



Secretary of State **Oregon Audits Division**



Oregon Government Ethics Commission **Oregon's Ethics Commission and Laws Could Be Better Leveraged to Improve Ethical Culture and Trust in Government**

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Report 2021-14

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Executive Summary

Why This Audit is Important

» Public office is a 'public trust' in that elected officials operate the government for the public interest. For this reason, public officials and employees must adhere to a high standard of ethical behavior.

» Oregon government ethics laws prohibit public officials from using their position or office for financial gain or to avoid a financial detriment. The law requires public disclosure of economic conflicts of interests.

» The mission of the Oregon Government Ethics Commission (OGE) is to impartially and effectively administer and enforce Oregon's government ethics laws for the benefit of Oregonians. The commission emphasizes education in achieving its mission.

» OGE also enforces state statutes requiring lobbyist registration and expenditure disclosure, as well as Executive Session provisions of public meetings law.

Oregon Government Ethics Commission

Oregon's Ethics Commission and Laws Could Be Better Leveraged to Improve Ethical Culture and Trust in Government

What We Found

1. Oregon's ethics framework and OGE operations are generally aligned with other states' and leading practices. The commission is mostly independent from other branches of government and its complaint process includes sensible due process protections for those accused of violations. OGE's case management system and electronic filing system have improved data management and expanded transparency. ([pg. 11](#))
2. While the state has fundamental elements in place, Oregon's ethics framework can be strengthened by increasing OGE's independence, further protecting complainants, and implementing ethics requirements. For example, currently commissioners can be removed unilaterally by the Governor and the ethics statutes may not adequately protect complainants, potentially resulting in fewer credible complaints. ([pg. 14](#))
3. Better data practices and an enhanced training program could help OGE improve its operations and better inform public employees and Oregonians. ([pg. 21](#))

What We Recommend

Our report includes 14 recommendations to OGE intended to enhance independence, the complaint process, training, and public outreach.

OGE agreed with eight of our recommendations and declined to take a position on the remaining six. Their response can be found at the end of the report.

Other Pertinent Information

Oregon is one of only two states that require legislators to vote on matters on which they have an actual conflict of interest. The vast majority of states, many of which also have part-time legislatures like Oregon, either require or allow legislators to recuse themselves from voting on such matters. Some states go further, barring lawmakers from taking part in any discussion or action on bills in which they have a personal interest. ([pg. 24](#))

Introduction

“If we do not provide against corruption, our government will soon be at an end.”

- George Mason, delegate to the United States Constitutional Convention of 1787

Within the public sector, ethics standards are a crucial protection against misuse of office and abuse of power by elected officials and public employees. Oregon’s ethics laws were enacted in the wake of national scandals in the early 1970s to deter public officials from using their positions for their own financial gain. The Oregon Government Ethics Commission (OGE) was created at the same time to hold public officials accountable for violating the state’s ethics

laws and to serve as a source of guidance on the application of these laws.

The purpose of our audit was to evaluate whether there are ways in which Oregon can improve its government ethics framework — particularly the strength of the state’s ethics laws, the commission’s structure, training requirements, and efforts to promote an ethical culture. Our audit also evaluated whether there are ways in which OGE can improve its processes for receiving, investigating, and adjudicating ethics complaints and training government employees on ethics laws.



Protecting the public trust is a cornerstone of democratic government

In a democratic government, elected officials are given power by voters to execute the people’s will and to do so in a way that is reasonably effective and efficient. This power includes not only the authority to enact laws, but the power to direct how billions of dollars in public funds are spent. When the actions of public officials are aimed at advancing their own interests over the public’s interests, corruption¹ exists. This does not mean that officials advancing their political viewpoints or preferred policies are corrupt as long as they do so within the perimeters of law, but rather that certain behaviors should be prohibited or regulated because they strike against the core of what public service is: individuals serving the common good.

Concerns about government corruption stretch back to the founding of the United States. To combat the corrosive effect that corruption could have on such a young democracy, the founders worked to structure the new government to help ensure that elected officials would base policy

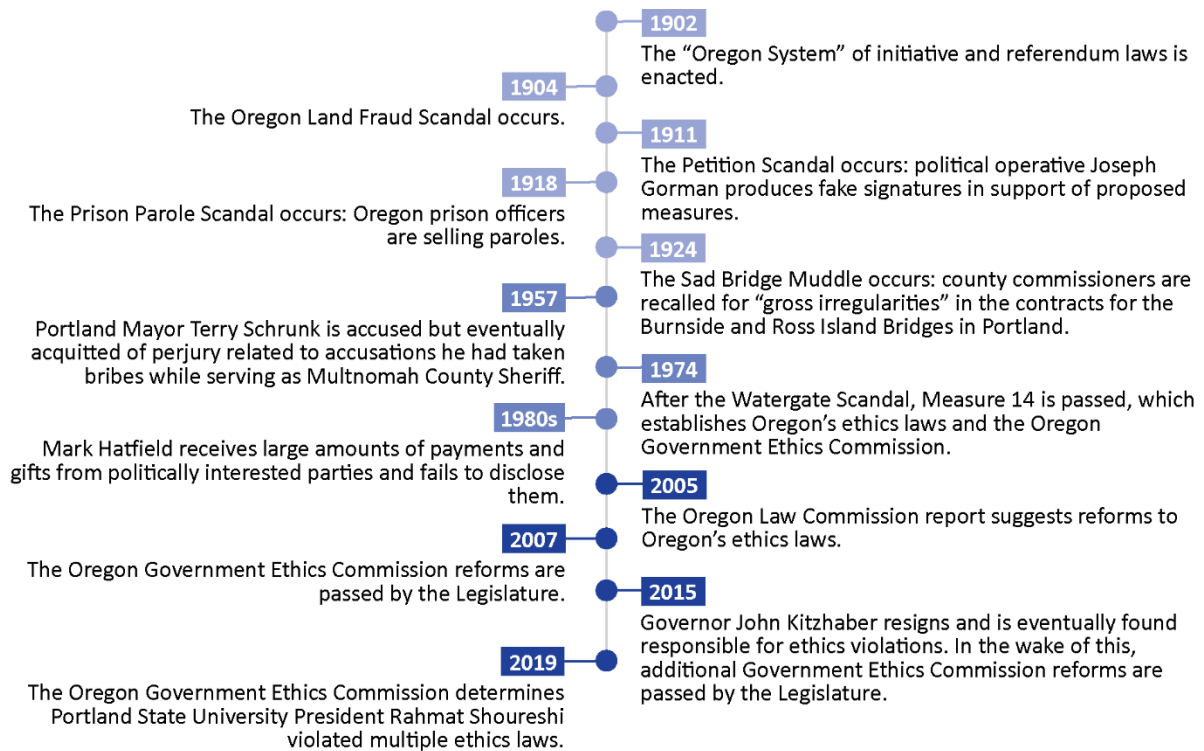
¹ The anti-corruption organization Transparency International defines corruption as the abuse of entrusted power for private gain.

decisions on the national interest, not on what would best serve their own financial interests. They recognized corruption as a singular threat in a democratic government, as it can undermine the people's trust in their representatives, fellow residents, and the efficacy of institutions. Individuals serving the public must be held to a higher standard of ethical behavior.

Oregon has experienced several public corruption cases across its history

Oregon has not been immune to instances of corruption and dishonest behavior by those in public service. Some notable examples over the state's history are included in Figure 1.

Figure 1: Oregon's history illustrates periods of scandal and periods of reform



Note: Dates in the timeline are not proportional to their chronology.

Several of these scandals came amid broad efforts for constitutional and political reform. In 1902, State Representative William S. U'Ren championed the passage of Oregon's initiative and referendum process, which came to be known at the time as the "Oregon System." U'Ren's work was aimed at reducing corruption in Oregon's government, which he felt was beholden to powerful economic and political interests to the detriment of the people. Various scandals and misdeeds at the state and local level since then have led to changes in state statutes and institutions.

Though conviction data suggests corruption in Oregon is low, some watchdog groups give the state a poor rating in its efforts to deter corruption

As recently as 2015, news reports² suggested that Oregon is a state with a low-corruption culture, based on the few available indicators that measure corruption. From 1976 to 2018, Oregon had 69 federal convictions for public corruption. This puts Oregon at 41st in total

² For example: *The irony: Kitzhaber's Oregon is least corrupt state*, Reid Wilson, The Washington Post, February 13, 2015.

Oregon Public Corruption Cases Old and New

Two public corruption cases from the early 1900s and 2010s in Oregon illustrate how public corruption can defraud taxpayers and distort policies intended for the public good.

Oregon Land Fraud Scandal, 1904-1905

“These looters of the public domain — working with crooked federal and state officials — through rascality and fraud, gained title to thousands of acres of valuable, publicly-owned timber lands, and at minimum prices.”

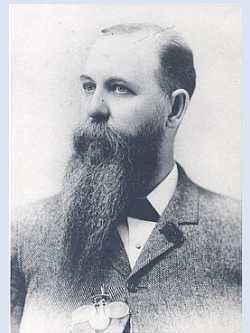
- Oregon Governor Oswald West, 1911-1915



Courtroom drawing of Mitchell trial. Courtesy Oregon Historical Society Research Library

The beginning of the 20th century was tumultuous for Oregon politics. Several land-fraud scandals and subsequent federal investigations revealed that land speculators and timber companies in pursuit of cheap natural resources were receiving assistance from public officials in fraudulently obtaining public land, including timbered land on the Siletz Indian Reservation, at significantly reduced prices. Along with other officials, U.S. Senator John Mitchell of Oregon, a lawyer and former Portland City Attorney, was indicted and convicted of helping one of his clients unlawfully obtain public land.

The convicted leader, Stephen A. D. Puter, wrote a book about the scandal with Horace Stevens, *Looters of the Public Domain*, which highlighted the extensive abuse of public power for private interest that consumed Oregon at the time. Senator Mitchell had served in office for over 20 years, so his conviction was impactful on the political culture of the state. The case was part of a turning point in politics, both in Oregon and nationally, coming just



U.S. Senator John Mitchell. Courtesy Oregon Historical Society Research Library

a few years after the political reforms that created the initiative and referendum processes, known at the time as the “Oregon System.”

Oregon Department of Energy, Business Energy Tax Credit fraud, 2007-2014

Oregon’s Business Energy Tax Credit (BETC) program was first established in 1979 to promote business investments in energy conservation and renewable energy projects in Oregon, using tax credits as an incentive. The program was expanded in 2007 and eventually ended in 2014. A contract forensic audit commissioned by the Oregon Secretary of State in 2016 found that out of \$1 billion in tax credits, \$347 million contained records with “concerning” risk factors, such as direct conflicts of interest, missing or suspicious documentation, and brokering conflicts or intermediary issues. According to the report, 79 projects contained enough suspicious circumstantial evidence to justify referral to the Oregon Department of Justice for additional review.



Wind turbine. Courtesy Gary Halvorson, Oregon State Archives

Based on subsequent criminal investigations of the BETC program, two individuals were charged with conspiring to illegally profit from arranging deals between tax credit sellers and buyers. Joseph Colello, an employee of the Oregon Department of Energy (ODOE), provided the names of BETC sellers and interested buyers — which he had knowledge of based on his role at ODOE — to another individual, Martin Shain. Colello would then contact the buyers and sellers to negotiate the credit sales, but under the guise that the transfers had been brokered by Shain. As a part of the deal, Shain would charge the sellers only 1% to 2% in commissions for arranging the purchases, greatly undercutting other brokers’ fees. In return for arranging the illegal deals, Colello received kickbacks from Shain. In total, Shain made over \$1.3 million in commissions from the transfers facilitated by Colello, who, along with his girlfriend, received over \$300,000 in illegal kickbacks.

