

1000 FRIENDS OF OREGON

400 DEKUM BUILDING, 519 S.W. THIRD AVENUE, PORTLAND, OREGON 97204 (503) 223-4396

TO: Henry R. Richmond, Executive Director
FROM: Mark J. Greenfield, ^{MJG} Staff Attorney
RE: Rajneesh Cattle Sale
DATE: March 5, 1982

On November 4, 1981, the Wasco County Court, by a 2-1 vote, approved a petition filed by followers of Bhagwan Shree Rajneesh for the incorporation of a new city, Rajneeshpuram. The County Court approved boundaries for the proposed city and set an election date of May 18, 1982.

Five days later County Judge Richard Cantrell, who had voted in the majority on the incorporation petition, completed a cattle sale with the Rajneesh. Negotiations on this sale had begun several weeks prior to the County Court's vote on the incorporation petition. Approximately 50 head of cattle were sold. The sale grossed \$17,540.

1000 Friends of Oregon and several Antelope-area ranchers have filed an appeal with the Land Use Board of Appeals challenging Wasco County's decision to approve the petition for incorporation. Five of our six assignments of error allege violations of the statewide planning goals. The sixth assignment of error alleges that Judge Cantrell's ongoing and undisclosed business dealings with the Rajneesh at the time of the decision denied petitioners an impartial tribunal.

In reviewing the facts of the cattle sale, I have uncovered substantial evidence suggesting foul play in the cattle transaction. Information I have received indicates that the Rajneesh bought the cattle at a price approximately \$5,000 higher than the market value of the cattle sold, possibly more. The facts lead a reasonable person to question whether the purchase price included a "gift" of at least several thousand dollars.

My review of the statutes leads me to conclude that agents of the Rajneesh may have committed the crime of bribe giving and that Judge Cantrell may have committed the crime of bribe receiving. A person commits the crime of bribe giving

"if he offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote,

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opinion, judgment, action, decision or exercise of discretion in his official capacity." ORS 162.015(1)

A public official commits the crime of "bribe receiving" if he:

"(a) Solicits any pecuniary benefit with the intent that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

"(b) Accepts or agrees to accept any pecuniary benefit upon an agreement or understanding that his vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced." ORS 162.025(1)."

Judge Cantrell also may have committed the crime of official misconduct. A public servant commits the crime of official misconduct in the second degree "if he knowingly violates any statute relating to his office." ORS 162.405(1). A public servant commits the crime of official misconduct in the first degree

"if with intent to obtain a benefit or to harm another:

"(a) He knowingly fails to perform a duty imposed on him by law or one clearly inherent in the nature of his office; or

'(b) He knowingly performs an act constituting an unauthorized exercise of his official duties." ORS 162.415(1).

For the reasons stated below, I recommend that we ask the Governor to direct the Attorney General to investigate this matter and determine whether a grand jury should be convened to consider issuance of indictments. It should be noted that bribery, if it has occurred, need not be limited solely to the incorporation decision. The Rajneesh intend to apply to the County for a plan amendment (from agriculture to rural residential) zone changes, and conditional use permits. Consequently, they will need additional approvals from Judge Cantrell and the Wasco County Court.

FACTS

1. Sources

The facts set forth below come from a variety of sources, including newspaper articles, affidavits, auction yard reports, letters, and memoranda and testimony offered at a hearing before the Oregon Government Ethics Commission on February 24, 1982. That hearing was held in response to a complaint filed against Judge Cantrell by Buck Coe, A Wasco County rancher and second vice president of the Oregon Cattleman's Association. In that complaint, Coe charged Cantrell with violations of ORS 244.120 (1)(a) and ORS 244.040(1) and (4).¹ On February 24, the Commission found probably cause that Cantrell violated ORS 244.120 (1)(a) and 244.040(4).²

¹ ORS 244.120(1)(a) provides:

"(1) When involved in a potential conflict of interest, a public official shall:

(a) If he is an elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission, announce publicly the nature of the potential conflict prior to taking any official action thereon."

ORS 244.040(1) provides:

"(1) No public official shall use his official position or office to obtain financial gain for himself, other than official salary, honoraria, or reimbursement of expenses, or for any member of his household, or for any business with which he or a member of his household is associated."

