

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING AN)	ORDINANCE NO. 88-237
OFFICE OF GENERAL COUNSEL TO)	
PROVIDE LEGAL ADVICE AND)	Introduced by the
ASSISTANCE TO THE METROPOLITAN))	Council Management Committee
SERVICE DISTRICT)	

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The following chapter is added to the Code of the Metropolitan Service District:

CHAPTER 2.08

OFFICE OF GENERAL COUNSEL

2.08.010 Purpose: The purpose of this chapter is to establish an Office of General Counsel to provide legal services to the District and its Council, Executive Officer, and any Metro commissions.

2.01.020 General Counsel Office Created: There is hereby created an Office of General Counsel consisting of the General Counsel and such subordinate employees as the Council may provide. The General Counsel and any subordinate employees shall be employed by the District subject to Personnel Rules adopted by the Council. Subordinate attorneys shall serve at the pleasure of the General Counsel. The General Counsel shall be appointed by Executive Officer subject to the confirmation of a majority of the members of the Council. The General Counsel may be removed by the Executive Officer or by a vote of a majority of the members of the Council. The Office of General Counsel is not a department of the District.

2.08.030 Powers: The General Counsel shall have:

- (1) General control and supervision of all civil actions and legal proceedings in which the District may be a party or may be interested.
- (2) Full charge and control of all the legal business of all departments and commissions of the District, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the District.

No District officer, board, Council, commission, or department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

2.08.040 Duties: The General Counsel shall have the following duties:

(1) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the District is interested in when required by the Council, the Executive Officer, or any Metro commission;

(2) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the District;

(3) Except as provided by any insurance policy obtained by the District appear for, represent, and defend the District, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving persons who after investigation by the office of the General Counsel, are found

by the General Counsel to have been acting outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty.

(4) Submit to the Council and Executive Officer, quarterly, a formal report of all suits or actions in which the District is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the District. At any time the General Counsel shall at the request of the Council or the Executive report on the status of any or all matters being handled by the General Counsel.

(5) Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when mutually requested by the Executive Officer and the Council when, in the discretion of the General Counsel, the same may be necessary or advisable to protect the interests of the District. The General Counsel shall not appear on behalf of the District, without the mutual consent of the Executive Officer and Council as appropriate in any action, suit, matter, cause or proceeding in any court or tribunal.

2.08.050 Records:

(1) The General Counsel shall have charge and custody of the office of General Counsel and of all legal papers pertaining

thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible;

(2) The General Counsel shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the District, the Executive Officer, Council, or any Metro commission or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the District in which case the General Counsel shall keep those records as the General Counsel deems advisable;

(3) The General Counsel shall keep and record all significant written opinions furnished to the District or to any department, the Executive Officer, Council or any Metro commission and shall keep an index thereof; and shall keep a chronological file including all opinions and correspondence of the office.

2.08.060 Attorney - Client Relationship: The relationship between the office of General Counsel and the District shall be an attorney - client relationship, with the District being entitled to all benefits thereof. The General Counsel shall maintain a proper attorney - client relationship with the elected officials of the District so long as such officials are acting within the scope of their official powers, duties and responsibilities.


2.08.070 Employment of Outside Legal Counsel

(1) Whenever the General Counsel concludes that it is inappropriate and contrary to the public interest for the office of the General Counsel to concurrently represent more than one Metro public officer in a particular matter or class of matters in cir-

cumstances which would create or tend to create a conflict of interest on the part of the General Counsel, the General Counsel may authorize one or both of such officers to employ its own counsel in the particular matter or class of matters and in related matters. Such authorization may be terminated by the General Counsel whenever the General Counsel determines that separate representation is no longer appropriate;

(2) When in the judgment of the General Counsel the General Counsel deems it necessary or appropriate to do so the General Counsel may subject to budget and procedural requirements established by the Council employ outside legal counsel on behalf of any commission, the Council, the Executive Officer, or any Metro commission to handle such matters as the General Counsel deems advisable.

ADOPTED by the Council of the Metropolitan Service District this 14th day of January, 1988.


Mike Ragsdale, Presiding Officer

ATTEST:


Clerk of the Council

DEC/sm
8662C/517
12/18/87

I certify this ordinance was not vetoed by the Executive Officer.


Clerk of the Council

1/20/88

Date



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. 10.2

Meeting Date Jan. 14, 1988

Date: December 21, 1987

To: Metro Council

From: Councilor Gardner
Chair, Council Management Committee

Regarding: COMMITTEE REPORT ON AGENDA ITEM NO. 8.3
(COUNCIL MEETING -- DECEMBER 22, 1987)

CONSIDERATION OF ORDINANCE NO. 88-237,
FOR THE PURPOSE OF CREATING THE OFFICE OF GENERAL COUNSEL

The Council Management Committee unanimously recommends adoption of Ordinance No. 88-237.

The purpose of this ordinance is to create an Office of General Counsel and, thereby, define the relationship of Metro's General Counsel to the Metro Council, Executive Officer, staff and Metro commissions. The definition of this relationship has been ignored during the past year, but should not be put off any longer since there is now a request to add an additional attorney. The basic premise behind this ordinance is that the General Counsel serves the entire organization -- the Council, Executive Officer, staff and commissions. Therefore it is important to set forth the powers, duties, method of appointment and termination of the General Counsel and subordinate employees.

The Management Committee spent a considerable amount of time discussing two separate proposed ordinances. One was submitted by Councilors Collier and Van Bergen as a result of their work as the Council's Task Force on Litigation, and the other was submitted by the administration. The ordinances for the most part were the same with the exception of the sections dealing with the method of appointment and termination, and approval of instigating litigation.

Attached as Exhibit A is Ordinance No. 88-237 unanimously recommended by the Management Committee. A section by section description of the ordinance is as follows:

Section 1: This section provides that the ordinance will be added to the Metro Code.

2.08.010 Purpose: This section describes the purpose of the Office of General Counsel.

2.08.020 General Counsel Office Created: This section creates the Office of General Counsel. It provides that the General Counsel and all employees in the office shall be employed subject to the Personnel Rules (open competitive recruitment). It states the General Counsel shall be appointed by the Executive Officer subject to Council confirmation. Either the Executive Officer or Council may terminate the General Counsel, and other attorneys in the Office shall serve at the pleasure of the General Counsel. Language is provided to clarify that this Office is not a department, thus, eliminating a potential conflict with the provisions of SB 629.

2.08.030 Powers: This section states the powers of the General Counsel. It states that the General Counsel is in charge of all legal business for the District including commissions of the District. It prevents other legal counsel from being retained without the approval of the General Counsel.

2.08.040 Duties: This section states the duties of the Office of General Counsel. It provides that the General Counsel shall give opinions; review contracts, ordinances, and resolutions, etc., as to form; represent Metro officials and employees under the Oregon Tort Claims Act; submit a quarterly report to the Council and Executive Officer on all litigation; and start, defend or appeal litigation on behalf of the District only with the mutual agreement of the Council and Executive Officer as long as the General Counsel agrees that the action is necessary to protect the interest of the District.

2.08.050 Records: This section provides that the General Counsel has custody of all legal records and shall keep them in good order and make them accessible to District officials.

2.08.060 Attorney-Client Relationship: This section defines the relationship of the General Counsel with District officials as an attorney-client relationship.

2.080.070 Employment of Outside Legal Counsel: This section gives the General Counsel discretion to authorize the use of outside counsel by Metro "public officers" when a conflict of interest occurs. It also gives the General Counsel authority to employ outside counsel (subject to budget restraints) to handle such matters as the General Counsel deems advisable.

The Management Committee also considered the position and funding request for the Legal Counsel position at its December 17, 1987, meeting (Resolution No. 87-828, for the Purpose of Adding a Legal Counsel Position to the Executive Management Department). The Committee unanimously recommends that the position be created and funded. Council staff prepared a memo regarding this request (see Exhibit B attached) and pointed out that the resolution needs to be

Memorandum
December 21, 1987
Page 3

revised to place the new position in the new Office of General Counsel should it be created. Staff will revise Resolution No. 88-828 and it will be considered by the Council on January 14, 1988, when Ordinance No. 88-237 will be on the agenda for second reading.

DEC/gl
8710C/D4

Attachments



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

EXHIBIT B

Date: December 17, 1987

To: Council Management Committee

From: Ray Barker, ^{RB} Council Assistant

Regarding: COUNCIL MANAGEMENT COMMITTEE MEETING
DECEMBER 17, 1987
AGENDA ITEM 5

The purpose of this memo is to provide additional information regarding the proposal to add a Legal Counsel position to the Executive Management Department.

Policy Questions

The staff report from Executive Management appears to make a good case for adding a Legal Counsel position, but some additional policy questions should be addressed:

1. How should the Legal Counsel position be funded?
2. Could the creation of a Legal Counsel position wait until the beginning of the new fiscal year? What legal work has to be done between now and July 1, 1988?
3. Are there other ways to address the need for additional legal assistance that should be considered?

Executive Management Budget

Table I attached shows the Executive Management budget for Personal Services. It shows current amounts budgeted for each position, actual amounts expended through November 30, 1987, the balance remaining, the amount required for each position through the end of the fiscal year and the difference between what is needed and what is available. The following assumptions are made:

1. That the Lobbyist position would not be filled until February 1, 1988, and that it would be at the mid-range salary of \$37,513.
2. That no more charges will be made to the Executive Management Department for use of the Contracts Officer.

3. That "temporary employees" includes the Law Clerk and that expenditures for the remainder of the fiscal year will be for 15 hours/week at \$10.30/hr.

It appears from the information shown in Table I that there is sufficient money within the Executive Management budget to fund the proposed Legal Counsel position and to fill the vacant Lobbyist position.

Funding Options

Options for funding the Legal Counsel position include the following:

1. Transfer from Contingency.
2. Direct charging: charge Legal Counsel time in individual department budgets.
3. Increase transfers to the General Fund from other operating funds (requires a supplemental budget).

Executive Management recommends that the amount required for the Legal Counsel position come from a combination of a transfer from Contingency to Executive Management, and from savings within the Executive Management Department due to vacancies.

Other Concerns

A Councilor has suggested that we consider not creating a new Legal Counsel position, and instead upgrade the existing Contracts Officer position. Assign those duties proposed for the Legal Counsel position to the Contracts Officer position, revise the position description, and increase the salary accordingly.

Other questions are: If the incumbent Contracts Officer is appointed to fill the proposed new Legal Counsel position and continues to perform some of the Contracts Officer's duties, what is left for the Contracts Officer position to do? Is it possible to save money by lowering the level of the Contracts Officer position?

Currently there is \$154,745 in the General Fund Contingency. What is needed between now and July 1, 1988? Will the Contingency be sufficient? It is our understanding that, in response to the auditor's management letter, the Accounting Division may request two additional positions in the current fiscal year which if implemented could cost approximately \$20,000.

Memorandum
December 17, 1987
Page 3

Legal Budget

Table II attached is a budget for the Office of General Counsel. The estimated expenditures are for the period December 1, 1987, through June 30, 1988.

Recommendation

If the position of Legal Counsel is created, it is recommended that a budget for the Office of General Counsel be adopted, as shown in Table II, and that the funds be transferred from the Executive Management budget.

