

October 1, 1999

Eileen Sammons
Communications & Ethics Officer
Clackamas County Fire District
11300 S.E. Fuller Road
Milwaukie, Oregon 97222

Dear Ms. Sammons:

This letter is in response to your correspondence dated September 24, 1999, concerning fire prevention week contests.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
99S-020**

STATED FACTS: The National Fire Protection Association (NFPA) provides fire prevention education to citizens, and provides resources to fire service agencies to assist them in public education efforts.

Each year, NFPA sponsors National Fire Prevention Week during the month of October. This event enlists the assistance of fire service agencies across the country in conducting publicity, special events and contests designed to raise public awareness of strategies for fire prevention.

This year, the NFPA's Fire Prevention Week promotion includes two similar contests designed to reach two different constituencies, under the theme, The Great Escape. The first contest challenges school children and their families to develop fire escape plans for their homes. Each participating family also submits an NFPA entry form to their local fire agency. Each fire agency selects a winning entry form, collects the home escape plan and submits both to the NFPA for a national drawing. The winner of the contest wins a trip for four to Walt Disney World in Orlando, Florida - a prize valued at \$10,000.

The second contest is virtually identical to the first, except that it is open only **to the immediate family members of fire service employees** (paid and volunteer). The process for the second contest is the same as for the first, in that each fire service agency collects entry forms from its firefighters and/or their families, selects a winning entry and submits the entry and the fire escape plan to the NFPA for a drawing for the trip for four to Disney World. The contest for firefighters families is completely separate from

the one
Eileen Sammons
October 1, 1999
Page two

for the general public, i.e. there will be one drawing for the general public and a **separate drawing** for the entries from firefighters from across the country. A Disney World trip will be awarded to the winners of **both** contests.

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.

ORS 244.020(16): Relative means the spouse of the public official, any children of the public official or of the public official s spouse, and brothers, sisters or parents of the public official or of the public official s spouse.

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: If an Oregon firefighter, or a firefighter s immediate family, entered a national contest open only to firefighters and their immediate families, and as a result of entering the contest accepted a trip for four to Disney World valued at \$10,000, would the firefighter be in violation of ORS 244.040(1)(a).

OPINION: Yes. 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, or

the public official's relative, or for any business with which the public official or a relative of the

Eileen Sammons

October 1, 1999

Page three

public official is associated.

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)(a) 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 make it clear that the contest is open only to firefighters and/or their immediate families. The general public would not be allowed to enter this contest. Therefore, if the firefighter or the firefighter's family accepted the prize to Disney World the firefighter would be availing oneself of a benefit not available to the general public. The firefighter would not have been allowed to enter the contest but for his official position as a firefighter, and the immediate family of the firefighter would not have been able to enter the contest but for the firefighter's official position. If the two contests had been combined into one contest allowing both the general public and firefighters and their immediate families to enter the contest, the firefighter would not appear to be in violation of ORS 244.040(1)(a) because the contest would be open to those who are not public officials.

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