ORS 244.040(4) provides:

"(4) No public official shall further his personal financial gain through the use of confidential information gained in the course of or by reason of his official position or activities in any way."

² The Commission found cause to believe Cantrell violated ORS 244.120 (1)(a) when he failed to disclose a potential conflict of interest (the cattle sale) at the November 4, 1982 hearing on the incorporation petition. It also found cause to believe that Cantrell used con-

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I acquired some of these materials in connection with my LUBA appeal challenging incorporation of Rajneeshpuram. Other information, including the affidavits of Buck Hodges and Loren Corwin, I obtained for the purpose of securing Judge Cantrell's withdrawal from Rajneesh-related land use proceedings pending before Wasco County. Copies of written source materials are attached to this memorandum.

2. Negotiations and Cattle Transfer

According to a memorandum for the Oregon Government Ethics Commission by Jr. Executive Director, Betty Reynolds, (Attachment A), and according to a December 19, 1981 news report in the Dalles Chronicle (Attachment B)³ Judge Cantrell first learned that the Rajneesh were interested in purchasing beef cattle at a meeting of Jefferson and Wasco County Commissioners at Rajneeshpuram on August 12, 1981. That meeting was held to enable the Commissioners to review the site prior to making certain land use decisions concerning the area. (Attachment A).⁴ During the visit a Rajneesh representative, David Knapp, told Judge Cantrell that the Community needed cattle to "eat stubble." The Judge then advised Mr. Knapp to purchase the equivalent of "hamburger-priced cows." (Attachment A).

² Confidential information he received from the Rajneesh (their interest in purchasing cattle) to accomplish personal gain, in violation of ORS 244.040(4). For reasons I fail to understand, it did not find that Cantrell used his office for personal gain.

³ The author of this article, Austin Abrams, has signed a sworn affidavit stating that the facts in the article attributed to Judge Cantrell are an accurate report of the facts Mr. Cantrell provided him (See Attachment B.)

⁴ I assume that those "land use decisions" refer to applications filed by the Rajneesh in Wasco and Jefferson County for 53 dwellings, a dining hall, a ranch headquarters and office, and several farm related structures.

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In late September or early October, Judge Cantrell and Art Rice, Judge Cantrell's agent/cattle-seller, established a selling price of \$625 for cow/calf pairs and \$.50/lb. for the remainder of Cantrell's stock, which numbered about 100 head at the time. (Attachment A. See also Attachment C, a letter from Cantrell to Paul Muller dated January 10, 1982, and the tape of the hearing before the Ethics Commission.)

On October 4, 1981 -- about the time this cattle price was established -- Judge Cantrell and his wife, at the invitation of the Rajneesh, visited Rajneeshpuram for Sunday lunch. On that occasion Rajneesh representative John Shelfer (Sheela Silverman's husband) informed Cantrell that the Rajneesh were interested in purchasing beef cattle. Cantrell advised them to buy the cheapest animals available on the market. (Testimony of Judge Cantrell at Ethics Commission hearing).

On October 13 Judge Cantrell informed the Rajneesh by letter that he had cattle for sale at the prices listed above. On October 22 two Rajneesh representatives, John Shelfer and Bob Harvey, surveyed Cantrell's livestock. On October 25 they informed Cantrell of their decision to purchase 40 or 50 head at the stated price. (Attachment A). However, this agreement was not put in writing. (Testimony of Cantrell at February 24 hearing.)

Meanwhile, on October 7, 1981, Rajneesh representatives discussed the possibility of city incorporation with County officials.⁵ (Attachment B). On October 13 -- one day after Cantrell informed the Rajneesh that he had cattle for sale -- the Rajneesh filed their petitions for incorporation of Rajneeshpuram.

According to the news report in the Dalles Chronicle (Attachment B), Judge Cantrell "advised" Wasco County Commissioners James Comini and Virgil Ellett of his pending sale prior to October 14.⁶ However, Comini told the Chronicle he first learned of the sale after the November 4 public hearing on incorporation. (Attachment B). To my knowledge, Ellett has yet to indicate when he first learned of the cattle sale.

On November 4, 1981, the Wasco County Court held a public hearing in the matter of incorporation of Rajneeshpuram. Following the hearing the County voted 2-1 (Comini opposed) to approve the request for incorporation and set an election date. Judge Cantrell did not publicly disclose his pending cattle sale at that hearing or at any other time during the incorporation proceeding. See Attachments A, B and C.