RB/gl-8688C/D3

cc: Donald Carlson
Ray Phelps
Dan Cooper

TABLE I

FY 1987-88

EXECUTIVE MANAGEMENT BUDGET

<u>Position</u>	<u>Budget</u>	<u>Actual July 1- Nov. 30</u>	<u>Balance Remaining</u>	<u>Amount Required^a</u>	<u>Difference</u>
Executive Officer	\$ 63,727	\$ 26,931	\$ 36,796	\$ 36,840	(\$ 44)
Deputy Executive Officer	42,278	17,719	24,559	26,265	(1,706)
General Counsel	52,297	13,265	39,032	29,564	9,468
Contracts Officer	0	1,191	(1,191)	0	(1,191)
Legal Counsel	0	0	0	17,638 ^b	(17,638)
Secretary	15,985	6,451	9,534	9,723	(189)
Senior Analyst	27,406	12,938	14,468	19,835	(5,367)
Lobbyist	33,320	4,370	28,950	15,606 ^c	13,344
Management Aide	20,598	8,345	12,253	12,205	48
Temporary Employees	10,302	10,611	(309)	4,728 ^d	(5,037)
Fringe Benefits ^e	80,270	19,508	60,762	52,453	8,309
TOTAL	\$346,183	\$121,330	\$224,853	\$224,857	(\$ 4)

^a For period December 1 through June 30; based upon current hourly rate times 1,224 working hours remaining in fiscal year; includes \$ for merit increases.

^b Assumes a December 1 starting date at entry level salary (\$30,202).

^c Assumes a February 1 starting date at mid-range salary (\$37,513).

^d Assumes a Legal Clerk for 15 hours/week at \$10.30/hr.

^e Fringe benefits are calculated at the rate of 31 percent for permanent employees and 10 percent for temporary.

TABLE II
BUDGET
OFFICE OF GENERAL COUNSEL

	FY 1987-88	
<u>Personal Services</u>	<u>FTE</u>	<u>AMOUNT*</u>
General Counsel	1.00	\$29,564
Legal Counsel	1.00	17,638
Legal Clerk	0.38	4,728
Fringe Benefits		<u>15,106</u>
Total Personal Services	2.38	\$67,036
 <u>Materials & Services</u>		
Travel		\$ 300
Meetings & Conferences		150
Training & Tuition		300
Dues & Subscriptions		200
Supplies - Office		200
Contractual Services		<u>1,000</u>
Total Materials & Services		\$ 2,150
 TOTAL EXPENDITURES		 \$69,186

* For period December 1, 1987, thru June 30, 1988.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Agenda Item No. 4

Meeting Date Dec. 17, 1987

Date: December 15, 1987

To: Council Management Committee

From: Councilors Collier ^{T.C.} and Van Bergen ^{G.U.B.}

Regarding: PROPOSED ORDINANCE CREATING OFFICE OF GENERAL COUNSEL

The purpose of this memo is to propose an ordinance which creates an Office of General Counsel. It is a result of a meeting of the Council's Litigation Task Force held on December 3, 1987. The ordinance will help define the relationship of Metro's General Counsel to the Council, the Executive Officer, staff and Metro commissions. The definition of the relationship has been ignored during the past year, but cannot be put off any longer since there is now a request to add an additional attorney. The basic premise behind this ordinance is that the General Counsel serves the entire organization -- the Council, Executive Officer, staff and commissions. Therefore, it is important to set forth the powers, duties, method of appointment and termination of the General Counsel and subordinate employees.

Attached please find a copy of the ordinance recommended by Councilors Collier and Van Bergen. The ordinance is similar to that suggested by the administration, but it has some significant differences. Below is a section by section analysis which discusses the similarities and differences:

Section 1. This section is necessary to add the ordinance to the Metro Code. It is the same as the administration ordinance.

2.08.010 Purpose: This section defines the purpose of the Office of General Counsel. It is the same as the administration ordinance.

2.08.020 General Counsel Office Created: This section creates the Office of General Counsel. It states that the General Counsel and subordinate employees will be hired subject to the Personnel Rules of the District (open competitive recruitment). It states that the General Counsel shall be appointed by the Executive Officer subject to Council confirmation and that either the Executive Officer or the Council can terminate the services of the General Counsel. An alternative which was discussed was termination by the Executive Officer subject to approval of the Council. The main point of either of these approaches is that because the General Counsel serves both the Executive Officer and the Metro Council both should have a say in the

termination of the services of the General Counsel. Subordinate employees in the Office would be terminated according to the provisions of the Personnel Rules (for cause). The ordinance states that the Office of General Counsel is not a department. This provision is included to make it clear that the General Counsel is not a department head and consequently does not serve at the pleasure of the Executive Officer as provided in SB 629.

The administration ordinance is substantially different in that it provides for the General Counsel to serve at the pleasure of the Executive Officer and that subordinate attorneys in the Office serve at the pleasure of the General Counsel. In regard to the latter point, subordinate attorneys would be employed under different conditions than other subordinate employees in the District.

2.08.030 Powers: This section states the powers of the General Counsel. It states that the General Counsel is in charge of all legal business for the District including commissions of the District. It prevents other legal counsel from being retained without the approval or consent of the General Counsel. These provisions are the same as the administration ordinance.

2.08.040 Duties: This sections enumerates the duties of the Office of General Counsel. The General Counsel shall give opinions; review contracts, ordinances, and resolutions, etc., as to form; represent Metro officials and employees under the Oregon Tort Claims Act; submit an annual report to the Council and Executive Officer on all Metro litigation; institute legal proceedings for the District (with some minor exceptions) only upon approval of the Council or in the case of commissions only upon approval of the commissions.

This section is substantially the same as the administration ordinance with one major exception (subsection 5). The administration ordinance authorizes legal proceedings to be instituted upon the request of the Council, Executive Officer or a commission. It also gives the General Counsel discretion not to institute any proceeding if it is not in the best interests of the District. Presumably if in the opinion of the General Counsel a proceeding is "frivolous," then the General Counsel could decide not to undertake the action.

2.08.050 Records: This section states that the General Counsel has custody of all legal records and shall keep them in good order and make them accessible to District officials. These provisions are the same as the administration ordinance.

2.08.060 Attorney-Client Relationship: This section describes the attorney-client relationship. It is the same as the administration ordinance.

Memorandum
December 15, 1987
Page 3

2.08.070 Employment of Outside Legal Counsel: This section gives the General Counsel discretion to authorize the use of outside counsel by Metro "public officers" when a conflict of interest occurs. It also gives the General Counsel authority to employ outside counsel (subject to budget restraints) to handle such matters as the General Counsel deems advisable. These provisions are the same as the administration ordinance.

SUMMARY

The differences between this ordinance and the administration's ordinance are found in sections 2.01.020 and 2.08.040(5).

This ordinance: 1) involves the Council in both the hiring and firing of the General Counsel and makes subordinate employees subject to all the provisions of the Personnel ordinance like other subordinate Metro employees; and 2) requires Council or commission approval for the instigation of legal proceedings (with some minor exceptions) for the District or the commissions.

DEC/sm
8670C/D3

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING AN) ORDINANCE NO. 87- _____
OFFICE OF GENERAL COUNSEL TO)
PROVIDE LEGAL ADVICE AND)
ASSISTANCE TO THE METROPOLITAN)
SERVICE DISTRICT)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The following chapter is added to the Code of the
Metropolitan Service District:

CHAPTER 2.08

OFFICE OF GENERAL COUNSEL

2.08.010 Purpose: The purpose of this chapter is to establish
an Office of General Counsel to provide legal services to the
District and its Council, Executive Officer, and any Metro
commissions.

2.01.020 General Counsel Office Created: There is hereby
created an Office of General Counsel consisting of the General
Counsel and such subordinate employees as the Council may provide.
The General Counsel and any subordinate employees shall be employed
by the District subject to Personnel Rules adopted by the Council.
The General Counsel shall be appointed by Executive Officer subject
to the confirmation of a majority of the members of the Council.
The General Counsel may be removed by the Executive Officer or by a
vote of a majority of the members of the Council. The Office of
General Counsel is not a department of the District.

2.08.030 Powers: The General Counsel shall have:

- (1) General control and supervision of all civil actions and
legal proceedings in which the District may be a party or
may be interested.

- (2) Full charge and control of all the legal business of all departments and commissions of the District, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the District.

No District officer, board, Council, commission, or department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

2.08.040 Duties: The General Counsel shall have the following duties:

- (1) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the District is interested in when required by the Council, the Executive Officer, or any Metro commission;
- (2) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments of the District;
- (3) Except as provided by any insurance policy obtained by the District appear for, represent, and defend the District, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving persons who after investigation by the office of the General Counsel, are found by the General Counsel to have been acting outside the scope of their employment or duties or to have committed malfeasance in office or willful or wanton neglect of duty.

(4) Submit to the Council and Executive Officer, annually, a formal report of all suits or actions in which the District is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the District. At any time the General Counsel shall at the request of the Council or the Executive report on the status of any or all matters being handled by the General Counsel.

(5) Institute legal proceedings for the District or any commission of the District in any court or tribunal on direction by resolution of the Council or the commission, except that the General Counsel may upon approval of the Executive Officer and for good cause shown seek enforcement of any regulation or franchise requirement including the payment of any fee, penalty, or interest established by state statute, Metro Code or ordinance, and collection of any account receivable and may assert a counterclaim, a cross-claim, or a third party claim. The General Counsel may upon approval of the Executive Officer institute appeals on behalf of the District for the enforcement of regulations or franchise requirements including such payments established by state law or Metro ordinance and for the collection of accounts receivable. The General Counsel shall institute other appeals for the District or any commission of the District on direction by resolution of the Council or the commission.

2.08.050 Records:

(1) The General Counsel shall have charge and custody of the office of General Counsel and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible;

(2) The General Counsel shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the District, the Executive Officer, Council, or any Metro commission or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the District in which case the General Counsel shall keep those records as the General Counsel deems advisable;

(3) The General Counsel shall keep and record all significant written opinions furnished to the District or to any department, the Executive Officer, Council or any Metro commission and shall keep an index thereof; and shall keep a chronological file including all opinions and correspondence of the office.

2.08.060 Attorney - Client Relationship: The relationship between the office of General Counsel and the District shall be an attorney - client relationship, with the District being entitled to all benefits thereof. The General Counsel shall maintain a proper attorney - client relationship with the elected officials of the District so long as such officials are acting within the scope of their official powers, duties and responsibilities.

2.08.070 Employment of Outside Legal Counsel

(1) Whenever the General Counsel concludes that it is inappropriate and contrary to the public interest for the office of the General Counsel to concurrently represent more than one Metro public officer in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on the part of the General Counsel, the General Counsel may authorize one or both of such officers to employ its own counsel in the particular matter or class of matters and in related matters. Such authorization may be terminated by the General Counsel whenever the General Counsel determines that separate representation is no longer appropriate;

(2) When in the judgment of the General Counsel the General Counsel deems it necessary or appropriate to do so the General Counsel may subject to budget and procedural requirements established by the Council employ outside legal counsel on behalf of any commission, the Council, the Executive Officer, or any Metro commission to handle such matters as the General Counsel deems advisable.

