To: Government Ethics Work Group and Interested Persons
Re: Staff Analysis and Sub-Work Group Recommendations on LC 1137
Gifts, Honoraria and Financial Gain
From: Jerry Watson
Date: September 29, 2006

LC 1137 would make changes to laws concerning gifts, honoraria and financial gain applicable to public officials in Oregon.

Oregon Law Commission staff has reviewed the text of draft statutory provisions in LC 1137. Staff finds that the statutory draft appropriately reflects the decisions and recommendations made by the Government Ethics Standards Sub-Work Group (Group #1), subject to those qualifications set forth in items nine and ten below.\(^1\) Group #1 now forwards the draft to the full Government Ethics Work Group for consideration and action.

**Gifts.** The Sub-Work Group agreed to make the following recommendations dealing with gifts at its meetings on June 19, 2006, June 30, 2006 and September 25, 2006.

1. The existing “basic” definition of gift currently in ORS 244.020(7), excluding for the moment, those exceptions set forth as ORS 244.020(7)(a)-(e) should continue to be public policy. However, any person who resides with a public official should be a recipient covered by this definition. A gift shall not be considered financial gain. (See Section 1 of LC 1137 at Subsection 5(a) and Subsection 9)\(^2\)

2. A public official or a relative of a public official may solicit or receive a gift unless the gift is solicited or received from a source that could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has any official position or office over which the official exercises any authority. (See Section 2 of LC 1137 at Subsections 2(d)-(f) amendment ORS 244.020)

3. The existing prohibition [currently ORS 244.040(2)] on solicitation or receipt of gifts with an aggregate value in excess of $100 during any calendar year from any single

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\(^1\) Statutory changes in LC 1137, except as specifically discussed in this memorandum, are generally technical changes to conform to Legislative Counsel’s form and style. Those technical changes are self-explanatory.

\(^2\) This recommendation generally continues existing statutory provisions, but calls for a somewhat broader definition of those gift recipients who are within the scope of the statute. See Section 1 of LC 1137 at Subsection 5(a) which adds “member of the household of a public official” as a covered recipient and at Subsection 9 which changes the definition of a “Member of the household” to mean any “person” (rather than “relative”) who resides with the public official.
source “reasonably known” to have a legislative or administrative interest should be modified to limit the value of such gifts to no more than $100 for any single gift during any calendar year (regardless of the number of “sources” of the gift), and a total value of all gifts from a single source to no more than $250 per year. (See Section 3 of LC 1137)

4. The following items, which are expressly excluded from the current definition of “Gift” [see ORS 244.020(7)] should either be retained as exclusions to the definition of gift or included elsewhere as allowed gifts:

   a. Campaign contributions (See Section 1 of LC 1137 at Subsection 5(b)(A))
   b. Gifts from relatives (See Section 1 of LC 1137 at Subsection 5(b)(B))
   c. Food, lodging and travel when participating in an event which bears a relationship to the public official’s office (See Section 1 of LC 1137 at Subsection 5(b)(C))
   d. Food or Beverage consumed by the public official or the public official’s relatives in the presence of the purchaser or provider thereof (See Section 1 of LC 1137 at Subsection 5(b)(D))

5. There should be no special exemption for entertainment. Giving or receiving entertainment is to be treated as an ordinary gift to which the general gift restrictions apply. (See Section 1 of LC 1137 at subsection 5 omitting former ORS 244.020(7)(e))

Honoraria. The Sub-Work Group agreed to make the following recommendations dealing with Honoraria at its meetings on June 30, 2006, July 11, 2006 and September 25, 2006.

6. (General prohibition on receipt of honoraria): No Public official or candidate for public office shall solicit or accept honoraria if the honoraria is solicited or offered in connection with an official’s governmental duties or office, or the governmental duties of the office for which a person is a candidate except as specifically allowed by law. (See Section 2(2) of LC 1137 deleting honoraria from exceptions to financial gain; and see Sections 6(1) and 6(2) of LC 1137 prohibiting honoraria)

7. (Exception for honorific items of de minimus value): A public official or candidate for public office may accept honoraria offered in connection with an official’s governmental duties or the governmental duties of the office for which a person is a candidate, if the honoraria is a purely honorific item of de minimus value, such as a

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3 Note: The group noted that several terms found in that existing statutory provision are ambiguous and should be clarified in the statute or by administrative rule. Concepts requiring clarification are “participating in an event” and “official capacity.” Those terms have been clarified in the proposed statutory draft.
plaque or commemorative token. “De minimus” means having a value of $50 or less. (See Section 6(3) of LC 1137)

8. (Honoraria in higher education): If allowed by applicable statutes governing state institutions of higher education, including Oregon Health and Sciences University, employees of those institutions may solicit and accept honoraria to the extent allowed by law. (See Section 9 of LC 1137 amending ORS 351.067(3) and See Section 10 of LC 1137 amending ORS 353.270)

9. (Reimbursement for travel and other expenses): A public official may accept payment or reimbursement for travel and other directly related expenses in connection with a substantial appearance at an event where an honoraria, other than a de minimus honoraria, is prohibited. A “substantial” appearance requires that the public official either be on the agenda or be a registered participant. (See Section 1 of LC 1137 at Subsection 5(b)(C) removing “food, lodging and travel when participating in an event which bears a relationship to the public official’s office” from the definition of “gift” for purposes of ethics law.)

Staff note: Subsection 5(b)(C) may need additional clarification regarding “directly related expenses” if the work group intends that term to cover more than “food and lodging.”

10. (Reporting Honoraria and Expense Reimbursement): Any honoraria and payment or reimbursement for expenses received by a public official who is otherwise required to file statements of financial interest shall be reported, subject to any threshold standard that might be adopted. (See Section 1 of LC 1137 at Subsection 5(b)(C)) and Section 4 of LC 1137 at Subsection 2)

Staff note: There is an apparent conflict between section 4 of LC 1137 at subsection 2 and the provisions of LC 1226 on reporting thresholds. This conflict will need to be resolved by the work group.

Financial Gain. The Sub-Work Group agreed to make the following recommendations dealing with financial gain at its meetings on July 11, 2006.

11. (“Financial gain” restrictions): The limiting clause on financial gain (ORS 244.040(1)(a)) should be amended to specifically add “gifts except as otherwise prohibited” to the list of allowed forms of financial gain. (See Section 2 of LC 1137 at Subsection 2(b) and 2(d)-(f))
concept has been incorporated into the statutory draft at Section 2 of LC 1137 at Subsection 2(a) in a manner consistent with the sub-work group’s discussion. (See Section 2 of LC 1137 at Subsection 2(a))