(Footnotes 5 through 8 on following page).

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On the night of November 9, the cattle were loaded into a stock truck, weighed at Dufur Elevator, and transported to Rajneeshpuram. (Tape of Ethics Commission hearing. See also the Officer's Report filed by brand inspector Buck Hodges (Attachment D), the affidavit of Buck Hodges (Attachment E) and the transportation slip signed by Robert Harvey (Attachment F).

The transportation slip signed by Bob Harvey indicates that 50 head of cattle were transported to Rajneeshpuram.⁷ However, a transportation slip signed by Judge Cantrell, also dated November 9, 1981, states that only 48 head of cattle (one bull, 18 cows, 13 heifers and 15 calves) were transferred.⁸ See Attachment G.

On November 15, 1981, the Rajneesh paid for the cattle with a check to Judge Cantrell and the United States National Bank. (Attachment A). On November 16, 1981, Cantrell banked the check. (Attachment B). The Rajneesh paid \$625/pair for nine cow/calf pairs, plus \$.50/lb. for the remaining 30 head. The cattle sold by the pound weighed a total of 24,120 pounds. (Attachment D).

⁵ I do not know whether Judge Cantrell was among those county officials.

⁶ I do not know the circumstances under which Cantrell purported to "advise" Ellett and Comini of his pending cattle sale.

⁷ IRS 694.061 requires that cattle transported from the premises of the owner or person in lawful possession to another place in the state must be accompanied by a transportation certificate. A transportation certificate is a document signed by the owner or person in lawful possession of the cattle to be transported, on a form presented by the Department of Agriculture, setting forth the identity of the cattle owner, the point of origin and destination of the cattle, the number of head, a description of the distinguishing characteristics of the cattle, including brands, tags, breed and sex, and an authorization to transport if it is to be performed by a person other than the owner.

⁸ Buck Hodges brand inspected only 48 head of cattle. It remains unclear whether the sale involved 48 or 50 head of cattle. See Attachment D.

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According to the article in the Dalles Chronicle (Attachment B), the cattle sale grossed \$17,540. However, I have been unable to obtain a copy of the bill of sale. A letter dated February 18, 1982 from Judge Cantrell to Buck Hodges indicates that there was no bill of sale. (Attachment H).

3. Brand Inspection

Brand inspection is required by law to prevent livestock theft. See Attachment E and ORS Chapter 605. ORS 604.046(3) authorizes the Department of Agriculture

"to establish and carry out a system of brand inspection at the times and places as an intra-state, regional movement of cattle takes place, or as a change of ownership takes place."

Pursuant to this authority the department adopted an administrative rule governing livestock brand inspections. That rule provides in pertinent part, at OAR 603-14-205:

"Subject to OAR 603-14-210, all cattle shall be inspected at any time there is a transfer of ownership in said cattle, by sale or otherwise. However, the buyer and seller of cattle may agree to have inspection of groups of cattle at a designated collection point at any time within 48 hours after the sale or other form of transfer of ownership has taken place."⁹

Here the evidence shows that no brand inspection took place during the sale or at anytime soon afterwards. Instead, the brand inspection occurred on December 21, some six weeks after the cattle were transferred.¹⁰

According to Buck Hodges' report (Attachment D), Hodges visited Rajneeshpuram on December 7. His reasons for visiting the ranch at that time are not identified in the report. While there he was told by several Rajneesh members that they had purchased cattle from Judge Cantrell. However, despite one and one-half hours of searching, they were unable to produce a copy of the bill of sale.

⁹ OAR 603-14-210 provides:

"The brand inspection required by OAR 603-14-205 shall not apply to the following:

(Footnotes 9 and 10 continued on next page)

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(1) Cattle that are:

(a) Transported or moved directly (without diversion) to a licensed slaughtering establishment, or a licensed auction yard, whereat regular brand inspection will be performed upon said cattle; and

(b) Sold directly to the person causing such transportation or movement and such brand inspection referred to in subsection (a), of this rule; and

(c) The subject matter of an assurance given to the seller that such cattle are to be so brand inspected and transported or moved within eight days of the transfer of ownership.

