EXHIBIT 1
DATE 3.14.05
SB 487

THE CITY OF LIVINGSTON, MONTANA

A municipal corporation and political subdivision of the State of Montana

Office of City Attorney:
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February 17, 2005

Brenda Nordlund
Assistant Attorney General
State of Montana
215 N. Sanders
Helena, MT 59620-1401

BY FACSIMILE to 444-3549

re: Senate Bill 487

Dear Brenda,

I understand that Senate Bill 487 will be heard this afternoon. I endorse the proposed bill and encourage the Montana Legislature to enact the bill into law. As you know, I am currently engaged in a court action wherein the constitutionality of 61-8-351 (7) Montana Code Annotated as it currently exists is being challenged as the statute makes the registered owner the prima facie driver. The issue before the court is shifting the burden of proof from the State to the registered owner to prove that he was not driving.

I have a major concern on the constitutionality as the Montana Supreme Court has previously held in *City of Missoula v. Shea*, 202 Mont. 286, 661 P.2d 410 (Mont. 1983) that a Missoula parking ordinance which similarly made the registered owner of the illegally parked vehicle the *prima facie* guilty party was unconstitutional. The Montana Supreme Court held that "the effect of the presumption is to violate constitutional due process requirements by shifting the burden of persuasion to the defendant and contradicting the presumption of innocense."

However, by making the registered owner responsible rectifies the constitutional issue. In *State v. Luchau* 297 P.2d 415, 992 P.2d 840 at 853, the Montana Supreme Court stated that "a law which creates a rebuttable presumption that an illegally parked vehicle was parked by its owner will run afoul of *Sandstrom*, but one imposing strict liability on the owner regardless of who parked the vehicle will not."

School bus passes occur frequently. A constitutional law is needed to protect our children. Not

only do I have the case challenging the constitutionality of the current bus pass law, I also have six additional cases which are being held in abeyance pending the constitutional outcome.

Please enter my letter into the Legislative Record in support of the proposed amendment.

Sincerely,

Bruce E. Becker
Livingston City Attorney