in 1995, the legislature granted significant "regulatory relief" to OUS. For example, OUS no longer was subject to the state personnel system, no longer was required to conduct procurement and contracting through the Oregon Department of Administrative Services, and gained other independent authority. However, OUS remained a state agency in many if not most respects, and the State Board lacked certain key authorities that similar governing boards in other states enjoyed.

In 2011, the Oregon Legislative Assembly enacted Senate Bill 242, which was an amalgam of higher education reform proposals made by the Legislature's Joint Committee on Higher Education and the higher education governance reform proposals made by OUS. The bill provided the State Board of

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Higher Education and the chancellor with additional power and OUS with relief from additional state regulatory requirements but did not provide additional authority or autonomy to the universities.

SB 270 established each of OSU, PSU and UO as an independent public body governed by strong boards of trustees based on the model pioneered by OHSU. The bill provides for the universities to have "statewide purposes and missions" and be "without territorial boundaries." Further, none of the three universities is a state agency, board, commission or institution for purposes of state statutes or constitutional provisions.

Until July 1, 2015, the State Board remains the governing board for SOU, EOU, OIT and WOU.

3. Status of SOU Currently and as of July 1, 2015

SOU is governed by the State Board of Higher Education and is one of the public universities that comprise the Oregon University System through June 30, 2015. Today, OUS consists of the office of the Chancellor and SOU, EOU, OIT and WOU. The State Board has substantially the same authorities it has had since 1929, except as modified in 1995 and 2011. The Chancellor is the chief executive officer of OUS and supervises the presidents of SOU, EOU, OIT and WOU.

The State Board and the Board of Trustees must live with some ambiguity until June 30, 2015. While the State Board remains the legal governing board of SOU, the trustees have broad authority to take all actions necessary to assume responsibility for SOU on July 1, 2015. On that date, SOU will become an "independent public body" governed by the Trustees with the full authority set forth in SB 270 and other applicable law.

4. Role of the Board of Trustees Under SB 270

Effective July 1, 2015, SOU will be an "independent public body" governed by the Board of Trustees. This is the same as PSU, OSU and UO currently and is much like OHSU as well. Indeed, Senate Bill 270 is largely based on the statutes applicable to OHSU. It is critical to understand that the board of trustees is not itself a legal entity and is not separate from SOU. Rather, SOU is akin to a public corporation, and the Board of Trustees is the board of directors of the public corporation. The legal entity is "Southern Oregon University." The board of trustees is the university's governing board, and the president of the university is the organization's chief executive officer. Because of the culture of colleges and universities, as well as statutory provisions with a long history in Oregon (and in other states), the faculty also play a significant role in the academic operation of the organization.

Under SB 270, the Board of Trustees has very broad authority to manage and govern the university. Under the board's supervision, the university may operate inside or outside the State of Oregon, including in foreign countries. While the university will continue to be a governmental entity, it will not be a unit of local or municipal government or a state agency, board, commission or institution for purposes of state statutes or constitutional provisions. This provides the university with a broad exemption from state and local regulation in Oregon. Of course, the university remains subject to a wide-range of federal and some state regulation.

The board will have every authority necessary or appropriate for the operation of a public university, including the authority to:

- Appoint and employ a President and other employees.
- Set tuition, mandatory enrollment fees, and charges, fines and fees for services, facilities, operations and programs, except that the authority to increase resident undergraduate tuition and mandatory enrollment fees is capped at five percent per year absent approval of the Higher Education Coordinating Commission or the Legislature.
- Approve the university budget.
- Manage, invest, and spend all available money without approval of the Legislature, the Oregon Department of Administrative Services, or the State Treasurer, except for the portion of the operating budget provided by the state (currently just over 15% of the operating budget) and the proceeds of state bonds.
- Borrow money and issue bonds secured by university revenue.
- Acquire, hold, and dispose of any kind of property, real or personal, tangible or intangible. Real property will be held in the name of the "State of Oregon acting by and through the Board of Trustees of Southern Oregon University."
- Authorize the construction, improvement, and operation of any kind of building or structure.
- Acquire by condemnation private property for public use.
- Establish any and all university policies.
- Establish, supervise and control all academic and other programs, subject to the authority of the Higher Education Coordinating Commission (HECC) to approve "significant changes in academic programs."
- Sue and be sued.
- Establish a police department and regulate conduct, traffic and parking on university property.

Having the authority does not in all cases mean that the authority must be exercised. However, there are some authorities that the trustees must exercise, including setting tuition and mandatory enrollment fees and approve the university budget, as well as selecting, evaluating, and dismissing the president.

Between now and July 1st the university (under the direction of and as delegated by the board) may take any action that is necessary for the university to exercise on and after July 1st all of the duties, functions and powers granted by SB 270.

5. Role of the President and Faculty Under SB 270

The president of the university is the "executive and governing officer of the university," the "president of the faculty," and, subject to the Board's supervision, has the authority to "direct the affairs" of the university. The faculty of the university consists of the "president and professors."

In American higher education, there is a tradition of shared academic governance between and among the governing board, president and faculty, although ultimate authority resides with the governing board via the president. Thus, the president and the professors as the faculty have the immediate government and discipline of a university and the students therein, *except as otherwise provided by law or action of the board*. The faculty may, subject to the supervision of the board and the Higher Education Coordinating Commission, prescribe the course of study to be pursued in the university and the textbooks to be used.

6. Role of the Oregon Education Investment Board and Higher Education Coordinating Commission

The Oregon Education Investment Board (OEIB) was established in 2011 by the Oregon Legislative Assembly. The OEIB was established for the purpose of ensuring that all public school students in this state reach the education outcomes established for the state. The OEIB was charged with accomplishing this goal by overseeing a unified public education system that begins with early childhood services and continues throughout public education from kindergarten to post-secondary education.

The duties of the board include:

- Ensuring that early childhood services are streamlined and connected to public education from kindergarten through grade 12 and that public education from kindergarten through grade 12 is streamlined and connected to post-secondary education. To assist the board in fulfilling this duty, the OEIB oversees:
 - a. The Early Learning Council.
 - b. The Higher Education Coordinating Commission established by ORS 351.715.
- Recommending strategic investments in order to ensure that the portion of the public education budget appropriated by the state is integrated and is targeted to achieve the education outcomes established for the state.
- Providing an integrated, statewide, student-based data system that monitors expenditures and outcomes to determine the return on statewide education investments. The OEIB must provide the data system by:
 - a. Developing the data system or identifying or modifying an existing data system that accomplishes the goals of the data system; and
 - b. Ensuring that the data system is maintained.

- Working with the Quality Education Commission to identify best practices for school districts and the costs and benefits of the adoption of those best practices by school districts.

The OEIB also reviews and enters into achievement compacts with school districts, education service districts, community colleges, the public universities, and OHSU. The achievement compact is one vital way that the OEIB accomplishes its purposes. The OEIB is not a governing board, and the university boards of trustees do not report to the OEIB.

House Bill 3120 (passed in 2013) activated the Higher Education Coordinating Commission (HECC), which had been created in 2011. Funding for the HECC is primarily through some of the funds that formerly would have been appropriated to OUS and used by the Chancellor's Office. As its name indicates, the HECC serves a coordinating function relative to significant changes to the academic programs of the community colleges and public universities (and has narrow approval authority in that regard), the relatively modest, although not insignificant, portions of operating and capital budgets that are funded by the State of Oregon, and strategies for achieving state post-secondary education goals.

The HECC's role is limited and carefully circumscribed. The HECC may exercise only powers, duties and functions expressly granted by the legislature. All other authorities reside with the boards of trustees. This approach contrasts with the powers, duties and functions granted to the boards of trustees, which not only have all of the powers, rights and privileges that are expressly conferred, but all that are implied by law or are incident to such powers, rights and privileges.

The HECC may:

- Advise and assist the OEIB on state goals and associated achievement compacts for community colleges and public universities; strategic investments in higher education; and coordination of the post-secondary elements of data collection and structure.
- Adopt a strategic plan for achieving state post-secondary education goals.
- Recommend to the Governor and OEIB a consolidated higher education budget request for appropriated funds and state bonds.
- Adopt rules governing the distribution of appropriated funds to community colleges and public universities.
- Approve or disapprove any "significant change" to the academic program of a community college or a public university.
- Approve the mission statement adopted by a board of trustees.

The HECC has a variety of other responsibilities relative to community colleges and private colleges and universities.

7. Overview of the Oregon Public Records Law (OPRL)

Southern Oregon University and the Trustees are Subject to the OPRL

Southern Oregon University is a public body covered by the OPRL. The board of trustees is the governing body of SOU and thus each trustee in his or her official capacity is subject to the OPRL. Any public record prepared, owned, used or retained by a trustee and related to the public's business is subject to the OPRL.

Records Covered by the OPRL

The definition of "public record" is very broad and "includes any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics." *This serves to include any writing that relates to the conduct of the public's business and that is contained on a privately owned computer or a privately owned email account of a trustee or a university employee.*

A "writing" is any "handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, files, facsimiles or electronic recordings." *This definition includes emails, text messages and voice mails that are retained.* Even after an e-mail message is "deleted" from a computer or account, the message may continue to exist on back-up media, and the university is required to search for the record. As with any public record, the university must make all nonexempt e-mail that constitutes a public record available for inspection and copying *regardless of its storage location.*

Using a private email or text message account does not necessarily result in a record being beyond the ambit of the OPRL.

