ATTORNEY GENERAL
STATE OF MONTANA

3-8-05 6
HB 615

Mike McGrath
Attorney General

Department of Justice
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MEMORANDUM

TO: Representative Chris Harris

FROM: John Connor, Chief Criminal Counsel

DATE: February 18, 2005

SUBJECT: House Bill 615

House Bill 615 proposes to create an environmental crimes investigation and prosecution office in the Department of Justice, which would handle cases referred at the request of the Department of Environmental Quality.

Prosecution services in the Department of Justice are managed by the Prosecution Services Bureau. This bureau is derived from the provisions of Mont. Code Ann. § 44-4-101, which creates the position of training coordinator for county attorneys, a position I currently occupy. Mont. Code Ann. § 44-4-111 provides a statutory process by which the training coordinator, and thus the bureau managed by the training coordinator, may act as a special prosecutor for criminal cases referred by county attorneys. Mont. Code Ann. § 44-4-115 specifies the creation of a part-time special prosecutor position in the Department of Justice dedicated solely to assisting in the prosecution of fish, wildlife and parks cases statewide. We are also statutorily authorized to prosecute Medicaid fraud, workers' compensation fraud, and Legislative Auditor-referred cases.

Aside from the foregoing provisions, there is no statutory authorization or procedure for the assumption of prosecution services by the Attorney General or our department. Although it might be argued that the Attorney General's general powers under Mont. Code Ann. § 2-15-501 would allow the department to prosecute environmental crimes referred by DEQ, having a specific statutory authority as proposed in House Bill 615, would certainly clarify our authority and forestall any legal challenges to our assumption of such cases.

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