



DEPARTMENT OF JUSTICE

Justice Building
Salem, Oregon 97310
Telephone: (503) 378-4400

September 28, 1984

Ronald R. Still, Chief of Police
Portland Police Bureau
Central Precinct/1111 SW 2nd
Portland, Oregon 97204

Re: City of Rajneeshpuram Peace Force

Dear Chief Still:

We have been asked three related questions regarding the "City of Rajneeshpuram Peace Force." First, may the Board on Police Standards and Training (BPST) certify an employee of the Peace Force as a qualified police officer under the provisions of ORS 181.610 to 181.690. Second, may an employee of the Peace Force be admitted to training programs at the Oregon Police Academy. Third, is the Peace Force entitled to participate in the BPST reimbursement program in connection with the participation of its employees in Police Academy programs.

The answer to each of these questions turns upon the legal status of the City of Rajneeshpuram. When the substantial and complicated issues regarding the city's legal status are resolved, resolution of the three questions presented is a relatively simple matter of interpreting and applying the applicable statutes and administrative rules. In our opinion the City of Rajneeshpuram is not validly constituted. We therefore conclude that employees of that city's Peace Force may not be certified as qualified police officers. BPST may, in its discretion, permit Peace Force employees to attend programs at the Academy. However, if they are permitted to attend the Academy, they or their employer should be required to pay reasonable fees to cover operating costs of the Academy. The City of Rajneeshpuram may not benefit from the BPST reimbursement program for local law enforcement units.

Our advice with regard to BPST's dealings with the Peace Force is prospective only. The issue of the legal status of the City of Rajneeshpuram is now before both state and federal courts in pending litigation. Until that issue is finally resolved, we have endeavored, insofar as possible, to maintain

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the status quo with respect to all aspects of the community's legal status. We have never advised and we do not recommend that BPST take affirmative steps to revoke certification previously issued or to recoup money already expended. Those actions can and should await final decision by the courts.

Legal Status of the City of Rajneeshpuram

In Opinion 8148, we concluded, based upon certain assumed facts, that the exercise of municipal power by the City of Rajneeshpuram or state recognition of its purported municipal status would violate the provisions of the Oregon and United States Constitutions providing for separation of church and state. Subsequent to our opinion, we have confirmed through public records and readily available information, the factual assumptions underlying our legal conclusion. We adhere to our opinion. The state may not constitutionally recognize the municipal status of the City of Rajneeshpuram or confer upon the city those financial benefits which Oregon municipalities ordinarily are entitled to receive from the state. In our opinion, conferring municipal status or financial benefits upon the City of Rajneeshpuram would be the functional equivalent of conferring those powers and benefits upon a church. Our constitutions do not permit such a fusion of church and state.

The provision of direct financial aid is a matter of particular concern because it is specifically forbidden by the Oregon Constitution. Article I, section 5 of the Oregon Constitution provides:

"No money shall be drawn from the Treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the Legislative Assembly."

The question whether the state constitutionally may recognize and give effect to the municipal status of the City of Rajneeshpuram is directly presented in litigation now pending before the United States District Court for the District of Oregon. The legal status of the city also is implicated in land use litigation now pending before the Oregon Supreme Court. If the courts ultimately conclude that the City of Rajneeshpuram is

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legally constituted and that the state constitutionally may give effect to its municipal status, we will, of course, amend our advice accordingly. At present, however, Opinion 8148 reflects our best legal judgment on this issue and our advice to state agencies must be guided by that opinion.

Police Certification

ORS 181.610 (6) defines police officer as follows:

"Police officer means an officer or member of a law enforcement unit who is employed full time as a peace officer commissioned by a city, port, school district, mass transit district, county, indian reservation, the Criminal Justice Division of the Department of Justice or the Governor and who is responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security." (Emphasis supplied.)

OAR 259-10-055 sets forth the basic requirements and procedures for officer certification as provided in ORS 181.665.¹

¹ ORS 181.665 provides:

"(1) No person shall be employed as a police officer by any law enforcement unit for a period to exceed one year unless he has been certified as being qualified as a police officer under the provisions of ORS 181.610 to 181.690 and the certification has neither lapsed nor been revoked pursuant to ORS 181.661, 181.662 and 181.664(1) and not been reissued under ORS 181.664(2).

"(2) Except as provided in subsection (3) of this section, a person employed as a police officer by any law enforcement unit

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Subsection (3) of that administrative rule provides:

"To be eligible for the award of a certificate, each applicant must be a full-time police, corrections, or parole and probation officer as defined by ORS 181.610."

Employees of the Rajneeshpuram Peace Force are not commissioned as peace officers by a city because, as discussed above, the City of Rajneeshpuram is not a valid municipality. Accordingly, those employees are not police officers within the meaning of ORS 181.610(6) and they are not eligible for certification.

Because the status of the City of Rajneeshpuram presently is the subject of pending litigation, BPST need not reject

Footnote 1 continued

shall commence the training necessary for certification under ORS 181.610 to 181.690 at an academy operated by the board not later than the 90th day after the date of the officer's employment by the law enforcement unit.

"(3) A law enforcement unit may delay the commencement of training of a police officer for up to 120 days from the date of the officer's employment when it considers the delay necessary. When a law enforcement unit delays commencement of a police officer's training under this subsection, it shall file a written statement of its reasons with the board.

