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December 31, 1997

Michael Rose
The Business Journal
P.O. Box 14490
Portland, OR 97214

Re: *Petition for Public Records Disclosure Order: Oregon State Treasury Records*

Dear Mr. Rose:

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 December 3, 1997,[1] asks the Attorney General to direct the Oregon State Treasury to make available "materials initiated by, addressed to, or routed to the Jones Day law firm, specifically the investigation of the Pacific Aircraft Maintenance Corporation Inc. (Pamcorp) transaction" and the same materials with respect to "restructuring transactions similar to the Pamcorp deal in the future." 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. One of those exemptions, set forth in ORS 192.502(9), provides that "[p]ublic records or information the disclosure of which is prohibited or restricted or otherwise made confidential or **privileged** under Oregon law" are unconditionally exempt from disclosure. (Emphasis added.)

Pursuant to the Oregon Evidence Code (OEC) Rule 503, codified as ORS 40.225, communications between a lawyer and his or her client "for the purpose of facilitating the

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

rendition of professional legal services" are privileged communications protected from disclosure to third parties. The rendition of such legal services need not be confined to representing a party in litigation and is broader than simply providing legal advice. *State ex rel Oregon Health Sciences Univ. v. Haas*, 325 Or 492, 504, 942 P2d 261 (1997). The privilege will apply when the general purpose in hiring a lawyer concerns legal rights and obligations. *United States v. Chen*, 99 F3d 1495, 1501-1502 (9th Cir. 1996); *see also United States v. Rowe,* 96 F3d 1294 (9th Cir. 1996) (investigation and fact finding by attorneys falls within attorney-client privilege).

The privilege in OEC Rule 503 extends beyond just the direct attorney-client communications to also include communications:

> (a) Between the client or the client's representative and the client's lawyer or a representative of the lawyer;
>
> (b) Between the client's lawyer and the lawyer's representative;
>
> (c) By the client or the client's lawyer to a lawyer representing another in a matter of common interest;
>
> (d) Between representatives of the client or between the client and a representative of the client; or
>
> (e) Between lawyers representing the client.

This office has conducted a review of the materials that you requested. Attorneys with the firm of Jones Day Reavis and Pogue were appointed as special assistant attorney generals by the Oregon Attorney General. The firm was charged with using its legal knowledge to review and report on the Pamcorp transaction and to provide confidential advice related to the transaction to the Oregon State Treasury. The records consist primarily of direct communications between attorneys with the Jones Day firm and employees of the Oregon State Treasury (between lawyer and client), communications between the Oregon Department of Justice and Treasury that were copied to Jones Day (between lawyer and client), or copies of communications between the Jones Day firm and the Oregon Department of Justice (between lawyers representing the client) that were copied to a Treasury employee (between lawyer and client). Accordingly, those records are confidential communications in furtherance of the rendition of professional legal services to the Oregon State Treasury within the meaning of OEC Rule 503. Such communications are privileged under OEC Rule 503 and therefore exempt from disclosure under ORS 192.502(9). Therefore, we deny your

petition with respect to these exempt documents.[2]

A few of the records covered by your petition are not privileged under OEC Rule 503 and are not exempt from disclosure. The Oregon State Treasury has agreed to provide you the opportunity to inspect or receive copies of the records covered by your petition that are not exempt from disclosure under ORS 192.410 to 192.505. Because the Treasury has agreed to make the nonexempt records available to you, upon your payment of the appropriate fees for its photocopying and staff costs, the Attorney General has no authority to order the Treasury to disclose the records, and we therefore deny your petition with respect to those records as moot.[3]

Sincerely,

DAVID SCHUMAN
Deputy Attorney General

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c: Dan Smith, Director
Investments Division, Oregon State Treasury

[2] Some of these records may also be exempt from disclosure under ORS 192.502(1) as communications within or between public bodies. Because these records are fully and unconditionally exempt from disclosure under ORS 192.502(9) because of the attorney-client privilege, we do not address the exemption provided in ORS 192.502(1).

[3] The Treasury may charge a fee reasonably calculated to cover its actual costs of making copies of the records available to you. ORS 192.440(3); OAR 150-192.440.

bc: Greg Chaimov, AAG
Pete Shepherd, AAG
Lisa Kaner, Attorney at Law