

November 22, 1999

The Reverend
Chuck Boman
Lake Grove Christian Church
15751 SW Quarry Road
Lake Oswego, OR 97035

Dear Mr. Boman:

This is in response to your correspondence dated November 15, 1999 regarding honorariums you may receive from local funeral homes for presiding over funerals of deceased persons after you responded to the scene of their death as the Lake Oswego Fire Department Chaplain.

OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF
OPINION NO. 99S-029

STATED FACTS: The pastor of a local church volunteers as a fire department chaplain. The chaplain is called occasionally to respond to emergency situations where there has been a death. The chaplain will remain at the scene until the deceased has been removed from the scene. This procedure may require the chaplain to remain with the family of the deceased for long periods of time. Because people are usually not prepared to deal with this situation, the chaplain is asked various questions concerning what will happen next. The chaplain is there to help the family through this process.

The chaplain informs the family that there are several funeral homes in the area rather than recommending any specific funeral home. The chaplain is sometimes asked by the deceased's family to preside over the funeral. The arrangements for presiding over a funeral are usually made through a local funeral home. If a funeral home makes the arrangements they suggest a fee for an honorarium. If the family makes the arrangements and the chaplain is asked about a fee, the chaplain refers the family to the funeral home.

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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(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 244.040: 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 the chaplain violate Oregon Government Standards and Practices laws by accepting an honorarium from a funeral home if the chaplain has referred the family to the funeral home?

OPINION: No. The stated facts indicate the chaplain is a pastor for local church and a volunteer chaplain for the fire department. There is no indication from the stated facts that the chaplain sets any fee for his services or has any business relationship with any funeral home. Therefore, when the chaplain is asked to preside over the funeral of a person, and the chaplain was at the scene of that person's death, the chaplain would be free to accept a fee from the funeral home for his services. The but for issue does not appear to apply in this case because a funeral home could call upon him in his capacity as a pastor to preside over a funeral regardless of his public official position as fire department chaplain.

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Traditionally, an honorarium has been the granting of a sum of money to a public official in exchange for giving a speech or performing a service in an official capacity. The public official can neither dictate, negotiate nor recommend the value of the honorarium. The stated facts indicate the honorarium is set by the funeral home and not the chaplain.

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

LPH:aip/boman.so