Colello pleaded guilty to charges of conspiracy and filing a false income tax return. In 2018, he was sentenced to 60 months in prison and ordered to pay \$81,000 in restitution. OGEC also found that Colello violated Oregon’s ethics laws and ordered him to pay a \$3,000 civil penalty. Shain pleaded guilty to conspiracy and tax evasion charges and was sentenced in 2018 to 46 months in prison. He was also ordered to pay more than \$520,000 in restitution.

prosecutions, tying it with Idaho, Nebraska, and North Dakota. Measured per capita, Oregon's rate of corruption convictions ranks 49th. Figure 2 shows how Oregon compares to other states.

Figure 2: Oregon has the second lowest corruption rate in the country (convictions per 100,000 residents)

Rank	State	Rate	17	Tennessee	7.22	34	Connecticut	4.45
1	Montana	17.51	18	Florida	6.96	35	Indiana	4.41
2	Louisiana	16.42	19	Delaware	6.82	36	Idaho	3.93
3	South Dakota	13.38	20	New York	6.23	37	Wisconsin	3.78
4	Mississippi	12.19	21	Arkansas	6.17	38	California	3.68
5	Alaska	12.07	22	Missouri	5.97	39	Nebraska	3.58
6	Kentucky	11.46	23	Massachusetts	5.75	40	North Carolina	3.18
7	Virginia	9.73	24	Rhode Island	5.49	41	Kansas	3.13
8	North Dakota	9.6	25	Texas	5.47	42	Iowa	2.98
9	Alabama	9.35	26	Georgia	5.46	43	Nevada	2.74
10	Maryland	9.27	27	Arizona	5.42	44	South Carolina	2.58
11	West Virginia	9.25	28	Hawaii	5.07	45	Washington	2.44
12	New Jersey	8.74	29	Wyoming	5.02	46	Colorado	2.3
13	Oklahoma	8.27	30	Vermont	4.95	47	Minnesota	2.25
14	Pennsylvania	7.97	31	Michigan	4.69	48	Utah	1.83
15	Illinois	7.53	32	New Mexico	4.53	49	Oregon	1.67
16	Ohio	7.41	33	Maine	4.48	50	New Hampshire	1.62

Source: U.S. Department of Justice, Public Integrity Section.

However, it is not clear whether Oregon's corruption rate is low because corruption is not happening or because it is not being uncovered and properly investigated. The non-partisan ethics watchdog group Coalition for Integrity gave the state a low rating on its annual States With Anti-Corruption Measures for Public Officials (S.W.A.M.P.) Index.³ Oregon ranks 42nd out of the 50 states and the District of Columbia. By comparison, Washington State ranks 1st and California ranks 4th. Oregon's low score is due to a variety of factors, such as not requiring the disclosure of those who pay for political advertisements and not requiring legislators to disclose the identity of all people for whom the legislator has performed services.

The Center for Public Integrity also rated Oregon low in its 2015 assessment of state government accountability and transparency, giving the state another ranking of 42nd out of 50 states. According to the center, Oregon's grade was due to a shaky legal structure for ethics in which "good behavior is taken for granted rather than enforced."

According to a 2015 report from the Center for Public Integrity, Oregon has a shaky legal structure for ethics in which "good behavior is taken for granted rather than enforced."

Oregon's ethics framework has developed since the 1970s and covers a wide range of topics related to maintaining the public trust

Stirred by the Watergate scandal⁴ that embroiled the Nixon Administration and a desire to ensure government operates in the public interest, Oregon voters overwhelmingly enacted

³ States With Anti-Corruption Measures for Public Officials (S.W.A.M.P.) Index Report for 2020, Center for Public Integrity (2020), <https://www.coalitionforintegrity.org/wp-content/uploads/2020/11/The-SWAMP-Index-Final-Report-2020.pdf>.

⁴ The Watergate Scandal arose out of a 1972 break-in at the Democratic National Committee headquarters located at the Watergate Hotel complex in Washington, DC. The five burglars arrested at the scene were found to have ties to President Richard Nixon's re-election campaign. In July 1974, the U.S. House of Representatives voted to impeach President Nixon, but he resigned from office on August 8, 1974, before an impeachment trial could begin.

Measure 14 in 1974, with 74% voting for the law. Measure 14 codified numerous provisions aimed at increasing accountability of public officials through prohibiting certain activities and requiring public disclosure of personal interests. OGEc was established to enforce the new laws and provide advice to public officials and employees on how to comply.

In 2007, significant changes were made to Oregon's ethics laws through Senate Bill 10 and House Bill 2595, jointly known as the Oregon Ethics Reform Act. These changes were the result of a legislatively funded, comprehensive review of Oregon's ethics statutes performed in 2005 by the Oregon Law Commission,⁵ which presented recommendations related to lobbying, campaign finance, and the funding of OGEc's administration. In 2009, the Legislature made additional changes to the ethics laws to address issues resulting from the passage of the earlier bills.

In the wake of the ethics scandal surrounding former Governor John Kitzhaber⁶, Governor Kate Brown introduced several bills in 2015 that would impact the commission's work. These changes included increasing the number of commissioners from seven to nine, shortening the preliminary review phase from 135 days to 30 days, and requiring that advisory opinions be made more easily accessible to the public.

The state's ethics laws were designed to help prevent public officials from using their positions for their own financial benefit

Oregon's ethics laws cover numerous issues pertaining to the conduct of public officials, which are defined as those serving as state or local elected officials, appointed officials, employees, or agents, as well as the Governor's partner. The ethics laws also apply to some other groups, such as public officials' family members, public contractors, candidates, and lobbyists. These requirements have a common purpose: to deter those in public office from using these positions to benefit themselves and those close to them. Key areas currently covered by ethics law include:

- **Use of public office for personal gain:** Public officials are prohibited from using or attempting to use their position or office to benefit themselves, relatives, household members, or any businesses with which they or their relatives or household members are associated, unless that benefit would be available regardless of their position or office.
- **Conflicts of interest:** Except for state legislators, a public official is prohibited from participating in any discussion, debate, or vote on a decision, recommendation, or other action that would financially affect that official, a relative, or a business with which the official or the official's relative is associated. If the decision, recommendation, or action only potentially affects the official, a relative, or a business with which the official or their relative is associated, the official must make a public announcement of the nature of the conflict if that official is a member of a governing body. Most other public officials must provide a written notice of the potential conflict to their supervisor or employer and request that the supervisor or employer resolve the matter. State legislators must vote on matters on which they have a conflict of interest, unlike other public officials, but before voting they must publicly announce the conflict in accordance with the rules of the legislative chamber of which they are a member.

⁵ The Oregon Law Commission was created by the Legislature in 1997 to help keep Oregon laws current through proposed law reform bills, administrative rules, and policy analysis.

⁶ Governor Kitzhaber resigned from office in February 2015 when the media discovered his fiancée, Cylvia Hayes, was working as a private consultant on environmental and economic issues while also being involved in those issues in her capacity as First Lady of Oregon. OGEc eventually determined Governor Kitzhaber had committed 10 ethics violations, including using his office for personal gain and failing to disclose conflicts of interest, among others. Cylvia Hayes was found to have committed 22 ethics violations.

- **Acceptance of gifts:** Public officials and their relatives can only accept gifts up to an aggregate value of \$50 in a calendar year from any individual source who is reasonably known to have an economic interest distinct from that of the general public in the public official's decision-making.
- **Nepotism:** Except for state legislators, public officials may not directly appoint, employ, promote, fire, or demote a relative or member of their household, or take part in any interviews or discussions of doing so. Public officials are also prohibited from supervising relatives and members of their household. State legislators are allowed to hire family members for positions on their personal legislative staff.
- **Financial interest in public contracts:** For at least two years after the date on which a public contract was authorized, a former public official cannot have a direct beneficial financial interest in that contract if that official played a significant role in authorizing or approving the contract.
- **Statements of Economic Interest (SEIs):** Certain public officials⁷ must submit an annual statement of their financial interests, including business, employment, investment, and other interests.
- **Lobbyist⁸ registration and disclosure:** Paid lobbyists, representative lobbyists, and public official lobbyists and their employers must register and disclose their expenditures on lobbying activities.
- **Executive session:** All state and local governments and agencies must follow the executive session provisions of Oregon's Public Meetings law.

As noted above, some of the ethics laws treat state legislators differently from other public officials. According to OGE, this is due in part to the state having a part-time Legislature; the law anticipates that legislators are likely to have outside business interests. The Oregon House and Senate are also much larger governing bodies than a typical city council or county commission, so power is spread more broadly and a single member is less likely to be the deciding vote. However, these same points hold true for Legislatures in other states, where legislators are either required or allowed to recuse themselves from matters on which they have a conflict of interest. The Other Pertinent Information section on page 24 discusses this issue further.

According to data from the National Council of State Legislators, 44 states have an organization that oversees government ethics, but the jurisdiction of each state's organization varies. Along with Oregon, most states have a board or commission that regulates the executive and legislative branches, as well as lobbyists. Oregon is also one of 23 states in which the ethics board or commission has oversight authority over local government officials. However, Oregon is in the minority of states lacking an ethics organization that oversees campaign finance.

Unlike Oregon, most other states require or allow legislators to recuse themselves from matters on which they have a conflict of interest.

⁷ ORS 244.050 requires individuals serving or desiring to serve at every level of Oregon government to file SEIs. Some of those required to file an SEI include: the Governor, legislators, state agency directors, county elected officials, city elected officials, administrative and financial officers of school districts, education districts, and community college districts, members of the board of directors for some special districts, and some candidates for public office.

⁸ ORS 171.725 defines a lobbyist as any individual that is compensated for lobbying; any person who lobbies for a corporation, association, organization or any other group; and any public official who lobbies. Not all individuals that meet the definition of a "lobbyist" are required to register or file expenditure reports, such as members of the news media, legislators acting in their official capacity, individuals who do not lobby for compensation, and some statewide elected officials.

Instead, Oregon’s Secretary of State mostly regulates candidates for office. Appendix A includes a comparison of Oregon’s ethics laws and commission against those of seven other states we reviewed for this audit.

In Oregon, OGEC is provided the authority and responsibility to enforce government ethics rules at the state and local level.

OGEC’s mission is to objectively administer Oregon’s government ethics laws

OGEC is tasked with administering and enforcing the state’s ethics laws. The commission is comprised of nine commissioners, all of whom are appointed by the Governor and approved by the Senate. By law, eight of the commissioners must be chosen from names recommended by the Democratic and Republican leaders in each chamber of the Oregon Legislature — two from each of the four leadership groups.⁹ The final commissioner is independently selected by the Governor.

Nine staff members, led by the executive director, administers the commission’s day-to-day operations. The commission’s budget for the 2019-21 biennium is \$2.9 million, funded by an assessment on the budgets of state agencies and local governments: half from state agencies and half from local governments.

The agency receives no funding from penalties assessed for violations¹⁰ or the state’s General Fund. In 2020, the commission’s jurisdiction covered roughly 200,000 individuals working in state, county, municipal, and special governments across the state, including members of state boards and commissions.

OGEC Quick Facts	
Commissioners	9
Biennial budget (2019-2021)	\$2.9 million
Staff	9
Government Employees Covered	State and local public officials and employees — approximately 200,000 in total
Complaints Received (2019)	227, out of which 111 cases were opened
Opinions & Advice Issued (2019)	55

Under Oregon law, OGEC is broadly tasked with five core functions: enforcing the state’s government ethics laws; providing formal opinions and informal advice to public officials on the application of those laws; offering training and guidance to public officials; administering the filing of SEIs by public officials and lobbying registration and expenditures by lobbyists and their employers; and enforcing the state’s executive session laws.