DEC/sm

8662C/517

12/15/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: December 1, 1987

To: Councilors Collier and Van Bergen

From: Donald E. Carlson, Council Administrator *DEC*

Regarding: PROPOSED ORDINANCE ESTABLISHING OFFICE OF GENERAL COUNSEL

This is to confirm our meeting of your Council Litigation Task Force on Thursday, December 3, 1987, at 3:00 p.m. in the Council office. The subject of the meeting will be a proposed ordinance establishing an Office of General Counsel. As you recall, your first meeting was in September where we discussed ideas on how the Council would authorize and control District litigation. As a result of that meeting, I drafted a proposed ordinance which would establish an Office of General Counsel (see Exhibit A attached -- memo from Dan Cooper dated November 4, 1987, which includes my initial draft). It had been my intent to clean up the draft ordinance and bring it back to your subcommittee for consideration and possible introduction.

As a result of Council action on November 24, 1987, to refer the request for a second attorney position to the Management Committee, the administration has drafted a proposed ordinance to establish an Office of General Counsel for submission to the Management Committee. The administration draft is attached as Exhibit B. There are differences in the two drafts principally in (1) the appointment and termination of the General Counsel; (2) the appointment and termination of additional attorneys in the office; and (3) the provision dealing with who authorizes litigation.

Please review and bring this material to the meeting so you can decide whether or not to make a recommendation to the Management Committee.

DEC/gl
8604C/D5

Attachments

cc: Richard Waker
Jim Gardner
Rena Cusma
Ray Phelps
Dan Cooper



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

EXHIBIT A

Date: November 4, 1987
To: Donald E. Carlson, Council Administrator
From: Daniel B. Cooper, General Counsel *DBC*
Regarding: ORDINANCE ESTABLISHING OFFICE OF GENERAL COUNSEL

As I promised, I am giving you my comments and reaction to the draft ordinance you have prepared creating an Office of General Counsel. I understand you have modeled your draft on the provisions of the Portland City Code regulating the Portland City Attorney. In general many of my comments are based on the distinction between Metro's Council/Executive Officer form of government and the City of Portland's Commission form.

I will attempt to deal with the ordinance sections in the sequence in which you have prepared them.

X.01.010

I have no comment on the purpose clause.

X.01.020 General Counsel Office Created

The first half of this paragraph sounds appropriate to me. On the appointment and removal process I have two general concerns and some comments.

The appointment and removal process contained in this ordinance differs from my understanding of the appointment and removal process that was agreed to by the Council and the Executive Officer prior to the time that I was hired. My understanding of that process is that after there had been a joint process for reviewing candidates for the position of General Counsel and an appointment of the General Counsel, the General Counsel would "report to the Executive Officer." My understanding of this is that I am subject to being terminated by the Executive Officer without any need for the Council to concur.

I have no strong views on the confirmation of appointment issue. I do feel that concurrence for removal is probably inappropriate. The hesitation I have on this point relates to my comments below regarding the relationship of the General Counsel to the Executive and the Metro Council. A recognition of the separate

legal needs of both entities needs to be taken into account. This could lead to the Council determining that it was appropriate for it to obtain legal advice other than from the Office of the General Counsel.

X.01.040 Duties

(1) I suggest that the language be altered by adding in the first line "Except as provided for in any insurance policy obtained by the District." On the second page I suggest that the language after the word "investigation by" on line 2 be altered to read "the Office of the General Counsel are found by the General Counsel to have been acting outside the scope of their employment or duties or committing malfeasance in office or willful or wanton neglect of duty and except as otherwise directed by the Executive Officer or state law."

(2) No comment.

(3) No comment.

(4) I recommend an annual report.

(5) My main concern with the ordinance is (5) of Section X.01.040. I have included for your review copies of ORS ch. 180, in particular sections 180.060, 180.100, 180.220 and 180.235, governing the Office of the Attorney General. In addition, I have enclosed copies of ORS 173.135 and 173.200 pertaining to the Office of the Legislative Counsel.

It is my belief that Metro does not need, at this time, to establish two separate legal officers as provided for under state law. Perhaps in the future a determination might be made that that is appropriate.

Under the state model the Attorney General is the legal officer for the state and appears on behalf of the Governor, any state executive department, officer, or agency in the event they need to be in court, at their request and subject to their policy direction. Unless the Attorney General decides it is necessary, executive branch agencies, departments and officers, may not appear in court with any other attorney. I believe this model is appropriate for Metro with the Executive Officer, department heads and commissions being substituted for the equivalent state entities.

The Legislature has the power under ORS ch. 173 to hire the Attorney General in the event they want the Attorney General to represent it in legal matters, but they also may use the legislative counsel or any outside law firm. If requested, the Attorney General must prepare bills and advise the Legislature and its members.

I believe an appropriate model for Metro, in regards to initiating litigation and determinations regarding litigation, would be as follows:

The General Counsel would act as the attorney for the entire agency. If the Executive Officer or any independent commission having authority to take legal action on its own right desired legal counsel in such litigation they would request such service from the General Counsel who would be obligated to furnish it to them under their policy direction.

If the Metro Council wanted to initiate litigation on its own behalf or to protect its legislative interests or other powers, the General Counsel would likewise be obligated to represent them in such proceedings.

If the General Counsel determined that it was appropriate for the General Counsel not to represent more than a party in a proceeding because of the different interests of the parties, then the General Counsel would be obligated, as the Attorney General is, to secure outside legal counsel to represent both parties.

This would have the practical consequence that in the event of a conflict of interest in a legal proceeding between the Metro Executive and the Metro Council, General Counsel would not participate and both parties would be represented by separate legal counsel under their own control and policy direction.

In the event Metro, the Executive Officer, any individual, department head, etc., or the Metro Council, is named as a defendant in a lawsuit the General Counsel should be obligated to defend the proceeding.

I also think it is important that once litigation is commenced that the legal counsel have the ability to assert any counterclaims, crossclaims, or third party claims that the legal counsel deems appropriate, and that if an appeal is brought by another party a crossappeal may also be brought by the General Counsel. This language is set forth in the City Code and this power is given to the City Attorney. It is important for an attorney to have the legal flexibility to make tactical decisions on behalf of a client in order to carry out the obligation to best represent a client's interest to the attorney's best ability.

X.01.060 Attorney Client Relationship

I recommend this section be deleted. The rules of the Oregon Supreme Court regulating attorney's preempt the field in this area and make this section unnecessary.

Memorandum
November 4, 1987
Page 4

I hope these comments are constructive and lead to the resolution of this issue in a positive fashion.

DBC/gl
8436C/D5

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING AN) ORDINANCE NO. 87-_____
OFFICE OF GENERAL COUNSEL TO)
PROVIDE LEGAL ADVICE AND)
ASSISTANCE TO THE METROPOLITAN)
SERVICE DISTRICT)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The following sections are added to the Code of the
Metropolitan Service District:

CHAPTER X.01

OFFICE OF GENERAL COUNSEL

X.01.010 The purpose of this chapter is to establish an office
of General Counsel to provide legal advice and assistance to the Council,
Executive Officer and Commissions of the Metropolitan Service District.

X.01.020 General Counsel Office Created: There is hereby
created an Office of General Counsel consisting of the General
Counsel and such subordinate employees as the Council may provide.
The office is not considered a department of the District. The
General Counsel and any subordinate employees shall be employed by
the District subject to Personnel Rules adopted by the Council. The
General Counsel shall be appointed by Executive Officer subject to
the confirmation of a majority of the members of the Council. The
General Counsel may be removed by the Executive Officer subject to
approval of a majority of the members of the Council.

X.01.040 Duties: The General Counsel shall have the following
duties:

- (1) Appear for, represent, and defend the District, and its
departments, officers, commissions and employees and other
persons entitled to representation under the Oregon Tort

Claims Act in all appropriate legal matters except legal matters involving individuals who after investigation by the Department of Finance & Administration, are found by the Department to have been acting outside the scope of their employment or duties or committing malfeasance in office or willful or wanton neglect of duty, and except as otherwise directed by the Executive Officer or state law;

- (2) Review and approve as to form all written contracts, bonds, or other legally binding instruments to which the District is a party;
- (3) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the District is interested in when required by the Executive Officer or Presiding Officer of the Council;
- (4) Submit to the Council, quarterly, a report of all suits or actions in which the District is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the District;
- (5) Institute legal proceedings for the District in any court or tribunal on direction by resolution of the Council, except that the General Counsel may upon approval of the

Executive Officer and for good cause shown seek enforcement of any regulation or franchise requirement including the payment of any fee, penalty, or interest established by state statute, Metro Code or ordinance, and collection of any account receivable and may assert a counterclaim, a cross-claim, or a third party claim. The General Counsel may upon approval of the Executive Officer institute appeals on behalf of the District for the enforcement of regulations or franchise requirements including such payments established by state law or Metro ordinance and for the collection of accounts receivable. The General Counsel shall institute other appeals or direction by resolution of the Council.

X.01.050 Records:

- (1) The General Counsel shall have charge and custody of the Office of General Counsel and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible.
- (2) The General Counsel shall keep in the Office a complete docket and set of pleadings of all suits, actions, or proceedings in which the District or any department, official, or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the District in which case the General Counsel shall keep those records as the General Counsel deems advisable.

- (3) The General Counsel shall keep and record in a book to be provided for that all significant written opinions furnished to the District or to any department, official, or employee and shall keep an index thereof; and shall keep a chronological file including all opinions and correspondence of the office.

X.01.060 Attorney - Client Relationship:

- (1) The relationship between the Office of General Counsel and the District shall be an attorney - client relationship, with the District being entitled to all benefits thereof;
- (2) In suits, actions, or other proceedings in which the General Counsel accepts the defense of a District official, employee, or other person pursuant to the requirements of the Oregon Tort Claims Act, the relationship between the Office of General Counsel and the official, employee, or other person shall be an attorney - client relationship, with the official, employee or other person being entitled to all the benefits thereof regarding the subject matter of the suit, action, or proceeding. The General Counsel shall keep all confidential records regarding the subject matter of the suit, action or proceeding separate from all other records of the Office of General Counsel.

DEC/gl

8430C/517

10/29/87

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

AN ORDINANCE ESTABLISHING AN)
OFFICE OF GENERAL COUNSEL TO)
PROVIDE LEGAL ADVICE AND)
ASSISTANCE TO THE METROPOLITAN)
SERVICE DISTRICT)

ORDINANCE NO. 87-_____

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The following chapter is added to the Code of the
Metropolitan Service District:

CHAPTER 2.08

OFFICE OF GENERAL COUNSEL

2.08.010 The purpose of this chapter is to establish an Office
of General Counsel to provide legal services to the District and its
Council, commissions, departments and Executive Officer.

2.08.020 General Counsel Office Created: There is hereby
created an Office of General Counsel consisting of the General
Counsel and such subordinate employees as the Council may provide.
Attorneys employed by the General Counsel shall be appointed by the
General Counsel and shall continue in service during the General
Counsel's pleasure. The General Counsel shall be appointed by
Executive Officer subject to the confirmation of a majority of the
members of the Council. The General Counsel shall serve at the
pleasure of the Executive Officer.

2.08.030 Powers: The General Counsel shall have:

- (1) General control and supervision of all civil actions and
legal proceedings in which the District may be a party or
may be interested.

- (2) Full charge and control of all the legal business of all departments and commissions of the District, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the District.

No District officer, board, Council, commission, or the head of a department shall employ or be represented by any other counsel or attorney at law except as may be provided for in this chapter.

