

February 11, 1998

Steven J. Ickes
Assistant Director
Oregon Department of Corrections
Central Administration
2575 Center Street NE
Salem, Oregon 97310

Dear Steve,

This letter is in response to your correspondence dated February 4, 1998, concerning inmate hair cutting using Oregon Department of Corrections (ODOC) staff as an opportunity for additional training.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION
98S-003**

STATED FACTS: In an effort to maintain skill levels, increase the barber's experience base and increase the likelihood of employment at release, the Workforce Development staff of ODOC has tried to add value to the training given inmates in the barbering school by offering haircuts on a limited basis to ODOC staff with clearance to enter the Oregon State Prison (OSP). In reality, the vast majority of haircuts will likely be given to OSP staff.

This program has been carefully designed from the beginning. Staff are charged a price comparable to beauty schools in the community. Staff can only get haircuts on their own time.

This program has been approved by OSP and the department's Workforce Development staff and is underway only four hours per week, i.e., two hours Wednesday and two hours on Friday.

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

Steven J. Ickes

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 OSP personnel to take advantage of having their hair cut by inmates involved in the Workforce Development program at a cost comparable to that of beauty schools in the community?

OPINION: No. ORS 244.040(1)(a) prohibits a public official from using, or attempting to use, their 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.. .

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 GSPC staff believes however, that the financial benefit to be received by OSP personnel would be available to others who are not public officials at the same cost at various beauty schools in the community. Therefore, it appears that the OSP personnel taking advantage of the service would not be receiving a benefit that others who are not

Steven J. Ickes
February 11, 1998
Page three

also public officials would not be able to receive and would not be in violation of Government Standards and Practices laws.

The real potential advantage to this inmate barbering program appears to be to the general citizenry who will benefit from inmates having a vocational skill when they are paroled which will help the inmates to not re-offend.

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 don't hesitate to call or write again if you have questions or would like additional clarification.

Sincerely,

L. Patrick Hearn
Executive Director

so\2\9\98\0849.JP