Because the ethics laws can be complex, public officials can ask OGEC for advice on a specific question or scenario. Depending on the request, this advice is provided as an Advisory Opinion issued by the commission, a Staff Opinion issued by OGEC’s executive director, or informally by OGEC staff. Only Advisory Opinions, which are issued by the commission itself, provide what’s known as “safe harbor” protection. Under safe harbor protection, the person requesting the opinion cannot be penalized in any way for good faith actions carried out in accordance with the opinion, provided the requestor did not omit or misstate material facts when making the request.

⁹ The four leadership groups consist of the Speaker of the House, House Minority Leader, Senate President, and Senate Minority Leader.
¹⁰ Funds received from penalties go to the state’s General Fund.

Only Advisory Opinions provide “safe harbor” protection, in which the person requesting the opinion cannot be penalized in any way for actions carried out in accordance with the opinion.

Staff Opinions and informal advice provide a lesser level of protection. For Staff Opinions, requestors are protected from any penalty beyond a letter of reprimand, explanation, or education, as long as they acted in accordance with the opinion. For informal advice, the commission is allowed to consider whether the actions of a person accused of a violation were taken while relying on advice from OGEC

staff. OGEC management indicated that the commission has never taken action against a person who acted while relying on OGEC advice, regardless of whether that advice was an Advisory Opinion, Staff Opinion, or informal advice.

To help public employees learn about the ethics laws, OGEC offers training. Trainings can be in-person, through a virtual webinar, or via online courses offered through the state’s iLearnOregon platform. The commission also provides a guidance booklet for public officials that reviews ethics topics, statutes, and administrative rules.

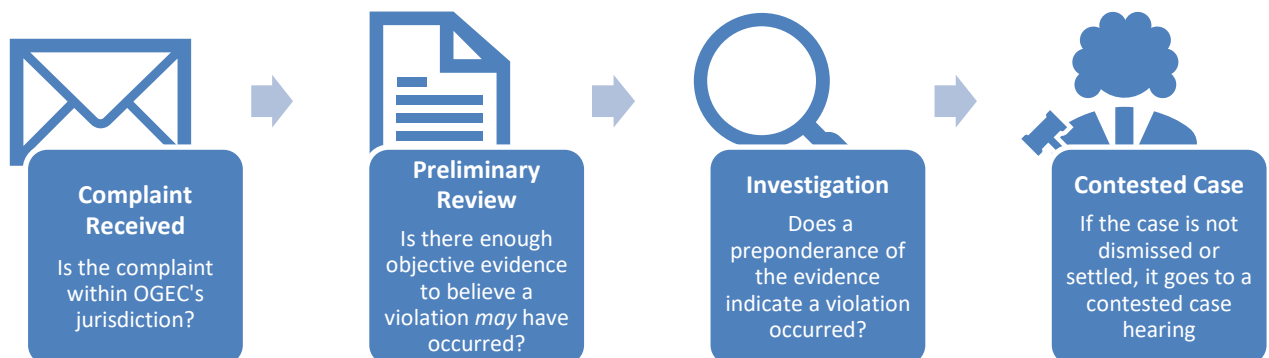
OGEC also manages the filing of SEIs by public officials as well as lobbying registration and expenditures by lobbyists and their employers. The commission enforces these requirements, oversees the system by which public officials and lobbyists submit this information, and makes SEI and lobbyist filings available to the public.

While OGEC is tasked with all these functions, the commission’s primary mechanism for enforcing the state’s ethics laws is through the receipt and investigation of ethics complaints.

OGEC is responsible for investigating ethics complaints and generally takes an educational approach when applying sanctions for minor and unintentional violations

By law, anyone can submit an ethics complaint, but all complaints must be submitted in writing and signed by the complainant — anonymous complaints are not allowed. Statutes also permit OGEC to open an investigation on its own, provided the commission has reason to believe a violation of the ethics law may have occurred. According to OGEC management, these “own motion” cases are generally opened when the commission becomes aware of a potential violation through media reports, while investigating another complaint, or in other documentation from a state agency or local government. Figure 3 shows OGEC’s complaint process.

Figure 3: An overview of OGEC’s complaint phases shows the points at which OGEC determines whether to move a case forward



When a complaint is received, it is first reviewed by OGEC’s executive director to make sure the complaint falls within the commission’s jurisdiction and includes the information that formed the basis to believe that a violation occurred. OGEC has 30 days from receipt of a complaint to complete a preliminary review. During the preliminary review phase, OGEC investigators begin

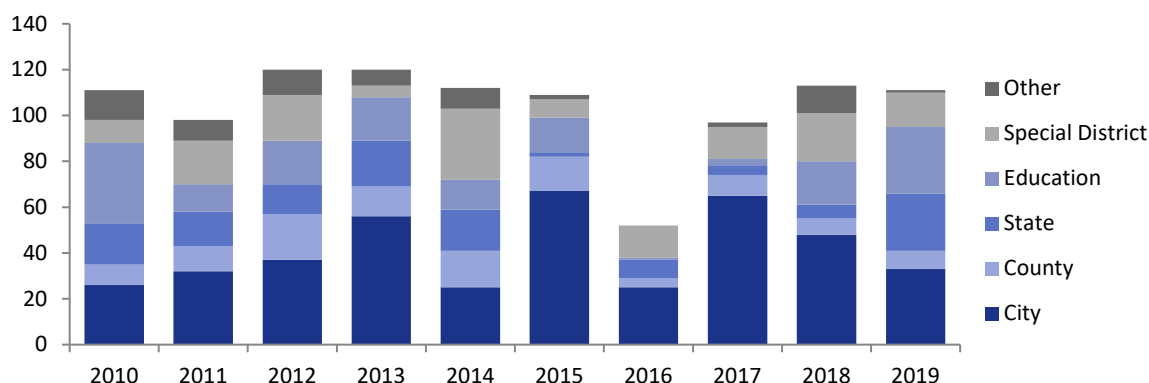
to gather the evidence relevant to the complaint. The investigator compiles a preliminary review report, which is reviewed by OGEC's executive director and the commission's assigned Assistant Attorney General (AAG) from the Oregon Department of Justice (DOJ) before going to the commissioners. By the end of the 30-day period, the commission must vote on whether it believes sufficient objective evidence exists to indicate that a violation may have occurred. Based on the commission's decision, the case is either dismissed or moved to the investigation phase. At least five of the nine commissioners must affirmatively vote to move a case to investigation.

In the investigation phase, OGEC investigators have 180 days to gather additional evidence relevant to the complaint. The investigator prepares an investigation report, which is also reviewed by the executive director and OGEC's assigned AAG. Based on the evidence from the investigation, the commission then votes on whether to find a violation has occurred or to dismiss the case. The commission can also decide to extend the investigation phase by no more than 30 days. As in the preliminary review phase, at least five affirmative votes are required for a final decision.

Unless the case is dismissed, it is either settled or goes to a contested case hearing. OGEC reports that about 99% of cases end in a negotiated settlement. If a settlement is reached, the commission issues a Stipulated Final Order that lays out the terms of the settlement, including what violations were found and any sanctions or penalties. If a settlement is not reached, the case may go to a contested case hearing before an administrative law judge upon the request of the subject, or the case may be resolved through a default final order. Alternatively, the respondent can choose to take the case to the Marion County Circuit Court. The respondent also has the right to appeal the decision of the contested case hearing or the circuit court to the Oregon Court of Appeals.

If the commission finds that a violation has occurred, it can apply sanctions, penalties, or both. According to OGEC management, the commission generally prefers to take an educational approach to the sanctions and penalties it applies, favoring letters of education or small fines in cases where the violation was relatively minor, unintentional, and the person accused acknowledged their mistake. The penalty for a violation is limited to no more than \$5,000 for most violations of the ethics laws, but with multiple violations total penalties can go higher. Since 2015, the commission has issued penalties of more than \$20,000 in a small number of cases in which several serious violations were found.

Figure 4: Other than 2016, the total number of cases OGEC opened each year stayed relatively steady from 2010-19, while the types of jurisdictions associated with cases often changed significantly

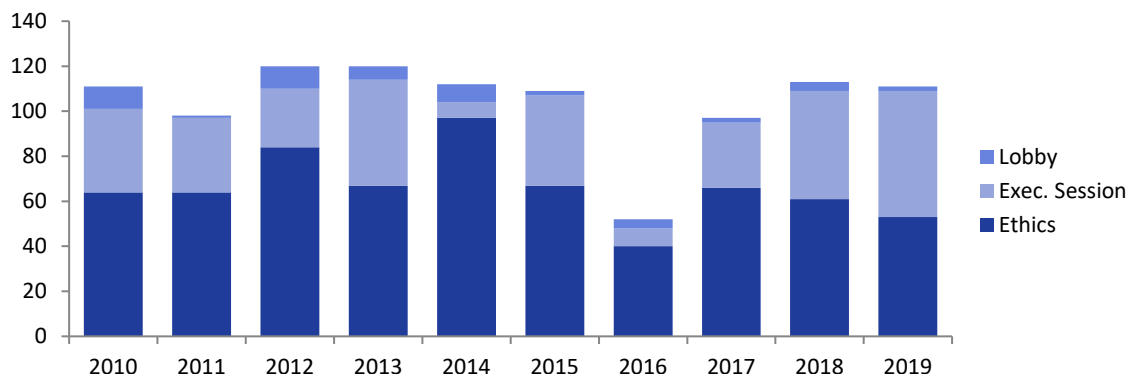


Source: Oregon Government Ethics Commission.

OGEC tracks some complaint statistics from year to year, such as the total number of cases opened and cases by jurisdiction. From 2010 to 2019, OGEC received approximately 1,043 complaints, or an average of 104 a year. Except for 2016, yearly case totals ranged from 97 to

120 a year. The makeup of the jurisdictions associated with cases appears to vary each year, though cases against city officials make up about 40% of the total (414 of 1,043) and the largest share most years. Figure 4 shows the breakdown of cases by jurisdiction from 2010 to 2019, while Figure 5 shows the breakdown by type of complaint (ethics, lobbying, or executive session).

Figure 5: The types of cases opened each year also seem to fluctuate, but ethics cases outnumber executive session and lobbying cases most years



Source: Oregon Government Ethics Commission.

To continue to fulfill its mission, OGEC has modified its operations during the COVID-19 pandemic

According to OGEC, the commission has been able to maintain its operations without substantial disruption due to the COVID-19 pandemic. To continue its work, the commissioners and staff are working more online, which has resulted in some benefits for commissioners and those accused in complaints, also known as respondents. OGEC claims that more respondents — particularly those living outside the Willamette Valley — have attended meetings virtually than did previously when all meetings were conducted in-person in Salem. According to OGEC’s executive director, people seeking help from OGEC would not know anything has changed, as communications have continued normally, and its customer service ratings have improved over the previous year. The commission’s budget has also not been affected by the pandemic.

The small size of the commission’s staff gave them flexibility to respond to changing circumstances and demands. OGEC reports its building is well situated to allow for implementation of distancing and other safety measures while maintaining operations. Typically, the commission does not receive many visitors, so visitors are able to be accommodated through appointments. Recently implemented online systems, an updated website, and a renewed focus on e-learning and webinars show OGEC has implemented strategies that are not just beneficial during the COVID-19 pandemic, but also generally.

Audit Results

Ethics laws establish the framework that protects the public trust against unethical conduct by public officials. Oregon's laws relating to conflicts of interest, acceptance of gifts, and misuse of office, among many others, appear to provide a reasonable structure for preventing unethical behavior and enforcing ethics rules. However, gaps in this structure, particularly in the areas of independence, protection of complainants, and ethics training, present opportunities for strengthening the state's culture around government ethics.

