

June 7, 1999

Michael J. Gilsdorf
President
Oregon Emergency Management Association
P.O. Box 391
Gresham, OR 97030

Dear Mr. Gilsdorf:

This letter is in response to your correspondence dated May 26, 1999, concerning the Oregon Emergency Management Association's (OEMA) plans for conducting a raffle at its annual statewide conference.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION 99S-016

STATED FACTS: The Oregon Emergency Management Association's (OEMA) is a not-for-profit organization comprised of emergency services personnel from all levels of government, the private sector, and volunteer agencies. Many of the members pay their own annual dues, but are considered representatives of their organizations at OEMA's meetings and activities. The OEMA conducts an annual statewide conference, which includes a raffle of items purchased by OEMA and/or donated by the members.

Raffle tickets are sold in advance to individuals (both public employees and the general public) and during the conference to attendees. Winners need not be present to win a raffle item. Raffle tickets are purchased by individuals and are not part of the conference registration package.

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 public sector members of the Oregon Emergency Management Association violate Oregon Government Standards and Practices laws if they accepted items won in a raffle held during the association's annual conference under the circumstances described in the stated facts?

OPINION: No. 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 OEMA is a not-for-profit organization comprised of emergency services personnel from all levels of government, the private sector, and volunteer agencies. The OEMA is not a political subdivision of the State of Oregon. Its members, by virtue of their membership in OEMA, are not public officials as defined in ORS 244.020(15). Some members are emergency personnel from government agencies while other OEMA members are non-public employees.
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The stated facts also indicate raffle tickets are sold in advance to the general public and during the conference to attendees. The tickets are purchased separate and apart from any registration package for the conference.

The but for test of Davidson does not apply to the stated facts. Attendees to the OEMA s annual conferences come from both the public and non-public sectors of emergency services throughout the state and raffle tickets are sold to the general public as well as attendees to the conferences. Therefore, it cannot be said of those government employee members who attend the conferences, but for their public position, the member would not be in a position to win a raffle prize.

The stated facts upon which this opinion is based differ from the facts in opinion 98S-021. In 98S-021, a state employee attended a professional work-related conference at the expense of the employee s agency. All of the participants to the conference were public employees. Each participant received a raffle ticket with their registration packet. The opportunity to even purchase raffle tickets was available only to public employees who attended the conference solely because of their official position. The employee won a free dinner at a local restaurant. But for the fact that the employee attended the conference as a state employee, the employee would not have been in a position to win the free dinner.

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/gilsdorf.so