

February 5, 1999

Jim Kanoff  
Director of Support Services  
Douglas Education Service District  
1871 NE Stephens  
Roseburg, OR 97470-1493

Dear Mr. Kanoff:

This is in response to your correspondence dated January 21, 1999 regarding prizes received by public officials while attending professional conferences.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF**  
**OPINION NO. 99S-001**

**STATED FACTS:** Public officials often attend conferences and conventions. They sometimes receive gifts and door prizes at these conferences and conventions. Many of the gifts and door prizes are promotional items such as pens, pencils, mouse pads, etc. and usually are less than \$100 in value. Generally, these items are taken back to the public agency for work use, but not always. Some vendors occasionally donate a more expensive item such as a fruit basket having a value of \$25-\$75. Usually these gifts are not given directly to public officials; they are donated by a vendor to the group organizing the conference. Conference organizers then draw attendee names as winners.

**RELEVANT STATUTES:** The following Oregon Revised Statutes are applicable to this opinion:

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(8): Gift means something of economic value given to a public official or the public official's relative without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or the relatives of public officials on the same terms and conditions;  
and something of economic value given to a public official or the public official's relative for valuable consideration less than that required from others who are not public officials.

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ORS 244.020(11): Legislative or administrative interest means an economic interest, distinct from that of the general public, in one or more bills, resolutions, regulations, proposals or other matters subject to the action or vote of a person acting in the capacity of a public official.

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.

ORS 244.040(2): No public official or candidate for office or a relative of the public official or candidate shall solicit or receive, whether directly or indirectly, during any calendar year, any gift or gifts with an aggregate value in excess of \$100 from any single source who could reasonably be known to have a legislative or administrative interest in any governmental agency in which the official has or the candidate if elected would have any official position or over which the official exercises or the candidate if elected would exercise any authority.

QUESTION #1: Would an employee violate Oregon Government Standards and Practices laws if they were to accept a gift valued at less than \$100, assuming the employee does not receive any other gifts/prizes during the same calendar year, and the employee does not take any actions affiliated with the vendor/donor of the gift?

OPINION: The \$100 gift limitation applies only if the source of the gift has an administrative interest in the public official and/or the official's public agency. This question indicates there is no administrative interest between the source and the official; however, there is no indication regarding the agency.

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 official position to obtain financial gain for himself where, through access to the governmental body's buying power, the official purchased an automobile at a discount price. The court emphasized

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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 holding the position, the public official would have been unable to purchase a car at a discount price and, thus, obtain a personal gain. 712 p 2d 92.

The stated facts referred to promotional items such as pens, pencils and mouse pads. It can be assumed that these would be the type of items that each attendee would receive for their use in the performance of their official duties and would not be considered a personal gift. However, using the court's reasoning in the Davidson case, but for the fact that the individual was a public employee, would the official be at the conference and in a position to receive the gift? If the conference is open to both public and non-public attendees and the employee is attending the conference on their own time and at their own expense, the Davidson rationale would not apply and the official could accept the gift. If the employee attends the conference on the agency's time or if the agency paid fee for the employee to attend, the employee would be prohibited from accepting a personal gift. Nevertheless, items such as pens, pencils and mouse pads are of such de minimus value that the GSPC staff does not feel the receipt of such items would violate the intent of the law.

QUESTION #2: If one or more vendors give an item to the association organizing the conference and the association then gives the item away, since the association is not the vendor, would the answer to question #1 be different? What if the value of the item is more than \$100?

OPINION: If the question assumes the association organizing the conference has no administrative interest in the public official and/or the official's public agency, the answer is no.

QUESTION #3: Assume that a public official attends a national conference. The official's spouse travels to the conference at the personal expense of the official. While at the conference, the spouse participates in a family activity such as a tour. During this activity the spouse wins a drawing for a prize. Would the prize be subject to the \$100 gift limitation? What if other individuals on the tour include non-public officials such as vendor family members or vendor employees? Would the deciding factor be that the employee's spouse would not have won the prize but for the employee's involvement in the conference?

OPINION: If the employee's spouse attends the conference at their own personal expense, the spouse can accept the prize. The but for test would not apply to the public employee's spouse.

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The \$100 dollar gift limitation would only apply in this case if the source of the prize could reasonably be known to have a legislative or administrative interest in the public official's position or office.

QUESTION #4: A vendor donates a prize to the sponsor of the conference. A participant at the conference can qualify for the door prize by visiting every vendor's display booth. The association selects the winner of the prize through a random drawing. Would a public official violate Oregon Government Standards and Practices laws by accepting the door prize?

OPINION: Two facts would prevent the official from keeping the prize. These are (1) the official 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 official to be eligible for the prize at no cost to the official. The official could accept the prize under those circumstances without violating the law by turning the gift over to the official's agency or by donating the gift to charity. However, if the conference, convention or workshop was open to employees from private industry as well as public agencies, **and** the official paid the registration fee out of their own pocket, without reimbursement from their employer, then it could not be said that but for the official's public position the official would not have been in a position to win the free prize. The public official would not violate Oregon Government Standards and Practices law by accepting 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

LPH:aip/99S-001