

SWCD MODEL ADVOCACY POLICY INSTRUCTIONS AND SUPPORTING INFORMATION

The OACD model advocacy policy is intended to be adopted by Oregon Soil and Water Conservation Districts. The model is in a separate document from this set of instructions and supporting information.

The model was prepared based on good-faith interpretations of Oregon's statutes and rules relating to political and legislative advocacy. It should not be used as a substitute for legal advice in specific situations. Final decisions regarding the legality of actions taken by District employees and board members may be made only by the Oregon Ethics Commission, the Secretary of State, the State Attorney General, or other appropriate legal authority.

An original version of this policy was approved by the OACD Board on May 21, 2022. This more current version has been modified to make the body of the policy more streamlined and to provide instructions and supplemental information in an accompanying document. The overall substance remains consistent.

INSTRUCTIONS

The model advocacy policy is a template and may be modified to suit the needs of individual districts. Following are some general considerations when making modifications:

- Caution should be exercised in making adjustments that might result in conflicts with state laws and regulations.
- The policy should be adopted by the district board.
- The policy may be adopted as one document or may be divided into several separate pieces. One logical division would be to have separate actions for the core policy, position statements, and delegation of authority.
- The district may adopt the OACD position statements for ease of implementation. The district may also supplement or amend the OACD position statements or adopt their own set of position statements.
- Remember that political campaigning cannot be delegated to staff.
- Delegated authority can be set up in many ways depending on what works best for the district. In customizing delegated authority recognize that advocacy is a broad term and normal day to day activities of District staff need to proceed in an efficient manner.
- In delegation authority it is important to distinguish formal and informal advocacy to make sure that formal actions get sufficient review and oversight and to make

- sure that informal actions can be taken expeditiously by a larger set of people.
- In delegating authority, it might be useful to differentiate lobbying from other advocacy.
 - The model policy does not address allowable sources of funding to be used for advocacy. This may be an important issue for Districts without a source of unrestricted funds.
 - The model policy is intended to be brief for ease of use. However, it may be important for individuals who engage in advocacy to have additional background. Some additional background is provided below.
 - Consider the need for training for those who might engage in advocacy.

SUPPORTING INFORMATION ON POLITICAL CAMPAIGNING

Lead State Agency: Oregon Secretary of State

Key Documents:

Oregon Secretary of State's guide titled *Restrictions on Political Campaigning by Public Employees* (January 2016)

Oregon Secretary of State's guide titled Quick Reference Guide – Restrictions on Political Campaigning for Public Employees

Following is selected information that may be helpful:

Board members are not considered to be public employees per ORS 260.432 (5) (a) and may participate in political campaigning on behalf of the Board
Oregon Revised Statute (ORS) 260.432 provides as follows:

(1) No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose any political committee or to promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder.

(2) No public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours. However, this section does not restrict the right of a public employee to express personal political views.

The Oregon Secretary of State's guide titled *Restrictions on Political Campaigning by Public Employees* (January 2016) provides the following clarification when restrictions apply:

- For initiative, referendum and recall petition efforts, as soon as a prospective petition is filed with the appropriate elections filing officer (for a statewide initiative, this is the date the sponsorship prospective petition is filed);
- For a ballot measure referred to the ballot by a governing body (district, city, county, state) as soon as the measure is certified to the ballot. A county, city or district measure is certified to the ballot when the elections official files the referral with the county election office;
- For a candidate, as soon as the person becomes a candidate under the definition in ORS 260.005(1)(a); and
- For political committees, whenever the political committee is active.

The prohibitions cease to apply at 8:00 pm on the date of the election at which the candidate, measure, recall or referendum is being voted on. The prohibitions cease to apply to petitions (initiative, referendum or recall) on the date the petition is withdrawn or becomes void.

The Oregon Secretary of State's guide titled *Quick Reference Guide – Restrictions on Political Campaigning for Public Employees* (December 2013) summarizes the prohibited and allowed activities by public employees and Board members as follows.

Prohibited Activities.

A public employee, while on the job during work hours may not:

- Prepare or distribute written material, post website information, transmit emails or make a presentation that advocates a political position
- Collect funds, prepare filing forms or correspondence on behalf of candidates or political committees
- Produce or distribute a news release or letter announcing an elected official's candidacy for re-election (except for an elections official doing so as an official duty) or presenting an elected official's political position
- Make outgoing calls to schedule or organize campaign events or other political activity on behalf of an elected official or political committee (however, a scheduler may, as part of official duties, take incoming calls

about the official's availability and add an event to the schedule)

- Grant unequal access to public facilities to candidates or political committees
- Direct other public employees to participate in political activities, when in the role of a supervisor
- Draft, type, format or edit a governing body's resolution that advocates a political position (except to conform the resolution to a standard format)
- Prepare or give recommendations to the governing body urging which way to vote on such a resolution
- Sign such a resolution, except if the signature is only ministerial and clearly included to attest the board took the vote
- Announce the governing body's position on such a resolution to the media
- Include the governing body's position or vote on such a resolution in a jurisdiction's newsletter or other publication

Elected officials may not:

- In the role of a supervisor, request a public employee, whether the public employee is on or off duty, to perform any political activity. A request made by a person in a position of supervisor or superior is viewed as a command for purposes of this election law.
- Have an opinion piece or letter advocating a political position published in a jurisdiction's newsletter or other publication produced or distributed by public employees.