OGEc is charged with administering the ethics laws and appears to generally perform its work well. However, the commission could enhance its data practices to better monitor trends in ethics violations. OGEc could also provide a more robust training program for government employees, update its ethics manual for public officials as required in statute, and work more proactively to educate the public on the state's ethics laws.

Oregon's ethics framework and OGEc operations are generally aligned with other states and leading practices

Oregon's ethics laws and commission mostly operate in a manner comparable to other states and leading practices, particularly in the areas of independence, nonpartisanship and objectivity, due process protections for respondents, and improving public access to information. For example, OGEc is generally independent from the offices and agencies it regulates, while still being subject to appropriate checks and balances, and OGEc statutes and policies are designed to protect against partisanship and foster an impartial body.

OGEc is generally independent from other branches of government

OGEc's structure is based on the concept of checks and balances that permeates American political culture. The commission acts as a check against the abuse and concentration of power by state and local public officials. To facilitate this function, OGEc's legal structure allows it to independently investigate ethics violations and penalize violators at all levels of state and local government. If OGEc were overly reliant or interdependent on another government entity it could compromise the commission's ability to impartially enforce ethics law in the state. To this end, the Legislature has implemented policies aimed at protecting OGEc from outside interference in its proceedings.

The commission's structure is designed to create an effective and impartial body. Of the nine commission members, no more than three individuals can be registered to the same political party. This design helps prevent any party from being able to use the commission for purely political reasons. Commissioners are selected by the Legislature and the Governor, going through the standard appointment process for all other boards and commissions. Unlike many other boards and commissions in the state, the Governor gets just one preferred candidate for appointment to the commission.

We reviewed the ethics laws and commissions from seven other states: Washington, California, Nevada, Colorado, Ohio, Massachusetts, and Connecticut. Those states had comparable protections in place. For example, commissioners on the California Fair Political Practices Commission are selected by the Governor, Attorney General, Secretary of State, and Controller. If the Attorney General, Secretary of State, and Controller are all from the same political party, the Controller must select from lists of candidates provided by other parties with 500,000 or more registered voters.





The five members of the Colorado Ethic Commission are chosen by the state House, Senate, Governor, and Chief Justice of the Colorado Supreme Court, with those four commission members then selecting the fifth member from a local government. In Ohio, all commissioners are chosen by the Governor, but must be approved by the state Senate.

OGEC's assessment funding model also promotes its independence. While the state's General Fund dollars are appropriated every biennium at the discretion of the Legislature, OGEC's assessment falls outside the General Fund; changing the assessment would require the Legislature to pass a new law. Though its budget is still approved by the Legislature, having a separate funding source helps insulate OGEC from having its budget cut, either to fund other priorities or, more cynically, by lawmakers who might want to exert leverage over how the commission decides on cases. Instead of having to compete with other state agencies and recipients for the state's limited General Fund dollars, the commission's assessment provides a source of funding that is dedicated to OGEC and that helps bolster the commission's independence from the Legislature and Governor's Office.

Additionally, OGEC indicates it has worked hard to generate a culture that maintains the commission's independence, reduces the role of politics in its decisions, and generally ensures a fair process. In interviews, many OGEC commissioners mentioned they would not be able to tell the political leanings of their fellow commissioners based on their interactions on the commission. Moreover, OGEC's independence is highlighted by the actions it has taken against high-level political leaders, including a former Governor.

OGEC's complaint process includes sensible protections for those accused of ethics violations

A core function of OGEC's operations is its complaint process, which receives, investigates, and adjudicates complaints of ethics violations against public officials. Like a court of law, this system has been set up with significant protections for the individual accused of misconduct.

The complaint process currently keeps all complaints confidential during the 30-day preliminary review phase. During that phase, OGEC can only confirm the existence of a complaint against an individual — no other details may be released by the commission. After the preliminary review phase ends, all information becomes public record, including the identity of the complainant. This helps protect respondents from frivolous complaints and allows the commission to review the initial evidence of the complaint before it becomes public.

Similarly, the law protects elected officials from potentially false ethics allegations before an election. Upon request of a public official accused of a violation, the commission may postpone the disposition of a preliminary review if the complaint was received within 61 days of an election in which the public official is a candidate. In those cases, the commission's decision on the case is delayed until after the election has taken place. This helps protect officials from potentially frivolous complaints filed just before an election while ensuring the complaint is still processed and acted on appropriately.

The commission's complaint process also includes many of the required elements of legal due process, including:

- an unbiased hearing;
- notice of the proposed action and the grounds for that action;
- the opportunity to present reasons why the action should not be taken;
- the opportunity to introduce evidence and bring forth witnesses;
- knowing the opposing evidence;

- decisions based exclusively on the evidence presented;
- an opportunity to be represented by counsel;
- a record of the evidence presented at the hearing;
- written findings of fact and reasons for the commission's decision; and
- an opportunity to appeal the commission's decision.

The commission has considerable discretion over the sanctions and penalties it hands out, up to the maximum penalty for a given violation. According to OGE, commissioners consider mitigating and aggravating circumstances and factors when making their decisions. To help keep penalties and sanctions consistent, OGE management has developed a penalty matrix the commissioners use to guide their determinations. The matrix is included in OGE's administrative rules, but is not binding on the commissioners; however, it encourages consistent punishments for similar violations and could help reduce bias.

The other seven states we reviewed used a variety of mechanisms to protect officials from potentially frivolous complaints. To prevent the politicization of the complaint process, a manager from the Ohio Ethics Commission indicated that the commission is required to keep all investigative information confidential, only releasing settlement agreements and, in some circumstances, releasing that a case was referred to a county district attorney.



In Massachusetts, only cases in which the commission finds reasonable cause to believe a violation occurred become public — all others remain confidential.

The Colorado Ethics Commission and Connecticut Office of State Ethics also keep all unfounded cases confidential. In California, the Fair Political Practices

Commission generally keeps all information confidential until the case is closed and will redact any sensitive or confidential information from any documents made public.

OGE's case management system and electronic filing system have generally improved data management and expanded transparency

While fundamentally a regulatory body, OGE plays a role in promoting government transparency by publishing information about the financial interests of public officials and candidates, as well as the expenditures of lobbyists and the clients they represent. An informed public is essential to a well-functioning democracy, and transparency allows individuals to access information, promotes integrity in government, and can improve government efficiency by reducing the need to manually process public records requests.

OGE has implemented systems for internal management and tracking of complaints that allow public officials, lobbyists, and their clients and employers to file required information and the public to view this information online. These systems have improved the public's ability to access ethics information and the ability of OGE to track and manage cases and registrations. Figure 6 shows examples of the public-facing sides of OGE's Case Management System (CMS) and Electronic Filing System (EFS).

The EFS allows individuals, including elected officials, lobbyists, and candidates for office, to file required information, replacing the older system of paper filing. It also sends notifications and reminders to filers in order to facilitate compliance and keep users updated about changes to policies and procedures. Stakeholders interviewed, including lobbyists and elected officials, indicated the system was easy to use and made their filing requirements easier to fulfill. Some stakeholders questioned the ability of all potential filers to use the system given that it requires a computer and some knowledge, but OGE says it helps individuals who have trouble filing to meet the requirements. In 2019, OGE reports achieving 100% filing compliance for the first time.

Figure 6: OGE's electronic case management and filing systems improve transparency by providing easy access to case dispositions, opinions, and lobbyist and financial interest filings on the commission's web site

Search Advice and Case Information
Oregon Government Ethics Commission

Final Dispositions

Search Filters

Keyword:

Date Range: Starting: Ending:

Case Number: Complainant: Respondent: Category:

Jurisdiction:

[Back to Basic Search](#)

Clear Search

Show 50 entries

Date Issued	Status	Case Number	Respondent	Jurisdictions	Categories
11/06/2020	Default Final Order	19-187XSM	Rick Scholl	City of St Helens	Executive Session
11/06/2020	Stipulated Final Order	19-286XSM	Tom Calvanese	Port Of Port Orford	Executive Session
11/06/2020	Stipulated Final Order	19-287XSM	Lella Thompson	Port Of Port Orford	Executive Session
11/06/2020	Stipulated Final Order	19-288XSM	Aaron Ashdown	Port Of Port Orford	Executive Session
11/06/2020	Default Final Order	19-284XSM	Brett Webb	Port Of Port Orford	Executive Session
11/06/2020	Dismissal	20-021XSM	Dave Jacobs	Mid-Columbia Fire & Rescue	Executive Session
11/06/2020	Dismissal	20-023XSM	Bob Delaney	Mid-Columbia Fire & Rescue	Executive Session
11/06/2020	Dismissal	20-024XSM	Dick Schaffeld	Mid-Columbia Fire & Rescue	Executive Session

Electronic Filing System
Oregon Government Ethics Commission - Public Records

Public Records Lookup

Select Report Type: Select Filer Type: Set Year:

First Name: Last Name:

Select Category: Select Jurisdiction: Select Office:

[Generate Report](#)

Report Results - Summary

Total Filers: 5105

Report Results - Detail

[Export to CSV](#) [Print Report](#) [25](#)

Last Name	First Name	Year	
Faszer II	Dwight	2020	View Details
Aaron	Marcia	2020	View Details
Abar	Donald	2020	View Details
Abercrombie	Sandra	2020	View Details
Abernathy	Gayle	2020	View Details

Source: Oregon Government Ethics Commission.

These systems also have public facing features that allow the public to view information without a public records request. The public can view SEIs, lobbyist and lobbyist employer registrations and expenditures, legal defense trust funds, case dispositions, and advice and opinions.

OGE's transparency activities are generally aligned with best practices and comparable to the practices of other states. Most of the states we reviewed had physical or online means to view financial disclosure, complaint results, and other information. OGE has made progress in promoting transparency with the implementation of the EFS and CMS systems.

Oregon's ethics framework can be strengthened by increasing OGE's independence, further protecting complainants, and implementing ethics training requirements

Though the state's overall structure for government ethics is reasonable, we identified weaknesses with some key areas of the ethics laws, including a lack of adequate removal protections for commissioners, diminished institutional knowledge because commissioners are limited to one term, virtually no limits on commissioners' political activities, and limited protections for complainants, which could result in fewer complaints. Strict statutory deadlines can also make it difficult for investigators to complete preliminary reviews in time, particularly when complaint volumes are high. Other areas that could be improved include the independence of OGE's legal counsel, the state's ethics training requirements, and policies that help foster an ethical culture in state and local government.

Commissioners can be removed by the Governor for any reason, potentially jeopardizing their independence

As noted previously, state law includes several protections related to OGE's structure that prevent the commission from being controlled by any one political party or branch of government. However, there appears to be a fundamental oversight in this provision: as all nine commissioners are appointed by the Governor, they can also be removed by the Governor,

without cause. This has implications for OGE's independence and ability to regulate the state's highest public office.

Commissioners are not protected from unwarranted removal

Oregon is one of just eight states that do not statutorily protect commissioners from removal without just cause.

Oregon is one of just eight states that does not statutorily protect commissioners from removal without just cause, according to the Coalition for Integrity. If the Governor can remove commissioners without just cause, the person in that office could potentially obstruct an investigation they oppose by unilaterally removing all the commissioners. While this would likely be strongly opposed by other state leaders, political polarization has increased both nationally

and in many states. In an atmosphere of rising partisanship, political norms and public disapproval may not be enough to dissuade a future Governor from taking such an extreme step.

To help insulate ethics commissions from political interference and to safeguard their independence, the Campaign Legal Center and Coalition for Integrity both recommend that jurisdictions only allow a commissioner's removal for cause. As the Campaign Legal Center notes, both the Massachusetts State Ethics Commission and the California Fair Political Practices Commission only allow a commissioner to be removed under certain circumstances, including "substantial neglect of duty, inability to discharge the powers and duties of the office, or violations of certain prohibitions on commissioner activities." According to OGE management, one commissioner has been removed from the commission for health reasons. OGE indicated the removal was supported by the other commissioners.