2.08.040 Duties: The General Counsel shall have the following duties:

- (1) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the District is interested in when required by the Executive Officer, the Council, or any Metro commission;

- (2) Review and approve as to form all written contracts, ordinances, resolutions, executive orders, bonds, or other legally binding instruments to which the District is a party;

- (3) Except as provided by any insurance policy obtained by the District appear for, represent, and defend the District, and its departments, officers, commissions and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters except legal matters involving individuals who after investigation by the office of the General Counsel, are found by the General Counsel to have been acting outside the scope of their employment or duties or committing malfeasance in office or willful or wanton neglect of duty, and except as otherwise directed by the Executive Officer or state law;

(4) Submit to the Council and Executive Officer, annually, a report of all suits or actions in which the District is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action and the disposition of the suit or action including the amount of any money paid by the District;

(5) Appear, commence, prosecute, defend or appeal any action, suit, matter, cause or proceeding in any court or tribunal when requested by the Executive Officer, any commission or the Council when, in the discretion of the General Counsel, the same may be necessary or advisable to protect the interests of the District. The General Counsel shall not appear on behalf of the District, Executive Officer, Council or any commission without the consent of the District, Executive Officer, Council or any commission as APPROPRIATE in any action, suit, matter, cause or proceeding in any court or tribunal.

2.08.050. Records:

(1) The General Counsel shall have charge and custody of the office of General Counsel and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible;

(2) The General Counsel shall keep in the office a complete docket and set of pleadings of all suits, actions, or proceedings in which the District or any department, official, or employee thereof

is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the District in which case the General Counsel shall keep those records as the General Counsel deems advisable;

(3) The General Counsel shall keep and record in a book to be provided for that all significant written opinions furnished to the District or to any department, official, or employee and shall keep an index thereof; and shall keep a chronological file including all opinions and correspondence of the office.

2.08.060 Attorney - Client Relationship: The relationship between the office of General Counsel and the District shall be an attorney - client relationship, with the District being entitled to all benefits thereof. The General Counsel shall be responsible to maintain a proper attorney - client relationship with the elected officials of the District so long as such officials are acting within the scope of their official powers, duties and responsibilities.

2.08.070 Employment of Legal Counsel

(1) Whenever the General Counsel concludes that it is inappropriate and contrary to the public interest for the office of the General Counsel to concurrently represent more than one public officer or agency in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on the part of the General Counsel, the General Counsel may authorize one or both of such officers or agencies to employ its own general or special counsel in the particular matter or class of matters and in related matters. Such authorization may be

terminated by the General Counsel whenever the General Counsel determines that separate representation is no longer appropriate;

(2) When in the judgment of the General Counsel the General Counsel deems it necessary or appropriate to do so the General Counsel may subject to budget and procedural requirements established by the Council employ outside legal counsel on behalf of any commission, the Executive Officer, department or the Council on a case by case basis to handle such specialized matters as the General Counsel deems advisable.

DBC/gl

8589C/519

11/27/87



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: November 4, 1987
To: Donald E. Carlson, Council Administrator
From: Daniel B. Cooper, General Counsel *DBC*
Regarding: ORDINANCE ESTABLISHING OFFICE OF GENERAL COUNSEL

As I promised, I am giving you my comments and reaction to the draft ordinance you have prepared creating an Office of General Counsel. I understand you have modeled your draft on the provisions of the Portland City Code regulating the Portland City Attorney. In general many of my comments are based on the distinction between Metro's Council/Executive Officer form of government and the City of Portland's Commission form.

I will attempt to deal with the ordinance sections in the sequence in which you have prepared them.

X.01.010

I have no comment on the purpose clause.

X.01.020 General Counsel Office Created

The first half of this paragraph sounds appropriate to me. On the appointment and removal process I have two general concerns and some comments.

The appointment and removal process contained in this ordinance differs from my understanding of the appointment and removal process that was agreed to by the Council and the Executive Officer prior to the time that I was hired. My understanding of that process is that after there had been a joint process for reviewing candidates for the position of General Counsel and an appointment of the General Counsel, the General Counsel would "report to the Executive Officer." My understanding of this is that I am subject to being terminated by the Executive Officer without any need for the Council to concur.

I have no strong views on the confirmation of appointment issue. I do feel that concurrence for removal is probably inappropriate. The hesitation I have on this point relates to my comments below regarding the relationship of the General Counsel to the Executive and the Metro Council. A recognition of the separate

legal needs of both entities needs to be taken into account. This could lead to the Council determining that it was appropriate for it to obtain legal advice other than from the Office of the General Counsel.

X.01.040 Duties

(1) I suggest that the language be altered by adding in the first line "Except as provided for in any insurance policy obtained by the District." On the second page I suggest that the language after the word "investigation by" on line 2 be altered to read "the Office of the General Counsel are found by the General Counsel to have been acting outside the scope of their employment or duties or committing malfeasance in office or willful or wanton neglect of duty and except as otherwise directed by the Executive Officer or state law."

(2) No comment.

(3) No comment.

(4) I recommend an annual report.

(5) My main concern with the ordinance is (5) of Section X.01.040. I have included for your review copies of ORS ch. 180, in particular sections 180.060, 180.100, 180.220 and 180.235, governing the Office of the Attorney General. In addition, I have enclosed copies of ORS 173.135 and 173.200 pertaining to the Office of the Legislative Counsel.

It is my belief that Metro does not need, at this time, to establish two separate legal officers as provided for under state law. Perhaps in the future a determination might be made that that is appropriate.

Under the state model the Attorney General is the legal officer for the state and appears on behalf of the Governor, any state executive department, officer, or agency in the event they need to be in court, at their request and subject to their policy direction. Unless the Attorney General decides it is necessary, executive branch agencies, departments and officers, may not appear in court with any other attorney. I believe this model is appropriate for Metro with the Executive Officer, department heads and commissions being substituted for the equivalent state entities.

The Legislature has the power under ORS ch. 173 to hire the Attorney General in the event they want the Attorney General to represent it in legal matters, but they also may use the legislative counsel or any outside law firm. If requested, the Attorney General must prepare bills and advise the Legislature and its members.

Memorandum
November 4, 1987
Page 3

I believe an appropriate model for Metro, in regards to initiating litigation and determinations regarding litigation, would be as follows:

The General Counsel would act as the attorney for the entire agency. If the Executive Officer or any independent commission having authority to take legal action on its own right desired legal counsel in such litigation they would request such service from the General Counsel who would be obligated to furnish it to them under their policy direction.

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This would have the practical consequence that in the event of a conflict of interest in a legal proceeding between the Metro Executive and the Metro Council, General Counsel would not participate and both parties would be represented by separate legal counsel under their own control and policy direction.

In the event Metro, the Executive Officer, any individual, department head, etc., or the Metro Council, is named as a defendant in a lawsuit the General Counsel should be obligated to defend the proceeding.

I also think it is important that once litigation is commenced that the legal counsel have the ability to assert any counterclaims, crossclaims, or third party claims that the legal counsel deems appropriate, and that if an appeal is brought by another party a crossappeal may also be brought by the General Counsel. This language is set forth in the City Code and this power is given to the City Attorney. It is important for an attorney to have the legal flexibility to make tactical decisions on behalf of a client in order to carry out the obligation to best represent a client's interest to the attorney's best ability.

X.01.060 Attorney Client Relationship

I recommend this section be deleted. The rules of the Oregon Supreme Court regulating attorney's preempt the field in this area and make this section unnecessary.

Memorandum
November 4, 1987
Page 4

I hope these comments are constructive and lead to the resolution of this issue in a positive fashion.

DBC/gl
8436C/D5

ATTORNEY GENERAL

180.010 Office of Attorney General. There is established the office of Attorney General of the State of Oregon.

180.020 Election; term of office. The Attorney General shall be elected by the qualified electors of this state at the regular general election in the same manner as other state officers are elected. The term of the Attorney General shall commence on the first Monday in January of the year succeeding his election. He shall hold his office for the term of four years, and until his successor is elected and qualified.

180.030 Filing certificate of election and oath. Before entering upon the duties of his office the Attorney General shall qualify by filing with the Secretary of State his certificate of election or of his appointment, with his oath of office indorsed thereon.

180.040 Governor to fill vacancy by appointment; term of appointee. At any time when a vacancy may by any cause occur in the office of Attorney General, the Governor shall appoint a suitable person to be Attorney General, who shall hold his office until the next general election, when his successor shall be elected for a full term and shall qualify as prescribed in ORS 180.030.

180.050 Location of office. The Attorney General shall keep and attend his office at the capital of the state. The state shall provide and furnish the office.

180.060 Powers and duties of Attorney General. (1) The Attorney General shall:

(a) Appear for the state in the trial of all civil and criminal causes in the Supreme Court or the Court of Appeals in which the state may be directly or indirectly interested.

(b) Appear for the state, when required by the Governor or the legislature, in any court or tribunal in any cause in which the state is a party or in which the state is directly interested.

(c) Appear, commence, prosecute or defend for the state all causes or proceedings in the Supreme Court or the Court of Appeals in which the state is a party or interested.

(d) Appear, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court when requested by any state officer, board or commission when, in his

discretion, the same may be necessary or advisable to protect the interests of the state.

(2) The Attorney General shall give his opinion in writing, when requested, upon any question of law in which the State of Oregon or any public subdivision thereof may have an interest, submitted to him by the Governor, any officer, department, agency, board or commission of the state or any member of the legislature.

(3) The Attorney General shall not render opinions or give legal advice to others than such state officers listed in subsection (2) of this section.

(4) The Attorney General shall consult with, advise and direct the district attorneys in all criminal causes and matters relating to state affairs in their respective counties. He may require their aid and assistance in all matters pertaining to his duties in their respective counties and may, in any case brought to the Supreme Court or the Court of Appeals from their respective counties, demand and receive assistance of the district attorney from whose county such case or matter is brought.

(5) The Attorney General shall, when requested, perform all legal services for the state or any department or officer of the state.

(6) The Attorney General shall have all the power and authority usually appertaining to such office and shall perform the duties otherwise required of him by law.

(7) The Attorney General shall assign to each agency, department, board or commission an assistant who shall be its counsel responsible for insuring the performance of the legal services requested by such agency, department, board or commission. The counsel shall be a person trained in the law concerning such agency, department, board or commission and shall be approved by the chief administrator thereof, provided, however, such approval shall not be unreasonably withheld. Such approval may be withdrawn at any time by the chief administrator and thereupon the Attorney General shall assign replacement counsel to the agency, department, board or commission.

(8) The Attorney General shall not appear on behalf of any officer, department, agency, board or commission without its consent in any action, suit, matter, cause or proceeding in any court or before any other federal or state regulatory body.

(9) The responsibility of establishing policies for each agency, department, board or commission shall rest upon the chief administrator thereof. [Amended by 1971 c.418 §1]

180.070 Power of Attorney General to conduct investigations and prosecutions; duties of district attorneys unaffected. (1) The Attorney General may, when directed to do so by the Governor, take full charge of any investigation or prosecution of violation of law in which the circuit court has jurisdiction.

(2) When acting under this section, the Attorney General shall have all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process. The Attorney General may, when he considers the public interest requires, with or without the concurrence of the district attorney, direct the county grand jury to convene for the investigation and consideration of such matters of a criminal nature as he desires to submit to it. He may take full charge of the presentation of such matters to the grand jury, issue subpoenas, prepare indictments, and do all other things incident thereto to the same extent as the district attorney may do.

(3) All costs, fees and other expense shall be paid by the county in which the investigation takes place, to the same extent as if conducted by the district attorney of that county.

