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December 26, 1996

Thomas P. Kerr
3897 Pasadena Ave., Suite 100
Sacramento, CA 95821

Re: ***Petition for Public Records Disclosure Order: Department of Revenue Records***

Dear Mr. Kerr:

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 23, 1996, asks the Attorney General to direct the Department of Revenue to produce a copy of the transcript of the hearing of September 19, 1995, in the matter of *Summerset Village Joint Venture v. Benton County*, Department of Revenue hearing Nos. 94-2344 through 94-2347 and 95-1267. We respectfully deny your petition.

Ms. Lou Ellen Pearson, Section Manager, Appeals Section, Department of Revenue, has informed us that she has not denied your request for these records, contrary to the assertion in your petition. The transcript has been in the possession of the Department of Administrative Services, as a result of your pending litigation with the Department of Revenue. Ms. Pearson has requested a copy of the transcript. She has also informed us that you requested to know the number of pages contained in the transcript and the cost of supplying you with a copy, before sending you a copy.

The Public Records Law authorizes a public body to establish and charge fees for the actual cost of making records available. ORS 192.440(3). These fees may include a charge for the time spent by the public body's staff to locate the requested records, as well as the costs of copying the records. ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1995) at 10. An agency does not deny a request for a public record merely because it requires payment of copy and search fees in advance. *Id.* 10-11.

Because your request for disclosure of the records has not been denied by the Department of Revenue, the Attorney General has no authority to order disclosure of the records. *See* ORS 192.450. Accordingly, your petition for an order requiring disclosure of public records is denied.

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

JCW:AV:jcw/JGG0F1B0

c: Lou Ellen Pearson, Department of Revenue, Appeals Section