Prepared, Owned, Used or Retained by a Public Body

A record prepared by a public body is subject to the OPRL as long as it relates to the conduct of the public's business. However, records need not have been prepared originally by the university or a trustee to qualify as public records. If records prepared outside government contain "information relating to the conduct of the public's business," and are "owned, used or retained" by the university, the records are within the scope of the OPRL. For example a letter from the American Assembly of Collegiate Schools of Business (AACSB) to PSU was a public record when in the possession of PSU because it was retained and used by PSU. However, the copy in the possession of the AACSB is not a public record.

A document prepared by a private entity does not become a public record merely because a public official reviews the document in the course of official business so long as the official neither uses nor retains the document. Further, not all documents in the possession of a trustee necessarily constitute public records. For instance, correspondence between the Oregon Government Ethics Commission (OGEC) and a trustee concerning the trustee's possible violation of ethical obligations in ORS chapter

244 is not a public record in the hands of the trustee because the OGEC investigation pertains to the trustee in his or her individual capacity and the liability of the trustee is personal. However, that same correspondence may be a public record in the hands of OGEC.

This is a key point: a document may not be a public record when in the possession of one public body but may be a public record when in the possession of another public body. We will address this issue further in the discussion of exemptions from the OPRL.

Destruction of Public Records

It is a crime to knowingly destroy, conceal, remove or falsely alter a public record. It is a good practice for each trustee to ensure that the board secretary or other appropriate SOU official retains a copy of all correspondence, electronic or otherwise, relating to the conduct of the public's business to and from trustees. As long as the board secretary or other appropriate official retains one copy, the university and the trustee need not retain other copies, unless revised or altered in some way.

Records That Are Not Within the Scope of the OPRL

There are a few kinds of records that are, by definition, not subject to the OPRL. For purposes of a public university in Oregon, certain records pertaining to faculty members are by statute not public records.

Records That May Be Exempt from the OPRL

There is a lengthy list of records that are or, under certain circumstances may be, exempt from disclosure. The decision about whether a record is exempt should be made by the applicable person at SOU and, as appropriate, with the advice of legal counsel.

There are "unconditional" and "conditional" exemptions from disclosure. An unconditional exemption exists when the record falls within the exemption provision without any further balancing of confidentiality interests and public disclosure interests. A conditional exemption *requires* that the university balance these interests. In determining whether an exemption applies, the university should be aware that the identity of the requester and the circumstances surrounding the request are irrelevant to the question concerning whether the information fits within the category of the exemption. The circumstances of a particular request become relevant only if the requested information comes under an exemption that requires a balancing of interests. In that context, the requester's purpose in seeking disclosure may be relevant to determining whether the public interest requires disclosure.

The following are brief descriptions of some of the records that are most relevant to universities and may be exempt from disclosure:

- Certain public records pertaining to litigation
- The portion of a record containing a trade secret
- Tests and exam material
- Certain real estate appraisal records

- Certain records pertaining to personnel disciplinary actions
- Certain records pertaining to faculty research
- Certain public safety plans
- Certain records that may affect the security of facilities
- Certain records pertaining to security measures
- Student email addresses
- Records containing “internal advisory communications”
- Records the disclosure of which would constitute an unreasonable invasion of privacy
- Records containing certain personal information such as home address, age, weight, and residential telephone number
- Records that include “confidential submissions”
- Records or information the disclosure of which is prohibited by federal law. The primary example in the college and university setting are records and information prohibited from disclosure by the Family Educational Rights and Privacy Act of 1974 (FERPA)
- Records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law
- Records protected by the attorney-client privilege

Separation of Exempt and Non-exempt Material and Information

If any public record contains material which is not exempt and also material which is exempt from disclosure, the university must separate the exempt and nonexempt material and make the nonexempt material available for examination. This is why public bodies redact portions of records that are disclosed.

Consultation with Legal Counsel

Public bodies often must consult with legal counsel regarding public record requests. Briefly postponing the disclosure of records for that purpose does not violate the OPRL. It is also reasonable for the university to obtain legal advice before responding to an extensive public records disclosure request when compliance will seriously disrupt the institution’s operations. Similarly, it is reasonable for the university to consult counsel about disclosure of documents that appear to be exempt, in whole or in part, from the disclosure requirements of the OPRL. When the university receives a request for records that the university believes may be pertinent to a legal claim or litigation against the public body, it is also advisable to consult counsel.

8. Overview of the Oregon Public Meetings Law (OPML)

Southern Oregon University and the Trustees are Subject to the OPML

The board of trustees is a governing body of a public body and thus will almost always be subject to the OPML. Board committees may also be subject to the OPML.

Meetings That May Be Subject to the OPML

The OPML defines a meeting as the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision *on any matter*. Even if a meeting is for the sole purpose of gathering information or conducting an investigation to serve as the basis for a subsequent decision or recommendation by the board, the meetings law will apply, as long as a quorum is present. Typically, a quorum is a majority of the members of a board or certain committees. However, the bylaws that you adopt may define a quorum differently.

A gathering of less than a quorum of a board, committee, subcommittee, advisory group or other governing body is not a "meeting" under the OPML. Moreover, if the members of a committee, subcommittee or advisory group are charged to form their recommendations individually rather than collegially through a quorum requirement, the Public Meetings Law does not apply.

Governing body meetings with administrative staff are subject to the requirement of the OPML if a quorum of the members of the governing body convenes to receive information from staff on topics related to particular substantive or administrative matters that a quorum of the governing body will or may be called upon to decide.

The OPML expressly recognizes that meetings may be conducted by telephonic conference calls or "other electronic communication." Such meetings are subject to the OPML. For nonexecutive session meetings held by telephone or other electronic means of communication, the public must be provided at least one place where its members may "listen" to the meeting by speakers or other devices. As discussed in greater detail below, representatives of the news media may need to be provided access to such facilities when executive sessions are conducted electronically unless the representatives may be excluded lawfully from the executive session.

Use of more sophisticated means of electronic communication, such as "WebEx" or "Go To Meeting" in lieu of face-to-face official meetings has become more common in recent years. Communications between and among a quorum of members of a governing body convening on electronically-linked personal computers are subject to the OPML if the communications constitute a decision or deliberation toward a decision for which a quorum is required, or the gathering of information on which to deliberate.

Meetings That Are Not Covered by the OPML

Social Gatherings: Purely social gatherings of the members of a governing body are not covered by the OPML. The Oregon Court of Appeals has held that social gatherings of a school board at which members sometimes discussed "what's going on at the schools," did not violate the OPML. The *purpose* of the meeting triggers the requirements of the law. However, a purpose to deliberate on any matter of official policy or administration may arise *during* a social gathering and lead to a violation. Trustees constituting a quorum must avoid any discussions of official business during such a social gathering. Trustees should also be aware that some citizens may perceive social gatherings as an effort to avoid issuing a notice of a public meeting.

Retreats and Goal-setting Sessions: Governing bodies sometimes want to have retreats or goal-setting sessions. These types of meetings are nearly always subject to the OPML because the governing body is deliberating toward a decision on official business or gathering information for making a decision. For example, the board may wish to have an informal, long-range planning session to help guide (in general terms) the future priorities of the university. Because the discussion at such a session is very likely to lay the foundation for subsequent decisions, whether a decision on which general issues to pursue over the next year or a decision on how to approach a particular issue, it would be subject to the OPML. It does not matter that the discussion is "informal" or that no decisions are made; it is still a "meeting" for purposes of the OPML.

Training Sessions: Whether a governing body's training sessions are subject to the OPML will depend on whether any substantive issues are discussed. For example, the board may have a training session on improving personal interaction among the trustees. If that training is carefully structured to avoid any discussion of official business, and no such discussion occurs, the training would not be subject to the meetings law. This is a very sensitive area, however, and advice from legal counsel should be sought.

On-site Inspection of any Project or Program: Visits by trustees to a research laboratory to conduct an on-site inspection of a research program or to a facility in order to conduct an on-site inspection of the design or construction of a facility are statutorily exempt from the OPML.

Attendance at Conferences: Attendance of trustees at any national, regional or state association to which the university or the trustees belong (e.g., the Association of Governing Boards if the university is a member) is statutorily exempt from the OPML.

OPML Issues That Will Be Problematic for the Trustees

Lack of Sufficient Advance Notice of a Meeting: The university must give public notice, "reasonably calculated to give actual notice" to interested persons including news media which have requested notice, of the time and place for holding *regular meetings*. Typically, this is accomplished by emailing the notice to the trustees, posting the notice on a website dedicated to the trustees, and issuing a press release to local media and any other news media that have requested notice.

A *special meeting* requires at least 24 hours' notice to the trustees, the news media which have requested notice, and, usually by posting on the trustee web site, the general public. In case of an actual *emergency*, a meeting may be held upon such notice as is appropriate under the circumstances, but the minutes for such a meeting must describe the emergency justifying less than 24 hours' notice.