(4) The power conferred by this section, ORS 180.060, 180.220 or 180.240 does not deprive the district attorneys of any of their authority, or relieve them from any of their duties to prosecute criminal violations of law and advise the officers of the counties composing their districts.

180.080 Attorney General to manage criminal proceedings in court or before grand jury at request of Governor. When directed by the Governor, the Attorney General shall attend in person, or by one of his assistants, any term of any court, or appear before the grand jury in any county, for the purpose of managing and conducting in such court, or before such jury, the criminal action or proceeding specified in the requirement. The Attorney General, or his assistant so attending, shall exercise all the powers and perform all the duties in respect of the action or proceeding which the district attorney would otherwise be authorized to exercise or perform. The district attorney shall only exercise such powers and perform such duties in the action or proceeding as are required of

him by the Attorney General, or his assistant attending.

180.090 Investigations and prosecutions; calling on other departments and officers for assistance; employing special investigators. In making investigations of and conducting special prosecutions for violations or alleged violations of the penal laws of the state, the Attorney General may call upon the Department of State or any other peace officer or department for assistance in making such investigations in his discretion, may employ special investigators for such purpose.

180.095 Antitrust Revolving Account. (1) There hereby is appropriated out of the General Fund in the State Treasury \$250,000 for the purpose of providing funds to pay personal services, travel, meals and lodging and all costs, disbursements and other litigation expenses incurred by the Department of Justice in preparing, commencing and prosecuting actions and suits under the federal antitrust laws.

(2) The money appropriated by subsection (1) of this section shall be transferred to an account in the General Fund in the State Treasury to be known as the Antitrust Revolving Account. The amount appropriated by subsection (1) of this section is the maximum allowable balance in the revolving account. All moneys in such revolving account appropriated and constitute a continuing appropriation out of the General Fund for purposes of this section. The creation of revolving account shall not require an amendment or allocation of moneys pursuant to ORS 291.234 to 291.260.

(3) All sums of money received by the Department of Justice under a judgment settlement or compromise, including damages, attorney fees, costs, disbursements and other recoveries, in actions and suits under federal antitrust laws shall, upon receipt be deposited with the State Treasurer. If a court awards attorney fees to the Department of Justice in excess of the cost of providing attorney services, the difference between the award and the cost of the services shall be credited to the General Fund. The balance of such sums on behalf of the state, after deduction of expenses under subsection (1) of ORS 180.097, if any, shall be credited to the General Fund. However, if the action or suit is based on an expenditure or loss from a department

INS

LEGISLATIVE DEPARTMENT
AND LAWS
171-175

EXECUTIVE DEPARTMENT

176-185

cated fund, the balance of such sums on behalf of the state, after deduction of expenses under subsection (1) of ORS 180.097, if any, to the extent of the expenditure or loss, shall be credited to the dedicated fund and the remainder thereof credited to the General Fund. The balance of such sums on behalf of any public body other than the state, after deduction of expenses under subsection (1) of ORS 180.097, if any, shall be paid to the public body. [1965 c.194 §2; 1971 c.85 §6; 1975 c.446 §6]

180.097 Reimbursement of Antitrust Revolving Account; credit to General Fund. (1) Whenever recovery under any action or suit under federal antitrust laws is made and expenses therefor were advanced from the Antitrust Revolving Account, the Attorney General shall present an accounting of all such expenses to the State Treasurer who shall credit the Antitrust Revolving Account with the amount of the accounting plus 20 percent thereof, which shall constitute expenses for purposes of ORS 180.095.

(2) The Emergency Board may authorize increases in the maximum allowable balance in the Antitrust Revolving Account to reflect the percentage credits thereto authorized by subsection (1) of this section. However, if by reason of such credits, the amount in the account exceeds such allowable maximum, the excess shall be credited to the General Fund. [1971 c.85 §§8, 9; 1977 c.445 §1]

180.100 Legislative bills; preparation on request. The Attorney General shall, upon request of any member of or of any person elected to either branch of the Legislative Assembly of the State of Oregon, prepare all bills requested by any such member or person within a reasonable length of time prior to the commencement of any session of the legislature, and furnish the bills to such member or person for introduction on or before the first day of the session. The Attorney General shall during the sessions of the legislature prepare bills at the request of any member of the legislature as expeditiously as the number of deputies in his office will permit.

180.110 Keeping copies of opinions and records of cases; biennial report; printing and binding opinions. The Attorney General shall keep copies of all his opinions and a record of all cases, in any of the courts and tribunals, prosecuted or defended by him or in which he appears. He shall make a biennial report to the legislature of all the

official business transacted by him for the biennial period ending December 31 prior to the meeting of the legislature. He shall have printed and bound all opinions rendered by him during the period, for distribution to the various state officers, public libraries and others entitled to receive them. [Amended by 1971 c.418 §2]

180.120 Defending in criminal proceedings for Oregon State Police or member thereof; conducting prosecutions. (1) The Attorney General shall:

(a) Defend all criminal actions and proceedings in which the Department of State Police or any member thereof is concerned as a party, which require the services of an attorney or counsel in order to protect the interests of the state and are necessary for the purposes of the Department of State Police or the members thereof.

(b) Conduct such prosecutions as shall be directed by the Superintendent of State Police with the approval of the Governor.

(2) The Attorney General may appoint an attorney for the purpose of such defense or prosecution and certify the expenses thereof to the Department of State Police for payment from the moneys appropriated for the Department of State Police. [Amended by 1971 c.418 §3]

180.130 Deputy Attorney General. The Attorney General shall appoint a Deputy Attorney General, who shall qualify as required by law, and who may do and perform, in the absence of the Attorney General, all the acts and duties that may be authorized and required to be performed by the Attorney General. The Attorney General shall be responsible for all the acts of his deputy.

180.140 Other assistants; salaries. (1) The Attorney General shall appoint the other assistants he deems necessary to transact the business of the office, each to serve at the pleasure of the Attorney General and perform such duties as he may designate and for whose acts he shall be responsible. Each assistant shall have full authority under the direction of the Attorney General to perform any duty required by law to be performed by the Attorney General.

(2) Each assistant so appointed shall be a person admitted to the practice of law by the Supreme Court of this state and shall qualify by taking the usual oath of office, conditioned upon the faithful performance of his duties.

(3) The Attorney General may appoint temporary assistants for a period not to exceed 15 months. Such temporary assistants shall be legally trained but are not required to be admitted to the practice of law by the Supreme Court of this state.

(4) Each assistant shall receive the salary fixed by the Attorney General, payable as other state salaries are paid. Each assistant so appointed shall devote his full time to the business of the state, unless his employment on a part-time basis is otherwise fixed by the Attorney General.

(5) Special legal assistants or private counsel may be employed by the Attorney General, under his direction and control, in particular cases or proceedings, whenever he deems it appropriate to protect the interests of the state. The cost of such special assistants or counsel shall be charged to the appropriate officer or agency pursuant to ORS 180.160. [Amended by 1969 c.543 §2; 1971 c.418 §4]

180.150 Clerks. Subject to any applicable provisions of the State Merit System Law, the Attorney General shall employ the necessary clerical aid required for the discharge of the duties imposed upon him by law, and fix compensation therefor, to be paid as other salaries are paid.

180.160 Charges for services to public agencies. Subject to rules prescribed by the Attorney General, in rendering assistance to the respective officers, departments, boards and commissions of state government, and other public bodies, the Department of Justice may charge such officers, agencies and public bodies (including, when appropriate, the Department of Justice itself) separately for the cost of such assistance, said cost including, but not limited to salaries of assistants and administrative and clerical salaries, investigative services, and capital outlay; and shall also charge such officers, departments, boards, commissions or public bodies for other costs incurred and disbursements made pursuant to request or authorization in connection with such assistance, and not paid directly out of moneys appropriated or otherwise available for expenditure by such officers, agencies or public bodies. [1969 c.543 §1; 1971 c.85 §4]

180.165 Support enforcement fees. (1) The Attorney General shall, subject to the approval of the Joint Ways and Means Committee of the Legislative Assembly, or the

Emergency Board if the legislature is not in session, establish and from time to time amend a fee schedule for support enforcement services.

(2) Support enforcement service fees shall be set in amounts designed to reimburse the Support Enforcement Division for the actual costs of its support enforcement services in particular cases, regardless of the costs of other support enforcement services for which a support enforcement fee may not become payable or be collectible.

(3) The district attorney may impose fees for support enforcement services in accordance with the Attorney General's fee schedule. [1975 c.458 §9]

DEPARTMENT OF JUSTICE

180.170 Billing for services to public agencies. The Department of Justice shall estimate in advance the expenses that it will incur during the biennium under ORS 180.16 and 180.340, and shall render to officer departments, boards and commissions of state government and other public bodies an invoice for their share of such expenses for period within the biennium and in sufficient amounts to provide reasonable cash operating requirements for the Legal Division of the Department of Justice within the biennial period. Each officer, department, board or commission or other public body shall pay to the credit of the Department of Justice Operating Account such invoice as an administrative expense from funds or appropriation available to it in the same manner as other claims against the state or public body are paid. If the estimated expenses for any officer department, board, commission or public body are more or less than actual expenses for the period covered by the invoice, the difference shall be reflected in the next following estimate of expenses. [1971 c.85 §3; 1973 c.775 §5]

180.180 Department of Justice Operating Account. (1) The Department of Justice Operating Account is created. Moneys credited to the account are continuously appropriated for the purpose of paying expenses incurred by the Department of Justice, including those incurred by the Support Enforcement Division, but not including expenses described in ORS 180.095 that are reimbursable from the Antitrust Revolving Account.

(2) All moneys received by the Department of Justice pursuant to its activities ex

cept those received and creditable to the Antitrust Revolving Account shall be deposited in the State Treasury to the credit of the Department of Justice Operating Account.

(3) Subaccounts may be used in the Department of Justice Operating Account whenever the Department of Justice determines that operating needs of the department so require. [1971 c.85 §2]

180.190 Department of Justice Current Expense Account. (1) The Executive Department is hereby authorized to draw a warrant in the amount of \$15,000 payable to the Department of Justice from the Department of Justice Operating Account which shall then be deposited by the Department of Justice in the State Treasury in an account to be known as the Department of Justice Current Expense Account. The moneys so deposited are continuously appropriated for the purposes of this section and ORS 128.670, 180.170 and 294.695.

(2) Disbursements from the account established by subsection (1) of this section shall require the approval of the disbursing officer of the Department of Justice who shall be designated by the Attorney General. Disbursements may be made for any lawful purpose within the limits of the funds available and to the extent that immediate cash payments are necessary or beneficial to the operations of the department. The account shall be reimbursed at intervals not exceeding 30 days from any legislatively authorized appropriation or expenditure limitation in existence at that time for the department by the drawing of a claim in payment of the expenses advanced from the Department of Justice Current Expense Account.

(3) The account established by subsection (1) of this section shall be secured by a surety company authorized to do business in the State of Oregon in the penal sum of \$15,000 and furnished by the disbursing officer. The premium of any bond so furnished shall be paid by the Department of Justice. [1973 c.775 §§1, 2, 3; 1977 c.498 §4]

180.210 Department of Justice; Attorney General head and chief law officer. There hereby is constituted an executive department to be known as the Department of Justice. The Attorney General shall be the head of this department and the chief law officer for the state and all its departments.

