

\_\_\_\_\_ **SOIL AND WATER CONSERVATION DISTRICT**  
**ADVOCACY POLICY**  
\_\_\_\_\_, 2020

*Following is template for an advocacy policy that may be adopted by Oregon Soil and Water Conservation Districts.*

*This document 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.*

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## **INTRODUCTION**

This document establishes policy and guidance for advocacy conducted by \_\_\_\_\_ Soil and Water Conservation District.

This policy addresses requirements in Oregon. If advocating at the Federal level, different requirements may apply.

For purposes of this policy, advocacy is defined as follows:

*Advocacy* means influencing or attempting to influence governmental laws, regulations, policies, procedures, and political campaigns. It does not include business transactions with government organizations such as applying for and receiving grants and permits and negotiating and executing projects and programs.

Advocacy is divided into three categories:

- Political Campaigning
- Lobbying
- Other Advocacy

There are distinct laws and regulations governing political campaigning and lobbying. The third category, other advocacy, is used to capture all other forms of advocacy that are not subject to Oregon laws.

Imbedded in the various sections of this document are “policy statements” that provide high level direction. There are also “good practices” that the District should strive to follow. This policy also contains discussion to help understand the laws and regulations and references to sources of information that may be helpful.

## **POLITICAL CAMPAIGNING**

### **Definition**

Political campaigning means promoting or opposing any political committee, 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.

### **Policy Statements**

- Board Members and staff shall strive to follow all applicable laws and regulations pertaining to political campaigning.
- Staff shall not participate in political campaigning while on duty per ORS 260.432.
- Staff shall not display messaging for political campaigns within District facilities.
- 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. The District Board must approve all political campaigning actions.
- Staff and Board members may participate in political campaigning on their own time, but it must be clear that the action is not associated with the District.
- The District shall post the notice to all public employees regarding prohibitions on political campaigning per ORS 260.432(3).

### **Good Practices**

In deciding whether to participate in political campaigning, the Board should exercise caution and get involved only when the need is clearly relevant to the mission of the District.

If a Board member or staff engages in political campaigning on their own, they should not display information that could be interpreted to mean that they are acting as a District representative (e.g., wearing District hat or shirt). If there is potential for confusion, they should make it clear that their actions are not on behalf of the District.

If a Board member participates in political campaigning as a representative of the District, they should state that they represent the organization and have been given the authority to participate.

Use of District facilities by third parties for political campaigning is discouraged but may be allowed but should be authorized the Board. If District facilities are provided to third parties involved in political campaigning, access must be provided on the same terms and conditions to all interested parties regardless of political affiliation or position.

The District may produce impartial, factual information pertaining to a political campaign. Any such material should be reviewed in advance by the Secretary of State, Elections Division, before being disseminated to the public.

Although it is allowed per statute, staff should not be put in a position of handling elected officials calls about the official's availability for political events.

## **Discussion**

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. (Note that the policy and good practices are more stringent in some cases and will override some of the allowable activities.)

### 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.

## **LOBBYING**

### **Definitions**

The following definitions are provided in Oregon Revised Statutes 171.725.

*Lobbying* means influencing, or attempting to influence, legislative action through oral or written communication with legislative officials, solicitation of executive officials or other persons to influence or attempt to influence legislative action or attempting to obtain the goodwill of legislative officials.

*Legislative action* means introduction, sponsorship, testimony, debate, voting or any other official action on any measure, resolution, amendment, nomination, appointment, or report, or any matter that may be the subject of action by either house of the Legislative Assembly, or any committee of the Legislative Assembly, or the approval or veto thereof by the Governor.

*Legislative official* means any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.

*Executive official* means any member or member-elect of an executive agency and any member of the staff or an employee of an executive agency. A member of a state board or commission, other than a member who is employed in full-time public service, is not an executive official for purposes of ORS 171.725 to 171.785.

*Executive agency* means a commission, board, agency or other body in the executive branch of state government that is not part of the legislative or judicial branch.

*Lobbyist* means:

- a) Any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.
- b) Any person not otherwise subject to paragraph (a) of this subsection who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.
- c) Any public official who lobbies.

### **Policy Statements**

- Board Members and staff shall strive to follow all applicable laws and regulations pertaining to lobbying.

- The Board is responsible for establishing positions on issues.
- The Board is responsible for and authorizing lobbying actions.
- Lobbying must be consistent with established positions.
- Oregon laws establish time and expense thresholds for determining whether registration as a lobbyist is required. No Board or staff member shall intentionally cross these thresholds without approval of the Board. If the thresholds are crossed registration with the Oregon Government Ethics Commission shall be done.
- In the event that the District has a representative that registers as a lobbyist or is required to register as a lobbyist, the District shall file the required Employer Lobbying Expenditure Report with the Oregon Government Ethics Commission.