Allowable Activities.

A public employee, while on the job during working hours may:

- Prepare and distribute impartial written material or make an impartial presentation that discusses election subjects (using the guidelines provided in the Secretary of State's detailed manual on ORS 260.432.) agencies.
- Perform standard job duties, such as taking minutes at a public meeting, maintaining public records, opening mail, inserting a proposed resolution into a board agenda packet, etc.

- Impartially advise employees about possible effects of a measure, but not threaten them with financial loss to vote a particular way.
- Address election-related issues while on the job, in a factual and impartial manner, if such activity is legitimately within scope of employee’s normal duties.
- As staff of an elected official, handle incoming calls about the official’s availability for political events.
- Prepare neutral, factual information for a governing body to use in determining what position to take on an issue (planning stage of a governing body’s proposed issue before certified as a measure to a ballot is not subject to ORS 260.432).
- In a clerical manner, incorporate amendments into a finalized version of a governing body’s resolution on an issue respond to public records request for information, even if the material advocates a political position.
- Wear political buttons subject to applicable employer policies unless the public employee is providing voter registration services under NVRA, where additional restrictions apply. A public employee, on their own, off duty time, may send letters to the editor that advocate a political position and may participate in any other lawful political activity.

Elected officials may:

- Advocate a political position at any time. Elected officials are not considered a “public employee” for purposes of ORS 260.432.
- Vote with the other elected officials of a governing body to support or oppose a measure, and publicly discuss such a vote—but must not use the public employee staff time to assist in this, except for ministerial functions.
- Perform campaign activity at any time, however, must take caution not to involve any public employee’s work time to do so.

SUPPORTING INFORMATION ON LOBBYING

Lead State Agency: Oregon Government Ethics Commission

Key Document: Guide to Lobbying in Oregon, Oregon Government Ethics Commission, 2021 Revision.

Following is selected information that may be helpful:

ORS 171.735 specifies the thresholds beyond which lobbyists must register with the state. Two of the conditions when registration is not required are for:

171.735 (3): Any individual who does not receive compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies.

171.735 (4): A person who does not:

- (a) Agree to provide personal services for money or any other consideration for the purpose of lobbying;
- (b) Spend more than an aggregate amount of 24 hours during any calendar quarter lobbying; and
- (c) Spend an aggregate amount in excess of \$100 lobbying during any calendar quarter.

The Oregon Government Ethics Commission (OGEC) has determined that there are three types of lobbyists as follows

- *Professional Lobbyists* are those who agree to provide personal services for money or other consideration.
- *Representative Lobbyists* are those who engage in lobbying as a representative of a corporation, association, organization, grassroots group, or other group in which they are employed or to which they belong.
- *Public Official Lobbyists* are those who engage in lobbying on behalf of the public body that they represent.

Requirements for registration as a lobbyist are different for professional lobbyists than the other two types.

Professional lobbyists must register within three (3) business days after being hired or retained by, or agreeing to represent, the client/employer.

Registration as a lobbyist is not required for representative and public official lobbyists unless they exceed either of the following time and expenditure limits:

- Aggregate of 24 hours spent on lobbying in any calendar quarter, or
- Aggregate of more than \$100 spent on lobbying during any calendar quarter.

The \$100 threshold is based on the dollar amount that is received by the person being lobbied. For example, if an individual were to invite and pay for a legislator's lunch and the lunch engagement was established and conducted for the purposes of lobbying, the cost of the lunch would count towards the \$100 threshold. The threshold does not include monies received by the lobbyist while lobbying or providing services for the purposes of lobbying. (Source: OGEC staff advice)

Any person or organization for whom a lobbyist was registered, or was required to register, with the Oregon Government Ethics Commission, must file an Employer statement of expenditures. Thus, if the District has a Board member, staff person or paid professional lobbyist that needs to register, the District must assume the responsibility for the employer statement of expenditures.

Lobbying does not include time spent researching, reviewing, and analyzing legislative actions and time spent preparing letters, testimony, or other documents for the purpose of lobbying. These activities do not need to be counted in the 24 hour allotment under ORS 171.735 (4) (b). (Source: OGEC staff advice.)

Providing factual information is not lobbying as long as it is not intended to influence legislative action. Staff and Board members can provide unbiased information to those involved in legislative actions to help them make good decisions without being considered lobbyists. However, the criterion for lobbying is whether the information is intended to influence legislation. It is possible to selectively present facts to sway legislation, which could be considered lobbying, or to present facts without underlying intent to sway legislation which would not be considered lobbying. For example, if a State Senator working on legislation dealing with soil erosion calls the District Manager to find out whether the County is experiencing serious soil erosion problems, the District manager could easily explain current issues and problems without lobbying. Conversely, if the District Manager was aware of some "poor" legislation dealing with soil erosion and took the initiative to call the Senator to "provide the facts," the question of whether the District Manager is truly providing unbiased facts or trying to lobby for better legislation could be difficult to answer.