Content of the Notice and any Agenda: The OPML requires that the notice of any meeting "include a list of the principal subjects anticipated to be considered at the meeting." The list should be specific enough to permit members of the public to recognize the matters in which they are interested. It may be advisable to provide more than a list of principal subjects, either in the notice or by posting an agenda which includes a more detailed description of significant items to be discussed and also includes drafts of policies or transactions proposed to be approved.

Executive Sessions: Sometimes a meeting will include both a session open to the public and an executive session. It is good practice to include this on the notice, along with the statutory authority for the executive session. If only an executive session will be held, the notice must be given to the trustees, to the general public and to news media which have requested notice, stating the specific provision of law authorizing the executive session.

Permissible Subjects of an Executive Session: There is a statutory list of subjects that may be discussed during an executive session. Most germane to a university governing board are: (1) to consider the employment of a public officer, employee, staff member or individual agent; (2) 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; (3) to conduct deliberations with persons designated by the governing body to carry on labor negotiations; (4) to conduct deliberations with persons designated by the governing body to negotiate real property transactions; (5) to consider information or records that are exempt by law from public inspection; (6) to consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations; (7) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed; and (8) to review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

Presence of the News Media in Executive Sessions: Oregon appears to be the only state that allows "representatives of the news media" to attend certain executive sessions. Given the changing nature of the news media, there is much current discussion about who is a "representative of the news media." Representatives of the news media are not permitted in executive sessions where the trustees conduct deliberations with persons designated to carry on labor negotiations. Representatives of the news media may also be excluded when records or information that is confidential under federal law is discussed. An example typical in higher education is the discussion of education records rendered confidential by the Family Educational Rights and Privacy Act of 1974 (FERPA). Overall, the presence of the news media in executive sessions substantially reduces the usefulness of executive sessions even though the law imposes, and the university may place, some restrictions on what news media representatives who are present may report.

Misunderstanding What is a Social Gathering: It is useful to build the culture of a board by having the members get to know each other in social settings. However, presentations by staff members or others may serve to turn what would otherwise be a social gathering into a public meeting.

Inadvertently Converting a Social Gathering or Other Non-public Meeting Into a Public Meeting: A quorum of trustees may not engage in discussions of official business during a social gathering. Further, sometimes a meeting planned for less than a quorum of trustees, such as dinner with a small group of trustees from other institutions, may inadvertently be attended by more than a quorum, thus potentially converting it into a public meeting.

Dinner Meetings: I have provided an article from the *Seattle Times* about dinner meetings held by the Board of Regents of the University of Washington. There is nothing wrong with having a meeting around a meal. Persons other than trustees need not be served any food or beverages. However, problems can arise when dinner meetings are held in restaurants, hotels, or out-of-the-way locations and are not purely social gatherings. Dinner meetings where business will be conducted should be held in a facility that is easily accessible to members of the public.

Electronic Communications: The application of the OPML to meetings conducted by electronic means is discussed above. Trustees should also be careful about serial emails, serial text messages, and serial telephone calls among trustees.

Locations of Meetings: The Board of Trustees of SOU may meet anywhere in Oregon. However, it would be generally advisable to limit meetings to SOU facilities in Ashland and Medford, and, if desirable, facilities in Portland.

Local News

Originally published November 10, 2014 at 8:50 PM | Page modified November 11, 2014 at 3:00 PM

UW regents move dinner meetings for public access

Times Watchdog: The University of Washington Board of Regents is moving its monthly dinner meeting from the president's house, which critics challenged as inaccessible to the public, to a club on campus.

By Katherine Long

Seattle Times higher education reporter

Prompted by a legal challenge into whether its dinner meetings were truly open to the public, the University of Washington Board of Regents will no longer regularly be holding them at the off-campus home of UW President Michael Young, as has been its practice for many years.

Instead, the 10-member board will meet at the University of Washington Club, a nonprofit campus social club.

Observers still won't get dinner, but they will have an easier time finding the meeting, and likely a more comfortable place to watch, too. Last month, observers of the dinner had to stand on a porch that adjoined the dining room, behind a velvet rope, watching the regents eat and talk. No chairs were provided.

Critics applauded the move.

"It looks like they took the concerns to heart," said Toby Nixon, president of the Washington Coalition for Open Government and a member of the Kirkland City Council.

"I think they should be commended for doing the right thing rather than circling the wagons and resisting," he said.

Last month, the group Don't Expand UW Primate Testing claimed the governing board broke the state's open-meetings law when it discussed the construction of a new animal-research laboratory during a dinner meeting at the president's mansion's last year.

The lawsuit claims that a chain of emails shows the board illegally reached a consensus on approving the project at dinner on Nov. 13, 2013.

The lawsuit claims that the dinner meetings have "the purpose and effect of shutting the public out of this decision-making process and shielding defendants from accountability for their positions."



The UW has argued that the dinner meetings are public meetings, which are properly advertised, and conducted in accordance with the state's Open Meetings Act.

"However, as a result of the spotlight recently shed on them (the dinner meetings), we thought we would give more of the public access by moving to the UW Club," said UW spokesman Norm Arkans. Most future dinner meetings likely will be held in that location as well, he said.

The board routinely has a dinner meeting the Wednesday night before its regular monthly meeting on the second Thursday of the month — a common practice for the governing boards of the state's other public universities.

But the other universities have their dinners on campus, or stipulate that the dinners are purely social in nature.

The UW's regular board meetings take place during the day, usually in a large, open room in the Allen Library.

Nixon, the open government advocate, was critical of the UW's previous failure to give an address for the president's house, which is about 2 miles south of campus, in its dinner-meeting notice.

This month, the notice, which is on the regents' website, gives clear directions to the UW Club.

The agenda for this Wednesday's dinner meeting, which starts at 5:30 p.m., includes a legislative preview, an update on the medical-school program, a presentation on enhancing the UW's relations with the city of Seattle, and a discussion of university goals by Young and Provost Ana Mari Cauce.

Also this week, during the Thursday meeting, the regents will take a second vote on the Animal Research and Care Facility — the \$123.5 million building that is to be constructed underground, and which will allow the university to expand animal testing.

The regents approved that construction a year ago. It was the vote to approve that building that spurred the lawsuit.

The regents are voting a second time "out of an abundance of caution" because of the lawsuit, according to the board packet.

That project will be discussed during the finance and asset management committee's meeting at 8:30 a.m. Thursday in 142 Gerberding Hall, followed by a vote during the regular meeting at 12:45 p.m., in the Peterson Room of the Allen Library.

Katherine Long: 206-464-2219 or klong@seattletimes.com On Twitter @katherinelong



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9. Overview of the Oregon Government Ethics Law (OGEL)

A Trustee is a Public Official and Thus Subject to the OGEL

The OGEL restricts some choices, decisions or actions of a public official. A trustee is a public official. This section will address how the OGEL applies to trustees. Initially, it is essential to understand that the OGEL applies to trustees individually and not to the actions of the board as a whole or the university. Each individual trustee is personally responsible for complying with provisions in the OGEL, although you will discuss in the future the extent to which the university should provide a defense to an individual trustee who is the subject of an ethics complaint.

Relatives

The OGEL also applies to some relatives of a trustee. "Relative" means:

- (a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate;
- (b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate;
- (c) Any individual for whom the public official or candidate has a legal support obligation;
- (d) Any individual for whom the public official provides benefits arising from the public official's public employment or from whom the public official receives benefits arising from that individual's employment; or
- (e) Any individual from whom the candidate receives benefits arising from that individual's employment.

Businesses With Which Trustees are Associated

The OGEL also touches businesses with which a trustee may be associated.

"Business" means 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 section 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 non-remunerative capacity.

"Business with which the person is associated" means:

- (a) Any private business or closely held corporation of which the person or the person's relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person's relative owns or has owned stock, another

- form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;
- (b) Any publicly held corporation in which the person or the person's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year;
 - (c) Any publicly held corporation of which the person or the person's relative is a director or officer; or
 - (d) Any business listed as a source of income on the annual verified report of economic interests.

Substantive Provisions Prohibiting or Requiring Certain Acts

Use of Position for Personal Gain: A key provision of the OGEL prohibits public officials from using or attempting to use their official positions or offices to obtain a financial benefit for themselves, relatives or businesses they are associated with through opportunities that would not otherwise be available but for the office held. This provision has been the subject of many opinions of the OGEC. It is well beyond the scope of this presentation to set forth the many matters considered by the OGEC.

Gifts Solicited or Received by a Public Official or Made to a Public Official: During a calendar year, a public official or a relative may not solicit or receive, directly or indirectly, any gift or gifts with an aggregate value in excess of \$50 from any single source that could reasonably be known to have a legislative or administrative interest. During a calendar year, a person who has a legislative or administrative interest may not offer to the public official or a relative or member of the household of the public official any gift or gifts with an aggregate value in excess of \$50.

“Legislative or administrative interest” means an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official.

This seems like a broad prohibition on the receipt of gifts. However, in the absence of a legislative or administrative interest in any matter subject to the decision or vote of the public official, no gift limit exists. Further, there are numerous exceptions to the definition of “gift,” the most germane of which are mentioned below.

Use of Certain Confidential Information for Personal Gain: Public officials often have access to or manage information that is confidential and not available to members of the general public. The OGEL 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. The OGEL 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.