### **Good Practices**

Any person lobbying on behalf of the District is expected to present information accurately and in a clear and straightforward manner.

Each staff and Board member who engages in lobbying on behalf of the District should track their time to ensure compliance with registration requirements.

Board members and staff may assist industry associations with their lobbying efforts. Any time spent lobbying on behalf of industry associations should be considered when determining whether registration as a lobbyist is required.

The Oregon Association of Conservation Districts (OACD) has a mission and authority to represent Oregon's Soil and Water Conservation Districts in legislative matters, and to lobby on their behalf. It is good practice to coordinate with OACD, as OACD representatives can provide background on issues and assist with setting up meetings and providing testimony.

Giving and receiving gifts while lobbying may result in violations of Oregon's Ethics Laws for Public Officials and should be avoided.

### **Discussion**

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 interpreted 171.735 (4) (a) to be applicable to paid professional lobbyists. JSWCD staff are considered representative lobbyists and not subject to 171.735 (4) (a). This interpretation is contained in OGEC advice number 20-0011. In accordance with this interpretation, registration is not required for District Board and staff 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 JSWCD has a Board member, staff person or paid professional lobbyist that needs to register, JSWCD 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 in an attempt 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 Jackson 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.

## **OTHER ADVOCACY**



Other advocacy includes forms of advocating that are not political campaigning and lobbying. This includes influencing actions of state agencies and local jurisdictions.

State rule making results in the Oregon Administrative Rules (OARs). This is done through branches of the State outside the legislative branch and such rules are usually not subject to legislative approval. Advocating with respect to rule making is not considered to be lobbying.

Advocating for local laws, (e.g., cities and counties) is not subject to the state lobbying requirements.

### **Policy Statements**

- The Board is responsible for establishing positions on issues.
- The Board is responsible for authorizing advocacy actions.
- Advocacy must be consistent with established positions.

## **POSITION STATEMENTS**

The Board may adoption position statements that provide guidance on a range of issues that are expected to come up in legislative and regulatory and other forums. These statements can then be used to guide advocacy efforts.

*Position statements may be adopted by a separate action of the Board or included within this policy. Consideration may be given to adopting positions of the Oregon Association of Conservation Districts or developing positions specific for the District.*

## **DELEGATION OF AUTHORITY TO ADVOCATE**

*Delegated authority may be adopted by separate action of the Board or included within this policy.*

*Delegated authority can be set up in many ways. 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. The authority should clearly distinguish the following:*

- *Formal and informal advocacy*
- *Political campaigning, lobbying and other advocacy.*

*Following is one possible example of delegated authority.*

The Board retains the authority to authorize any lawful political campaigning, and this authority is not delegated herein.

The Board hereby delegates authority to conduct advocacy, other than political campaigning, as follows.

The delegated authority is categorized as lobbying and non-lobbying actions and formal and informal actions. Formal actions mean actions that are written or are spoken in formal public venues or are otherwise intended to be entered into the public record.

### **Formal Lobbying**

Authority to approve actions is delegated to:

\_\_\_\_\_, Chair of the Board  
\_\_\_\_\_, Director  
\_\_\_\_\_, District Manager

Approval requires concurrence from at least two individuals with the delegated authority.

The District Manager may further delegate tasks to staff.

All actions shall be reported to the Board, preferably at the next Board meeting.

### **Informal Lobbying**

Authority to approve actions is delegated to:

All Directors and Associate Directors  
\_\_\_\_\_, District Manager

The District Manager may further delegate tasks to staff.

All major actions shall be reported to the Board, preferably at the next Board meeting.

### **Formal Other Advocacy**

Authority to approve actions is delegated to:

\_\_\_\_\_, Chair of the Board  
\_\_\_\_\_, Director  
\_\_\_\_\_, District Manager

The District Manager may further delegate tasks to staff.

All major actions shall be reported to the Board, preferably at the next Board meeting.

### **Informal Other Advocacy**

Authority to approve actions is delegated to:

All Directors and Associate Directors  
\_\_\_\_\_, District Manager

The District Manager may further delegate tasks to staff.

All major actions shall be reported to the District Manager, who shall report to the Board at their discretion.

### **Other Conditions of Delegation**

Advocacy conducted through this delegated authority shall be subject to the following conditions:

- Advocacy must be conducted in accordance with District advocacy policies.
- Advocacy must be consistent with positions adopted by the Board. If there are doubts about consistency, the matter should be brought to the Board for direction. If the matter is urgent and it is not practical to wait until the next opportunity to consult with the Board, action may proceed with subsequent notification of the Board as soon as practical.