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confidential submissions

July 1, 1991

Kristine M. Juul, Administrator
Workers' Compensation Management/Labor
Advisory Committee
Labor & Industries Building
Salem, OR 97310

Joel A. Mason, President/Director
The Peoples Legislature PAC
1156 Patterson, #6
Eugene, OR 97401

Re: Petition for Public Records Disclosure Order; Department of Insurance and Finance Records

Dear Ms. Juul and Mr. Mason:

This letter is the Attorney General's order on Mr. Mason's petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. The petition, which we received on June 17, 1991,[1] asks the Attorney General to direct the Governor's office and the Department of Insurance and Finance to make available for inspection and copying "the minutes of the meetings of the Management/Labor Advisory Committee, better known as the Mahonia Hall group, January through April of 1990" and all supporting documents "which should be listed as exhibits."[2] For the reasons that follow, we grant the petition in part and deny it in part.

The Public Records Law confers the right to inspect public records of a public body in Oregon, subject to certain exceptions. ORS 192.420. If a public record contains both exempt and nonexempt material, the public body must separate the material and make the nonexempt material available for examination if it is "reasonably possible" to do so while

preserving the confidentiality of the exempt material. ORS 192.505; Turner v. Reed, 22 Or App 177, 186 n 8, 538 P2d 373 (1975).

We understand that the Governor's office has no documents that satisfy Mr. Mason's petition. Accordingly, we deny the petition as it relates to the Governor's office.

The Department of Insurance and Finance, however, does have records falling within the scope of the petition. The great majority of these records are reports generated by the Department of Insurance and Finance, legislative records, statistical surveys and studies. These documents are nonexempt public records, and must be made available for inspection and copying.

For the reasons that follow, however, we conclude that some parts of the informal minutes of the meetings of the Mahonia Hall group, and certain other documents reflecting the thought processes or positions taken by specific members on various issues, are exempt from disclosure pursuant to ORS 192.502(3). This statute exempts from disclosure:

> Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

The purpose of this exemption "is to encourage citizens to provide relevant information voluntarily to governmental agencies, with some reasonable assurance that the information will be kept confidential." Attorney General's Public Records and Meetings Manual 32 (1989) (Manual).

We believe that the elements of ORS 192.502(3) are satisfied here. The Mahonia Hall group comprised several private individuals representing labor and management, together with some government officials, who met to review Oregon's Workers' Compensation Law and to propose reform legislation. Private Mahonia Hall group members joined the group voluntarily. We have been informed that those individuals participated only on the

basis of specific assurances from the government that the contents of their discussions would be kept confidential. It is apparent that such confidentiality was crucial in gathering people of disparate views together to develop a series of compromise reform proposals for legislative consideration. The promises of confidentiality appear to have been made in good faith, in part to allow the compromise process to work in an atmosphere free from the pressures and inhibitions that public disclosure would entail.

We also believe that portions of the minutes and supporting materials reasonably should be considered confidential. They reveal the give and take of sensitive negotiations which, if publicly revealed, could subject the participants to criticism for having sacrificed the interests of their supporters in the course of reaching a compromise.

Finally, we believe that the public interest would suffer by disclosure. The Mahonia Hall effort resulted in proposals for reform legislation in an area of the law beset with divisive issues long resistant to compromise among competing groups. Disclosure now, despite previous reliance on promises of confidentiality, would undermine future similar efforts and potentially could undermine the progress achieved to date. These potential injuries to the public interest outweigh any value in public disclosure of the limited number of documents we conclude are exempt. This is particularly true because most of the working documents used by the private parties are subject to disclosure, and the ultimate findings of the Mahonia Hall group have been made available to the public.

For these reasons, we conclude that the department may withhold from inspection portions of the minutes and related documents showing individual members' specific positions taken on the issues addressed by the group. An Assistant Attorney General will be available to work with the department in identifying and segregating the exempt material.

We direct the Department of Insurance and Finance to disclose the records identified above as subject to disclosure. The department has seven days from the date of this order in which to comply. ORS 192.450(2). The department may charge Mr. Mason for its reasonable actual expenses incurred in satisfying

his request, including its photocopy costs and the time spent by agency personnel in reviewing the records. ORS 192.440(3); Manual at 6.

Sincerely,

Donald C. Arnold
Chief Counsel
General Counsel Division

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[1] We appreciate Mr. Mason's courtesy in allowing us to exceed the seven-day deadline for issuing this order.

[2] The Department of Insurance and Finance maintains a file in support of the Workers' Compensation Management/Labor Advisory Committee (committee) created pursuant to Oregon Laws 1990, chapter 2, section 41. That law, now codified at ORS 656.790, took effect on May 8, 1990. Since that time, the committee has conducted its business as a public body, and the records of its operation generally are available for public inspection. Those records are not at issue here.