Commissioners are limited to one term, potentially diminishing institutional knowledge and continuity

Under Oregon law, OGE commissioners can only serve one four-year term.¹¹ While this requirement was likely enacted with good reason, such as to promote new thinking on the commission, it may also undermine the ability of the commission to retain institutional knowledge and continuity. Commissioners and OGE management noted it takes time for new commissioners to become familiar with the ethics laws and the requirements the commission and staff must follow. Commissioners spend a significant portion of the term learning their roles and how the system works, leaving little time for putting their knowledge into practice. One commissioner suggested that by the time a commissioner has a good understanding of the entire process and their role, their term is up.

Of the other states we reviewed, four ethics boards and commissions also limit commission members to one fixed term, though in all cases the term is longer than four years. The Massachusetts State Ethics Commission and the Washington Legislative Ethics Board,¹² Executive Ethics Board, and Public Disclosure Commission all limit members to one term of five years, though this limit can sometimes be exceeded if a commissioner is appointed to complete another member's term and is then reappointed for a full term. Ohio, Colorado, Nevada, and Connecticut all have terms of four to six years and permit members to serve two or more terms. Among the other states we reviewed, only the California Fair Political Practices Commission limits members to one four-year term.

Allowing OGE commission members to serve an additional term — or increasing the length of the single fixed term — could help reduce the loss of institutional knowledge from member

¹¹ A commissioner can also complete another commissioner's unfinished term.

¹² The Washington Legislative Ethics Board has both legislative and public members; legislative members serve two-year terms and can be reappointed, while public members are limited to one five-year term.

turnover and cut down on the time needed for commissioners to become familiar with their responsibilities.

There are almost no statutory limits on commissioners' political activity

While some other states significantly limit commissioners' involvement in the political process, Oregon law does not restrict OGEC commissioners from most political activities. Many of the other states we reviewed prohibit commissioners from one or more of the following political activities:

- donating to political campaigns;
- endorsing candidates and ballot measures;
- working for other government bodies;
- working for political parties for money or volunteering for a political party, candidate, or ballot measure campaign; and
- campaigning for office.

For example, the Washington Public Disclosure Commission prohibits commissioners from all the political activities listed above. The Connecticut Office of State Ethics restricts board members from holding office in any political party or committee, donating to political campaigns, working as a registered lobbyist, or holding or campaigning for public office while a member of the board and for three years beforehand. Nevada limits commissioners from active involvement in a political party or campaign and from lobbying for pay.

Oregon law restricts most elected and appointed officials from serving on the ethics commission. However, statutes set no other limitations on who can serve on the commission and, importantly, do not restrict commissioners from working on or donating to political campaigns, working or volunteering for a political party, or endorsing candidates or ballot measures. Since OGEC regulates many elected officials, commissioners engaging in such activities may undermine the actual or perceived objectivity of the commission and its decisions.

OGEC receives legal services from DOJ, which may lead to a perception of a conflict of interest

As is the case with other state agencies and commissions, state law requires OGEC to receive legal counsel services from DOJ under the leadership of an elected Attorney General, which is a partisan position. The Commission's assigned AAG reviews documentation produced by OGEC during the complaint process, as well as formal ethics opinions dispensed by the commission. The AAG also attends commission meetings and, when asked, provides counsel to the commission related to application of the law to the matter at issue.

Although representation by DOJ is common across state government, OGEC's role places the commission in the rare position of being reliant upon that agency for legal advice while simultaneously exercising oversight over the agency, since Oregon's elected Attorney General and DOJ employees are all subject to the state's ethics laws. This legal counsel governance model has the potential to create an appearance of a conflict of interest. State law allows OGEC to obtain separate legal counsel when representation by DOJ might create a conflict of interest, but statutes require approval by DOJ in order to do so. This creates the potential for conflicts of interest and could weaken OGEC's ability to independently enforce the state's ethics laws and to uphold public trust.

An OGEC commissioner also voiced concerns about DOJ providing legal counsel. This commissioner noted that a previous AAG assigned to OGEC had been highly influential in shaping OGEC's interpretation of the ethics laws. This commissioner also stated that the

commissioners at the time were overly deferential to the AAG's interpretation of the law, which this commissioner viewed as infringing on OGEC's purview to interpret and apply the ethics laws. An outside attorney who has represented officials before the commission also expressed a similar view that in the past some commissioners were too deferential to the AAG's interpretation of the ethics laws.

To be clear, the concerns expressed by this commissioner and attorney were their own views and do not necessarily indicate that OGEC's authority or independence were constrained. Both individuals also noted this situation occurred in the past. However, the commission's reliance upon DOJ for legal counsel creates an ongoing potential risk that a similar situation or other conflict of interest issues and appearances could arise.

Oregon's ethics statutes may not adequately protect complainants, potentially resulting in fewer credible complaints from those who fear retaliation

Oregon law does not provide a specific means for OGEC to accept anonymous ethics complaints or keep a complainant's name confidential; complaints must be in writing and signed by the complainant. According to OGEC management, this requirement was included in the law to allow those accused of ethics violations to "face their accuser" by knowing the identity of the complainant.

The Campaign Legal Center and Coalition for Integrity both note that not allowing anonymous or confidential complaints could have a chilling effect on potential complaints.

While other states' ethics commissions have a similar requirement, the Campaign Legal Center and Coalition for Integrity both note that this could have a chilling effect on potential complaints. As the Coalition for Integrity states, many people will rightly fear losing their job or being placed in a hostile work environment if their identity is exposed. Oregon law includes protections for

"whistleblowers" — workers who report actions they believe violate local, state, or federal laws. These protections prohibit all employers from demoting, suspending, firing, or in any way discriminating or retaliating against a whistleblower who makes a good faith report of activity they believe violates the law. However, these protections are not proactive. Instead, they allow a whistleblower who has been fired or retaliated against to contest their employer's actions by filing a complaint with the Oregon Bureau of Labor and Industries or by suing the employer. Allowing anonymous complaints or keeping complainant names confidential could proactively protect complainants from being retaliated against in the first place.

Some states we spoke with also indicated they would receive more complaints if they could accept them anonymously. The Washington Legislative Ethics Board's executive director indicated that allowing anonymous complaints leads both to more complaints and more substantive complaints.

Six of the nine ethics organizations we spoke with allow anonymous complaints, keep complaints confidential, or both. As mentioned previously, the Ohio Ethics Commission keeps all complaints confidential. When a case is closed, notification is sent to the person who was investigated and the person who made the initial complaint.



Nevada takes a different approach, allowing a complainant's name to be kept confidential if the complainant works for the same government agency as the respondent or can provide evidence of a legitimate physical threat if their identity were disclosed. Nevada's ethics commission also has the authority to consider retaliation against a complainant as a separate ethics violation and to open a complaint on its own motion to investigate acts of retaliation. The Massachusetts

Ethics Commission, the Washington Executive Ethics Board, and the California Fair Political

Practices Commission all either accept anonymous complaints or keep complainant names confidential.

Another way an ethics commission can act on anonymous information is by opening a complaint under the commission's own authority. For example, the Connecticut Office of State Ethics indicated that it routinely receives information anonymously and has opened complaints on its own motion based on information received anonymously. However, Connecticut keeps all dismissed cases confidential, so a frivolous complaint submitted anonymously would not be made public. As mentioned previously, OGEC has the authority to investigate potential ethics violations under its own motion, but it generally opens such cases only based on media reports, evidence discovered during another investigation, or other credible information. OGEC does not have the authority to keep a dismissed case confidential, which increases the potential risk to the accused person's reputation if the anonymous information turns out to be wrong.

Unlike some state regulatory bodies, Oregon law does not explicitly allow OGEC to accept anonymous complaints.

Some other state entities that accept anonymous complaints or keep complainant names confidential include:

- Oregon Medical Board
- Oregon Board of Dentistry
- Oregon Board of Massage Therapists
- Department of Environmental Quality
- Oregon Liquor Control Commission
- Oregon Board of Social Workers
- Oregon Secretary of State's Fraud, Waste, and Abuse Hotline.

Besides other ethics agencies, many other state agencies, boards, and commissions in Oregon accept anonymous complaints or keep complainant names confidential. For example, state law requires all Oregon health licensing boards — such as the Oregon Medical Board, Oregon Board of Dentistry, and Oregon Board of Massage Therapists — to keep a complainant's name confidential from the person accused of misconduct. The Oregon Department of Environmental Quality, the Oregon Liquor Control Commission, and the Oregon Board of Social Workers also accept complaints anonymously or maintain complainant confidentiality, as does the Secretary of State's Fraud, Waste, and Abuse Hotline.

Without some way to allow anonymous complaints or to keep complainant names confidential, individuals who fear retaliation may not come forward with complaints, especially if the complaint is against an individual with significant power over them. Allowing anonymity or confidentiality could result in more credible complaints of wrongdoing being brought to the commission's attention.

Oregon does not require public employees to receive ethics training and could do more to help foster an ethical culture

As responsibility for adhering to the ethics laws falls on individual public employees and not the governments and agencies they represent or serve, state law does not require these public bodies to provide ethics training. This limits OGEC's leverage to encourage governments and agencies to provide their employees with ethics training, almost certainly resulting in lower participation than if training were required.

Only one group under OGEC jurisdiction — lobbyists — is required to receive annual training where enforcement is administered and reported through OGEC. Under ORS 171.742, lobbyists must receive education on sexual harassment and report their fulfillment of the requirement on their annual filings. OGEC is then required to report the list of lobbyists who have received training, as well as the date and duration of the training. Oregon law also requires state employees to engage in other required trainings, such as courses on sexual harassment and discrimination and information technology security.

At the same time, OGE is a small commission. If ethics training became mandatory for all state and local government employees, OGE management noted it would be hard-pressed to handle such a large increase in trainees without a significant infusion of staff and resources. However, some governments prioritize training to certain groups or have implemented other practices to help foster an ethical culture among their employees.

For example, federal regulations impose several ethics requirements upon federal agencies. Federal rules require every agency to maintain an ethics education program to teach employees how to identify government ethics issues and get help in complying with government ethics laws and regulations. Additionally, federal rules require new employees to receive an initial ethics training and employees in key positions to receive annual ethics training. Each federal agency must also appoint a Designated Agency Ethics Official to oversee the agency’s ethics program.

Other governments have also implemented training or other ethics requirements. Massachusetts requires all public employees to receive ethics training within 30 days of starting in their position and every two years thereafter. All public employees must also annually confirm they have received a summary of the conflict of interest laws, which is produced by the state’s ethics commission and provided by employers. Connecticut requires its Office of State Ethics to provide annual ethics training to all state employees and requires each state agency to appoint an Ethics Compliance Officer or Ethics Liaison. Ohio requires each new public official to be provided with a copy of the relevant ethics statutes and requires the employee to acknowledge receipt in writing. Many cities and other local governments have also implemented an ethical code of conduct, such as the City and County of Denver and the Metro regional government in the Portland area.

Despite being elected to lead large public institutions, state law does not require school board members to file SEIs

Nearly all elected and appointed officials in Oregon are required to disclose their financial interests publicly, including most elected officials. Public scrutiny of the economic interests of public officials helps prevent those officials from misusing their public office for their own benefit. School board members stand out from other members of public governing bodies in Oregon because they are not required to file SEIs.

Oregon school board members manage critical public bodies that educate Oregon’s students using billions of dollars in revenue and significant human capital and physical assets. The five largest school districts in Oregon collectively manage more than \$6 billion dollars in revenue each biennium, so significant tax dollars are on the line when board members make decisions. Figure 7 shows the overall budgets for the five largest school districts in the state.