Appears Before the Board: The OGEL addresses circumstances that may arise when a public official own or is associated with a business. The type of business is one that may occasionally send a representative of the business to appear 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.

Typical Circumstances Not Prohibited by the OGEL:

Official Compensation: "Official compensation" means the wages and benefits provided to the public official. Typically, a governing board would adopt policies that apply to board members regarding the direct payment of expenses by the public body and benefits that are permissible because they involve duties associated with the public body, such as attending performances and sporting events.

Reimbursement of Expenses: Public officials are allowed to receive reimbursement of expenses incurred by the public official in the course of performing official duties. Payment of expenses in advance is also permissible.

Honoraria: Public officials are allowed to accept an honorarium. An honorarium is a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event. You should not solicit or negotiate an honorarium.

Acceptance of Certain Gifts: Under specific conditions public officials may also accept gifts without regard to quantity or aggregate value. As noted above, in the absence of a legislative or administrative interest in any matter subject to the decision or vote of the public official, no gift limit exists. Further, there are numerous exceptions to the definition of "gift" when a legislative or administrative interest exists. The following are a few of the exceptions most likely to apply to trustees:

- Gifts from relatives or members of the household of the trustee.
- An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.
- Informational or program material, publications or subscriptions related to the recipient's performance of official duties.
- Admission provided to or the cost of food or beverage consumed by a trustee, or a member of the household or staff of the trustee when accompanying the trustee, at a reception, meal or meeting held by an organization when the trustee represents the university.
- Expenses provided by one public official to another public official for travel inside the state to or from an event that bears a relationship to the receiving public official's office and at which the official participates in an official capacity.

- Food or beverage consumed by a trustee at a reception where the food or beverage is provided as an incidental part of the reception and no cost is placed on the food or beverage.
- Entertainment provided to a trustee or a relative or member of the household of the trustee that is incidental to the main purpose of another event.
- Entertainment provided to a trustee or a relative or member of the household of the trustee where the trustee is acting in an official capacity while representing the university for a ceremonial purpose.
- Anything of economic value offered to or solicited or received by a trustee, or a relative or member of the household of the public official or candidate:
 - (i) As part of the usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private business, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, not-for-profit corporation or other legal entity operated for economic value; and
 - (ii) That bears no relationship to the trustee's holding of, or candidacy for, a position on the board of trustees or another public office.

Declaration of Actual and Potential Conflicts of Interest

Another provision that frequently applies to trustees when engaged in official actions is the requirement to disclose the nature of conflicts of interest. When met with an actual or potential conflict of interest, a trustee must:

- announce publicly the nature of the *potential* conflict prior to taking any action thereon in the capacity of a trustee; or
- When met with an *actual* conflict of interest, announce publicly the nature of the actual conflict and refrain from participating in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

“Actual conflict of interest” means 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 pecuniary 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 pecuniary benefit or detriment arises out of circumstances described in the definition of potential conflict of interest.

“Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary 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 pecuniary 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.
- (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.

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By Tony Boom

Print Page

July 16, 2013 12:01AM

State ethics panel drops case against Talent city manager

TALENT — Oregon's Government Ethics Commission has voted to drop an investigation into allegations that City Manager Tom Corrigan improperly benefited when city workers installed panels on the side of a personal trailer he was using to haul trees to a city nursery.

TALENT — Oregon's Government Ethics Commission has voted to drop an investigation into allegations that City Manager Tom Corrigan improperly benefited when city workers installed panels on the side of a personal trailer he was using to haul trees to a city nursery.

Commissioners voted 5-1 in Salem Friday to drop the case despite a staff recommendation to move to investigation. There appeared to be a "substantial objective basis to believe that violation of Oregon Government Ethic laws may have occurred," a staff report said.

Joe Strahl, who oversees city engineering under a contract, filed the complaint on April 8. Public Works Superintendent Lester Naught and employees Bret Marshall and Chance Metcalf also signed the complaint.

"I wished they had gone forward," Strahl said Monday. "I'm disappointed. I think a lot of misinformation that was out there could have been resolved by doing an investigation."

Corrigan and attorney Lauren Sommers of the Local Government Law Group, which represents the city, attended the session in Salem. The Talent City Council had earlier agreed to supply legal counsel for Corrigan in the matter.

"I would compliment the ethics commission on their work," said Corrigan. "It is a very difficult job. They are very diligent in their pursuits. I appreciate the job they have to do and the conclusion that they reached."

Commissioners felt they had enough information to decide against going forward, said commission Executive Director Ron Bersin. The meeting was a closed executive session and Bersin would not discuss the reasoning behind the commission's action.

"There are times that the staff here will recommend to move (an investigation) forward. We may want to know more information," said Bersin. "I believe (the commissioners) got all the information they needed to get their decision."

According to the complaint, Corrigan benefited financially when wooden panels were fitted to his trailer by Metcalf and Marshall. Corrigan was bringing trees on the trailer from his property in Sams Valley to a tree nursery established by the city's Together for Talent Committee.

Corrigan paid for the panels, but Metcalf and Marshall spent an estimated 5 1/2 hours on procurement and installation in late February.

According to information cited in the report:

- Corrigan donated more than 100 trees to the project. Larger ones that had to be hauled on the trailer about 40 miles arrived wind-buffed and defoliated.
- City staff recommended the panels and offered to install them using scrap metal brackets, the report notes. The brackets have been returned to the city.
- When contacted by the ethics commission in mid-April, both Metcalf and Marshall indicated they felt pressured to sign the complaint and, given more time for consideration, might not have signed. They felt Strahl had a "personal vendetta" against Corrigan.

The employees also said the work was performed to protect the trees while in transit.

But Strahl said he did not regret pursuing the case.

"I had to do what I did. I did the right thing. My obligation to the city of Talent and those employees is satisfied," said Strahl. "It was up to the commission and they chose not to pursue it further."

Strahl's complaint also indicated that Corrigan advised Strahl during a meeting before the installation that he was "the sole person in charge at the city and that his authority was not to be questioned."

Corrigan would not discuss specifics in the report. Strahl had not seen the report and also declined to talk further about details. Naught declined to comment on the commission ruling.

Tony Boom is a freelance writer living in Ashland. Reach him at tboomwriter@gmail.com.

<http://www.mailtribune.com/article/20130716/News/307160330>

Print Page

10. Annual Reporting of Economic Interests

On or before April 15 of each year, a trustee must file with the OGEC a verified statement of economic interest. Based on advice provided by the OGEC in 2014, SOU trustees will first file the verified statement in April 2016. Legal counsel or the board secretary should be charged with ensuring that your name has been provided to the OGEC so that you will receive a form. Legal counsel or the board secretary should also alert you to the requirement in early 2016 and follow up with you to ensure that you have filed. A specimen of the current form is attached.

STATE OF OREGON



2014

ANNUAL VERIFIED STATEMENT OF ECONOMIC INTEREST

[INFORMATION FOR THE CALENDAR YEAR 2013]

PLEASE READ CAREFULLY:

- The Oregon Government Ethics Commission (Commission) has been informed that you are a public official who is required by ORS 244.050 to file a Statement of Economic Interest (SEI) form. The governing body you serve has provided us with your name, position, and mailing address. If any of our information is incorrect, please notify your governing body as soon as possible, and also make the correction on the SEI form before you return it so we may update our records.
- You must file if you will hold your position on April 15, 2014. The information you report must reflect the economic interests you held at **any time during the calendar year January 1, 2013 through December 31, 2013**. This applies even if you did not hold your position during the calendar year 2013.
- Do not leave any section blank. Indicate "N/A" if the requested information does not apply to you, **except in item 2, Sources of Income**. You may attach additional sheets if necessary to provide complete information. Please see instructions on page 2 for additional information.
- Enter your name in the space provided at the top of each page.
- Sign, date, and provide your daytime telephone number and email address in the spaces provided at the bottom of page 6.
- **Please make a copy of the completed form and retain it for your own records in case you are asked for a copy at a later date.** If you return your form by fax or email, please include this cover sheet as it contains information we need for prompt processing of your filing.

NOTE: Failure to complete and file this form by the final filing date may subject you to an automatic civil penalty of \$10.00 for each of the first 14 days the SEI is late and \$50.00 for each day thereafter, up to a maximum of \$5,000 [ORS 244.350(4)(c)].

