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March 1, 2011

SENT VIA REGULAR MAIL & EMAIL

Les Zaitz, Senior Investigative Reporter
The Oregonian
P.O. Box 837
John Day, OR 97845
(lzaitz@oregonian.com)

Re: Public Records Disclosure Order:
Oregon State Treasury Records

Dear Mr. Zaitz:

This letter is the Attorney General's order on your petition for a waiver of a fee proposed to be charged by the Oregon State Treasury for producing records under the Oregon Public Records Law. We received your petition on February 22, 2011. In your petition, you asked the Attorney General to "find that Oregon State Treasury proposes to charge other than its 'actual' expenses for producing records and bar the agency from doing so." Alternatively, you asked the Attorney General to "find the agency's denial of [your] fee wavier request was unreasonable under" the Public Records Law. For the reasons that follow, we respectfully deny your petition.

The Public Records Law authorizes a custodian of public records to waive or reduce fees that it would otherwise charge to reimburse it for its actual cost in responding to a request for records, if the custodian concludes that waiver or reduction "primarily benefits the general public." ORS 192.440(3), (4). If a requester believes that a state agency has unreasonably denied a request for a fee waiver or reduction, that person may petition the Attorney General for review of the denial. ORS 192.440(5). In delineating the Attorney General's authority to review such a denial, the Public Records Law states that the Attorney General has "the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied." ORS 192.440(5).

The Attorney General has no authority to review the actions taken in response to a request for public records that are in the custody of an elected official, or in the custody of another person but as to which the elected official claims the right to withhold disclosure. ORS

192.480. The Public Records Law specifically states that in either of those situations, "no petition to require disclosure may be filed with the Attorney General or * * * if a petition is filed it shall not be considered by the Attorney General * * * after a claim of right to withhold disclosure by an elected official." *Id.* ORS 192.440(5) extends this limit on the Attorney General's jurisdiction to his authority to respond to a petition alleging the unreasonable denial of fee waiver request.

We spoke with Darren Bond, Deputy Treasurer, about your petition. Mr. Bond confirms that the State Treasurer has directed denial of the requested fee waiver. Therefore, the fee-waiver request is within the scope of ORS 192.480, and the Attorney General lacks jurisdiction to respond substantively to your petition. Accordingly, the petition is denied.

Sincerely,

KEITH S. DUBANEVICH
Chief of Staff and Special Counsel to the
Attorney General

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c: Darren Bond, Deputy Treasurer, OST