

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AMENDING)
METRO CODE CHAPTER 2.08, OFFICE)
OF GENERAL COUNSEL)
ORDINANCE NO. 90-347-A)
Introduced by)
Councilor Collier)

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Council finds:

There is a need to clarify the Duties and Powers of the Office of General Counsel regarding legal opinions interpreting the provisions of Oregon Law relating to the division of Powers, Duties and Authority of the Metro Council and the Metro Executive Officer.

Section 2. A new Section 2.08.080 "Opinions Regarding Division of Powers" is hereby added to Chapter 2.08 of the Metro Code.

2.08.080 Opinions Regarding Division of Powers:

(a) The General Counsel shall prepare written opinions regarding interpretations of Oregon Law including but not limited to ORS Chapter 268 as provided for herein. Opinions prepared in conformance with this section shall be official guidance to the District except as superseded by courts of law, legislative action administrative rules, or actions of other superior tribunals or bodies.

(b) Requests for opinions regarding interpretations of Oregon Law concerning the powers, duties, and authority of the Metro Council or the Metro Executive Officer as they relate to

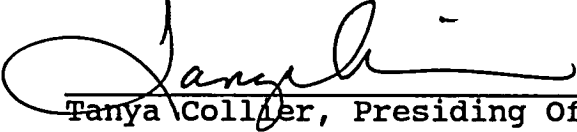
the division of powers, duties, and authorities, or jointly held powers, duties, and authorities, shall be made only by the Executive Officer, the Presiding Officer, chairs of standing Council Committees, Committees acting by resolution, or the Council acting by resolution.

(c) Prior to commencing to prepare any requested opinion subject to the provisions of paragraph (b) this section, the General Counsel shall refer the request to both the Executive Officer and the Council. The issuance of an opinion shall require the concurrence of both the Council and the Executive Officer in the question to be answered. Council concurrence shall be by resolution, except where an opinion request is originally approved by the Council and the Executive Officer concurs in the request. Executive Officer concurrence shall be in writing.

(d) In the event the Council and the Executive Officer fail to concur in a request for an opinion, either the Council or the Executive Officer may direct that the Office of General Counsel refer the question to outside legal counsel approved by the General Counsel and the requestor of the opinion subject to the provisions of Metro Code Chapter 2.04 and available budget appropriations. In the event any requested opinion is rendered by outside counsel, it shall not be official guidance to the District but shall constitute legal advice to the requestor of the opinion only.

(e) Nothing contained herein shall restrict the Office of General Counsel from effectively advocating the legal interests

of the District in appearing before courts or tribunals. Such advocacy shall be consistent with opinions rendered pursuant to this section but the advocacy efforts of attorneys for the District shall not constitute official guidance to the District.


Tanya Collier, Presiding Officer

ATTEST:


Clerk of the Council

DBC/gl
1016



METRO

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

Memorandum

Date: August 7, 1990
To: Intergovernmental Relations Committee
From: Jessica *JM* Marlitt, Council Analyst
Regarding: ORDINANCE NO. 90-347

Ordinance No. 90-347 was first considered by the Intergovernmental Relations (IGR) Committee May 8, 1990 and reviewed at the Committee's last meeting, July 24. Councilor Collier, who introduced the ordinance, said its intent is to prevent Metro's General Counsel from being caught in the middle of legal disputes between the Executive Officer and the Council. General Counsel Cooper noted the Council and the Executive Officer have independent authority to fire the General Counsel if he fails to serve either party, providing an informal mechanism to maintain the balance between the two government branches.

The Committee's July 24 discussion focussed on defining the legal impact of General Counsel opinions on Metro (addressing the term "binding" as used in the ordinance) and clarifying the ordinance's potential impact on contracting cases where the Executive Officer's authority is challenged by an outside party.

The Committee unanimously deferred Ordinance No. 90-347 until the August 14 IGR meeting to allow General Counsel to review further the ordinance and address the two issues noted. General Counsel's review and proposed ordinance revisions are attached (August 1 memo to Presiding Officer Tanya Collier) for the Committee's consideration. If you have any questions or would like additional information, please contact me at the Council Office, extension 286.

