

November 25, 1998

Charles E. Pritchard
Chief Counsel
Department of Justice
Criminal Justice Division
610 Hawthorne SE
Salem, Oregon 97310

Dear Mr. Pritchard:

This is in response to your correspondence dated November 10, 1998 concerning items received from Nike in gratitude for services provided by employees of the Department of Justice, Criminal Intelligence Unit.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
NO. 98S-037**

STATED FACTS: Recently, the Nike World Masters Games were held in Oregon. Federal, state and local law enforcement agencies played a key role in providing law enforcement support services to the games to ensure the safety of participants in the games. The Criminal Intelligence Unit of the Oregon Department of Justice provided the criminal intelligence support for the events.

In gratitude for the services of the Criminal Intelligence Unit, Nike donated certain items to the Oregon Department of Justice to be provided to those individuals who participated in the support services of this event. These items consisted of a T-shirt valued at \$18.00, a fanny pack valued at \$20.00 and a sports bag valued at \$50.00. As such, each individual would receive items totaling \$88.00.

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

ORS 244.020(9): Honoraria means a payment or something of economic value given to a public official in exchange for services upon which custom or propriety prevents the setting of a price. Services include, but are not limited to, speeches

or other services rendered in connection with an event at which the public official appears in an official capacity.

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.

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: Would it be a violation of Government Standards and Practices laws for the employees who provided the services to keep the merchandise provided by Nike?

OPINION: No. ORS 244.040(1)(a) makes it clear that receipt of honoraria, like the receipt of salary or expenses, is permitted, and is not considered to be the use of office for financial gain. Honoraria is a payment, whether of money or other item of economic value, to the public official in exchange for services. This implies that the public official is providing the service contemporaneously with the payment and that the payment and the service are related.

The statutory definition of honoraria, ORS 244.020(9), provides additional guidance by providing a specific example. The service could be, but is not limited to, the giving of a speech **or other service** rendered in connection with attendance at an event at which the public official appears in an official capacity.

A factor to help determine whether or not a particular payment is honoraria, so that public officials may keep the payment without violating ORS 244.040(1)(a), is whether or not

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there is a corresponding service which the public official provided for the honoraria, and whether or not the service is of the kind for which there is not ordinarily a set price. This would mean that the parties have made no prior agreement on the fee. If those elements are present, and the situation is consistent with the specific example of the speech, the payment would be considered honoraria. If the parties have set the price in advance of the service, then the payment would not constitute an honorarium.

Given the stated facts, it appears that the items provided by Nike to the Criminal Intelligence Unit employees for the services they provided at the world games are honoraria. Therefore, the employees would not be in violation of ORS 244.040(1)(a) for accepting the items.

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.

Please feel free to call or write again if you have questions or desire additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

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