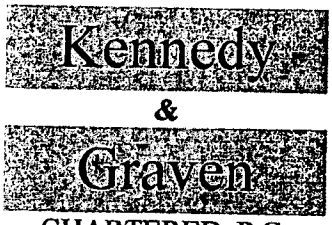
EXHIBIT 5
DATE 1/12/07
HB 128



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Friday, January 12, 2007

Chairman Rick Jore
Members of the House Education Committee
Montana House of Representatives

Via E-mail

Ladies and Gentlemen:

This letter is being provided for reference as part of the committee hearing on House Bill 128 (the "Bill") entitled "An Act eliminating outmoded requirements for prior review or approval by the Attorney General of local government and school bond actions, special education cooperative contracts, and textbook surety bonds." The Bill removes the *antiquated statutory requirement* that the Attorney General review certain debt proceedings of local government units. Please note that the Bill does not prohibit a local unit of government (including school districts) from requesting advice from the Montana Attorney General (the "Attorney General") with respect to any of the statutory provisions that the Bill proposes to amend.

Kennedy & Graven, Chartered, P.C. is a nationally-recognized bond counsel firm and acts as bond counsel and underwriter's counsel for municipal bond financings by states, municipalities, and local units of government throughout the United States (including various Montana local government units). I am a member of the National Association of Bond Lawyers and am licensed to practice law in Montana and Minnesota. My legal practice primarily consists of acting as bond counsel to local units of government on municipal bond financings in both Montana and Minnesota. One of the functions of bond counsel is to deliver an "unqualified opinion" with respect to the validity and tax status of municipal bonds issued by state and local government units. An unqualified opinion by a nationally-recognized bond counsel (such as Kennedy & Graven, Chartered, P.C.) with respect to an issue of municipal bonds is the recognized standard in the municipal bond market place for selling municipal bonds to the public. According to the National Association of Bond Lawyers' most recent *Model Bond Opinion Report,* in order to render an unqualified opinion, bond counsel must be "firmly convinced that the highest court of the relevant jurisdiction, acting reasonably and properly briefed on the issue, would reach the legal conclusions stated in the opinion."

The Bill will modernize certain statutory provision relating to municipal bond law in Montana and will help local governmental units (including municipalities and school districts) in Montana incur debt in a more efficient manner. The provisions of Montana law that are proposed to be amended by the Bill were enacted during times when the municipal bond marketplace was much smaller and there was not an established group of lawyers specializing in the practice area. This is not the case anymore. In 1979, the lawyers that practice municipal finance law formed the National Association of Bond Lawyers ("NABL") and NABL currently has approximately 3000 members. In addition, the Bond Buyer's Municipal Marketplace (the "Red Book") has also been developed as the primary source for municipal bond industry professionals to determine whether or not a law firm or lawyer is experienced in municipal bond law. The Red Book is published twice a year and contains a listing of the law firms and lawyers that have rendered a sole legal opinion in connection with the sale of state and/or municipal bonds in the two-year period preceding each publication of the Red Book. Generally, in order for municipal bonds to be offered for sale to the public by an investment banking firm or financial advisor (such as Piper Jaffray & Co. or D.A.

Davidson & Co.), the bond counsel opinion that opines to the validity and tax status of each municipal bond issue must be rendered by a law firm or lawyers listed in the Red Book. It is generally unnecessary to require the review of municipal bond proceedings by a state attorney general in order for municipal bonds to be marketable. Attorney general review is generally considered unnecessary as a result of the development of NABL, the high legal standard required to deliver an unqualified bond counsel opinion, and the development of the Red Book, among other items.

The laws of a majority of the states (for example, Minnesota and Colorado) do not require attorney general review of municipal bond proceedings prior to the issuance of municipal bonds by a local government unit. There are also inconsistencies in Montana law regarding the requirement for Attorney General review of municipal bond proceedings. The provisions of Montana law proposed to be amended by the Bill require review of proceedings by the Attorney General while many of the provisions of Montana law for the issuance of municipal bonds due not require Attorney General review. Two examples of Montana law in which Attorney General review is not required are the issuance of special improvement district bonds by a city pursuant to MCA 7-12-4100, et seq. and the issuance of general fund bonds by a city pursuant to MCA 7-1-4104.

In addition to modernizing specific municipal bond law provisions in Montana, passage of the Bill should have the affect of lowering legal fees charged by bond counsel to local units of government in Montana. For example, if the Bill is adopted in its current form, Kennedy & Graven, Chartered, P.C. will not be required to organize and provide the proceedings to the Attorney General relating to issuance of a general obligation bond by a municipality or school district and, therefore, we will not bill our client (the municipality or school district) for this time and expense.

Please do not hesitate to contact me if any members of the committee have questions regarding this letter. I may be reached at (800) 788-8201 or bjohnson@kennedy-graven.com.

Very truly yours,

Benjamin W. Johnson

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Cc: Brenda Nordlund, Esq., Assistant Attorney General
Alec Hansen, Montana League of Cities and Towns

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