Figure 7: The state’s largest school districts oversee budgets of more than \$6 billion in total, but no school board members are required to file SEIs

School District	All Funds Budget
Portland	\$2.73 billion
Salem-Keizer	\$1.53 billion
Beaverton	\$936.5 million
Bend-La Pine	\$481.5 million
Hillsboro	\$536.2 million

Source: School district budget documents.

School board members, like other public officials in Oregon, are part-time positions, so many board members have other forms of employment. They are also often integrated into their communities, which can increase the likelihood that conflicts of interest will arise. While this does not preclude individuals from serving on a school board, it is important to provide the public with adequate information about these potential conflicts to maintain accountability and fairness.

Some other states we looked at require school boards to file financial disclosure information. Washington¹³ and Nevada both require school board members to file financial disclosure information, while Ohio limits that requirement to school board members from districts with over 12,000 students.

Rigid 30-day time limits on preliminary reviews can burden OGE staff and cause unnecessary investigations

As mentioned previously, all complaint cases are kept confidential during the preliminary review phase. Prior to 2015, statute set the preliminary review phase at 135 days, with extensions allowed beyond that period. However, after some high-profile cases in which the preliminary review was extended well beyond 135 days, the Legislature changed the preliminary review period to 30 days with no option for extension.

The inflexibility of the requirement can place a significant burden on OGE staff. OGE has nine total staff, only two of which are investigators, and opens an average of eight to ten cases per month based on complaints received. However, OGE has no control over how many complaints it receives or when they will be received, so in some months that number can be significantly higher. This greatly increases the workload for OGE's investigators. With no way to control the flow of complaints, investigators are forced to complete a much larger amount of work within the same amount of time.

Along with increased workloads, delays in receiving responses from complainants and respondents can prevent investigators from obtaining all the information needed for the preliminary review in the required 30 days. Once that time period is up, statute requires the commission to either move the complaint to the investigative phase— before the needed information has been received — or dismiss the complaint entirely.

According to OGE management, past complaint cases have been moved to the investigative phase because staff did not receive the information needed to answer all the commissioners' questions within 30 days. Short of requesting additional staff or dismissing potentially valid complaints, OGE does not appear to have any other options. At the same time, moving a case to investigation before all the preliminary review evidence has been received could affect a public official's reputation, as both a commissioner and an attorney who has represented several officials before the ethics commission pointed out to auditors. Even if a case is ultimately dismissed, some in the public may assume there must have been enough evidence of unethical behavior to warrant an investigation or else the commission would not have approved one.

Only one of the seven other states we reviewed has a strict time limit for completing the preliminary review of a complaint, and the one state that does — Nevada — also provides more time than Oregon.

In auditors' reviews of seven other states, only Nevada placed a strict time limit on their preliminary review determinations. In Nevada, the Commission on Ethics has 45 days to determine whether the commission has jurisdiction over the complaint and to decide whether to open an investigation. The executive director of the Nevada commission noted that even this amount of time is insufficient when complaint volumes are high. The six other states we spoke with did not have rigid time limits for

completing the preliminary review of a case.

¹³ In Washington, school board members are only required to file a financial disclosure statement if there are more than 2,000 registered voters in the school district.

Better data practices, more training options, and statutory enhancements could help OGEc improve its operations and better inform public employees and Oregonians

OGEc has put in place a reasonable system for receiving complaints, conducting investigations, and providing training, but could tighten some of its practices in each of these areas. The commission has policies and procedures to help ensure that complaint investigations are conducted within statutory timeframes and documented in the complaint data system, CMS. OGEc could also more fully utilize CMS to analyze trends in ethics complaints, which could help inform the commission's training priorities.

As required in statute, OGEc publishes a guidance manual for public officials and provides ethics training for public employees. However, OGEc has not updated its manual since 2015, though state law requires it to be updated every four years. Additionally, OGEc's communication and outreach efforts could be enhanced to help improve the public's understanding of Oregon's ethics laws and the role the ethics commission plays in upholding and promoting ethics at all levels of government.

OGEc could better utilize data to analyze ethics trends and risks

In 2017, OGEc began using CMS to track and store the complaints it receives, preliminary reviews and investigations conducted, and any correspondence, evidence, or other documentation that results from an investigation. CMS also contains advice and opinions issued by the commission or its staff. Final case dispositions and advisory opinions are published to the commission's web site through CMS.

In addition to case evidence and correspondence, data captured in CMS includes important tracking information. This includes the date on which a complaint was received, types of alleged violations included in a complaint, the case disposition, and any sanctions or penalties imposed. However, OGEc does not appear to utilize this information in a strategic way.

OGEc staff indicated that they track high-level case file statistics by jurisdiction and general type of violation. They do not normally review case statistics based on more specific data in CMS. For example, OGEc does not run statistics on complaints by specific types of violations, such as conflicts of interest, use of public office for private gain, and nepotism, among others. Looking at the trends on these types of violations could help OGEc identify areas of the ethics law that should be emphasized in trainings as well as identifying possible improvements for the state's ethic legal framework.

Relatedly, OGEc does not have a formal process for reviewing the accuracy of data captured in CMS. Key case documents like preliminary review and investigation reports are reviewed by the executive director and OGEc's assigned AAG before going to the commission, which helps provide assurance that case information presented to the commission is accurate. However, OGEc has not established a policy or procedure for regularly reviewing the accuracy and completeness of the data entered in CMS.

In reviewing the complaint data, auditors found several cases in CMS for which information was missing or incorrect. For example, auditors identified 28 settled cases in which the commission had found a violation, but no sanction or penalty was noted in CMS (though at least in some cases, that information was contained in the actual settlement agreements). Also, in responding to the auditors' data questions, OGEc staff found that some controls were not working, allowing illogical dates to be entered, such as a case closure date that is earlier than the case open date. While these errors were relatively minor, having an established process for regularly reviewing

the CMS data would help ensure that any future analysis of complaint trends is based on accurate data.

OGEc maintains an ethics training program for public officials but could do more to educate government employees and improve public understanding of state ethics laws

Under the state's ethics statutes, OGEc is responsible for providing a program of continuing education for public officials. Prior to the COVID-19 pandemic, the commission primarily met this requirement by providing in-person trainings, often by presenting at meetings and conferences geared toward public officials. OGEc also works directly with individual state agencies and local governments to set up trainings specifically for their employees. OGEc staff noted that these customized trainings can be tailored to the areas of the ethics laws most relevant to organizations and their employees. For example, a presentation at an association of lobbyists can be customized to focus on the state's lobbying laws and reporting requirements. OGEc reports training about 2,000 individuals a year.

With the onset of the COVID-19 pandemic, the commission pivoted to providing most of its training through online meeting platforms. OGEc offers several monthly hour-long webinars on specific topics, such as accepting gifts and conflicts of interest, as well as a monthly session for new public officials. OGEc also utilizes this technology to provide the customized trainings for specific governments and organizations it previously offered in person.

OGEc management indicated the organization is looking to increase its technology infrastructure to support more online training. The commission has also hired a new trainer with more experience in providing virtual trainings. Though it has enhanced its virtual training offerings, OGEc management indicated the organization does not have a lot of experience with these technologies, so it will be reaching out to other state agencies to learn from their experiences.

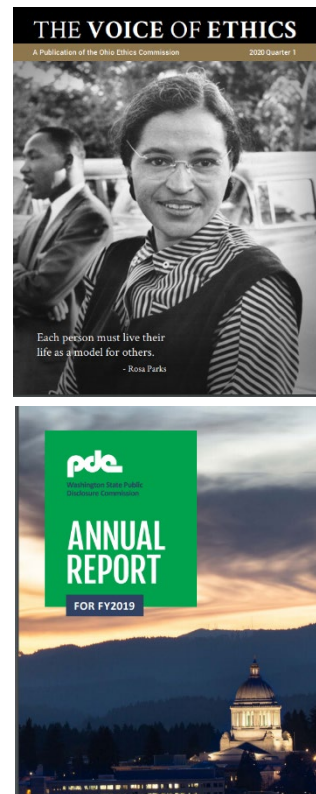
In addition to in-person and online trainings, OGEc's website also offers several resources on the ethics laws. These include links to short introductory presentations that users can access on demand, a variety of flowcharts to help officials navigate specific ethics laws, and an overview of the state's ethics requirements.

According to OGEc, legal responsibility for following the ethics laws falls on public employees, not state agencies and local governments. Because of this, the commission's influence to persuade governments and agencies to provide their employees with ethics training is limited. However, unethical conduct by public employees can still cost governments money and harm their reputations. For example, a former prison food manager for the Oregon Department of Corrections was charged with taking kickbacks and bribes of \$1.3 million for purchasing food from a particular vendor.

OGEc could also do more to inform public employees of the ethics laws and the resources OGEc makes available. The other states we spoke with all issue quarterly newsletters or annual reports that provide an overview of their commissions' activities during that time period. These reports often include information such as:

- significant changes to the ethics laws;
- suggested improvements to the ethics laws;

Figure 8: Examples of a newsletter from the Ohio Ethics Commission and an annual report from the Washington Public Disclosure Commission



- notable complaint investigations or violations found;
- key ethics advice and opinions; and,
- statistics on complaints received, trainings conducted, and opinions issued.

As an example, the Ohio Ethics Commission publishes a quarterly newsletter that often includes a discussion of a specific ethics question; an update on available training courses; and recent advisory opinions issued, among other topics. Other state ethics organizations we spoke with that publish annual reports include those from Colorado, Nevada, Connecticut, Massachusetts, California, and Washington. However, OGEc does not publish a similar report or newsletter.

Similarly, the commission does not proactively reach out to the public to inform them of OGEc's activities. For example, the commission does not take advantage of social media or other methods to directly communicate OGEc's mission, goals, key ethics cases or opinions, or other important information to the public. OGEc management indicated that in the past, news outlets often covered commission meetings, so the organization traditionally relied upon media outlets to communicate the commission's activities. However, management acknowledged fewer reporters now attend the meetings. Utilizing social media and other direct communication strategies could help OGEc convey how its education and enforcement efforts help foster an ethical culture in Oregon government.

OGEc's ethics guidance for public officials should be updated, in accordance with statutes

As a part of the statutes establishing the state's ethics laws, OGEc was tasked with creating a manual on government ethics to explain the ethics requirements to legislators, other public officials, and the general public. The manual also sets forth the reporting requirements for lobbyists and public officials required to file SEIs. Statutes prohibit OGEc from imposing any penalties on a public official for any "good faith action" taken while relying upon the manual or any updates to the manual.

Statutes require OGEc to update the manual as often as it deems necessary, but not less than every four years. However, auditors found this has not been happening. The current manual was last updated in 2015; based on the statute, OGEc should have issued an updated manual in 2019. As of January 2021, it had not yet done so. According to OGEc, managers and staff were focused on their main work priorities and overlooked this requirement. OGEc is aware of this lapse and has indicated it will be releasing an updated manual in early 2021.

Other Pertinent Information

This section covers information not addressed in the audit's findings, but which is relevant to the audit topic and should be considered by the Legislature.

Oregon legislators are required to vote on legislation even when they have a potential or actual conflict of interest

Oregon's conflict of interest laws contain an exception for legislators which allows them to participate in votes and decisions that present an actual conflict of interest. This exception exists even though virtually all other public officials must abstain from voting and recuse themselves from participating in such decisions.¹⁴ This legislative loophole undermines the idea that public officials should not be involved in decisions that would benefit them, their family, or close associates.