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METRO

2000 SW First Avenue
Portland, OR 97201-5398
(503) 221-1646
Fax 241-7417

August 1, 1990

The Honorable Tanya Collier
Presiding Officer
Metropolitan Service District
2000 S. W. First Avenue
Portland, OR 97201-5398

Dear Councilor Collier:

Re: Ordinance No. 90-347

Enclosed please find a revised version of Ordinance No. 90-347, which is now titled Ordinance No. 90-347-A.

In this draft I have attempted to resolve the concern raised by Councilor Hansen at the discussion with the Intergovernmental Relations Committee on July 24, 1990, regarding positions taken by the Office of General Counsel in court. I think the language now contained in subsection (e) resolves this issue by providing that the Office of General Counsel is not limited in its advocacy efforts on behalf of the District, but must conduct such advocacy consistent with previous opinions rendered pursuant to this section and that any positions taken during the advocacy efforts of the attorneys for the District do not constitute legal advice to the District.

Also, throughout the Ordinance I have removed the reference to opinions of the General Counsel being "binding" on the District and instead substituted the term "official guidance to" the District on such matters. I think this more accurately reflects the actual situation.

I will be unable to attend the Intergovernmental Relations Committee meeting scheduled for August 7. The Ordinance as printed in the No. 90-347-A version does, I believe, adequately deal with the issues raised at the previous

Executive Officer
Rena Cusma

Metro Council

Mike Ragsdale
Presiding Officer
District 1

Gary Hansen
Deputy Presiding
Officer
District 12

Lawrence Bauer
District 2

Jim Gardner
District 3

Richard Devlin
District 4

Tom DeJardin
District 5

George Van Bergen
District 6

Ruth McFarland
District 7

Judy Wyers
District 8

Tanya Collier
District 9

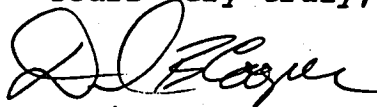
Roger Buchanan
District 10

David Knowles
District 11

The Honorable Tanya Collier
August 1, 1990
Page 2

Committee meeting, and if the Committee so desires is ready
for referral to the full Council.

Yours very truly,



Daniel B. Cooper,
General Counsel

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Enclosure

INTERGOVERNMENTAL RELATIONS COMMITTEE REPORT

**ORDINANCE NO. 90-347, AMENDING METRO CODE CHAPTER 2.08, OFFICE OF
GENERAL COUNSEL**

Date: August 15, 1990

Presented by: Councilor Devlin

COMMITTEE RECOMMENDATION: At the August 14, 1990 Intergovernmental Relations Committee meeting, Councilors Gardner, McFarland and myself voted unanimously to recommend Council adopt Ordinance No. 90-347A as amended. Councilors Bauer and Hansen were excused.

COMMITTEE ISSUES/DISCUSSION: Presiding Officer Tanya Collier presented the ordinance and proposed revisions drafted by General Counsel Dan Cooper per the Committee's discussion of July 24, 1990. At the July 24 meeting, the Committee raised two issues for General Counsel to address: a) use of the word "binding" to describe General Counsel opinions regarding division of powers between the Council and the Executive Officer; b) ensuring the new section in no way obstructs the Office of General Counsel's work in any other areas of business.

Ordinance No. 90-347A responds to the Committee's concerns by replacing the term "binding" with "official guidance to" in describing the status of opinions rendered on division of powers questions and by adding a final section (e) to clarify the new section will not impact General Counsel's work on behalf of Metro.

The Committee supported General Counsel's proposed revisions and did not raise any additional questions or concerns.

