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December 1, 1999

Anne L. Nichol
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1211 SW Fifth Ave., Suite 1500
Portland, OR 97204-3715

RE: *Petition for Public Records Disclosure Order: State Controller's Division Records*

Dear Ms. Nichol:

This letter is the Attorney General's order on your petition for disclosure of records under the Oregon Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on November 12, 1999,[1/] asks the Attorney General to direct the State Controller's Division (division) to make available a copy of a list of all outstanding and uncashed warrants, in the amount of $2000 or greater, issued by the State of Oregon at any time during the last two years. For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. If a public record contains exempt and nonexempt material, the public body must separate the materials and make the nonexempt material available for examination if it is "reasonably possible" to do so while preserving the confidentiality of the exempt material. *Turner v. Reed*, 22 Or App 177, 186, n 8, 538 P2d 373 (1975).

We understand from your petition and the State Controller's office that your request was denied by the division on September 14, 1999. The stated basis for the denial was ORS 98.352(4). This statute is incorporated into the Public Records Law by ORS 192.502(15), which exempts "[r]eports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352."

[1/] We appreciate your extending the time within which the law would have otherwise obligated us to respond.

ORS 98.352 is part of the Uniform Disposition of Unclaimed Property Act.[2/] The last sentence of ORS 98.352(4) is the source of the claimed exemption. It provides:

> All lists of records or property held by a government or public authority pursuant to ORS 98.336 shall be exempt from public review until 24 months after the property is remitted to the division.

The question is whether the division's list of unclaimed warrants less than two years old is exempt from disclosure under this law.

In interpreting a statute, our goal is to discern the intent of the legislature.[3/] We first look to the text and context of the statute, which includes prior versions of the statute and other provisions of the same statute and related statutes.[4/] To do this, we consider dictionary definitions, rules of grammar and statutory and judicially developed rules of construction that bear directly on how to read the text. If the legislative intent is clear from the text and context, we stop there. Only if the legislative intent is not clear do we look to the legislative history to attempt to discern that intent.[5/]

1. Text and Context of ORS 98.352(4)

The sentence at issue was added to ORS 98.352(4) in 1997.[6/] Standing alone, the sentence does not answer our question: does the exemption apply to lists of records or property held by a government agency before the property is considered abandoned? The sentence has an ending date – 24 months after the property is remitted to DSL – but no beginning date. There are two possible start dates for the exemption: either when the property is reportable to DSL or when the list is first created by the government agency. Neither beginning date is express. Because this sentence is ambiguous, we look to the referenced statute – ORS 98.336.

The lists of records or property held by the government agency – such as the records requested here – are exempt only if held "pursuant to ORS 98.336." That statute states that intangible property held by government agencies, including uncashed warrants, is presumed abandoned if unclaimed by the owner for two years. The question is whether a list is held "pursuant" to this statute only after the property is presumed abandoned and reportable to DSL. The division holds intangible property for the owners in the form of uncashed warrants – and maintains a list of those uncashed warrants – from the date the warrant is issued until the underlying property is reported to DSL. Because property held "pursuant" to ORS 98.336 could simply refer to the types of property – both tangible and intangible – held by government agencies, we believe that the qualifier "pursuant to ORS 98.336" does not necessarily mean only property deemed abandoned after the two-year period.

[2/] ORS 98.302 to 98.436 and 98.991 to 98.992.

[3/] ORS 174.020; *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610, 859 P2d 1143 (1993).

[4/] *Id.* at 611; *Krieger v. Just*, 319 Or 328, 336, 876 P2d 753 (1994).

[5/] Id. at 611-612; 49 Op Atty Gen ___ (No. 8264, 1999) at 2.

[6/] Or Laws 1997, ch 86, § 1.

The context of other parts of ORS 98.352(4) does not resolve this ambiguity. The only sentence providing a public records exemption before the last sentence of subsection (4) was added in 1997 was the immediate preceding sentence, which states:

> All records are exempt from public review for 12 months from the time the property is reportable and for 24 months after the property has been remitted to the division.

This sentence applies to "[a]ll records" of property, including property held by government agencies. It already provides an exemption from public disclosure for all records for 12 months starting when the property is reportable, as well as for 24 months after the property has been remitted to DSL. If the new sentence adopted in 1997 is interpreted to exempt the list only after it is reportable to DSL, then the new sentence adds nothing to what was already exempted by the preceding sentence. We do not presume that the legislature added that final sentence in 1997 with no change in meaning.[7/]

We conclude that the last sentence of ORS 98.352(4) is ambiguous in that it is susceptible to two different interpretations. The interpretation requiring disclosure of lists of uncashed government agency warrants before they have been presumed to be abandoned is not clearly the only correct interpretation. In fact, the opposite interpretation seems more logical, when the text and context are closely examined. We therefore turn to the legislative history.

2. Legislative History

The 1997 legislation that added the last sentence of ORS 98.352(4) was proposed by DSL.[8/] The sentence at issue was part of the original bill proposal, and no one appeared to consider whether it was sufficiently clear to serve its intended purpose.[9/] DSL's written testimony explained that the confidentiality provision's purpose was to give public agencies time to find the owners without being required to provide the lists to researchers who charge the owners for their services. This testimony stated: [10/]

> The confidentiality provision allows state agencies to perform their due diligence in searching for the owners of uncashed checks before turning those checks over to the Division's Unclaimed Property Program. Currently, lists of uncashed checks do not become confidential until they are turned over to the Division. Researchers obtain those lists and contact the owners, charging a fee of 30% to 60% of the face value to

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[7/] *Carlson v. Myers*, 327 Or 213, 225, 959 P2d 31 (1998) (material changes in statutory language are presumed to create material changes in meaning).

[8/] Or Laws 1997, ch 86 (SB 204).

[9/] SB 204 passed 29-0 in the Senate and 57-0 in the House.

[10/] Testimony of Paul Cleary, Director, Division of State Lands, Senate Committee on Civil Law, Business and Government Operations, January 27, 1997. Cleary gave similar testimony to the House General Government Committee at a work session on March 24, 1997.

help them recover their property.

* * * * *

[W]e wanted to bring state agencies in line with the private sector, which keeps owner information records confidential before remitting them to the Division.

This legislative history makes it clear that the legislature intended the new language in ORS 98.352(4) to exempt the uncashed warrant lists of government agencies during the period when they were held by the agency, as well as when the records were held by DSL.

3. Conclusion

Based on our examination of the text and context of ORS 98.352, together with the legislative history of the 1997 amendment, we conclude that the Controllers Division's records of uncashed warrants less than two years old are exempt from disclosure under ORS 98.352 and 192.502(15).[11/] Therefore we respectfully deny your petition to order disclosure of those records.

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

AGS03549
c: John Radford, Administrator, Controllers Division, DAS
Marcella Easly, Manager, Trust Property Section, DSL

[11/] DSL has adopted a rule to implement ORS 98.352, which provides in relevant part: "All lists of uncashed warrants or stale dated checks issued by a government or public authority pursuant to ORS 98.336 shall be exempt from public review from the issued date until twenty-four (24) months after the property is remitted to the Division." OAR 141-045-0105(1)(c). We believe that this interpretation of the statute by the agency that proposed the legislation and is charged with administering it further supports our conclusion.