Name
Jurisdiction
Address 1
Address 2
City, State, Zip

Annual Verified Statement of Economic Interest
Filing Instructions

- ORS 244.050 specifically identifies certain public officials who are required to complete the SEI form. Your position is one of those listed. **If you do not believe that you are required to file a SEI or if you have other questions, please call the Commission at (503) 378-5105 as soon as possible.**
- If you hold more than one position that is required to file, you may receive multiple forms. You need only return one form. We will apply the filing date of that one form to each position in our database that is associated with your name. It helps us if you indicate on the front page of the form what additional position(s) you hold.
- The most common errors officials make when filing their form are:
 - (a) Forgetting to sign and date the form on the last page.
 - (b) Failing to list all sources of household income for question 2. All sources of income exceeding 10% of the total annual household income must be listed. *(The question does not relate only to the public position you hold.)* Do not overlook the fact that a pension or social security benefit represents part of the household income. Please refer to the definition of income on page 3.
 - (c) Completing items 7 to 10 when not necessary. Please carefully read the instructions in the box on page 5. The questions need to be answered only if the conditions described in the instructions apply to your responses.
- **Please do not fail to respond to this notification!** ORS 244.350(4)(c) prescribes assessment of a penalty of \$10 for each of the first 14 days the SEI is late and \$50 for each day thereafter that passes after the filing deadline date, up to a maximum of \$5000.
- Please return this form to the Oregon Government Ethics Commission as soon as possible. **It must be postmarked or received no later than Tuesday, April 15, 2014.** Please contact the Commission at 503-378-5105 if you have questions.
- Return your form as soon as possible:

By mail to be postmarked on or before April 15 to: Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544

By Fax to 503-373-1456, or
By scanning and emailing to ogec.mail@state.or.us

Please remember to retain a copy for your records

STATUTORY REFERENCES

Item 4-A, ORS 244.020(6)(b)(F) – Reasonable expenses paid by any unit of the federal government, a state or local government, a Native American tribe that is recognized by federal law or formally acknowledged by a state, a membership organization to which a public body as defined in ORS 174.109 pays membership dues or a not-for-profit corporation that is tax exempt under section 501(c)(3) of the Internal Revenue Code, for attendance at a convention, fact-finding mission or trip, conference or other meeting if the public official is scheduled to deliver a speech, make a presentation, participate on a panel or represent state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

Item 4-B, ORS 244.020(6)(b)(H) – Reasonable food, travel or lodging expenses provided to a public official, a relative of the public official accompanying the public official, a member of the household of the public official accompanying the public official or a staff member of the public official accompanying the public official, when the public official is representing state government as defined in ORS 174.111, a local government as defined in ORS 174.116 or a special government body as defined in ORS 174.117.

- (i) On an officially sanctioned trade-promotion or fact-finding mission; or
- (ii) In officially designated negotiations, or economic development activities, where receipt of the expenses is approved in advance.

DEFINITIONS

"Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain. This does not include income-producing not-for-profit corporations that are tax-exempt under section 501(c) of the Internal Revenue Code with which a public official or relative of a public official is associated in a non-compensated capacity. [ORS 244.020(2)]

"Income" means income of any nature derived from any source, including but not limited to any salary, wage, advance, payment, dividend, interest, rent, honorarium, return of capital, forgiveness of indebtedness, retirement income, real estate transactions, inheritance income, or anything of economic value received as income including income from government sources (i.e., social security, your public salary, etc.). [ORS 244.020(8)]

"Honorarium" means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches or other services rendered in connection with an event. [ORS 244.020(7)]

"Person" means, for purposes of this form, (a) the public official required to file a Statement of Economic Interest and (b) an individual, corporation, partnership, joint venture, and any other similar organization or association.

"Member of Household" means any person who resides with the public official. [ORS 244.020(10)]

1. **BUSINESS OFFICE OR DIRECTORSHIP: BUSINESS NAME:**

A. If you or a member of your household were an officer or director of a business (see definition of "business" above) during **2013**, please indicate that information below. (These would be personal business ventures, not the public position you hold. Items A and B may be the same and Item B may be subsidiary of parent company listed in Item A for example.)

| | <u>Business Name</u> | <u>Business Address</u> | <u>Description of Business</u> | <u>Title of Office</u> | <u>Held By Whom</u> |
|----|----------------------|-------------------------|--------------------------------|------------------------|---------------------|
| 1. | _____ | _____ | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ | _____ | _____ |

B. List the names under which you or members of your household did business (see definition of "business" above) during **2013**:

| | <u>Business Name</u> | <u>Business Address</u> | <u>Description of Business</u> | <u>Held By Whom</u> |
|----|----------------------|-------------------------|--------------------------------|---------------------|
| 1. | _____ | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ | _____ |

2. **SOURCES OF INCOME:** Identify the sources of income (See definition of "income" on page 3) received by you or a member of your household, who is 18 years of age or over, during the **2013** calendar year that produced 10% or more of the total annual household income. (Your business would be a source, not the individual clients of your business.)

| | <u>Name of Source</u> | <u>Address of Source</u> | <u>Description of Source</u> |
|----|-----------------------|--------------------------|------------------------------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |

3. **REAL PROPERTY:** List all real property (*residential, commercial, vacant land, etc.*) in which, during **2013**, you or a member of your household had any ownership interest, any option to purchase or sell, or any other right of any kind in real property, including a land sales contract, **located within the geographical boundaries of the public entity you serve.** (*Boundaries for legislators, or filers from state agencies, boards, commissions or institutions would be the state borders. Boundaries for local filers would be the limits of the city, county or district you serve.*) **Do not list your principal residence.**

| <u>Description</u> | <u>Address</u> |
|--------------------|----------------|
| 1. _____ | _____ |
| 2. _____ | _____ |
| 3. _____ | _____ |

4. **OFFICE RELATED EVENTS:**

A. List the amount of any expenses with an aggregate value exceeding \$50 provided to you during **2013** when participating in a convention, mission, trip, or other meeting as described in ORS 244.020(6)(b)(F), (*see reference on page 2*), which is an exception to gift restrictions. (*Do not list expenses that were paid by the public body you represent.*)

| <u>Date</u> | <u>Organization Name</u> | <u>Address</u> | <u>Nature of Event</u> | <u>Amount</u> |
|-------------|--------------------------|----------------|------------------------|---------------|
| 1. _____ | _____ | _____ | _____ | _____ |
| 2. _____ | _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ | _____ |

B. List the amount of any expenses with an aggregate value exceeding \$50 provided to you during **2013** when participating in a mission, negotiations, or economic development activities described in ORS 244.020(6)(b)(H), (*See reference on page 2*), which is an exception to the gift restrictions. (*These events are those that were officially sanctioned or designated by your public body. Do not list expenses that were paid by the public body you represent.*)

| <u>Date</u> | <u>Organization Name</u> | <u>Address</u> | <u>Nature of Event</u> | <u>Amount</u> |
|-------------|--------------------------|----------------|------------------------|---------------|
| 1. _____ | _____ | _____ | _____ | _____ |
| 2. _____ | _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ | _____ |

5. **HONORARIA:** List all honoraria (*see definition on page 3*) allowed in ORS 244.042, with a value exceeding \$15, received by you or a member of your household during **2013**.

| <u>Date</u> | <u>Organization Name</u> | <u>Nature of Event</u> | <u>Amount</u> |
|-------------|--------------------------|------------------------|---------------|
| 1. _____ | _____ | _____ | _____ |
| 2. _____ | _____ | _____ | _____ |
| 3. _____ | _____ | _____ | _____ |

6. **SHARED BUSINESS WITH LOBBYIST:** List the name of any compensated lobbyist who was associated with a business with which you or a member of your household was also associated during **2013**. (*Example: The public official or household member is an employee or owner of a private company that also employs a lobbyist. Owning stock in a publicly traded company in which the lobbyist also owns stock is not a relationship that requires disclosure.*)

| | <u>Name of Lobbyist</u> | <u>Name of Business</u> | <u>Type of Business</u> |
|----|-------------------------|-------------------------|-------------------------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |

PLEASE NOTE – Do NOT answer items 7, 8, 9, and 10 unless the source of the interest is derived from an individual or business that has a legislative or administrative interest or that has been doing business, does business or could reasonably be expected to do business with the governmental agency of which you hold an official position or over which you exercise any authority.

"Legislative or administrative interest" means an economic interest, distinct from that of the general public in any matter subject to the decision or vote of the public official acting in the public official's capacity as a public official.

(Please refer to the instructions in the box above.)

7. **INCOME OF \$1,000 OR MORE:** Respond only if you or a member of your household received a source of income exceeding an aggregate amount of \$1,000 during **2013**, and that income was derived from an individual or business that has been doing business, does business, or could reasonably be expected to do business with, or has a legislative or administrative interest in the governmental body you serve.

| | <u>Income Source</u> | <u>Address</u> | <u>Description</u> |
|----|----------------------|----------------|--------------------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |

(Please refer to the instructions in the box above.)

8. **DEBT OF \$1,000 OR MORE:** Respond only if you or a member of your household owed a debt of \$1,000 or more to a person (*see definition of "person" on page 3*) during **2013**, and that debt involved an individual or business that did business with, or reasonably could be expected to do business with, or had a legislative or administrative interest in the public body you serve. (*Note: Do not list loans from state or federally regulated financial institutions (banks, etc.) or retail credit accounts and do not list the amounts owed.*)

| | <u>Name of Creditor</u> | <u>Date of Loan</u> | <u>Interest Rate of Loan</u> |
|----|-------------------------|---------------------|------------------------------|
| 1. | _____ | _____ | _____ |
| 2. | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ |

(Please refer to instructions in the box on page 5.)

9. **BUSINESS INVESTMENT OF MORE THAN \$1,000:** Respond only if you or a member of your household had a personal, beneficial interest or investment in a business (see definition of "business" on page 3) of more than \$1,000 during **2013**, if the investment involved an individual or business that did business with or reasonably could be expected to do business with, or had a legislative or administrative interest in the public body you serve. (Note: Do not list the amount of the investment. Do not list individual items in a mutual fund or blind trust, or a time or demand deposit in a financial institution, shares in a credit union, or the cash surrender value of life insurance.)


| <u>Business Name</u> | <u>Address</u> | <u>Description of Business</u> |
|----------------------|----------------|--------------------------------|
| 1. _____ | _____ | _____ |
| 2. _____ | _____ | _____ |

(Please refer to instructions in the box on page 5.)

