

UNIVERSITY OF OREGON



Office of the President
DEAN OF FACULTIES

EUGENE, OREGON 97403
telephone (code 503) 342-1411

November 29, 1971

Mr. Vern Cook
519 N. E. 4th Street
Gresham, Oregon 97030

Dear Mr. Cook:

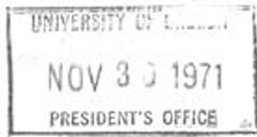
In reply to your communication of November 10, 1971, I am enclosing a copy of the letter dated October 28, 1971 that I sent to Mr. Leo E. Laurence. I believe this statement sets forth clearly the University's position regarding the employment of homosexuals.

Also relevant in this regard is the general definition of the University's employment policy as stated in a motion approved by the faculty last spring in connection with the creation of a committee on equal employment opportunities. It is there asserted that it is the University's policy to provide "equal employment opportunities for all individuals solely on the basis of professional or technical qualifications and merit, without regard to sex, race, color, creed, religion, national origin or any other extraneous consideration."

As you can well appreciate, the University of Oregon is bound by the requirements of the laws of the State of Oregon and the United States Constitution. We are endeavoring to meet these obligations as diligently as we can on the basis of the guidance we receive from the courts. The difficulty we are experiencing in this regard is well illustrated by the fact that subsequent to my letter of October 28, 1971 I learned that, at about the same time I was writing to Mr. Laurence, the 8th Circuit Court was reversing the decision in McConnell v. Anderson.

The Circuit Court concluded, in its reversal, that the University of Minnesota Board of Regents

"possessed ample specific factual information on the basis of which it reasonably could conclude that the appointment of a publically acknowledged homosexual to a post in the University library/ would not be consistent with the best interests of the University."



The Court went on to add that, on the facts of the case, the prospective employee had sought more than remunerative employment. This was, the Court said

"a case in which the applicant seeks employment on his own terms; a case in which the prospective employee demands, as shown both by the allegations of the complaint and by the marriage license incident as well, the right to pursue an activist role in implementing his unconventional ideas concerning the societal status to be accorded homosexuals and thereby, to foist tacit approval of this socially repugnant concept upon his employer, who is, in this instance, an institution of higher learning. We know of no constitutional fiat or binding principle of decisional law which requires an employer to accede to such extravagant demands."

I am informed, however, that there are other cases which may constitute authority for the proposition that, at least in some instances, a person's sex life is not a relevant criterion for certain types of public employment.

We intend to keep as well informed as possible regarding these court decisions and to analyze their implications for the University.

Moreover, the University has the responsibility of protecting the health and safety of persons in the institutional community. The University cannot knowingly employ individuals whose conduct would constitute a threat to the health and safety of those with whom they come into contact in an official capacity.

That is why I have publicly stated that homosexual behavior may be a relevant consideration in the recruitment and retention of faculty.

We believe that we must act responsibly on the basis of the best possible professional medical evidence. As recently as 1968, the American Psychiatric Association officially labelled homosexuality as a "mental disorder."

Furthermore, the legislature, as you know, recently revised the Oregon Criminal Code to remove criminal sanctions applicable to this type of conduct. In doing so, the legislature apparently acted to remove these laws because of their unenforceability, their potential for discriminatory application, and their almost total lack of deterrent and rehabilitative value. One rationale for the legislative change is found on page 117 of the final report of the Oregon Criminal Code Revision Advisory Committee:

"Medical writings approach consensus on the opinion that homosexual conduct is symptomatic of pathological disorders stemming

from a failure to achieve mature psychic development and that it cannot be cured unless the underlying psychological deviation is cured [citations omitted]. Criminal sanctions are no more able to cure homosexual conduct than they are medical disease or defect. Such criminal sanctions may actually deter some people from seeking psychiatric or other assistance for their emotional problems!"

To the fullest extent possible we are assiduously attempting to be guided by the best medical and psychological evidence available.

As you can see, we are, in both the legal and medical areas, sensitive to the issues involved and to the changing bodies of knowledge in this field. We are committed to obtaining rational and reasonable guidelines based on humane, scientific, legal, and ethical considerations.

With respect to your inquiry regarding the codes of ethics respecting expressions of attitudes on the question of sexual conduct, I should like to make reference to the following provisions of the Oregon State Board of Higher Education Administrative Rules:

OSBHE Administrative Rules § 42.010:

"The teacher in the State System institutions is entitled to freedom in the classroom in discussing his subject, but he should be careful not to introduce into his teaching controversial matter which has no relation to his subject. (The underscored material is also included in the 1940 Statement of Principles on Academic Freedom and Tenure issued by the American Association of University Professors.)

As a matter of policy the Board does not attempt to control or sway the personal opinion of any person in the faculty or otherwise on the payroll of any of the institutions, nor the public expression of that opinion, but does request that no employee take action which might be construed as committing the institution or the Board to a position on public issues. In the exercise of this freedom of expression, faculty members should manifest appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not institutional spokesmen."

Statement by the OSBHE Relating to Faculty Conduct dated October 1, 1970:

2. "As a 'member of a learned profession', the faculty member has an obligation to high standards of scholarly commitment, which compels 'vigorous rejection' of 'the attitude that scholarly requirements can be abandoned, transforming classrooms from centers of learning to centers of propaganda.'"

3. "As an employee of the institution, the faculty member has a contractual obligation to perform the services he was employed to provide."

Illustrative of practices deemed to violate this obligation are the following:

- "The abandonment, in substantial measure, of the subject matter of the course and the substitution therefore of subject matter unrelated to the discipline in which the course lies."

- "The habitual or persistent introduction into a course of controversial matter that has no relation to the course content."

The OSBHE Administrative Rules § 41, provide for the imposition of sanctions /including termination/ where there exists:

"failure to perform the responsibilities of an academic staff member, arising out of his particular assignment, toward his students, toward his academic discipline, toward his colleagues, or toward the institution in its primary educational and scholarly functions and secondary administrative functions of...protecting the health and safety of persons in the institutional community."

Evidence to demonstrate the existence of "cause" within the meaning of this definition can include, but is not limited to, "evidence of gross incompetence, gross inefficiency, default of academic integrity in teaching, research, or scholarship, and intentional or habitual neglect of duty. (emphasis supplied)

I believe that these provisions indicate that the distinction to which you drew attention in your letter is, in fact, one that is endorsed by all of the relevant policy documents. Failure to observe these responsibilities rigorously could easily constitute "evidence" and "cause" for the imposition of sanctions. Thus, the University's guiding policy in this area is well articulated and is backed by an internally operative sanctioning system.

I should particularly like to emphasize that in no case coming to my personal attention has unorthodox sexual behavior or improper classroom discussion of matters of sexual conduct ever been alleged.

I trust that the above observations provide you and your constituent with the materials you are seeking. Please feel free to call on me again if there is additional information you wish to have.

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Mr. Vern Cook

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November 29, 1971

As always, your interest in the program activities of the University of Oregon is very much appreciated.

Sincerely yours,

Harry Alpert
Vice President for Academic Affairs
and Provost

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Enclosure

cc: / President R. D. Clark
Professor David Frohnmayer