According to the Center for Public Integrity,¹⁵ Oregon and Utah are the only states that require legislators to vote on a matter regardless of whether it presents a potential or actual conflict of interest. Under both House and Senate rules, Oregon legislators cannot abstain from a vote for any reason, though legislators can be excused for medical appointments or necessary non-legislative meetings. Legislative leaders can penalize lawmakers who are absent without prior approval.

State law also requires legislators to announce their potential or actual conflicts in accordance with the legislative rules. However, under Article IV, Section 11 of Oregon's Constitution, the Legislature establishes its own rules governing operations and setting standards of conduct for legislators. These rules are voted upon by members of the respective chambers — and can also be changed by them.

In a 2007 report, the Oregon Law Commission recommended lawmakers be restricted from taking any action on matters that represent an actual conflict of interest, with the possible exception of being allowed to participate in floor votes.¹⁶ Santa Clara University's Markkula Center for Applied Ethics goes a step further, recommending lawmakers not be allowed to take part in any issues that could present even the appearance of a conflict of interest. The center explains that while a public official may feel their interest in an issue gives them a particular insight into the matter, it is impossible for a legislator to be impartial when their self-interest is involved. The center further notes that a conflict of interest is not resolved by being transparent about it; lawmakers must completely remove themselves from the decision-making process.

Each of the seven other states we reviewed for this audit either require or allow legislators to recuse themselves from participating in issues when they have a conflict of interest, though rules vary across those states. For example, the state constitutions of Colorado and Washington require legislators to both disclose and not vote on any bill or measure in which they have a personal or private interest. In contrast, Nevada legislative rules allow — but do not require — lawmakers to abstain from voting on a matter in which they have a conflict of interest. In California, the Legislature's joint rules prohibit a lawmaker from participating in any legislation in which they have a personal interest, with one exception: legislators are allowed to vote on

¹⁴ Under limited circumstances, public officials who are members of a governing body may vote on an issue that represents a potential or actual conflict of interest if their vote is necessary to maintain a quorum of that body.

¹⁵ Q&A: *What We Learned From Digging Into State Legislators' Disclosure Forms*, Center for Public Integrity (2017), <https://publicintegrity.org/politics/state-politics/qa-what-we-learned-from-digging-into-state-legislators-disclosure-forms/>.

¹⁶ In 2003, Governor Kulongoski tasked the Oregon Law Commission with reviewing and proposing comprehensive changes to Oregon's ethics laws. The Legislature funded this effort in 2005 and directed the commission to provide recommendations and draft legislation for its consideration during the 2007 legislative session.

final passage of such a bill if they submit a statement declaring their personal interest and that they are able to cast a fair and objective vote on the legislation.

Allowing legislators to participate in matters on which they have a conflict of interest risks weakening the public's trust in government and the notion of public office as a public trust, in which officials exercise their authority for the benefit of all rather than themselves. In addition to current requirements that legislators publicly disclose potential and actual conflicts of interest, the Oregon Legislature should consider changing statutes and chamber rules to require lawmakers to recuse themselves from any discussions, debates, or votes on such measures.

Recommendations

To strengthen the state's government ethics framework, OGEc should work with the Governor's Office and Legislature to:

1. Establish statutory protections for commissioners to prevent removal without just cause before a commissioner's term has ended.
2. Establish more specific limitations on commissioners' political activities.
3. Allow members to serve more than one term or increase commission terms to more than four years.
4. Explore legislation allowing the commission to hire or contract for an internal general counsel position, to increase its independence.
5. Amend statutes to allow OGEc to accept anonymous complaints or keep complainant names confidential, either at its discretion or when a complainant fears retaliation.
6. Require public employees to receive regular ethics training or require public employees to document their acknowledgement and understanding of the state's ethics laws upon hiring and regularly thereafter.
7. Establish additional policies aimed at creating and maintaining an ethical culture in Oregon government, such as requiring ethical codes of conduct.
8. Require school board members to file Statements of Economic Interest.
9. Increase the time allowed for preliminary reviews.

To improve its operations and better inform the public and public employees, OGEc should:

10. Establish procedures for reviewing the accuracy of CMS data and regularly analyzing CMS and other data to look for trends.
11. Continue to expand training options to provide more virtual and online trainings, which may require additional budget resources.
12. Create and distribute a quarterly newsletter or annual report that includes information and updates on OGEc operations, complaints, adjudications, important advisory opinions, legislative changes, and proposals for strengthening the state's ethics laws.
13. Consider utilizing social media and other avenues of communication to regularly inform the public of commission decisions, how to file a complaint, advisory opinions, information related to Statements of Economic Interest, and lobbying disclosures.
14. Update the ethics manual for public officials, in accordance with statute.

Objective, Scope, and Methodology

Objective

The objective of this audit was twofold: One, to determine whether there are ways in which Oregon can improve its government ethics framework, particularly in the following areas:

- a. Strength of ethics laws;
- b. Commission structure, independence, and qualifications;
- c. Training requirements for public officials and employees;
- d. Promoting an ethical culture.

Two, to determine whether there are ways in which OGEc can improve its processes for receiving, investigating, and adjudicating ethics complaints and training government employees on ethics laws.

Scope

The audit focused on Oregon's government ethics statutes, primarily captured in ORS Chapter 244, including those that set out the ethics requirements, OGEc's structure and responsibilities, and ethics training requirements, as well OGEc policies, procedures, and processes for receiving and investigating ethics complaints, including all complaint data captured in OGEc's CMS system through July 2020.

Methodology

To address our objectives, we used a methodology that included, but was not limited to, conducting interviews, reviewing documentation, and reviewing complaint data. To gain an understanding of the program and to learn the views, opinions, and perspectives of stakeholders, we conducted:

- Interviews with OGEc commissioners, management, and staff;
- Interviews with OGEc stakeholders, including legislative leaders, attorneys who have represented public officials before the commission, and managers or staff from the Governor's Office, Oregon Department of Justice, Legislative Fiscal Office, League of Oregon Cities, and other state agencies;
- Interviews with managers and reviews of documentation from the ethics regulatory bodies for Washington, California, Nevada, Colorado, Ohio, Connecticut, and Massachusetts;
- Reviews of relevant ethics laws and administrative rules;
- Reviews of OGEc's key performance measures; and
- Interviews and reviews of best practice information from ethics watchdog organizations, such as the Campaign Legal Center and Coalition for Integrity.

To gain an understanding of internal controls for OGEc's complaint process, we reviewed OGEc's written policies, procedures, and processes and interviewed key managers and staff about them. We also reviewed data from OGEc's CMS to determine whether the data would be reliable enough for our objectives. Though most of the CMS data appeared to be reliable enough for our purposes, the data around sanctions and penalties was inconsistent and thus not reliable enough for our purposes, so we did not end up using those data to support our findings or conclusions. However, we made recommendations for improving the reliability of OGEc's data.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We sincerely appreciate the courtesies and cooperation extended by officials and employees of OGEC during the course of this audit.

Appendix A: Comparison of State Ethics Organizations

	Commission Members	Coverage	Public Employees Covered (Approx.)	Comm. Staff	Budget for FY/CY 2019 or 2020 (Approx.)	Complaints Received in 2019	Allow Anonymous/ Confidential Complaints?	Members Protected from Removal?	Internal General Counsel Allowed?
California Fair Political Practices Commission	5	State and Local	>1,000,000	80	\$13,500,000	2,344 ¹⁷	Yes	Yes	Yes
Colorado Independent Ethics Commission	5	State and Local	Unknown	1	\$205,000	26	No	No	Yes ¹⁸
Connecticut Office of State Ethics	9	State	60,000	14	\$1,520,000	52	Yes	No	Yes
Massachusetts State Ethics Commission	5	State and Local	400,000	26	\$2,206,000	875	Yes	Yes	Yes
Nevada Commission on Ethics	8	State and Local	145,000	6	\$893,000	123	Yes	Yes	Yes
Ohio Ethics Commission	6	State and Local ¹⁹	600,000	19	\$2,600,000	174	Yes	No	Yes
Oregon Government Ethics Commission	9	State and Local	260,000	9	\$1,450,000	227 ²⁰	No	No	No
Washington Executive Ethics Board	5	State - Executive	65,000	4	\$481,000	110	Yes	No	No
Washington Legislative Ethics Board	9	State - Legislative	800	1	\$259,000	13	No	No	Yes
Washington Public Disclosure Commission	5	State and Local	7,000	31	\$5,000,000	414	No	Yes	Yes

¹⁷ Includes both complaints and referrals.

¹⁸ The Colorado Independent Ethics Commission is allowed to have its own general counsel but has chosen to receive general counsel services from the Colorado Attorney General's Office.

¹⁹ The Ohio Ethics Commission does not cover state legislators.

²⁰ Complaints received, out of which 111 cases were opened.



Oregon

Kate Brown, Governor

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April 19, 2021

Kip Memmott, Director
Secretary of State, Audits Division
255 Capitol St. NE, Suite 500
Salem, OR 97310

Dear Mr. Memmott,

This letter provides a written response to the Audits Division's final draft audit report titled: ***Oregon's Ethics Commission and Framework Could Be Better Leveraged to Improve Ethical Culture and Trust in Government.***

As Executive Director of the Oregon Government Ethics Commission, I would like to express my appreciation for the many volunteer hours put in by the current and former Commissioners who unfailingly perform their duties with grace and purpose. The staff of the Commission provides exemplary service to Oregon's citizens by educating public officials on their duties as holders of the public trust and holding them accountable when they fail to honor that trust.

The Secretary of State's performance audit of the Commission began in the summer of 2019. The Commission appreciates the work of the auditors and we are always eager to make improvements that could more efficiently accomplish the Commission's twin missions of education and enforcement.

The audit report describes the Commission's duties to include five core functions:

- 1) enforcing the ethics laws
- 2) providing advice and opinions on the application of those laws
- 3) conducting training for public officials on compliance
- 4) administering the filing requirements for lobbyists, their clients/employers, and certain public officials who must annually disclose their financial interests
- 5) enforcing the executive session provisions of Oregon Public Meetings law.

Of the 14 recommendations by auditors, 9 are for new legislation to address what the auditors consider deficiencies in the current ethics laws in ORS Chapter 244, the largest of three bodies of law within the Commission's jurisdiction. Thus, the majority of the post-audit recommendations would not necessarily improve the Commission's performance of their current core functions, but would enlarge the scope of those functions or change the requirements for Commissioners and legal counsel.



As noted below, the Commission may not unilaterally introduce proposed legislation, they may only propose legislative concepts to the Governor's Office. The Governor may choose to introduce proposed legislation based on a Commission concept, but until that point, the Commissioners and Commission staff must remain neutral on any proposed legislation. It is the Commission's hope that if the Governor introduces a bill in the 2023 legislative session based on a recommendation made in this audit report, the Secretary of State will provide legislative testimony as to the basis for their recommendation.

The Commission agrees with legislative recommendations #3 and #9. Bills are currently pending in the 2021 Legislative session to address the issues of expanding the preliminary review period from 30 to 60 days (SB 60) and allowing Commissioners to serve more than one term (SB 63). The bills have currently passed the Senate and are awaiting action by the House. Both of these bills would improve the performance of the Commission in meeting its mission of education and compliance.

Legislative recommendations #5 (taking anonymous complaints), #6 (mandated training for all public officials), and #8 (add a large group to the financial disclosure filers) would each expand the work of the Commission and require additional expenditures and new staff. The reasons for these recommendations, however, are explained in the audit report.

