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September 28, 1987

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Re: Public Records Petition
Lincoln County Juvenile Court

Dear Ms. Bell, and Messrs. Hall, Brickey and Thorpe:

This letter responds to the public records petition of Messrs. Hall, Brickey and Thorpe, dated September 11, 1987. The Attorney General received the petition on September 21, 1987. For the reasons that follow, we respectfully deny the petition.

The petitioners request the Attorney General to order disclosure of documents of the Lincoln County Juvenile Court.

The documents which petitioners seek to examine are "[l]egal pleadings in Lincoln County Case No. 870120, In the Matter of: Kevin C. Clock, and Kristy M. Clock, children." These documents, however, are exempt from the mandatory disclosure requirements of the Public Records Law.

The Public Records Law exempts from disclosure "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under ORS . . . 419.567." ORS 192.500(2)(h). Therefore, we may not order the disclosure of information protected under ORS 419.567, which is part of the Juvenile Code.

ORS 419.567(1) makes the record of a juvenile case generally confidential. That subsection states in part:

> "The record of the case shall be withheld from public inspection but shall be open to inspection by the child, parent, guardian or surrogate and their attorneys. The attorneys are entitled to copies of the record of the case."

ORS 419.567(2) provides that reports and other material relating to the juveniles' history and prognosis also are privileged. These records may not be disclosed to anyone other than the juvenile court judge, those acting under the judge's direction or the attorneys for the parties, except at the request of the child. Under ORS 419.567(3), no information appearing in the record of the case or other material relating to the juveniles' history or prognosis may be disclosed without judicial consent to anyone other than the persons described in ORS 419.567(2).

ORS 419.567(5) contains the sole exception to these rules. That subsection provides:

> "Notwithstanding any other provision of law, the name of the juvenile, the basis for the juvenile court's jurisdiction over the juvenile, the date, time and place of any juvenile court proceeding in which the juvenile is involved and that portion of the juvenile court order providing for the legal disposition of the juvenile <u>where jurisdiction is based on ORS 419.476(1)(a) or (g) shall not be confidential</u>." (Emphasis added.)

The exception provided in ORS 419.567(5) arose from the case in which the Oregon Supreme Court addressed the question whether juvenile court proceedings are open to the public. In State ex rel Oregonian v. Deiz, 289 Or 277, 613 P2d 23 (1980), the court held that Art. I, section 10, of the Oregon Constitution prohibits secret court proceedings, and that all court proceedings therefore are open to the public. The 1981 Legislative Assembly, in response to State ex rel Oregonian v. Deiz, amended ORS 419.567 by adding subsection (5). 1981 Or Laws, ch 524, sec 1. This statute makes it clear that where the juvenile court's jurisdiction is based on ORS 419.476(1)(a) (juvenile's commission of an act which would be punishable as a crime if committed by an adult) or ORS 419.476(1)(g) (juvenile's filing of a petition for emancipation), the enumerated types of information which appear in juvenile court records are not confidential. The types of information listed are generally items that could be obtained by attending a court session, and they clearly relate to the administration of justice.

We understand, however, that the jurisdiction of the Lincoln County Juvenile Court over Kevin C. and Kristy M. Clock is not based on ORS 419.476(1)(a) or (g). Accordingly, the records of their case are confidential and must be withheld from public inspection, pursuant to ORS 419.567(1).

We also understand that some or all of the requested records previously were shown to Mr. Hall. We nevertheless find no waiver of ORS 419.567(1). The statute is mandatory in its terms. It states that "the record of the case shall be withheld from public inspection." (Emphasis added.)

Therefore, we decline to order disclosure and we deny the public records petition of Messrs. Hall, Brickey and Thorpe.

Respectfully submitted,

JAMES E. MOUNTAIN, JR.
Special Counsel to the
Attorney General

JEM:cm
cc: Bob Muir, Assistant Attorney General
Larry Young, Assistant Attorney General
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