180.220 Powers and duties. (1) The Department of Justice shall have:

(a) General control and supervision of all civil actions and legal proceedings in which the State of Oregon may be a party or may be interested.

(b) Full charge and control of all the legal business of all departments, commissions and bureaus of the state, or of any office thereof, which requires the services of an attorney or counsel in order to protect the interests of the state.

(2) No state officer, board, commission, or the head of a department or institution of the state shall employ or be represented by any other counsel or attorney at law.

(3) This section is subject to ORS 767.875. [Amended by 1967 c.178 §3]

180.225 Attorney General representing public bodies in antitrust proceedings.

In any proceeding under the antitrust laws of the United States in which the state or any public body within the state is interested, the Attorney General may, in his discretion, represent any such public body at its request, charging it for the cost of such representation pursuant to ORS 180.160. [1971 c.418 §9]

180.230 Compensation not allowed state departments for attorney services.

No compensation shall be allowed to any person for services as an attorney or counselor to any department of the state government or to the head thereof, or to any board or commission, except in cases specially authorized by law. [Amended by 1971 c.418 §6]

180.235 Authority of agency to employ counsel; qualification and salary; status.

(1) Notwithstanding any provision of law to the contrary, whenever the Attorney General concludes that it is inappropriate and contrary to the public interest for his office to concurrently represent more than one public officer or agency in a particular matter or class of matters in circumstances which would create or tend to create a conflict of interest on his part, he may authorize one or both of such officers or agencies to employ its own general or special counsel in the particular matter or class of matters and in related matters. Such authorization may be terminated by the Attorney General whenever he determines that separate representation is no longer appropriate.

Refers to collection of fees owed to P.U.C.

(2) Any counsel so employed shall be a member of the Oregon State Bar and shall be paid a salary or other compensation out of the funds appropriated to such officer or agency.

(3) In any matter in which the Attorney General has authorized employment of such counsel, any references to representation of such officer or agency by the Attorney General contained in any provision of law shall be deemed to refer to such counsel. [1971 c.418 §8]

180.240 Attorney General and Department of Justice to have powers and prerogatives of district attorneys. The Attorney General and the Department of Justice shall have the same powers and prerogatives in each of the several counties of the state as the district attorneys have in their respective counties.

SUPPORT ENFORCEMENT DIVISION

180.310 [Subsections (1) and (2) enacted as 1957 c.105 §2 and 1957 c.424 §1; 1961 c.629 §1; repealed by 1975 c.458 §18]

180.320 Cooperation with division in enforcement; confidentiality of information furnished to division. All state agencies, district attorneys and all police officers of the state, county or any municipality or court thereof, shall cooperate with the Support Enforcement Division of the Department of Justice in furnishing and making available information, records and documents in the enforcement of ORS 180.320 to 180.370. Information furnished to the Support Enforcement Division by the Department of Revenue and made confidential by ORS 314.835 shall be used by the division and its employees solely for the purpose of enforcing the provisions of ORS 180.320 to 180.370 and shall not be disclosed or made known for any other purpose. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in subsection (2) of ORS 314.991. [1957 c.105 §4; 1971 c.779 §4; 1979 c.690 §13]

180.330 District attorneys not relieved from duties relating to enforcement of support laws. ORS 180.320 to 180.370 are not intended to relieve any district attorney from performing his duties, powers and functions under the statutes of this state relating to the enforcement of support and of the criminal laws of this state. [1957 c.105 §5]

180.340 Support Enforcement Division established; employment of personnel authorized. There is established the Support Enforcement Division of the Department of Justice to be maintained, operated and controlled under the supervision of the Attorney General. The Attorney General may employ attorneys, investigators and other personnel necessary to carry out the duties and functions of the division and fix their compensation, subject to any applicable provision of the State Merit System Law. [1957 c.105 §1]

180.350 Investigators to have authority of peace officers. Investigators employed by the Attorney General under ORS 180.320 to 180.370 shall have all the authority given by statute to peace officers of this state, including the authority to serve and execute warrants of arrest. [1957 c.105 §7]

180.360 Division exempt from payment of certain court fees. No filing, recording or court fees shall be required from the Support Enforcement Division of the Department of Justice by any county clerk, county recorder or any district clerk for the filing of any cases, documents or processes. [1957 c.105 §3]

180.370 Disposition of moneys received by division. All moneys received by the Support Enforcement Division of the Department of Justice shall be turned over to the Adult and Family Services Division for proper credit. [1957 c.105 §6]

CONSUMER PROTECTION DIVISION

180.510 Consumer Protection Division. There is established within the Department of Justice the Consumer Protection Division to carry out the functions of the Attorney General under this section and ORS 20.098, 83.710 to 83.750, 83.820 to 83.895, 646.605 to 646.656 and 646.990. The Consumer Protection Division shall be maintained, operated and controlled by the Attorney General, who may employ personnel necessary to carry out the duties and functions of the division and fix their compensation, subject to any applicable provisions of the State Merit System Law. [1971 c.744 §25]

INVESTIGATION OF ORGANIZED CRIME

180.600 Definitions for ORS 180.600 to 180.630. As used in ORS 180.600 to 180.630:

(1) "Department" means the state Department of Justice.

(2) "Organized crime" means any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, theft, abuse of controlled substances, illegal alcohol or controlled substance distribution, counterfeiting, extortion or corruption of law enforcement officers or other public officers or employees. [1977 c.754 §1; 1979 c.744 §10]

180.610 Investigation of organized criminal activity; powers and duties of department. The Department of Justice shall:

(1) Provide all administrative, clerical, investigative and legal assistance required by ORS 180.600 to 180.630.

(2) Establish a coordinated system of collecting, storing and disseminating information relating to organized crime.

(3) Develop and maintain a liaison between local, state and federal law enforcement agencies in Oregon, assisting them in the investigation and suppression of organized

criminal activity and encouraging cooperation among those agencies.

(4) Conduct comprehensive factual studies of organized criminal activity in Oregon, outlining existing state and local policies and procedures with respect to organized crime, and formulating and proposing such changes in those policies and procedures as the department may deem appropriate.

(5) Investigate allegations of corruption or malfeasance by public officials in Oregon and, where appropriate, coordinate, cooperate and assist in taking legal action.

(6) Investigate investment of funds in Oregon suspected to have been generated by criminal activities. [1977 c.754 §2]

180.620 Investigators to have authority of peace officers. All investigators employed pursuant to ORS 180.600 to 180.630 shall have all statutory powers and authority of peace officers and police officers of the State of Oregon. [1977 c.754 §3]

180.630 Acceptance of federal grant of funds; expenditure limitations. Subject to the provisions of ORS 291.375, the department may submit applications for federal grants and, when approved, accept and expend funds received subject to budgetary limits imposed by the Legislative Assembly or as modified by the Emergency Board. [1977 c.754 §4]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1979.

Thomas G. Clifford
Legislative Counsel

(4) The Legislative Counsel, pursuant to the policies and directions of the Legislative Counsel Committee and in conformity with any applicable rules of the House or Senate, shall perform or cause to be performed, as circumstances will permit, research service requested by any committee of the Legislative Assembly in connection with the performance of its functions. Research assignments made to the Legislative Counsel Committee by joint or concurrent resolution of the Legislative Assembly shall be given priority over other research requests received or initiated by the committee. The research service to be performed includes the administrative services incident to the accomplishment of the research requests or assignments. [1953 c.492 §3; 1959 c.295 §2; 1973 c.226 §1; 1979 c.237 §1]

173.135 Participation in legal proceedings to protect legislative interests. When deemed necessary or advisable to protect the official interests of the Legislative Assembly, one or more legislative committees, or one or more members of the Legislative Assembly, the committee may direct the Legislative Counsel and his staff, or may retain any member of the Oregon State Bar, to appear in, commence, prosecute or defend any action, suit, matter, cause or proceeding in any court or agency of this state or of the United States. Expenses and costs incurred pursuant to this section may be paid by the committee from any funds available to the committee. [1961 c.167 §32]

173.140 Preparation of initiative measures. The Legislative Counsel shall cooperate with the proponents of an initiative measure in its preparation when:

(1) Requested in writing so to do by 50 or more electors proposing the measure; and

(2) In the judgment of the committee there is reasonable probability that the measure will be submitted to the voters of the state under the laws relating to the submission of initiative measures. [1953 c.492 §4]

173.150 Continuous revision program; publication and distribution of statute editions and other materials. (1) The committee, through the Legislative Counsel, shall formulate, supervise and execute plans and methods for:

(a) The revision, clarification, classification, arrangement, codification, annotation, indexing, printing, binding, publication, copy-righting, sale and distribution of the Oregon

Revised Statutes, including index, replacement parts, annotations and supplements, and all editions thereof.

(b) The printing, binding, indexing, publication, copy-righting, sale and distribution of other materials the committee considers necessary or desirable to carry out its powers and duties.

(2) The committee shall determine when editions and publications shall be published, and shall fix the prices thereof. [1953 c.492 §5; 1961 c.279 §1]

173.152 Free distribution of Oregon Revised Statutes and replacement parts; issuance to legislators for use during session. (1) The state officer or agency designated by law to distribute copies of Oregon Revised Statutes, including index and annotations, shall furnish, free of charge and in addition to distribution otherwise authorized:

(a) For each member of the Legislative Assembly who did not serve during the session immediately preceding, one set and, for as long as he remains a member, the current replacement parts therefor as issued. Such sets shall be furnished, for issuance to the members, to the state officer or agency designated in ORS 171.135.

(b) For each member of the Legislative Assembly who served during the session immediately preceding, one set for his official use during each session. Such sets shall be furnished, for issuance to the members, to the state officer or agency designated in ORS 171.135. The issuing officer or agency upon final adjournment of each session shall collect sets issued pursuant to this paragraph for reissue during subsequent sessions. Current replacement parts for these sets shall be furnished as issued.

(c) For each judgeship, the salary of which is paid by the state, one set and current replacement parts therefor as issued, for each county in which the judge regularly holds court. Sets and current replacement parts distributed pursuant to this paragraph shall be delivered by the recipients to their successors in office.

(2) (a) The costs of furnishing sets and replacement parts therefor to members of the Legislative Assembly shall be paid from the appropriations made for the payment of the expenses of the Legislative Assembly.

(b) The costs of furnishing sets and replacement parts therefor pursuant to para-

bly may serve on such advisory committees or subcommittees. A member of such committee or subcommittee who is not a member of the Legislative Assembly shall be compensated and reimbursed in the manner provided in ORS 292.495. An advisory committee or subcommittee appointed to assist the committee in review of state agency rules may consist only of two or more members of the Legislative Assembly. [1969 c.256 §4 (enacted in lieu of 173.190); 1971 c.638 §5; 1975 c.136 §6; 1975 c.530 §4; 1977 c.344 §5]

173.196 [1975 c.136 §8; repealed by 1977 c.344 §7]

173.200 Legislative Counsel. (1) The committee shall select the Legislative Counsel, who shall serve at the pleasure of the committee. The Legislative Counsel shall be a person authorized to practice law in the highest court of one of the states of the United States.