It is difficult to discern the rationale for some of the other recommended legislation. For example, recommendation #1 seeks to legislatively protect Commissioners from unjust removal by the Governor and recommendation #2 seeks to prohibit Commissioners from participating in political activities, both of which appear to be solutions to problems for which the audit report provides no evidence. Similarly, recommendation #4 proposes legislation requiring that the Commission be represented by in-house or private legal counsel as opposed to representation by the Attorney General's office. The audit report states that representation by the AG's office *could* lead to a *perception* of a conflict of interest and mistakenly states that the Commission is prohibited from obtaining outside counsel without the AG's approval. The Commission is permitted by law to retain or appoint qualified legal counsel who is responsible to the commission when the commission finds it is inappropriate and contrary to the public interest for the office of the Attorney General to represent concurrently more than one public official or agency in any matter before the commission because the representation: (a) would create or tend to create a conflict of interest; and (b) is not subject to ORS 180.230 or 180.235. [ORS 244.250(7)]

Although the reason given for all recommendations #1, 2, and 4 is to make the Commission more independent, there is no evidence in the audit findings indicating that bias, outside interference, or political pressure, has existed or currently exists as to the Commissioners, the Commission staff, or the legal counsel.

The Commission agrees with recommendations #10 through #14, which would improve the performance of the Commission and are within the sole ability of the Commission to achieve. In fact, the Commission has already implemented three of these recommendations and the other two are ongoing endeavors (extending training and implementing a social media presence). Recommendation #7 suggests legislation to require an “ethical code of conduct.” As an alternative, a code of conduct could be adopted as an aspirational goal by the Commission and disseminated statewide. All six of these recommendations either have been or could be implemented on or before July 31, 2021.

Below is our detailed response to each recommendation in the audit.

RECOMMENDATION 1		
Work with the Governor’s Office and Legislature to establish statutory protections for commissioners to prevent removal without just cause before a commissioner’s term has ended.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Neither; must remain neutral on any legislative proposal	2023 Legislative Session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 1

Executive Director proposes legislative concepts prior to each legislative session to the Governor’s Office. If the Governor’s Office agrees on the merits of the concept, a bill is introduced in the legislative session by the Governor. Only at that point may the Commission interact with the Legislature to advocate for adoption of the Governor’s bill.

RECOMMENDATION 2		
Work with the Governor’s Office and Legislature to establish more specific limitations on commissioners’ political activities.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Neither; must remain neutral on any legislative proposal	2023 Legislative Session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 2

Executive Director proposes legislative concepts prior to each legislative session to the Governor’s Office. If the Governor’s Office agrees on the merits of the concept, a bill is introduced in the legislative session by the Governor. Only at that point may the Commission interact with the Legislature to advocate for adoption of the Governor’s bill.

RECOMMENDATION 3		
Work with the Governor's Office and Legislature to allow members to serve more than one term or increase commission terms to more than four years.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	Introduced as SB 63; Target date sine die 2021 session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 3

The Commission proposed this action as a legislative concept in April 2020 to the Governor's Office. The Governor agreed on the merits of the concept and the bill has been introduced in the 2021 Legislative Session as SB 63. On April 12, 2021, it was passed by the full Senate by a vote of 28-0 and has moved to the House.

RECOMMENDATION 4		
Work with the Governor's Office and Legislature to explore legislation allowing the commission to hire or contract for an internal general counsel position, to increase its independence.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Neither; must remain neutral on any legislative proposal	2023 Legislative Session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 4

Executive Director proposes legislative concepts prior to each legislative session to the Governor's Office. If the Governor's Office agrees on the merits of the concept, a bill is introduced in the legislative session by the Governor. Only at that point may the Commission interact with the Legislature to advocate for adoption of the Governor's bill.

RECOMMENDATION 5		
Work with the Governor's Office and Legislature to amend statutes to allow OGEC to accept anonymous complaints or keep complainant names confidential, either at its discretion or when a complainant fears retaliation.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Neither; must remain neutral on any legislative proposal	2023 Legislative Session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 5

Executive Director proposes legislative concepts prior to each legislative session to the Governor's Office. If the Governor's Office agrees on the merits of the concept, a bill is introduced in the legislative session by the Governor. Only at that point may the Commission interact with the Legislature to advocate for adoption of the Governor's bill.

RECOMMENDATION 6		
Work with the Governor's Office and Legislature to require public employees to receive regular ethics training or require public employees to document their acknowledgement and understanding of the state's ethics laws upon hiring and regularly thereafter.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Neither; must remain neutral on any legislative proposal	2023 Legislative Session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 6

Executive Director proposes legislative concepts prior to each legislative session to the Governor's Office. If the Governor's Office agrees on the merits of the concept, a bill is introduced in the legislative session by the Governor. Only at that point may the Commission interact with the Legislature to advocate for adoption of the Governor's bill.

RECOMMENDATION 7		
Work with the Governor's Office and Legislature to establish additional policies aimed at creating and maintaining an ethical culture in Oregon government, such as requiring ethical codes of conduct.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree as to the Commission creating and disseminating an "ethical code of conduct," but must remain neutral on any such legislative proposal	July 31, 2021 for internal creation of a "code of conduct"; 2023 Legislative Session for legislation on the subject	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 7

In lieu of a legislative proposal, the Commission staff could draft an "ethical code of conduct" for Oregon public officials as an aspirational policy statement, have it approved by the Commissioners, posted to the website, disseminated through social media, and included in future trainings.

RECOMMENDATION 8		
Work with the Governor's Office and Legislature to require school board members to file Statements of Economic Interest.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Neither; must remain neutral on any legislative proposal	2023 Legislative Session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 8

Executive Director proposes legislative concepts prior to each legislative session to the Governor's Office. If the Governor's Office agrees on the merits of the concept, a bill is introduced in the legislative session by the Governor. Only at that point may the Commission interact with the Legislature to advocate for adoption of the Governor's bill.

RECOMMENDATION 9		
Work with the Governor's Office and Legislature to increase the time allowed for preliminary reviews.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	Introduced as SB 60; Target date sine die 2021 session	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 9

The Commission proposed this action as a legislative concept in April 2020 to the Governor's Office. The Governor agreed on the merits of the concept and the bill was introduced in the 2021 Legislative Session as SB 60. On April 12, 2021, it was passed by the full Senate by a vote of 21-7 and has moved to the House.

RECOMMENDATION 10		
Establish procedures for reviewing the accuracy of CMS data and regularly analyzing CMS and other data to look for trends.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	Completed - March 31, 2021.	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 10

Agree with the recommendation.

The Commission has already implemented a procedure whereby the Compliance and Education Coordinator, in consultation with the Executive Director, will review the data accuracy of the Case Management System (CMS) on a quarterly basis and make corrections as necessary. Each staff member would receive notice of inaccuracies and instruction manuals would be updated if necessary on a quarterly basis. If CMS system changes need to be made by the software developer, they would be notified of necessary changes on an ongoing basis through the current ticket system.

Annually, on July 31, a report will be prepared for the Executive Director which analyzes and synthesizes data in CMS and other information for the prior 4 quarters as to any trends that would help guide the education and enforcement missions of the commission. This report would coincide with the annual gathering of the Commission's KPMs (key performance measures). For example, if a larger than usual number of complaints are

filed, phone calls received, and advice requested, on executive session compliance, the Commission could take some or all of the following actions: increase trainings on that topic, do a quarterly newsletter devoted to that topic, or propose that the Oregon State Bar approve a Continuing Legal Education (CLE) class on executive session compliance to reach Oregon attorneys who advise public bodies.

RECOMMENDATION 11		
Continue to expand training options to provide more virtual and online trainings, which may require additional budget resources.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	Ongoing - July 31, 2021	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 11

Agree with the recommendation and have already expanded online and virtual trainings during COVID, and will continue to do so.

The trainers prefer to use Adobe Connect for the virtual training because it allows them to measure training efficacy through a “polling” function that assesses each trainee’s baseline knowledge at the beginning of the course and again at the end of the course to ascertain “knowledge added” by the training session. The Commission trainers are very flexible, however, and have used Zoom, Webex, GoToMeeting, MS Teams, and various other platforms to deliver trainings when the audience prefers that mode. We will continue to expand these offerings going forward. Very soon, the training platform for state employees is migrating from I-Learn to Workday. The trainers are converting current I-Learn training modules to Workday and adding new ones.

In addition to formal trainings that are offered or requested by public bodies, a large amount of training takes place over the phone and through email. The Commission staff is available by phone during business hours and the trainers and other staff field many phone calls and emails throughout the day and provide one-on-one training as to how the laws apply to specific circumstances. Not uncommonly, a trainer will receive a call from a member of a governing body at 4pm who is about to go into a 5pm public meeting and needs to know whether they have a conflict of interest concerning a specific agenda item, and if so, how to handle that conflict to comply with the law.

RECOMMENDATION 12		
Create and distribute a quarterly newsletter or annual report that includes information and updates on OGE operations, complaints, adjudications, important advisory opinions, legislative changes, and proposals for strengthening the state's ethics laws.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	Completed – March 1, 2021	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 12

The Commission has completed this recommendation and has issued its first two quarterly newsletters entitled "Ethics Matters" in Winter 2020 and Spring 2021. In addition to posting to our website, these newsletters were distributed widely, using the Commission's electronic filing system database to reach all SEI filers, lobbyists and client/employers of lobbyists, the Commission's notice list for administrative rules, and other interested parties.

The inaugural Winter 2020 issue covered timely information concerning the preparations necessary at the local level for the upcoming filing of annual Statements of Economic Interest (SEIs). The newsletter highlighted trainings available for jurisdictional contacts who act as liaisons between the Commission and required SEI filers in their jurisdiction. Also included was a flowchart to determine who is a lobbyist and if so, whether they must register with the Commission and file quarterly reports. The Spring 2021 issue was published in April and focused on SEI filers (approximately 5,000 public officials) who must electronically file their reports with the Commission by April 15. This issue covered frequently asked questions about what information needs to be included in the SEI, and advertised available trainings offered online.

RECOMMENDATION 13		
Consider utilizing social media and other avenues of communication to regularly inform the public of commission decisions, how to file a complaint, advisory opinions, information related to Statements of Economic Interest, and lobbying disclosures.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	July 31, 2021	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 13

Agree with this recommendation. The trainers will explore the Commission's use of social media and other avenues of communication to better inform the public of the work of the Commission. The Commission could have one or more social media accounts established on or before July 31, 2021.

RECOMMENDATION 14		
Update the ethics manual for public officials, in accordance with statute.		
Agree or Disagree with Recommendation	Target date to complete implementation activities	Name and phone number of specific point of contact for implementation
Agree	Completed – Adoption of the GUIDE FOR PUBLIC OFFICIALS by Commissioners as a formal Commission Advisory Opinion on April 30, 2021	Ronald A. Bersin, Executive Director 503-378-5105

Narrative for Recommendation 14

The Guide for Public Officials (GUIDE) has been extensively revised to update statutory references, to include better and more numerous examples of common situations, and to correct some inaccurate or outdated information.

The GUIDE has been approved by the Commission's counsel for legal sufficiency and it is on the agenda for the Commissioners to adopt as a Commission Advisory Opinion at their April 30, 2021 meeting. Once approved, the GUIDE will be posted to our website and disseminated to public officials in our EFS and CMS databases and to stakeholder groups such as the Association of Oregon Counties, the League of Oregon Cities, the Special Districts Association of Oregon, and the Oregon School Board Association.

In closing, I wish to again thank the auditors, the Commissioners, and the staff for their assistance in making improvements to the services offered by the Commission. Please contact Ronald Bersin at 503-378-5105 with any questions.

Sincerely,



Ronald A. Bersin
Executive Director

cc: Andrew M. Love, Auditor
Stephen W. Winn, Auditor



Audit Team

Andrew Love, CFE, Audit Manager

Stephen Winn, MPP, Principal Auditor

Bill Newell, Staff Auditor

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of the office, Auditor of Public Accounts. The Audits Division performs this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division has constitutional authority to audit all state officers, agencies, boards and commissions as well as administer municipal audit law.

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