



Gerry T.  
FYI  
NOV 14 1983

November 14, 1983

Neil R. Fisher  
Administrator  
Executive Department  
155 Cottage Street NE  
Salem, OR 97310

Beloved Mr. Fisher,

On the morning of November 10th, I called you in regard to the payment of state-shared revenues to the City of Rajneeshpuram. I asked you on what basis you had withheld the funds. I cited Section 2 of House Bill 3028 which requires that funds are withheld from a city only "if the court or (administrative) agency determines that the incorporation is invalid" (lines 11-12). You stated that your basis for withholding the funds was the Attorney General's opinion and that there was no other reason.

You stated that you had decided to withhold the funds on October 4 and that you had received "advance notice" of the Attorney General's opinion which was made public on October 6. At 4:40 pm the same afternoon, I spoke with William Gary, Deputy Attorney General. I related my conversation with you to Mr. Gary. He and I also discussed the wording of House Bill 3028. Mr. Gary concluded that he would have to do some checking and call me back. Mr. Gary called me back within two minutes. He said that he had reviewed House Bill 3028 in more detail. He said that the Attorney General's office had not and would not direct any state agency to withhold any funds from the City of Rajneeshpuram based on the Attorney General's opinion. I asked him if he would advise you of this official Attorney General's stance and he said that he would. I asked him if he could understand, in light of what he had just said, why our city's funds would have been withheld. He said that it could have been based on the decision of the Land Use Board of Appeals, but that he could not say for sure. I reminded him then and I remind you now that LUBA did not declare the City of Rajneeshpuram invalid nor has any subsequent court declared the city invalid because of LUBA's decision.

At 4:45 pm, I spoke with you again. I relayed what Mr. Gary had said and you said, "That's interesting." I asked you if the decision of LUBA had ever entered your discussion about the state-shared revenues for Rajneeshpuram. You said that "it didn't come up." You reiterated again that it was based solely on the Attorney General's opinion and you were directed towards this approach by the governor through his executive assistant, Gerry Thompson.

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November 14, 1983  
Page Two

It is very clear that you have made a serious mistake in holding back state-shared revenue funds from the City of Rajneeshpuram. We demand that you rectify this mistake immediately and issue to the City all checks being withheld with the appropriate interest.

If the funds are not released within five days, the City will take appropriate legal action.

With love,



Swami Krishna Deva  
Mayor

cc: Victor G. Atiyeh, Governor  
Dave Frohnmayer, Attorney General  
H. Scott Coulter, State Highway Division, Department of Transportation  
Bob Oliver, Office of the Governor

A-Engrossed

House Bill 3028

Ordered by the Senate September 30

Including House Amendments dated September 29 and Senate Amendments dated September 30

Sponsored by COMMITTEE ON LEGISLATIVE RULES AND OPERATIONS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Amends definition of "municipality" as used in ORS 287.442.

**Provides that, if city incorporation is initially determined invalid, certain moneys shall be placed in escrow and not distributed to city. Moneys are those from revenue sharing, cigarette taxes and highway fund. Directs distribution of moneys to city involved on final determination of validity or to each city in state on final determination of invalidity.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1  
2 Relating to public financing; creating new provisions; amending ORS 287.435; and declaring an emergency.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 287.435 (section 3, chapter 124, Oregon Laws 1983) is amended to read:

5 287.435. As used in [*this chapter, unless the context requires otherwise:*] **ORS 287.442,**

6 [(1) 'Bonds' mean general obligation bonds.]

7 [(2)] 'municipality' means political subdivisions of or in this state and municipal, quasi-municipal and  
8 public corporations [*authorized by law to issue bonds*].

9 **SECTION 2.** (1) Notwithstanding ORS 221.770, 323.455, 366.785 to 366.820 and 471.810, when a  
10 proceeding challenging the validity of the incorporation of a city is commenced before a court or  
11 administrative agency of this state within two years after the incorporation, if the court or agency determines  
12 that the incorporation is invalid, moneys otherwise payable to the city under ORS 221.770, 323.455, 366.785  
13 to 366.820 and 471.810 shall not be distributed to the city, but shall be deposited with the State Treasurer as  
14 provided in subsection (3) of this section.

15 (2) Not later than 30 days after the issuance of an order or judgment declaring the incorporation of a city  
16 invalid, the party challenging the incorporation shall send a certified copy of the order or judgment to the  
17 State Treasurer, Department of Transportation, Department of Revenue and the Oregon Liquor Control  
18 Commission.

19 (3) Upon receiving as certified copy of the order or judgment under subsection (2) of this section, the state  
20 officer or department having responsibility for the distribution of moneys under ORS 221.770, 323.455,  
21 366.785 to 366.820 and 471.810 shall deposit those moneys in an escrow account administered by the State  
22 Treasurer.

NOTE: Matter in bold face in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.

