

July 17, 1998

Lieutenant John P. Salle
Internal Investigations Unit
Oregon State Police
400 Public Service Bldg.
Salem, OR 97310

Dear Lieutenant Salle:

This letter is in response to your correspondence dated July 8, 1998, concerning an Oregon State Police employee who won a free dinner while attending a work-related conference.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 98S-021

STATED FACTS: A state police employee attended a professional work-related conference at the expense of the department. All of the attendees at the conference were public employees. As part of the registration fee for the conference, the employee received a raffle ticket at no cost to the employee. The employee attended the raffle drawing, which was held in conjunction with the conference, and won a free dinner at a local restaurant.

RELEVANT STATUTES: The following Oregon Revised Statutes are applicable to the issues addressed herein:

ORS 244.020(15): Public official means any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

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ORS 244.040: Code of ethics; prohibited actions; honoraria. The following actions are prohibited regardless of whether actual conflicts of interest or potential conflicts of interest are announced or disclosed pursuant to ORS 244.120.

(1)(a) No public official shall use or attempt to use official position or office to obtain financial gain or avoidance of financial detriment that would not otherwise be available but for the public official's holding of the official position or office, other than official salary, honoraria, except as prohibited in paragraphs (b) and (c) of this subsection, reimbursement of expenses or an unsolicited award for professional achievement for the public official or the public official's relative, or for any business with which the public official or a relative of the public official is associated.

QUESTION #1: Would the employee violate government standards and practices laws if the employee accepted and used the free dinner under the circumstances described in the stated facts?

OPINION: Yes. ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their official position or office to obtain a financial gain or the avoidance of a financial detriment that would not otherwise be available but for the public official's holding of the official position or office other than official salary, honoraria, the reimbursement of expenses or an unsolicited award for professional achievement for the public official.

The Supreme Court, in Davidson v Oregon Government Ethics Commission, 300 OR 414, 712 p. 2d 87 (1985), identified the broad policy of Oregon's ethics laws as ensuring, "...that government employees do not gain personal financial advantage through their access to the assets and other attributes of government. In that case, the Supreme Court held that a public official could not use his official position to obtain financial gain for himself where, through access to his governmental body's buying power, he purchased an automobile at a discount price. The court emphasized that the term "use" in ORS 244.040(1) includes availing oneself of a benefit not available to the general public. The Court applied a "but for" test, i.e., but for his position, the public official would have been unable to purchase the car at the discount price and, thus, obtain a personal gain. 712 p 2d 92.

The stated facts indicate the employee attended the conference because of the employee's assignment within a public agency. It was a professional work-related conference. The stated facts do not indicate the employee attended the conference on the employee's own time, therefore, it can be assumed that the attendance was on the agency's time. Following the court's opinion in the Davidson case, but for the fact that the employee attended the conference as an employee of the Department of State Police, the employee would not have been in a position to win the free dinner.

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dinner does not qualify as official salary, honoraria, reimbursement of expenses or an unsolicited award for professional achievement as stated in ORS 244.040(1)(a); therefore, the employee is prohibited by ORS 244.040(1)(a) from taking advantage of the free dinner.

QUESTION #2: In the event a prize is accepted under such circumstances, what should the employee do with the prize?

OPINION: In instances when the prize is something that can be utilized by the employing agency, such as a computer or television set, the employee should turn the prize over to the agency. However, when the prize is personal in nature and cannot reasonably be used by the agency, such as a free dinner, it simply should not be accepted by the employee.

QUESTION #3: If the conference were attended by both public and private employees, would there be any difference in the to question #1?

OPINION: No. The opinion to question #1 points two other facts that prevent the employee from keeping the free dinner. These are: 1) The employee attended the conference on agency time; and 2) The agency paid the registration fee which entitled him to receive a raffle ticket at no cost to him.

However, if the conference was open to employees from private industry as well as public agencies and the employee paid the registration fee out of his own pocket, without reimbursement from his employer, then it could not be said that but for his position as a public employee he would not have been in a position to win the free dinner. The employee would not violate Oregon Government Standards and Practices law if he accepted and used the free dinner.

QUESTION #4: Would the response to question #1 be different if the employee purchased the winning raffle with his/her own funds?

OPINION: No. According to the stated facts, the opportunity to even purchase raffle tickets was available only to public employees who attended the conference solely because of their official position.

QUESTION #5: Does the source of the raffle prize have a bearing on the answer to question #1?

OPINION: No.

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QUESTION #6: If an employee, while attending a conference, participates in lawful gambling activities that are not associated with the conference, would it violate Oregon Government Standards and Practices laws to keep any money that they win?

OPINION: No. Where games of chance are played on the public employee s own time, using the employee s own money, this would not be considered a use of their of official position for financial gain. It can also be assumed that if the gambling is lawful, it would be open to the public. This is different from the circumstances presented in the stated facts wherein the raffle was held in conjunction with the conference.

THIS RESPONSE ADDRESSES ONLY THE APPLICATION OF ORS CHAPTER 244 TO THE FACTS STATED HEREIN. OTHER LAWS OR REQUIREMENTS MAY ALSO APPLY. THIS IS NOT A FORMAL ADVISORY OPINION PURSUANT TO ORS CHAPTER 244.280. IT IS MY PERSONAL ASSESSMENT AS THE EXECUTIVE DIRECTOR OF THE OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION.

Sincerely,

L. Patrick Hearn
Executive Director

LPH:aip/salle.so