(2) Cattle, not to exceed fifteen head, that are sold by seller to the same person during a consecutive eight-day period, and for which an exemption certificate, prescribed by and obtained from the Department, has been issued to said purchaser with the fee paid therefore. An executed copy of said exemption certificate shall be submitted to the Department within eight days of the execution thereof.

(3) Cattle that are handled by a custom slaughtering establishment wherein hide inspection and other requirements are performed.

(4) Calves up to 30 days of age."

The exceptions listed in this subsection do not appear to apply to this cattle sale.

¹⁰ Buck Hodges' affidavit (Attachment E) states that cattle normally are brand inspected at the time of sale, usually over the scales. Generally the seller contacts the brand inspector to inform him when he should be available to brand inspect the animals. Here Judge Cantrell never notified Hodges of the sale. According to Hodges' report (Attachment D), Cantrell did not know that brand inspection was required. As a result of Cantrell's failure to abide by state law, Hodges issued the Judge a warning citation. See Attachment D.

Buck Coe has informed me that he was the person who first brought this matter to the attention of Buck Hodges.

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On December 8, 1981, Judge Cantrell contacted Buck Hodges by phone and informed him of the cattle sale. Cantrell told Hodges that he was unfamiliar with the brand inspection laws because Art Rice does most of his buying. Cantrell also said he would make an effort to have the cattle brand inspected the next week. (Attachment D).

On December 18, 1981, Judge Cantrell contacted Buck Hodges at a cattle auction to inform him that the cattle should be ready for inspection within a few days. Cantrell stated that the Rajneesh

"have a transportation slip he made out for a bill of sale, like he always fills out when he sells cattle; that they probably wouldn't show it to (Hodges) because they were trying to protect (Cantrell); that (Hodges) should hear from Harvey by Monday, re: brand inspecting the cattle."
(Attachment D).

On December 21, 1981, Hodges and Loren Corwin, Madras, went to Rajneeshpuram and met with Cantrell.¹¹ Cantrell could not remember how many cattle he sold and could not produce his papers of the sale, but he did have the correct bill of sale for the branded cattle he had previously bought but not rebranded and had now sold to the Rajneesh. Cantrell told Buck Hodges that he had sold seven pairs at \$625 and the remaining cattle at \$.50/lb. Later he corrected the number of pairs sold to nine pairs.

Also on December 21 Hodges brand inspected the cattle. According to his report, Bob Harvey never came out during the brand inspection, although Hodges had been advised twice by Rajneesh members and once by Cantrell that Harvey would appear. (Attachment D.)

¹¹ Loren Corwin is a field hand and cattle appraiser who has worked on and off at the Madras and Redmond Auction Yard for 20 years. See affidavit of Loren Corwin (Attachment I). Buck Coe informs me that Corwin accompanied Hodges to Rajneeshpuram because Hodges required assistance from an experienced cattleman and did not know whether Bob Harvey would be available. I have not contacted Hodges for confirmation on this.

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On December 22, 1981, Hodges visited Judge Cantrell at Cantrell's office in The Dalles. Cantrell informed Hodges that he made the cattle deal with Rajneesh representative John Shelfer; that he weighed the cattle at the Dufur Elevator; that he sold nine pairs, and the other cattle were weighed in three drafts (weights 8,610, 8,630 and 6,890 pounds); and that Huck Rolff hauled the cattle to Rajneeshpuram. Cantrell also provided Hodges with his signed transportation slip at that time. (Attachments D, E.)

Cantrell's transportation slip is dated November 9, 1981. However, Buck Coe stated before the Ethics Commission that this slip was not prepared or signed until after the December 21 brand inspection. According to Coe, Cantrell brought a blank transportation slip to the brand inspection. While at the ranch he went into a building to find out the name of the purchaser. When he came out the name of the buyer was written on the back of the slip. That same slip was then filled out and given to Buck Hodges the following day.

4. Value of Cattle Sold

On January 26, 1982, Buck Hodges and Loren Corwin signed affidavits relating to this cattle sale. See Attachments E, I. These affidavits contain substantial relevant information addressing the nature of the cattle sale and the value of the cattle sold.

Hodges states that he has been a brand inspector in Oregon for over 25 years. He describes the steps he went through in inspecting these 48 cattle as "extremely unusual," noting that inspection generally occurs at the time of sale; that the seller generally knows how many cattle he has sold; and that the seller generally provides the inspector with the transportation slip at the time of inspection.