10. **SERVICE FEE OF MORE THAN \$1,000:** Respond only if **you** (not your business) received a fee of more than \$1,000 in **2013** from a person (see definition of "person" on page 3) for whom you performed a service, if the service involved an individual or business that did business with, or reasonably could be expected to do business with, or had a legislative or administrative interest in the public body you serve. (Do not list fees if you are prohibited from doing so by law or a professional code of ethics.)

| <u>Name</u> |
|-------------|
| 1. _____ |
| 2. _____ |

11. **VERIFICATION:** Under penalties for false swearing/false affirmation, I declare that the information submitted in this document is, to the best of my knowledge and belief, true, accurate, and complete.



Signature

Date

Daytime Telephone Number

Email Address

Return your form as soon as possible:

By mail to be postmarked on or before April 15 to: Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544

By Fax to 503-373-1456, or
By scanning and emailing to ogec.mail@state.or.us

Please remember to keep a copy for your records. If you return your form by fax or email, please include the cover sheet as it contains information we need for prompt processing of your filing.

11. Fiduciary Duties of Boards of Trustees of Colleges and Universities


A discussion of fiduciary duties from “Consequential Boards: Adding Value Where It Matters Most,” a report issued the National Commission on College and University Board Governance on November 6, 2014, is attached.

APPENDIX: FIDUCIARY DUTIES OF BOARDS OF TRUSTEES OF COLLEGES AND UNIVERSITIES

Fiduciary Duties: In General

Under state statutory and common law, officers and trustees of corporations—including public bodies and nonprofit corporations that oversee colleges and universities—are fiduciaries and must act in accordance with the fiduciary duties of *care*, *loyalty* and *obedience*. Taken together, these obligations require trustees to make careful decisions collectively in the best interest of the institution consistent with its public or charitable mission, independent from undue influence from any party or from financial interests. The specifics of what that means and how it is enforced through board policies and procedures may differ somewhat from institution to institution or by state. Good practice suggests that all trustees are informed of the legal meaning of their fiduciary role, accompanied by practical examples of decisions likely to face the board that require explicit attention to the balancing of interests necessary to carry out the fiduciary role. In addition, trustees and officers must understand that while they hold fiduciary duties individually, they act collectively as a board. Absent a particular designation of authority by the board to an individual trustee or officer (such as the authorization of a board chair to enter into an employment agreement with the president on behalf of the institution), no single trustee or officer has authority to bind the institution or determine its course of action, even those who may be appointed by a state governor or through a political process.

Legally, a fiduciary relationship is one of trust or confidence between parties. A fiduciary is someone who has special responsibilities in connection with the administration, investment, monitoring, and distribution of property—in this case, the charitable or public assets of the institution. A college or university trustee has duties to the institution and its beneficiaries under the law that a faculty member, a student, or an administrator does not. The precise meaning and extent of each duty may vary from state to state, depending on statutory language and judicial interpretation. These duties may also be described in and imposed by a college or university's bylaws, governing board policies, standards of conduct, or code of ethics. In the case of a public institution, state law may describe or apply these standards of conduct differently (for example, under particular rules applicable to regents or public bodies); however, adherence to these principles remains a key governance best practice in both private and public colleges and universities.


 **The Duty of Care.** The duty of care generally requires officers and trustees to carry out their responsibilities in good faith and using a degree of diligence, care, and skill that prudent persons would reasonably exercise under similar circumstances. A board member, therefore, must act in a manner that he or she reasonably believes to be in the best interests of the institution or system. As an example, the proper exercise of the duty of care requires a board member to regularly attend meetings, read the meeting materials prepared for the board in advance of the meeting, ask questions and participate actively in board discussions, and be knowledgeable of the institution's purposes, operations, and environment.

Determining what is in the best interest of the institution lies within the sound judgment of the board of trustees under the duty of care. It will necessarily involve a balancing of interests and priorities appropriate to the institution's mission and consistent with its strategic priorities, including explicit attention to the tradeoffs inherent in achieving appropriate balance, such as that between employees' interests (necessary to maintain quality and to protect the institution's assets), student interests (to maintain affordability), physical assets (grounds and buildings), fiscal assets (endowments and fund balances), consumer value of the degree (cost of degree production versus future job earnings), and community interests in the institution (jobs, economic development).

Also interwoven in the duty of care is the responsibility of board members to maintain the confidentiality of matters brought before the board, both during and after their board service. This is particularly the case with respect to personnel matters and sensitive business matters. In some cases, board members may be asked to sign an oath of confidentiality or a binding statement that sets forth their duties and responsibilities to the institution. Such instruments may be useful; however, they may also seem heavy-handed to some. Nevertheless, the duties will apply to board members who have been duly elected or appointed and have consented to service, whether or not an oath or statement is agreed to.

The duty of care does not require professional expertise, extensive consideration, or full knowledge of the matter at issue by every board member. Instead, the duty generally requires the board member to be reasonably well informed of the relevant issues. A board member may rely on information, opinions, reports, or statements, including financial statements and other financial data, that are prepared or presented by: (a) one or more officers or employees of the institution whom the board reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants, or other persons as to matters the board reasonably believes are within the person's professional or expert competence; or (c) a committee of the governing board of which he or she is not a member if the board member reasonably believes the committee's review merits confidence. Any reliance on information provided by others must be reasonable under the circumstances,

considering such factors as from what source the information was obtained, whether the information relied upon is a brief summary or an extensive analysis, whether the matter is routine or exceptional, and the time frame in which a decision must be made. Thus, such information should be a tool and a time-saver for an officer or board member in becoming informed, and should not be an excuse for dispensing with or ignoring the information.


 **The Duty of Loyalty.** The duty of loyalty requires officers and board members to act in good faith and in a manner that is reasonably believed to be in the interests of the college or university and its nonprofit or public purposes rather than their own interests or the interests of another person or organization. The fiduciary must not act out of expedience, avarice, or self-interest. The requirement that officers and board members discharge their duties in good faith is a subjective requirement that will vary depending on the facts and circumstances. When at issue, however, courts will generally look to the board member's state of mind to determine whether he or she was motivated by honesty and faithfulness to the institution, or whether self-interest or an interest contrary to the institution's purposes was a motivating factor in the officer or trustee's actions.

Under this requirement, a college or university board member must be loyal to the institution and not use the position of authority to obtain, whether directly or indirectly, a benefit for him or herself or for another organization in which the board member has an interest. Accordingly, the duty of loyalty considers both the financial interests held by a board member and the governance or leadership positions he or she has with other organizations when the conduct of the board member is being evaluated.

Independence by board members is increasingly sought after by regulators and key stakeholders to ensure adherence to the duty of loyalty. In this context, independence means that the board member is not employed by and does not do material business with the college or university. In addition, it means that the board member acts independently of any personal relationship he or she may have with the president or senior leaders of the college or university or with other trustees. It is not required by law that every trustee on the board be independent (for example, some *ex officio* trustees may not be), but ideally, a majority of the trustees should be independent.

In addition, it is incumbent on board members to retain their independence from external stakeholders in the conduct of their oversight and policy responsibilities. This applies to boards of independent institutions and especially public boards whose members are most often selected to their service through some form of political appointment. Public board members, while respectful of the views of appointing authorities, must not confuse such influence as being determinative of board action. It is essential that board members avoid a conflict of loyalty in meeting their fiduciary responsibilities to act on behalf of the institution(s) they hold in trust.

The most critical implementation of the duty of loyalty comes in a college or university's conflict-of-interest policy. Such a policy, when adhering to state law and best governance practices, requires board members to fully disclose financial interests and dual organizational relationships ("dualities of interest") that may affect their decision making on behalf of the institution. The policy will prohibit trustees from participating in or unduly influencing decisions in which they have a material financial conflict of interest or an adverse duality of interest ("recusal"), and may require the trustee to eliminate the duality of interest. AGB's 2013 "Statement on Conflict of Interest with Guidelines on Compelling Benefit" offers clarifying guidance on best practices for boards to consider in managing conflicts of interest within the board.

 **The Duty of Obedience.** A third fiduciary duty, which is arguably an element of the duties of care and loyalty, is the duty of obedience. This is the duty of board members to ensure that the college or university is operating in furtherance of its stated purposes (as set forth in its governing documents) and is operating in compliance with the law. A governing board of a college or university must make reasonable efforts to ensure that the institution is both legally and ethically compliant with the law and applicable internal and external rules (for example, accreditation, environmental, research, or labor rules) and has instituted effective internal controls to achieve compliance and to identify and address problems.

Fiduciary duties are owed by trustees and officers to those who place the board in a position of trust or confidence. Accordingly, trustees and officers act as fiduciaries to students (and those who may pay the tuition for them), faculty, alumni, and donors. Given the desire of institutions to achieve intergenerational equity, these duties also extend to those who will occupy those positions in the future. And fiduciary duties arguably extend to the public and the community at large (for public and independent institutions alike), particularly where the institution has a direct and material impact on the livelihood of its community and the beneficiaries of its research and scholarship.

