THE CITY OF LIVINGSTON, MONTANA

A municipal corporation and political subdivision of the State of Montana

SENATE HIGHWAYS AND TRANSPORTATION
EXHIBIT NO. 4
DATE: 2/17/05
BILL NO. SB 487

Office of City Attorney:
Bruce E. Becker
203 South Main
P. O. Box 1113
Livingston, MT 59047
Telephone: (406)222-2905
Facsimile: (406)222-7725

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

Billings Gazette

FRIDAY, FEBRUARY 11, 2005

Gazette Opinion

Enforcing seat belt law would save lives, money

Last weekend, five people lost their lives in vehicle crashes on Montana roads.

The tragedy is even greater because some of them probably would have survived — if only they had been wearing seat belts. None was wearing a seat belt and four were ejected from their vehicles. All were in single-vehicle crashes.

In fact, according to preliminary data from the Montana Highway Patrol, seat belts were not used by 14 of 16 people who died so far this year on Montana highways. The 17th traffic victim was a motorcyclist.

The evidence is overwhelming: Seat belts vastly improve safety. Yet a proposal that would increase the use of seat belts in Montana is stuck in the Senate Judiciary Committee for lack of one more vote to bring it to the Senate floor.

$44 million in damages

Sen. Mike Cooney, D-Helena, who is sponsoring SB43, acknowledged that the bill will face stiff opposition on the floor as well. What legislators are debating is whether Montana's seat belt law should be enforced like other traffic laws. The present law doesn't allow officers to cite seat belt violations unless the driver also commits some other violation.

In states that enforce seat belt laws like other traffic laws, the percentage of people buckling up is higher. The National Highway Traffic Safety Administration estimates that having a primary seat belt law would save 25 lives a year in Montana, prevent 183 serious injuries and save $44

Child safety bill languishing

Meanwhile in the Montana House, another common-sense traffic safety measure failed on second reading and was sent back to the Transportation Committee. House Bill 52, sponsored by Rep. Jill Cohenour, D-Helena, would restore primary enforcement for the state's child car seat law. Until a couple of years ago, the child car seat law was enforced like any other traffic law. Cooney said that in the process of updating the law to reflect the latest scientific research on booster seats and child car seats, the primary enforcement provision was eliminated inadvertently.

Now if a Montana officer notices little kids standing on the seat as a car goes by, she can't stop the car. If the officer sees a toddler sitting on the driver's lap or children climbing over the seats, she can't intervene for safety's sake — unless the driver also is violating some other law.

In HB52 and SB43, Montana legislators have an opportunity to save lives, lessen injury and save millions of dollars — every year. We urge all lawmakers to support these two bills. These safety laws don't do as much good as they would with primary enforcement.

Stay in touch with Legislature

To leave a message for a Montana legislator or check the status of a bill, call the Legislative Information Office at (406) 444-4800. You may leave messages for up to five legislators per call. Regular office hours are 7:30 a.m. to 5 p.m. weekdays and 8 a.m. till adjournment on Saturdays.

To look up bill information via the Internet or send an electronic message to a legislator, go to **www.leg.state.mt.us/session.htm.** This Web site will also tell you what committees legislators serve on, what bills they are sponsoring and how they have voted on legislation

Send letters to individual legislators at:

■ Montana Senate, P.O. Box 200500, Helena, MT 59620-0500

■ Montana House of Representatives, P.O. Box

Montana Legislature 2005