Hodges indicates that in his 25½ years as brand inspector he has "never seen a sale in which cows, calves, heifers, bull calves and large bulls were all weighed together and sold at the same price." Hodges explains that cattle sold by the pound ordinarily "are split up by sex, size and type of cattle and weighed separately. A flat \$.50 per pound is a very unusual type of arrangement." (Attachment E.)

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Hodges also indicates that the price Cantrell received for pairs was very high for the time of year and the type and quality of cattle involved. He notes that in November pairs paid between \$435 and \$470, with \$470 for a good quality pair. In his opinion none of the cattle involved in this sale were of good quality for beef. Many of them were of poor quality. About half of the cattle were old. See Attachment E.

Loren Corwin states that he accompanied Hodges to Rajneeshpuram and saw each of the cattle inspected. He describes these cattle as "off-quality" or "dairy quality,"¹² which is poor for beef production. Corwin notes that "a few of the cattle were of good quality for beef, but those of good quality were old. The young ones were not much good for a commercial herd for beef production, and poor kinds of cattle to make money with."

Like Hodges, Corwin states that in determining the value of cattle it is customary "to separate them by kind, weight, age, sex, etc. and weigh them. Mixing all types of cattle together and weighing them and selling them at a fixed price is very unusual." (Attachment I.)

Corwin did not appraise the value of these cattle on his visit to Rajneeshpuram on December 21. However, in his opinion not more than 12 of the 48 cattle he saw would have brought \$.50 a pound at sale at that time. Those that would have brought that price were some calves and light cattle.

However, Corwin notes that "dairy quality" cows sell at about \$.20/lb. less as beef cattle than good beef production cattle. Corwin also states that a dairyman would not have purchased these cattle for dairying due to poor quality.

Corwin estimates that the cattle he saw would have brought about \$.33 to \$.35 a pound at the time of inspection. At the time of sale they might have brought another nickel a pound. He states that "(g)ood quality steer will bring about \$.62 a pound today, a good quality heifer \$.50 a pound. These cattle were not good quality. There were no steer calves. There were about one dozen mixed calves that would bring \$.50 a pound.

¹² Corwin describes "dairy quality" as "beef cattle bred with dairy cows."

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Corwin says that he could not determine which of the cows and calves were sold as pairs. He states that a fair estimate for pairs is that the cows would weigh about 800 pounds and sell at \$.40/lb. (\$320 per cow) and that calves would sell at \$200/head, for a total of \$520/pair.

Corwin also found unbelievable the total weight assigned to the cattle sold by the pound. He states:

"When the nine pair (18 cattle) are removed, the average weight per head (including one bull) equals 804 pounds per head. Sold at \$.50 a pound, this figure is \$402 per head for bulls, heifers, cows, etc. In my estimation, these weights and prices are way out of line. They could not have weighed that much and brought that amount of money, considering the kinds of cattle involved in this sale, in a normal sales transaction. The value of these cattle was much lower."

ANALYSIS

To prove that the Rajneesh committed the crime of bribe giving, a prosecutor must show that the Rajneesh offered or agreed to offer a "pecuniary benefit" to Judge Cantrell with the intent to influence his vote in an official proceeding. To prove that Cantrell committed the crime of bribe receiving, a prosecutor must show that Cantrell solicited a bribe or knowingly accepted a pecuniary benefit with the understanding that his official actions would be influenced. If Cantrell committed bribe receiving, he would be guilty of official misconduct.

The facts surrounding this cattle sale indicate unusual and questionable conduct at every turn. The manner in which the negotiations took place, the timing of the sale, the absence of records, the violations of disclosure and brand inspection laws, the sale of all types, sexes and ages of cattle at one fixed price, the transportation of the cattle at night, and most notably the disparity between the market value of the cattle and the price paid, raise serious doubts about the propriety of this sale and clearly warrant a full scale investigation.

The deal was suspicious from the very beginning. When Cantrell first visited the ranch, on August 12, 1981, the Rajneesh told him that they needed cattle. Then on October 4, at the private luncheon for Cantrell and his wife, they again approached him with their need for cattle. See tape of Ethics Commission

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hearing. Surely they knew by then that Cantrell bought and sold cattle. Just as surely they invited him to lunch because of his position in county government.

