

July 29, 1998

Randall J. Fish  
Stores Supervisor  
University of Oregon  
Department of Campus Operations  
1276 University of Oregon  
Eugene, Oregon 97403-1276

Dear Mr. Fish:

This letter is in response to your correspondence dated July 22, 1998 concerning situations wherein door prizes are won by employees at conferences, conventions and workshops.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
98S-022**

**STATED FACTS:** One situation involves a university employee who attends a conference, convention, or workshop which is related to the employee's employment and is paid for by the university. Another situation involves a university employee attending a vendor open house/trade show. Attendance at these events is open to members of the general public, often with similar or related job duties. Sometime during the event names are drawn for a number of door prizes. Most prizes are valued at under \$100, though on occasion some may be substantially more (e.g., laptop computer, shelf size stereo, etc.).

**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: Does the employee get to keep the prize?

OPINION: No. ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, 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, 712p. 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, convention or workshop, at the expense of the university, 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, convention or workshop on the employee s own

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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 university, the employee would not have been in a position to win the prize. The prize 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 prize.

QUESTION #2: Can the university claim ownership because it financed the employee s attendance at the event?

OPINION: Yes. 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 free lodging at a resort, it simply should not be accepted by the employee.

QUESTION #3: Is there any difference in whether the item is cheap (coffee cup) or expensive (computer)?

OPINION: The law does not make such distinctions.

QUESTION #4: Does the fact that attendance is open to the general public have a bearing on the decision?

OPINION: No. The stated facts point out two facts that prevent the employee from keeping the prize. These are (1) the employee attended the conference, convention or workshop on agency time and (2) the agency paid the cost of the conference, convention or workshop which entitled the employee to be eligible for the prize at no cost to the employee.

However, if the conference, convention or workshop was open to employees from private industry as well as public agencies, as indicated in the stated facts, **and** the employee paid the registration fee out of the employee s own pocket, without reimbursement from the employee s employer, then it could not be said that but for the employee s position

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public employee the employee would not have been in a position to win the free prize. The employee would not violate Oregon Government Standards and Practices law if the employee accepted the prize.

**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

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