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Montana Legislative Services Division

Legal Services Office

January 25, 2007

Senator Jerry Black
445 O'Haire Blvd.
Shelby, Montana 59474

Dear Senator Black:

I am writing in response to your inquiry concerning LC0933. As currently drafted, the draft bill prohibits a legislator from accepting employment with the state during the legislator's term of office. This restriction would apply to the university system, because it is an entity of state government, but would not apply to a school district because school districts are local government entities.

The draft bill would not prohibit a legislator from competitively bidding on a state contract. The restrictions on legislators contracting with the state are contained in section 2-2-201, MCA. That section precludes legislators from being interested in a contract made by legislators in their "official capacity". A legislator bidding on a contract in the legislator's private employment is not acting in an "official capacity". In addition, section 2-2-201, MCA, is not amended in LC0933.

The draft bill does not restrict a state employee from being a candidate for the Legislature. The draft bill only prohibits a legislator from accepting employment with state government during the legislator's term of office. The basis and compelling reason for this exclusion is to implement the directive contained in section 2-2-103(1), MCA, which provides that the holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees.

I hope that I have adequately addressed your questions.

Sincerely,

Gregory J. Petesch
Director of Legal Services