12. Transition Activities Performed Between July 2013 and June 2014

The seven public universities and the Office of the Chancellor implemented a shared services program on July 1, 2014. This accomplished a great deal of the transitional work that SOU would otherwise be required to complete between now and June 30, 2015.

Shared services that are mandatory through June 30, 2015, include risk management and insurance; collective bargaining with the SEIU; and certain employee benefits, including the defined contribution retirement plan known as the Optional Retirement Plan and the Tax Deferred Investment Plan. After June 30, 2015, no shared services are mandatory, except for the statutorily-required collective bargaining partnership for the purpose of engaging in collective bargaining with the SEIU. However, a number of shared services are likely to continue for the foreseeable future.

The shared services program offers other services that are used to varying degrees by the seven universities. These include: financial accounting and reporting, such as preparation of financial statements and tax returns; payroll processing and reporting; and the internal bank, including cash management, investment services, and debt management services.

You should note that benefits provided through the Public Employees Retirement System (PERS) and the Public Employees Benefits Board (PEBB) are substantively unchanged. However, cost allocations among the public universities may be altered.

13. Transition Activities Required Between Now and July 1, 2015

First of all, you are on the same timeline as OSU, PSU and UO were on last year, and, positively, many of the transition activities that you would otherwise have to accomplish were completed earlier this year. However, there are a number of actions that you must complete prior to June 30, 2015. This is an outline of those transition activities, many of which may be performed by university staff or consultants. Needless to say, the outline does not reflect the underling complexity or necessary time and effort.

- Adoption of foundational documents
- Determinations regarding board support and board budget
- Review and, as necessary, revise and repeal OUS and SOU administrative rules and policies
- Determine how to provide the internal audit function
- Adopt a policy on tuition, fees, fines and other charges
- Analyze the adequacy of shared services and the existence of any gaps
- Assume functions no longer being performed centrally (primarily in academic and student affairs)
- Address the management of real property
- Negotiate any necessary changes to the relationship with the State Treasurer
- Activate the relationship with the OEIB and HECC by meeting with key officials
- Assess the labor relations function
- Assess the institutional research function
- Approve capital and operating budgets and expenditure authority for FY 2016.

14. Foundational Documents

Bylaws

The bylaws are the basic non-statutory foundational document of a college or university. With public universities, many standard components of bylaws are already set forth in statute. The bylaws should identify or repeat some of what is set forth in statute and also include matters involving the organization and functioning of the Board, such as the following:

- Legal name of the university
- Purposes of the university
- Authority, responsibilities and membership of the board
- Method of selection of board members
- Removal of board members and filling of vacancies
- Resignations and filling of vacancies due to resignations
- Identification of board officer positions and a description of the responsibilities of each
- Meetings; quorum requirements; notice of meetings; application of parliamentary rules
- Public meeting procedures
- If desired, identification of university officer positions (e.g., president, provost, chief financial officer and treasurer, secretary, and others as appropriate) and a general description of the responsibilities of each
- Authorization to appoint standing and ad hoc committees
- Conflicts of interest
- Indemnity of board members
- Procedures for amendment of bylaws

Trustee Roles and Responsibilities

This document helps to establish the culture of the board by committing each Trustee to:

Act as a Responsible Fiduciary: This involves acting in the best overall interest of the university and the state as a whole, rather than the interests of any constituency; participating constructively and consistently in the work of the board; participating in rational, informed deliberations based on reliable information; using one's own judgment in voting; avoiding personal involvement in university affiliates and student and employee organizations; maintain confidences.

Advance the Mission of the University: This involves representing the university positively and proactively to university constituents and helping the university preserve and secure the financial, human and other resources necessary for the university to achieve its mission and goals.

Uphold the Integrity of the Board: This involves speaking *for the board* only when authorized to do so by the board chair or university president; refraining from directing the president, faculty, staff and students; refraining from requesting special considerations; recognizing that the president is a trustee and at the same time reports to the board as a whole; avoiding actual and the appearance of conflicts of

interest; and adhering to the highest standards of personal and professional behavior and discretion to reflect favorably on the university.

Policy on Board Committees

This policy does not include committee “charters.” My recommendation is to have each committee draft a charter for review and approval by the full board. Typically, a board-level committee policy would include the following:

- Names and roles of committees
- Number of members of each committee
- Limitations on membership of committees
- Matters that are delegated to committees
- Notice of committee meetings
- Quorum requirements for committee meetings

Actual assignment of trustees to committees should be done by the board chair, based on experience, knowledge, and interests of trustees, once the board establishes the committees.

Policy on Delegation of Authority

Needless to say, neither the full board nor the committees have the capacity to make decisions regarding the day-to-day operation of the institution. SB 270 provides for the board to delegate nearly all authorities to the institutional president or, as appropriate, other officers such as the chief financial officer and treasurer. The exceptions are approval of tuition and mandatory enrollment fees, approval of the annual budget, and hiring, evaluating, and dismissing the president.

Of course, sound governance requires that the board retain authority to some extent on many matters that could be delegated. Some of these are as follows:

- Preserving complete authority to review and intervene in any and all aspects of the university
- Preserving institutional autonomy and institutional and faculty academic freedom
- Approving and adopting the mission statement and ensuring that it is kept current
- Approving and adopting a strategic plan
- Approving certain kinds of transactions or certain transactions above a dollar threshold
- Approving the incurring of substantial debt
- Ensuring the educational quality and integrity of the university and its academic programs
- Conferring academic degrees upon the recommendation of the faculty
- Approving the establishment, elimination, control, or substantial reorganization of academic programs and units of operation
- Approving the establishment of standards, qualifications, policies and practices relating to admission to study at the University and the curriculum, grading, credits, scholarships, and academic standards of the University, while according substantial deference on these subjects to the faculty

- Preserve final authority to establish standards of student conduct in consultation with the president, faculty and students
- Ensuring that policies and processes are current and properly implemented

The key point is for the board to be able to meet its fiduciary obligations, its obligations to the state, and its obligations to lead the institution, all while empowering the president and, with regard to academic matters, the faculty (which includes the president) and not interfering in the day-to-day operation of the institution. The board will also have to consider other statutes, both state and federal, and collective bargaining agreements in formulating this policy.

Meeting and Executive Session Procedures Including Guidelines on Public Comment

The bylaws should establish the role of the board chair relative to the conduct of meetings and the establishment of agendas. The bylaws should also set forth quorum requirements; requirements regarding notice of meetings; the application of parliamentary rules; and procedures to implement the requirements of the OPML.

However, the board chair, president, and secretary will want to come up with standards for meeting notices, agendas and guidelines. The board will also want to establish procedures for the conduct of public meetings and executive sessions.

Finally, the board should establish guidelines regarding public comment in board and committee meetings. Typically, guidelines include: a requirement of relevance to topics before the Board at a given meeting; time to be allotted overall and to an individual; a sign-up requirement in advance or at the meeting; how written materials may be submitted, and management of public comment by the board chair.

Conclusion


As members of the historic first Board of Trustees of Southern Oregon University, you now have a basic understanding of the context in which the board and you as individual trustees will operate. You should rely on SOU's terrific staff to assist you. Doing so protects you and the university.

Although the tasks before you may seem daunting, you should be comforted by the fact that significant work has already been completed by SOU, OUS, and the previous efforts undertaken by the other public universities that have already made the transition to independent governing boards. Because many of the transition activities that you would otherwise need to accomplish were completed earlier this year, SOU and its board have a magnificent opportunity to direct its efforts to establishing the foundational elements, rules, and culture that will guide SOU, and its board, for many years to come.

00635496.v2

Board of Trustees of
Southern Oregon University

Orientation on Legal Matters



**HARRANG LONG
GARY RUDNICK P.C.**
ATTORNEYS AT LAW

November 19, 2014
Randy Geller

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Orientation on Legal Matters – Part 1

1. Why You Are Here
2. Brief History of Governance
3. Legal status of Southern Oregon University
4. Role of Board of Trustees under SB 270
5. Role of President/Faculty under SB 270
6. Role of OEIB and HECC


2

Why You Are Here

1. Senate Bill 270 (2013)
2. House Bill 4018 (2014)

HL
GR 3

Brief History of Governance

1. SOU governed by State Board of Higher Education since SBHE established in 1929
2. History of SOU – *Remembering: A History of Southern Oregon University*, by Arthur Kreisman
3. 1995 Legislature - OHSU and OUS
4. 2011 Legislature – beginning of major reform
5. SB 270 (2013) and HB 4018 (2014)
6. Transitions

HL
GR 4

Status of SOU Now and as of July 1, 2015

1. Now – Governed by SBHE
2. Transition (Now to 7/1/15) - Board of Trustees has broad authority to effectuate transition
3. Board of Trustees assumes legal responsibility for SOU on July 1, 2015

HL
GR 5

Status of SOU Now and as of July 1, 2015 (cont.)

```
graph TD; OEIB --- HECC; EOU --- OIT --- OSU --- PSU --- SOU --- UO --- WOU; SOU --- SSE[Shared Services Enterprise];
```

HL
GR 6

Status of SOU Now and as of July 1, 2015 (cont.)

```

    graph LR
      OEIB((OEIB)) --- AC{{Achievement Compact}}
      HECC((HECC)) --- B{{Budget (Appropriate Funds) (Program Approval)}}
      AC -.-> SOU[Southern Oregon University]
      B -.-> SOU
  