(2) The committee shall fix the annual salary of the Legislative Counsel. Subject to and in the manner otherwise provided by law, the Legislative Counsel shall be reimbursed for actual and necessary expenses incurred or paid by him in the performance of his duties. [1953 c.492 §10]

173.210 Employment of staff. Subject to the approval of the committee, the Legislative Counsel may employ and fix the compensation of such professional assistants and clerical and other employes as he deems necessary for the effective conduct of the work under his charge. [1953 c.492 §11; 1973 c.735 §8]

173.215 Effect of expiration of terms of committee members. (1) The expiration of the terms of members of the Legislative Counsel Committee upon the convening of the Legislative Assembly in regular session next following the commencement of their terms, as provided by ORS 173.191, does not affect the employment of any individual filling a position previously approved by the committee.

(2) After the convening of the Legislative Assembly in regular session and until such time as the newly appointed committee provides otherwise:

(a) The Legislative Counsel may employ and fix the compensation of individuals he deems necessary for the effective conduct of the work under his charge.

(b) Notwithstanding ORS 173.111 and 173.200, the President of the Senate and the

Speaker of the House of Representatives, in case of a vacancy in the position of Legislative Counsel, may jointly select a Legislative Counsel having the qualifications set forth in ORS 173.200 to serve at their pleasure at a salary they jointly fix, not exceeding that last fixed by the committee. The President and Speaker may act in lieu of the committee under ORS 293.335 in designating the Legislative Counsel they select to approve voucher claims and in filing the statement of designation, and the provisions of ORS 293.335 shall apply as if the Legislative Counsel they select and so designate had been so designated by the committee.

(c) Nothing in paragraph (b) of this subsection limits the authority of the committee during its term of office over the matters described in paragraph (b) of this subsection. [1965 c.113 §1; 1967 c.5 §1; 1975 c.136 §10]

173.220 Location of Legislative Counsel's office. The permanent office of the Legislative Counsel shall be in the State Capitol, where he shall be provided with suitable and sufficient offices convenient to the chambers of the House and Senate. [1953 c.492 §12]

173.230 Confidential nature of matters handled by committee's staff. Neither the Legislative Counsel nor any employe of the committee shall reveal to any person not an employe or a member of the committee the contents or nature of any matter before him in his official capacity, if the person bringing the matter before the committee or employe designates the matter as confidential. Matters not designated as confidential may only be revealed as prescribed by the rules of the committee. [1953 c.492 §14; 1961 c.167 §30]

173.240 Committee's staff prohibited from influencing legislation. Neither the Legislative Counsel nor any employe of the committee shall oppose, urge or attempt to influence legislation. [1953 c.492 §14]

173.250 ORS Revolving Account. (1) The proceeds from the sale of any edition or publication made pursuant to ORS 173.150 shall be deposited in the State Treasury to the credit of a revolving account for the use of the committee in publishing and distributing future editions or publications. The account, to be known as the ORS Revolving Account, shall be continuously appropriated for such purpose.

EXECUTIVE DEPARTMENT AND PUBLIC AFFAIRS 176-185

or additional securities to be given by such bank shall be requested and require approval by the Council. If such bank fails to furnish such securities promptly, the Treasurer at once shall withdraw all deposits from such bank and such bank shall cease to be a depository of the City funds. To be reinstated as a depository of City funds requires that the bank deposit securities deemed satisfactory by a vote of the Council.

3.08.080 City Officers or Agents to Pay Money to the City Treasurer. Any officer or agent of this City or other person who shall receive or have possession of any money belonging to the City shall immediately pay the same to the Treasurer who shall receipt the money. Failure to pay to the Treasurer any money received within 48 hours shall be deemed sufficient cause for removal in the absence of excusable failure.

Chapter 3.10

OFFICE OF CITY ATTORNEY*

(New Chapter substituted by Ord. No. 155956; passed May 10, effective June 11, 1984.)

Sections:

- 3.10.010 Office of City Attorney.
- 3.10.020 General Organization.
- 3.10.030 Duties.
- 3.10.040 Chief Deputy City Attorney.
- 3.10.050 Records.
- 3.10.060 Attorney-Client Relationship.
- 3.10.070 Settlements.
- 3.10.080 Outside Counsel Conflicts of Interest.
- 3.10.090 Indemnities Fund.

*As to the authority of the Council to appoint a City Attorney, see Charter Sec. 2-601.

3.10.010 Office of City Attorney. The Office of the City Attorney shall consist of the City Attorney and such subordinate employees as the Council may provide. The deputies of the City Attorney shall be appointed by the City Attorney in writing and shall continue in service during the City Attorney's pleasure. In the event of a vacancy in the position of the City Attorney, the deputies shall continue in office with the Chief Deputy serving as acting City Attorney until such time as the Council appoints a new City Attorney.

3.10.020 General Organization. The Office of the City Attorney shall consist of the following sections, all of which shall be subject to the supervision of the City Attorney:

- (1) Consultation and Drafting;
- (2) Litigation;
- (3) Tort Defense;
- (4) Land Use Hearings Officer; and
- (5) Code Enforcement Hearings Officer.

The City Attorney's Supervision of the Land Use Hearings Officer and the Code Enforcement Hearings Officer shall be limited to financial and administrative supervision and shall not include supervision of the decision making of the Hearings Officers.

3.10.030 Duties. (Amended by Ord. No. 156711; Oct. 25, 1984.) The City Attorney shall have the following duties:

- (1) Appear for, represent, and defend the City, and its boards, commissions, bureaus, officers, and employees and other persons entitled to representation under the Oregon Tort Claims Act in all appropriate legal matters, except legal matters involving individuals who, after investigation by the Bureau of Risk Management, are found by the Bureau to have been acting outside the scope of their employment or duties or committing malfeasance in office or willful or wanton neglect of duty, and except as otherwise directed by the Council or the Charter;

- (2) Review and approve as to form all written contracts, bonds, or other legally

binding instruments to which the City is a party;

(3) Give legal advice and opinions orally and in writing and prepare documents and ordinances concerning any matter in which the City is interested when required by the Mayor, any Council member, the City Council, or any board, bureau, committee, commission, or agency of the City, or when required by any other person authorized by resolution of the Council to obtain advice and opinions of the City Attorney;

(4) Submit to the Council, annually as of the first day of January, a report of all suits or actions in which the City is a party. The report shall state the name of each pending suit or action and a brief description of the suit or action and of the status of the suit or action at the date of the report. The report shall also state the name of each suit or action closed during the preceding calendar year and a brief description of the suit or action including the amount of any money paid by the City;

(5) (Amended by Ord. No. 156711 Oct. 25, 1984.) Institute legal proceedings for the City in any court or tribunal on direction by resolution of the Council, except that the City Attorney may upon approval of the Commissioner In Charge and for good cause shown seek enforcement of any regulation or license requirement including the payment of any fee, penalty, or interest, established by Charter, Code, ordinance, or statute, and collection of any account receivable and may assert a counterclaim, a cross-claim, or a third party claim. The City Attorney may institute appeals on behalf of the City for enforcement of regulations or license requirements including such payments established by Charter, Code, ordinance, or statute, and for collection of any account receivable, and may appeal in any case in which the opposing side first has appealed, as the City Attorney deems advisable. The City Attorney shall institute other appeals on direction by resolution of the Council. The City Attorney may also upon approval of the Commissioner In Charge and for good cause shown file in the appropriate forum a

purpose the original or duplicate copies of complaint for interpleader whenever the City shall come into possession of property in which it has no claim and on which multiple claims have been made by other parties.

3.10.040 Chief Deputy City Attorney.

(1) The position of Chief Deputy City Attorney is hereby created and the City Attorney is hereby authorized, with the approval of the Commissioner In Charge, from time to time to appoint a suitable incumbent to such position with an assignment of duties to include attending Council meetings, advising the Council, having authority in the Office subject only to the approval of the City Attorney, and being in charge of the Office in the absence of the City Attorney.

(2) The City Attorney is authorized to name a Deputy City Attorney as acting Chief Deputy, and the acting Chief Deputy shall have and exercise all the powers and authority of the Chief Deputy. The City Attorney shall designate an acting Chief Deputy in writing and shall advise the Auditor of the City in writing of the designation. Where possible, the writing filed with the Auditor shall include the time period during which the designation shall be effective.

3.10.050 Records.

(1) The City Attorney shall have charge and custody of the Office of the City Attorney and of all legal papers pertaining thereto, which shall be arranged and indexed in such convenient and orderly manner as to be at all times readily accessible.

(2) The City Attorney shall keep in the Office a complete docket and set of pleadings of all suits, actions, or proceedings in which the City or any department, official, or employee thereof is a party, pending in any court or tribunal, unless the suits, actions, or proceedings are conducted by private legal counsel retained by the City in which case the City Attorney shall keep those records as the City Attorney deems advisable.

(3) The City Attorney shall keep and record in a book to be provided for that all significant written opinions furnished to the City or to any department, official, or employee and shall keep an index thereof; and shall keep a chronological file including all opinions and correspondence of the Office.

3.10.060 Attorney - Client Relationship.

(1) The relationship between the Office of City Attorney and the City shall be an attorney-client relationship, with the City being entitled to all benefits thereof.

(2) In suits, actions, or other proceedings in which the City Attorney, with the concurrence of the Bureau of Risk Management, accepts the defense of a City official, employee, or other person pursuant to the requirements of the Oregon Tort Claims Act, the relationship between the Office of the City Attorney's Tort Defense Section, the City Attorney as its Supervisor, and the official, employee, or other person shall be an attorney-client relationship, with the official, employee, or other person being entitled to all the benefits thereof regarding the subject matter of the suit, action, or proceeding. The tort defense section shall keep all confidential records regarding the subject matter of the suit, action or proceeding separate from all other records of the Office of City Attorney.

3.10.070 Settlements. The City Attorney may settle suits, actions, or proceedings as follows:

(1) As the City Attorney deems advisable, after consultation with the affected bureau, if appropriate, in cases of suits, actions, or proceedings seeking enforcement of any regulation or license requirement including payment of any fee, penalty, or interest, established by the Charter, Code, ordinance, or statute, and collection of any account receivable;

(2) With the written approval of the Commissioner In Charge, in cases of any other suits, actions, or proceedings except for settlements requiring payment by the City in excess of \$5,000; and

(3) With the approval by ordinance of the Council in cases of suits, actions, or proceedings requiring payment by the City in excess of \$5,000.

3.10.080 Outside Counsel Conflicts of Interest. The City Attorney is authorized to waive on behalf of the City potential conflicts of interest or private legal counsel retained by the City if the City Attorney determines the waiver to be in the City's interest.

3.10.090 Indemnities Fund. (Amended by Ord. No. 158015; Nov. 27, 1985.) The City Attorney and Office of Fiscal Administration shall administer payments out of the Indemnities Fund. The City Attorney may authorize payments for court-ordered costs and disbursements not exceeding \$1,000 from the Fund. Costs of more than \$1,000 and expenditures other than court-ordered costs shall only be with the approval by ordinance of the Council.

Chapter 3.12

PORTLAND OFFICE OF TRANSPORTATION

(New Chapter substituted by Ord. No. 155385; passed and effective Dec. 8, 1983.)

Sections:

- 3.12.010 Organization.
- 3.12.030 Bureau of Transportation Planning and Finance.
- 3.12.040 Bureau of Traffic Management.
- 3.12.050 Bureau of Transportation Engineering.
- 3.12.060 Bureau of Maintenance.

