

December 2, 1999

David Fine  
City Councilor  
City of Ashland  
50 Third Street  
Ashland, Oregon 97520

Dear Mr. Fine:

This letter is in response to your correspondence dated November 19, 1999 concerning your attendance at a city paid conference training session and using the training toward your Oregon State Bar Minimum Continuing Legal Education requirements.

**OREGON GOVERNMENT STANDARDS AND PRACTICES COMMISSION STAFF OPINION  
99S-030**

**STATED FACTS:** A member of the Ashland City Council is also a practicing attorney. The councilor attended the November 1999 League of Oregon Cities (LOC) annual conference at the expense of the City of Ashland. The Oregon City Attorneys Association (OCAA) holds its annual meeting and workshops during LOC annual conferences. Because various of the papers being presented at the OCAA workshops appeared more pertinent to the councilor's city council duties than LOC workshops running at the same time, the councilor registered for these OCAA workshops. The city paid the councilor's registration fee for the OCAA sessions, rather than paying for the councilor to attend the simultaneous LOC workshops.

The Oregon State Bar (OSB) has a Minimum Continuing Legal Education (MCLE) requirement for its active members. In every triennium each active OSB member must gain 45 hours of MCLE credits. Most activities which qualify for MCLE credits require payment of a fee; however, some are available without charge.

The councilor's triennial MCLE reporting period runs from January 1997 through December 1999. Prior to going to last weekend's LOC conference the councilor had already filed the councilor's 1997-1999 MCLE report. It showed that the councilor had exceeded the councilor's obligation for 1997-1999; moreover, the councilor had earned more than the number of additional MCLE credits which OSB rules permit one to carry over to a bar member's next triennial MCLE reporting period. In each of the councilor's reporting periods

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since joining the OSB the councilor has earned far more than the minimum number of MCLE credits required.

The councilor may well go to an LOC annual conference at city expense again in 12 months time. The councilor may determine that the OCAA workshops once again are more pertinent to the councilor's city council responsibilities than simultaneous LOC workshops.

The councilor's new triennial MCLE reporting period begins in January of 2000 and ends in December 2002. It is unlikely that the councilor will have earned the required 45 MCLE credits by November 2000.

RELEVANT STATUTES: The following relevant 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 244.040: 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 Oregon Government Standards and Practices laws for the city to pay for the councilor to attend OCAA workshops and use this training as credits toward the councilor's MCLE triennial requirements?

OPINION: Yes. 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 financial detriment that would not otherwise be available but for the public official's holding of the

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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, 712p. 2d 87 (1985), identified the broad policy of Oregon sethics 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.

In the councilor s case, the city would not have paid for the training the councilor received at the OCAA workshop but for the councilor s position as a city councilor. There would be no violation for the city to pay for the councilor s attendance at the OCAA workshops rather than the LOC workshops. The violation would occur when the councilor used the attendance at the workshop for the councilor s MCLE credit which would financially impact the councilor personally by enabling the councilor to avoid the financial detriment of personally paying for seminars which provide MCLE credit.

**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

s.o.\ 1100JP