```

HL
GR 7

Board of Trustees Under SB 270

1. Think of SOU as a public corporation – legal name is "Southern Oregon University"
2. SOU is still a public entity, but not a unit of local or municipal government or a state agency or institution for purposes of state statutes or constitutional provisions
3. Board of Trustees is like board of directors – a part of the public corporation and ultimately responsible for its well-being
4. Board has very broad authority, most of which it can and should delegate
5. Board may not delegate:
 - Setting tuition/mandatory enrollment fees
 - Adopting university budget in a public session
 - Hiring and dismissing president

HL
GR 8

The President and the Faculty

1. President is CEO ("executive and governing officer of the university") – and "directs the affairs" of SOU, subject to supervision and definition by board
2. Faculty, which consists of "the president and the professors," has traditional role, subject to supervision and definition by board

HL
GR 9

OEIB

1. Established by legislature in 2011
2. Ensures education outcomes
3. Oversees HECC
4. Recommends strategic investments
5. Establishes data system
6. Not a governing board

HL
GR 10

HECC

1. Established 2011 but activated in 2013
2. Not a governing board - limited to its express authority
3. Approves degrees and "significant changes to academic programs"
4. Appropriated funds distribution – formula
5. Budget requests – consolidates
6. Approves mission statements

HL
GR 11

Orientation on Legal Matters – Part 2

1. Public Records Law
2. Public Meetings Law
3. Government Ethics Law
4. Annual Reporting of Economic Interests
5. Fiduciary Duties
6. Transition Activities
7. Foundational Documents

HL CR 12

Oregon Public Records Law (OPRL)

1. You are covered
2. Any record relating to public business is covered, regardless of medium
3. Use of a private email account does not avoid the OPRL if email relates to public business
4. Records on a private computer that relate to public business are covered
5. Destruction of public records
6. Faculty records are not public records

HL CR 13

OPRL (cont.)

7. Exemptions

- Personnel disciplinary records
- Presidential searches
- Faculty research records
- Internal advisory communications
- Confidential submissions
- Student records
- Attorney-client privilege

HL CR 14

OPRL (cont.)


8. Exempt & non-exempt material and redactions

----- Original Message -----
From: [REDACTED] <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@[REDACTED]>
Sent: [REDACTED]
Subject: [REDACTED]
UNCLASSIFIED
This is FYI to you. It was raised at Gen [REDACTED] Ash this as. He simply asked that we monitor it for now.
vt [REDACTED]
----- Original Message -----
From: [REDACTED] <[REDACTED]@[REDACTED]>
To: [REDACTED] <[REDACTED]@[REDACTED]>
Sent: [REDACTED]
Subject: [REDACTED]

HL
GR 15

OPRL (cont.)

9. Consult with public records officer and legal counsel before responding



"Successful Meetings" looks O.K. to me.
Let's run it by the legal department."

HL
GR 16

Oregon Public Meetings Law (OPML)

1. Applies to meetings of a quorum of board of trustees and board committees when the group will make or deliberate toward a decision on any matter
2. Applies to conference calls or other meetings by electronic means (e.g., WebEx)

HL
GR 17

OPML (cont.)

3. Meetings that may not be covered (consult legal counsel)
 - Social gatherings
 - Retreats and goal-setting sessions
 - Training sessions
 - On-site inspections
 - Attendance at conferences

HL
GR 18

OPML (cont.)

4. Pitfalls

- Lack of sufficient advance notice
- Content of notice and agenda
- Executive sessions
- News media
- Social gatherings
- Inadvertent public meetings
- Dinner meetings
- Electronic communications

HL
GR 19


Oregon Government Ethics Law (OGEL)

1. Extremely complicated
2. Applies to trustees, certain relatives of trustees, and certain members of a trustee's household
3. May touch official actions by a trustee in relation to certain businesses with which the trustee is associated

HL
GR 20

OGEL (cont.)

4. Consultation with legal counsel helps



"I'd like your honest, unbiased, and possibly career-ending opinion on something."

HL
GR 21

OGEL (cont.)

5. Prohibitions

- Use of position for personal gain
- Gifts (some)
- Use of "confidential information" for personal gain
- Appearances before the board

6. Usually Allowed

- Official compensation
- Reimbursement of expenses
- Honoraria
- Gifts (most) – See next slide

HL
GR 22

OGEL (cont.)

7. Gifts – is it better to give or receive? Doesn't matter under the OGEL

8. Not a gift

- No legislative/administrative interest
- Gifts from relatives of household members
- Unsolicited token or award
- Admission provided to or the cost of food or beverage consumed at a reception, meal or meeting held by an organization when trustee represents the university.

HL
GR 23

OGEL (cont.)

Not a gift (cont.)

- Food, beverages, or entertainment at a reception where the food, beverage or entertainment is provided as an incidental part of the reception and no cost is placed on the food or beverage
- Usual and customary practice of the person's private business, or the person's employment or position as a volunteer with a private legal entity operated for economic value and that has no relationship to the trustee's position

HL
GR 24

OGEL (cont.)

9. Declaration of potential or actual COI

- Potential: announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a trustee
- Actual: announce publicly the nature of the actual conflict and refrain from participating in any discussion, debate or voting on the issue

HL
GR 25

Statement of Economic Interests

Annual report filed by each trustee beginning in April 2016

HL
GR 26

Fiduciary Duties

1. What is a fiduciary relationship?

- One of trust or confidence between parties where one party has special responsibilities in connection with the administration, investment, monitoring, and distribution of property
- A university trustee or officer has duties to the institution and its beneficiaries that a faculty member, student, or administrator does not
- These duties may be described in statute and in a university's bylaws, governing board policies, standards of conduct, or code of ethics

HL
GR 27

Fiduciary Duties (cont.)

2. Duty of Care

- Must act in good faith, using a degree of diligence, care, and skill that prudent persons would use under similar circumstances
- Must act in a manner that he or she reasonably believes to be in the university's best interests
- Generally may (and should) rely on information presented by officers and administrators, experts, and board committees

HL
GR 28

Fiduciary Duties (cont.)

3. Duty of Loyalty

- Must act in good faith and in a manner that is reasonably believed to be in the interests of the university and its public purposes rather than their own interests or the interests of another or organization.
- Courts will generally look to the trustee's state of mind to determine whether he or she was motivated by honesty and faithfulness to the institution, or whether self-interest or an interest contrary to the institution's purposes was a motivating factor in the trustee's actions.

HL
GR 29

Fiduciary Duties (cont.)

- A trustee must be loyal to the institution and not use the position of authority to obtain, whether directly or indirectly, a benefit for him or herself or for another organization in which the board member has an interest
- The duty of loyalty considers both financial interests held by a board member and governance or leadership positions a trustee has with other organizations
- Must maintain independence from stakeholders external to the board in the conduct of oversight and policy responsibilities

HL
GR 30

Fiduciary Duties (cont.)

4. Duty of Obedience

- Ensure institution operates in furtherance of its stated purpose
- Ensure compliance
- Ensure effective internal controls

HL
GR 31

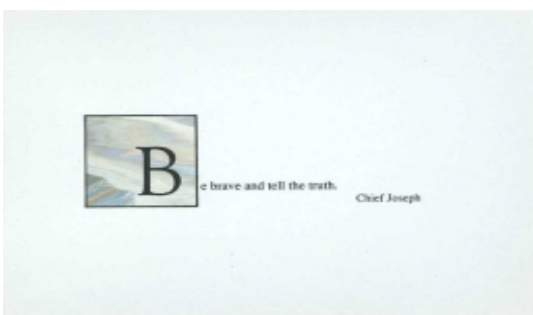
Fiduciary Duties (cont.)

5. Oregon Higher Ed. and Other Statutes

- ORS 352.025
 - Provide transparency, public accountability and support for the university.
 - Remain closely focused on the individual university.
 - Act in the best interests of both the university and the State of Oregon as a whole.
- Government Ethics Law

HL
GR 32

Fiduciary Duties (cont.)



Be brave and tell the truth. Chief Joseph

HL 33
GR

Transition Activities Accomplished

1. Shared Services - Mandatory

- Administration of ORP/TDI transferred to UO
- PURMIT: Public Universities Risk Management and Insurance Trust
- Collective bargaining with statewide bargaining units (SEIU)

HL 34
GR

Transition Activities Accomplished (cont.)

2. Shared Services – Optional

- Financial accounting and reporting
- Payroll processing and reporting
- Internal bank, cash management, investment
- Debt management - bonds

HL 35
GR

Transition Activities to be Accomplished

- Adoption of foundational documents
- Adoption of budgets for FY 16
- Develop funding request for FY 16
- Develop achievement compact for FY 16
- Review, revise repeal OUS/SOU rules/policies
- Internal audit
- Assess participation in shared services
- Establish relationship with HECC
- Assess institutional research function

Foundational Documents

- 1. Bylaws
- 2. Board & Trustee Roles and Responsibilities
- 3. Policy on Board Committees
- 4. Policy on Delegation of Authority

Conclusion

Don't be this board



*"Honesty is the best policy." O.K.
News, what's the second-best policy?"*