3.12.010 Organization. The Portland Office of Transportation shall be under the direction and control of the Director of Transportation. The Portland Office of Transportation shall be charged with the responsibility for the finance, operation, maintenance and improvement of the transportation system and shall be made up of the bureaus, under the direction and control of the Director, as set forth in this

Vote on the motion to Adopt the Ordinance: A roll call vote
on the main motion resulted in:

Ayes: Councilors Bonner, Cooper, DeJardin, Gardner, Hansen,
Kelley, Kirkpatrick, Knowles, Ragsdale, Van Bergen
and Waker

Nay: Councilor Collier

The motion carried and the Ordinance was adopted.

Councilor Van Bergen requested the Budget Committee review the issue of non-tax Zoo revenue being applied to capital outlay projects.

8.2 Consideration of Ordinance No. 87-236, for the Purpose of
Revising the Fee Schedule for Petitions to Amend the Urban
Growth Boundary (First Reading and Public Hearing)

The Clerk read the ordinance by title only a first time.

Ray Phelps, Finance & Administration Director, and Jill Hinckley, Land Use Coordinator, presented staff's report. The fee changes were being proposed so that fees charged by Metro would more closely correspond to the actual expense of hearing each case.

Presiding Officer Waker and Councilor Kirkpatrick encouraged a system where a ceiling would be placed on costs to petitioners.

Discussion continued and it was agreed the ordinance should be referred to the Council Management Committee for review and recommendation. The Presiding Officer concurred.

Motion: Councilor Knowles moved, seconded by Councilor DeJardin, to adopt Ordinance No. 87-236.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed. He explained the ordinance would be reviewed by the Council Management Committee on January 21 and would be before the Council for a second reading on January 28, 1988.

8.3 Consideration of Ordinance No. 87-237, for the Purpose of
Creating an Office of General Counsel (First Reading and Public
Hearing)

The Clerk read the ordinance by title only a first time.

Councilor Gardner referred Councilors to the Management Committee's written report on the ordinance. As a result of the Council's consideration of a resolution to add a new legal counsel position and the issue of who in the agency could initiate litigation, both Executive staff and Councilors Collier and Van Bergen had drafted ordinances creating an Office of General Counsel. The purpose of the ordinances was to define the role of General Counsel, how the Counsel would be hired and terminated and to define how and by whom litigation could be initiated.

After extensive discussion, the Management Committee recommended the new Legal Counsel position be created (the Council would be asked to consider a resolution creating the position at the January 28 meeting) and that the version of the ordinance now before the Council be adopted.

Councilors Van Bergen and Collier concurred with Councilor Gardner's recommendation. Councilor Collier noted that the new Office of General Counsel would reduce the amount of money spent on outside legal services and that all legal contracts would be approved by the General Counsel.

Executive Officer Cusma said she had some concerns about provisions in the proposed ordinance and would be discussing those issues with Councilors in the near future. Presiding Officer Waker requested the Executive Officer communicate her concerns before the January 14 second reading of the ordinance.

Motion: Councilor Collier moved, seconded by Councilor DeJardin, to adopt Ordinance No. 87-237.

Presiding Officer Waker opened the public hearing. There was no testimony and the hearing was closed.

A discussion followed about how the ordinance provided for the hiring and termination of the General Counsel.

Councilor Collier was pleased how Executive staff and Councilors had worked to draft an ordinance addressing the concerns of all parties.

Presiding Officer Waker announced the second reading of the ordinance was scheduled for January 14, 1988.

At the end of the meeting citizen Claire Green indicated in writing she would like a second public hearing to be conducted on January 14 because the ordinance had been added to the agenda after it had been mailed to the public. Presiding Officer Waker said he would forward her note to the new Presiding Officer in January and the new Presid-

ing Officer would decide if a second public hearing would be conducted.

The Council recessed from 7:25 p.m. to 7:45 p.m.

9. RESOLUTIONS

9.1 Consideration of Resolution No. 87-787, for the Purpose of Amending Resolution No. 87-744, Adopting a Supplemental Budget and Appropriations and Increasing Convention Center Project Debt Service Payments (Public Hearing)

Jennifer Sims, Management Services Director, summarized staff's written report. She explained the Council had initially reviewed the resolution in August 1987 and had approved the budget for transmittal to the Tax Supervising & Conservation Commission (TSCC). The TSCC certified the budget and had recommended certain changes as outlined in its letter included in the staff report.

Presiding Officer opened the public hearing. No testimony was received and the hearing was closed.

Motion: Councilor Hansen moved, seconded by Councilor DeJardin, to adopt the resolution.

Vote: A vote on the motion resulted in all eleven Councilors present voting aye. Councilor Collier was absent.

The motion carried.

9.2 Consideration of Resolution No. 87-833, for the Purpose of Endorsing the Tri-Met Five-Year Transit Development Plan

Andy Cotugno, Transportation Director, summarized staff's written report and explained the resolution ensured that a regional transit system would receive a stable funding base. He said the resolution would be presented to the Tri-Met Board pending the Council's adoption.

Motion: Councilor Van Bergen moved to adopt the resolution and Councilor Kelley seconded the motion.

Vote: A vote on the motion resulted in all ten Councilors present voting aye. Councilor Bonner and DeJardin were absent.

The motion carried and the resolution was unanimously adopted.

Councilor Knowles said after reviewing the Findings of Fact, he was convinced the Council's decision not to adopt the Hearings Officer's findings was contrary to Metro law. He thought the Findings were "tortured and convoluted" in an effort to comply with the Council's request. They did not protect UGB policies, he said. Councilor Knowles urged the Council to follow its law and send the matter back to the Hearings Officer in order for the DLCD letter to be incorporated into the record. He thought the DLCD had grounds for appeal.

Motion: Councilor Knowles moved to return the matter to the Hearings Officer along with any information submitted by the DLCD and for the Hearings Officer to make a new recommendation for Council consideration. Councilor Collier seconded the motion.

At the request of Mr. Cooper, Presiding Officer Ragsdale called a recess at 7:45 p.m. to determine whether the above motion was proper. The meeting reconvened at 7:55 p.m.

Withdrawal of Motion: Councilors Knowles and Collier withdrew the above motion because Counsel determined it was improper.

Mr. Cooper explained that if the majority of the Council did not vote to adopt the ordinance, then a motion could properly be made to refer the matter back to the Hearings Officer which would include specific instructions to the Hearings Officer.

Presiding Officer Ragsdale closed the public hearing and announced the second reading of the ordinance was scheduled for January 28, 1988.

10.2 Consideration of Ordinance No. 88-237, for the Purpose of Establishing an Office of General Counsel to Provide Legal Advice and Assistance to the Metropolitan Service District (Second Reading)

The Clerk read the ordinance a second time by title only. Presiding Officer Ragsdale announced the ordinance was subject to the Executive Officer's veto.

Motion: A motion to adopt Ordinance No. 88-237 was made by Councilor Collier and seconded by Councilor DeJardin at the first reading of the ordinance on December 22, 1987.

Presiding Officer Ragsdale noted staff had received a request from citizen Claire Green asking that a second public hearing be scheduled at this meeting in addition to the hearing conducted on

December 22. Because there were no citizens in attendance, no second public hearing was announced.

Councilor Gardner, Chair of the former Council Management Committee, referred Councilors to the Committee's written report. The Committee recommended adoption of the ordinance which had been cooperatively developed by the Executive Officer's staff, the ad hoc committee to review Metro litigation, and the Council Management Committee.

Executive Officer Cusma reported she had initial concerns with the legislation but after consultation with her staff, supported its adoption.

Vote: A roll call vote on the motion to adopt the ordinance resulted in all twelve Councilors present voting aye.

The motion carried and Ordinance No. 88-237 was adopted unanimously.

11. RESOLUTIONS

11.1 Consideration of Resolution No. 88-828, for the Purpose of Adding a Legal Counsel Position to the Executive Management Department

Councilor Gardner reported the Council Management Committee had unanimously recommended adoption of the resolution.

Motion: Councilor Gardner moved, seconded by Councilor Kelley, to adopt Resolution No. 88-828.

Councilor Kirkpatrick suggested amending the resolution to make it effective the same day as the companion Ordinance No. 88-237. Councilor Collier urged the resolution be adopted unamended so staff could start recruitment immediately.

Motion to Amend: Councilor Gardner moved, seconded by Councilor Collier, to amend the resolution to specify the position was part of the Office of General Counsel.

Vote on the Motion to Amend: A vote on the motion resulted in All twelve Councilors voting aye.

The motion carried.

Vote on the Main Motion: A vote on the main motion, as amended, resulted in all twelve Councilors voting aye.

The motion carried and Resolution No. 88-828 was adopted as amended.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

Date: January 20, 1988

To: Rena Cusma, Executive Officer

From: Marie Nelson, Clerk of the Council *amn*

Regarding: TRANSMITTAL OF ORDINANCE NO. 88-237
FOR CONSIDERATION OF VETO

Attached for your consideration is a certified true copy of Ordinance No. 88-237, adopted by the Council on January 14, 1988.

If you wish to veto this ordinance, I must receive a signed and dated, written veto message from you no later than 5:00 p.m., Thursday, January 21, 1988. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time stated above, the ordinance will be considered finally adopted.

amn

I, *Unette Horley*, received this memo and a certified true copy of Ordinance No. 88-237 from the Council Clerk on January 19, 1988.

Signed: *Unette Horley*

Dated: *1/20/88*



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

January 22, 1988

Mr. Charles D. Cameron
County Administrator
Washington County Courthouse
150 North First Avenue
Hillsboro, OR 97213

Dear Mr. Cameron:

Enclosed is a true copy of the following Ordinance adopted by the Metro Council. Please file this Ordinance in the Metro file maintained by your county.

Ordinance No. 88-237, An Ordinance Establishing an Office of General Counsel to Provide Legal Advice and Assistance to the Metropolitan Service District.

Sincerely,

A. Marie Nelson
Clerk of the Council

AMN:pa

Enclosure

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Mike Ragsdale
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Executive Officer
Rena Cusma



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1645

January 22, 1988

Mr. John Kauffman
County Clerk
Clackamas County Courthouse
8th and Main
Oregon City, OR 97045

Dear Mr. Kauffman:

Enclosed is a true copy of the following Ordinance adopted by the Metro Council. Please file this Ordinance in the Metro file maintained by your county.

Ordinance No. 88-237, An Ordinance Establishing an Office of General Counsel to Provided Legal Advice and Assistance to the Metropolitan Service District.

Sincerely,

A. Marie Nelson
Clerk of the Council

AMN:pa

Enclosure

Metro Council

Richard Waker
Presiding Officer
District 2

Jim Gardner
Deputy Presiding
Officer
District 3

Mike Ragsdale
District 1

Corky Kirkpatrick
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Sharron Kelley
District 7

Mike Bonner
District 8

Tanya Collier
District 9

Larry Cooper
District 10

David Knowles
District 11

Gary Hansen
District 12

Executive Officer
Rena Cusma



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

January 22, 1988

Ms. Jane McGarvin
Clerk of the Board
Multnomah County Courthouse
1021 S.W. Fourth Avenue
Portland, OR 97204

Dear Jane:

Enclosed is a true copy of the following Ordinance adopted by the Metro Council. Please file this Ordinance in the Metro file maintained by your county.

Ordinance No. 88-237, An Ordinance Establishing an Office of General Counsel to Provide Legal Advice and Assistance to the Metropolitan Service District.

Sincerely,

A. Marie Nelson
Clerk of the Council

AMN:pa

Enclosure

Metro Council

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Presiding Officer
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Executive Officer
Rena Cusma