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March 2, 2004

Ms. Agnes Sowle, County Attorney  
Suite 500  
501 SE Hawthorne Blvd.  
Portland, OR 97214

**Re: Issuance of Marriage Licenses**

Dear Agnes:

At your request, I have reviewed your "Confidential Memorandum" dated March 2, 2004, to Chair Linn and Commissioners Rojo de Steffey, Cruz, Naito, and Roberts, regarding the obligations of Multnomah County with respect to the issuance of marriage licenses. In my opinion, the analysis and conclusions set out in that Memorandum are correct and accurate.

I fully concur with the conclusion set out in your Memorandum that Multnomah County, and all of its officials, are obligated to act in accordance with the Oregon Constitution. When a statute or regulation conflicts with the Constitution, public officials have not just the right, but the duty, to obey the Constitution. That is the very reason that public officials can be, and often are, sued for violation of a person's constitutional rights: the public officials may well have acted in accordance with a statute, regulation, or long-standing practice, but if that statute, regulation, or practice violates the Constitution, public officials must act in accordance with the higher authority. As the Oregon Supreme Court has squarely held, "a state legislative interest, no matter how important, cannot trump a state constitutional command." *State v. Stoneman*, 323 Or 536, 542, 920 P2d 535 (1996).

I also fully concur with your conclusion that the State of Oregon and its instrumentalities, including Multnomah County, may not deny marriage licenses to persons based solely on the gender of the persons whom they wish to marry. The ability to marry and to have one's marriage recognized by the State, with all the concomitant advantages that such recognition brings with it, is a privilege accorded to its citizens by the State of Oregon. Article I, section 20, of the Oregon Constitution prohibits the State from granting that privilege "to any citizen or class of citizens" unless it makes that privilege available "upon the same terms \*\*\* to all citizens."

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As I said above, Multnomah County and its officials are required to act in accordance with the Oregon Constitution. No statute can shield them from that fundamental obligation. If Multnomah County issues marriage licenses to opposite sex couples, it must issue marriage licenses to same sex couples. To do otherwise would be to grant a "privilege" to one class of citizens that is denied to another class of citizens, in direct violation of the constitutional command of Article I, section 20.

Very truly yours,

A handwritten signature in cursive script that reads "Charles F. Hinkle". The signature is written in black ink and is positioned above the typed name.

Charles F. Hinkle

/cfh