Cantrell claims that on October 4 he advised the Rajneesh to buy the cheapest animals available on the market. (Ethics Commission hearing.) Yet on October 13 -- nine days after the luncheon, and six days after Rajneesh representatives broached the possibility of city incorporation with Wasco County officials -- he was offering to sell them his cattle at prices greatly in excess of the costs of the cheapest cattle available on the market (and, as shown below, at prices ten to fifteen cents per pound higher than most of his cattle were worth).

On October 14 the Rajneesh officially filed for incorporation. One week later Rajneesh representatives visited Cantrell's ranch, and on October 25 they agreed to purchase 40 or 50 head of his cattle. They reached this agreement just ten days before the incorporation hearing. However, the agreement was not reduced to writing. It is unclear the agreement was legally binding.

No money changed hands on October 25. No money changed hands until November 15, after Cantrell voted in favor of incorporation and six days after the cattle were shipped. See Attachment A.

At the November 4 hearing Judge Cantrell failed to publicly disclose the cattle sale. On November 9, when he shipped the cattle, Cantrell failed to notify the brand inspector or pay the \$1.00 per animal brand inspection fee. See Attachment E. Judge Cantrell must have known of these requirements, with three years' experience as a county official and over 30 years experience as a cattleman. (Testimony before the Ethics Commission.)

When Judge Cantrell finally contacted the brand inspector -- after news of the sale had become public -- he could not recall how many cattle he had sold. He was not even sure how many pairs he had sold. See Attachment D.

These lapses of memory, omissions and irregularities suggest much more than lax business practices or utter ignorance. They suggest that Cantrell and the Rajneesh had something to hide. This suggestion is further enhanced by the many other unusual circumstances surrounding this sale, including the facts that 1) the cattle were not separated and priced by type, age, and

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sex, as is standard practice; 2) the cattle were weighed and shipped at night, which Buck Coe testified is highly unusual; 3) there was no bill of sale; 4) Bob Harvey, the only experienced cattleman at Rajneeshpuram, refused to cooperate in the brand inspection; 5) the two transportation slips show different quantities of cattle sold; and 6) ¹³neither transportation slip was produced at the brand inspection.

The most noteworthy irregularity, however, is the discrepancy between the price paid for the cattle (\$17,540) and the value received. This discrepancy strongly suggests the presence of a sizeable "gift", valued in the thousands of dollars.

Judge Cantrell sold his nine pairs at \$625/pair and the remaining 30 head (weighing 24, 130 pounds) at \$.50 per pound. At these prices the Rajneesh paid \$5,625 for the pairs (9 x \$625) and \$12,065 for the remaining cattle (24,130 x \$.50). This totals \$17,670 -- \$130 above what Cantrell claims he received.

However, sworn testimony in Buck Hodges' affidavit (Attachment E) indicates that pairs were worth only \$435 to \$470 in November, with \$470 for good quality pairs. Cantrell's cattle were of poor quality.

At \$435/pair, Cantrell's pairs would be worth only \$3,915 -- \$1,710 below the price the Rajneesh paid for pairs.

Further, according to Loren Corwin's affidavit (Attachment I) these cattle were "dairy quality" cattle, poor for beef production. In his opinion most of these cattle were worth only \$.33 to \$.35 a pound at the time of inspection, though when sold they might have brought about \$.40 per pound. Some were old, and the young ones "were not much good for a commercial herd for beef production."

At \$.40/lb. 24,130 pounds of cattle are worth \$9,652. This is \$2,413 below the price the Rajneesh paid. At \$.35/lb., these cattle would have grossed \$8,445 -- some \$3,620 below the price the Rajneesh paid for the cattle sold by weight.

¹³ If Cantrell's transportation slip did not exist at the time, and the slip signed by Harvey showed a sale of 50 cattle, this might explain why neither Cantrell nor the Rajneesh would produce the slip at a brand inspection for 48 cattle.

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Thus, at \$435/pair and \$.40/lb, Cantrell's cattle were worth \$13,567. This is \$3,973 below the price the Rajneesh paid. At \$435/pair and \$.35/lb, the cattle were worth just \$12,360 -- \$5,180 below what the Rajneesh paid.