"(4) When a delay in the commencement of training necessary for certification under ORS 181.610 to 181.690 at an academy operated by the board is caused by the inability of the board, for any reason, to provide that training, the period of such delay shall not be counted as part of the periods set forth in subsections (2) and (3) of this section within which the training must be commenced."

pending applications for certification received from employes of the Rajneeshpuram Peace Force. Any such applications may be held in abeyance pending disposition of the pending litigation. If BPST rejects the applications for certification or refuses to act upon those applications, the applicants are entitled to appropriate notice under the Administrative Procedures Act. BPST's action or failure to act in this regard may trigger a right to a hearing and in any case would be subject ultimately to judicial review. When BPST has decided upon its course of conduct, this office will assist in preparing appropriate notice of that action.

Admission to the Oregon Police Academy

Attendance at the Oregon Police Academy is controlled by OAR 259-12-005.² That rule provides that the Academy is open to all eligible law enforcement personnel on application from their employing agencies. Under the rule, admission to the police academy is automatic for a "police officer" who is sponsored by a "law enforcement unit." In most cases, the room, board, tuition, books and other expenses associated with attendance at the academy are paid by the state for police officers attending mandatory programs. In addition, local law enforcement units which send police officers to the academy are entitled to reimbursement to defray the cost of salaries and other expenses incurred during the training of the officers. ORS 181.655. If the courses attended by the police officers are not mandatory, BPST may charge reasonable fees to cover operating costs of the academy.

² OAR 259-12-005

"(1) The Oregon Police Academy is open to all eligible law enforcement personnel upon application from their employing agencies. All persons attending the courses may live in the dormitories provided, or, with the permission of their department, they may commute to classes. Reasonable fees may be charged to cover operating costs of the academy for those attending courses that are not mandatory, and for persons not defined as police officers, corrections officers, or parole and probation officers under ORS 181.610. Additionally, fees may be charged

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Because employees of the Rajneeshpuram Peace Force are not police officers within the meaning of ORS 181.610(6), they are not entitled to automatic admission to training programs at the academy. Nor are they entitled to attend mandatory courses at no charge to them or to the Peace Force. However, OAR 259-12-005 clearly contemplates that persons who are not police officers may be permitted to attend the academy, if BPST, in its discretion, determines that such attendance is appropriate. If a person who is not a police officer is permitted to attend the academy, BPST may charge reasonable fees to cover operating costs of the academy relative to such attendance. Although the rule states that such fees may be imposed, imposition of such fees would be mandatory with respect to employees of the Rajneeshpuram Peace Force. Failure to recoup the cost of providing training and room and board to employees of the Peace Force would, in our opinion, constitute a direct financial benefit to a church in violation of Oregon Constitution Article I, section 5.

Nothing in the relevant statutes or rules sets forth criteria for determining whether to admit non-police officers to the police academy. It would be preferable to set forth by rule the standards by which BPST exercises its discretion in this regard. At a minimum, if BPST determines to deny admission to the academy, it should set forth in detail its reasons for so doing.

Of course, discretionary admission to the academy should not be granted or withheld upon the same terms to all citizens. Admission to the academy cannot be based upon race, religion,

Footnote 2 continued

an agency under the Act if they do not adhere to minimum standards as defined in Rule 259 10 015. BPST Form F-5 (Application for Basic Training) will be used to apply for Basic Courses. Other courses presented at the Oregon Police Academy will be announced through mailed course announcements with response required prior to established deadlines.

"(2) Admission to the Oregon Police Academy may be denied to those persons who do not meet the minimum employment standards as established by Rule 259 10 015."

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sex, or national origin. Nor can admission to the academy be denied on a purely arbitrary basis.

We conclude that BPST has discretion to admit employees of the Rajneeshpuram Peace Force to the police academy. If BPST decides to do so, it should charge a reasonable fee to cover the operating costs of the academy associated with the attendance of those persons.

Reimbursement for Training

ORS 181.665 provides, in pertinent part:

"(1) The Board on Police Standards and Training shall provide a reimbursement program to local law enforcement units which send police officers or corrections officers to the training academy operated by the Board. Such reimbursement shall be to defray the cost of salaries and other expenses incurred during the training of the officers.

" . . .

"(3) Reimbursement programs shall not apply to non-governmental organizations."
(Emphasis supplied.)

Because the City of Rajneeshpuram is not validly constituted, the Rajneeshpuram Peace Force is not a "local law enforcement unit"³ and its employees are not "police officers." By its terms, therefore, the reimbursement program does not apply

³ Local law enforcement unit is defined by ORS 181.610(4):

(4) "Law enforcement unit" means a police force or organization of a city, port, school district, mass transit district, county, Indian reservation, Criminal Justice Division of the Department of Justice, common carrier railroad or the Adult Community Services Unit of the Corrections Division whose primary duty, as prescribed by law, ordinance or

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to the City of Rajneeshpuram. Moreover, because the city is not a valid municipality, it is a "non-governmental organization" and, pursuant to ORS 181.665(3), the reimbursement program "shall not apply" to it.

Yours very truly,

WILLIAM F. GARY
Deputy Attorney General

WFG:pl

cc: Michael Sullivan, Vice President
Board on Police Standards and Training

Footnote ³ continued

directive, is any one or more of the following:

"(a) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

"(b) The custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

"(c) The control, supervision and reformation of adult offenders placed on parole or probation and investigation of adult offenders on parole or probation or being considered for parole or probation."