

# Board of Trustees of Oregon Institute of Technology

## Orientation on Legal Matters



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# What We Will Cover

1. Board of Trustees under Senate Bill 270
2. Higher Education Coordinating Commission (HECC)
3. Public Records Law
4. Public Meetings Law
5. Government Ethics Law
6. Annual Reporting of Economic Interests
7. Fiduciary Duties

## A black and white cartoon illustration by Dana Fredson. It depicts a business meeting with four men in suits seated around a large conference table. The man on the left is leaning forward, speaking. The man opposite him, on the right, is holding a cigar. The man in the foreground is seen from behind, looking towards the speaker. The background shows a window with a grid pattern and some framed pictures on the wall. The artist's signature 'Dana Fredson' is in the bottom left corner.

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

## Board of Trustees Under SB 270

1. Think of Oregon Tech as a public corporation – legal name is “Oregon Institute of Technology”
2. Oregon Tech is still a public entity, but not a unit of local or municipal government or a state agency or institution with respect to state statutes or constitutional provisions

## Board of Trustees Under SB 270 (cont.)

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

## HECC

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

# 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

## OPRL (cont.)

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



## OPRL (cont.)

### 7. Exemptions

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

## OPRL (cont.)

### 8. Exempt & non-exempt: redactions

----- Original Message -----

From: [REDACTED] SIS OSD OUSDI

To: [REDACTED] DISL OSD OUSDI;

[REDACTED] LIG MLE USA DCS G-2

[REDACTED] DISES OSD OUSDI

Sent: Fri Jul 31 12:09:42 2009

Subject: FW: On The Cusp Of Recess This Will Likely Not Make Much Of A Splash  
(U)

UNCLASSIFIED

This is FYI to you. It was raised at Gen [REDACTED] SSM this am. He simply asked that we monitor it for now.

VR, [REDACTED]

-----Original Message-----

From: [REDACTED] LtCol OSD PA

Sent: Friday, July 31, 2009 7:52 AM

To: [REDACTED] DISES OSD OUSDI;

CC: [REDACTED] HON. OSD USDI;

[REDACTED] CIV OSD OUSDI;

[REDACTED] MS, DoD OGC;

[REDACTED] OGC;

[REDACTED] OUSDI;

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[REDACTED] OUSDI;

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## OPRL (cont.)

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



*"Season's Greetings' looks O.K to me.  
Let's run it by the legal department."*

# 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, Go To Meeting)

## 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

## 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

# 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 a for-profit businesses with which the trustee or relative is associated

## OGEL (cont.)

### 4. Consultation with legal counsel helps



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



## OGEL (cont.)

### 5. Prohibitions

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

## OGEL (cont.)

### 6. Usually Allowed

- Official compensation
- Reimbursement of expenses
- Honoraria
- Gifts (most) – See next 3 slides

## 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

## OGEL (cont.)

### Not a gift (cont.)

- 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.
- 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

## Not a gift (cont.)

- 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

## 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

# Statement of Economic Interests

Annual report filed by each trustee  
beginning in April 2016

# 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



## 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
- Generally may (and should) rely on information presented by officers and administrators, experts, and board committees

## Fiduciary Duties (cont.)

### 3. Duty of Loyalty

- Trustees 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 she was motivated by honesty and faithfulness to the institution or whether another interest of the trustee was a motivating factor in the trustee's actions.

## 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
- A trustee must maintain independence from stakeholders external to the board in the conduct of oversight and policy responsibilities

## Fiduciary Duties (cont.)

### 4. Duty of Obedience

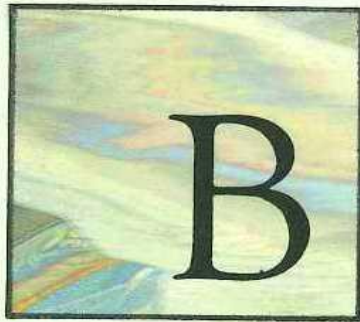
- Ensure institution operates in furtherance of its stated purpose
- Ensure compliance
- Ensure effective internal controls

## 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

# Conclusion



e brave and tell the truth.

Chief Joseph