The prices quoted by Hodges and Corwin are supported by figures in Madras Auction Yard Reports for the relevant periods.

Madras Auction Yard stubs dated October and November 1981 show that prices for pairs range between \$125 and \$520, with many pairs selling for around \$400. See Attachment J.

The Madras Auction Yard weekly reports show the following prices for cows, with the highest price for the best quality cows:

<u>Date</u>	<u>Hundred-Weight</u>
September 30, 1981	\$36.50 - \$44.00
October 21, 1981	\$35.00 - \$45.00
November 4, 1981	\$31.00 - \$40.00

"Good" quality heifers ranged from \$43.50 to \$50.00 per hundred weight on these dates.

As is indicated by the affidavit, the quality of Judge Cantrell's cattle was less than "good".

However, apart from the factors of price per pound and price per pair, there is also the issue of the weight of the cattle sold.

Corwin states in his affidavit that Cantrell's cattle could not have weighed 804 per head on the average. In his opinion, "These weights and prices (\$402 per head) are way out of line." For each 1,000 pounds that the 24,130 lb. figure is too high, Judge Cantrell would have received an additional \$500 beyond fair market value. Corwin said the 24,130 weight figure was "way out of line." If the correct figure would be off only by as much as 20% (a 4,826 lb. difference) that would mean the price paid would be an additional, approximately \$2,400 too high.

Thus, using the \$435/pair, \$.35/lb. and 19,304 weight figures, the Rajneesh would appear to have paid approximately \$7,580 or about 50% more than the fair market value of the cattle.

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By shopping elsewhere the Rajneesh apparently could have bought cattle of higher quality at a lower price. However, there is no evidence that the Rajneesh shopped around for cattle. Rather, the Rajneesh seemed to be interested in buying from Cantrell in particular for more than two months prior to the October 25 agreement on the sale -- since the first expression of interest in a purchase by Rajneesh representative David Knapp on August 12.

RECOMMENDATION

I recommend that we ask Governor Atiyeh to direct the Attorney General to open a full-scale investigation of this matter. ORS 180.070(1) authorizes the Attorney General to take full charge of any investigation or prosecution which the circuit court has jurisdiction, when directed to do so by the Governor. When acting under this authority, the Attorney General has all the powers of a District Attorney. ORS 180.070(2).

Generally the County District Attorney handles criminal investigations. ORS 8.660 authorizes the local District Attorney to conduct all prosecutions for public offenses occurring within his County. However, where the District Attorney is associated with the accused in business, the statutes provide for appointment of a special District Attorney. ORS 8.710.

Here it is unlikely that Bernard L. Smith, Wasco County District Attorney, is the appropriate official to conduct such a criminal investigation. Mr. Smith serves as the legal advisor to the Wasco County Court. Mr. Smith represents the County Court and Judge Cantrell in local proceedings involving the Rajneesh. Further, Mr. Smith is defending Judge Cantrell in the LUBA and Circuit Court proceedings concerning incorporation of Rajneeshpuram. These proceedings involve the issue of whether the same sale of the cattle constituted an undisclosed conflict of interest, which denied parties to the proceeding an impartial tribunal. His close business associations with Judge Cantrell prevent him from properly carrying out the functions of the District Attorney in this matter.

If we approached Mr. Smith, he would probably appoint a special District Attorney to handle the matter, if he chose to pursue the matter at all. I think the better approach is to go directly to the Governor and, through him, to the Attorney General.

I have discussed this matter with James M. Brown, a member of 1000 Friends' Board of Directors and the Former Attorney General of Oregon, and with Jeffrey Rogers, a lawyer in the United States Attorney's Office in Portland and a former 1000 Friends' Board member. Both gentlemen agree that the appropriate action would be to discuss this matter with the Attorney General and get his office involved.

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Jim Brown suggested that we carefully put our information together and share it with the Attorney General. He expressed great confidence and trust in the Attorney General's criminal investigation unit and its division head, Chuck Pritchard. Jim also explained that the Attorney General and local District Attorney have concurrent authority to conduct criminal investigations. While a district attorney with a conflict of interest might ask the Attorney General to assist in or take over an investigation, such an invitation from the district attorney is not a prerequisite to the state's participation.

Jeff Rogers also suggested that we first meet informally with the Attorney General or his staff.

MJG/lobw