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FINANCE COMMITTEE REPORT

See Revised Staff Report

CONSIDERATION OF ORDINANCE NO. 90-350, AMENDING METRO
CODE SECTION 5.02.060 TO UPDATE THE CREDIT POLITY

Date: August 16, 1990

Presented by: Councilor Devlin

COMMITTEE RECOMMENDATION: The Committee considered the Ordinance at its June 6, 1990 meeting. The Committee voted unanimously to recommend approval of Ordinance No. 90-350 as amended. Voting yes were Councilors Devlin, Gardner and Wyers. Councilors Collier and Van Bergen were excused.

COMMITTEE DISCUSSION/ISSUES: Bob Ricks, Senior Management Analyst, presented the staff report. He indicated that the purpose of the Ordinance is to update the Code to allow more flexibility to deal with individual credit accounts in a timely fashion to minimize credit losses. The need for an updated policy stems from the increase in the number of credit customers in the past four years.

Council staff suggested a change to the Ordinance requiring written notice to the Council of adjustments over \$500 to credit accounts (See Exhibit A). The Committee amended the Ordinance to require such reporting.

DEC:aeb
Attachment

A:\ORD-350.RPT

STAFF REPORT

CONSIDERATION OF AN ORDINANCE FOR THE PURPOSE
OF AMENDING METRO CODE 2.08, OFFICE OF
GENERAL COUNSEL

Date: April 30, 1990

Presented by:
Daniel B. Cooper

FACTUAL BACKGROUND AND ANALYSIS

Ordinance No. 90-347 has been prepared by the Office of General Counsel at the request of Councilor Collier. The purpose of the ordinance is to provide procedures for and restrictions on the Office of General Counsel regarding the issuance of formal opinions interpreting provisions of Oregon Law relating to the division of powers and duties of the Metro Council and the Metro Executive Officer.

The ordinance provides a mechanism whereby both the Council and the Executive Officer must agree on a particular question to be asked of the General Counsel, prior to the General Counsel commencing research or preparing any formal opinion regarding division of powers questions. If the ordinance had been in effect at the time the Executive Officer formally asked the Office of General Counsel to advise her regarding the Council's authority to require all contracts exceeding certain dollar amounts to be approved by the Council, the Office of General Counsel would have been precluded from answering that question unless the Council had concurred in the request. The ordinance provides that if no concurrence on a specific question can be reached between the Council and the Executive Officer, the General Counsel is required to assist either the Council or the Executive Officer or both in obtaining the services of an outside attorney to provide the requested legal advice.

The ordinance prepared is an outgrowth of discussions that were held at the Budget Committee, and as drafted is offered as one solution to the perceived problem. The ordinance as drafted precludes individual members of the Council from requesting the General Counsel to provide a legal opinion on a division of powers question. The ordinance strikes a middle ground between having all Councilors have the ability to request an opinion or to only requiring prior approval of the Council as a whole through a formal process. This question is one that is clearly a judgment call for the Council to make as to how to proceed in this area. The ordinance does not apply to requests for legal advice other than requests regarding formal opinions regarding divisions of powers questions.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

*SEE
Amended
Version
90-347A*

FOR THE PURPOSE OF AMENDING) ORDINANCE NO. 90-347
METRO CODE CHAPTER 2.08, OFFICE)
OF GENERAL COUNSEL) Introduced by
) Councilor Collier

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Tanya Collier, Presiding Officer

ATTEST:

Clerk of the Council

DBC/gl

1016



METRO

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

Memorandum

Date: August 27, 1990
To: Rena Cusma, Executive Officer
From: Gwen Ware-Barrett, Clerk of the Council
Regarding: TRANSMITTAL OF ORDINANCE NO. 90-347-A
and 90-350

Attached for your consideration are a true copies of Ordinance Nos. 90-347-A and 90-350 adopted by the Council on August 23, 1990.

If you wish to veto these ordinances, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday August 30, 1990. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, this ordinance will be considered finally adopted.

I, Washburn Duddell, received this memo and a true copy of Ordinance Nos. 90-347 and 90-350 from the Council Clerk on August 27, 1990.

GWPB:lc
\Mem.Ord.