SENATE HIGHWAYS
EXHIBIT NO. 2
DATE 2-8-07
BILL NO. SB-414

October 26, 2006

William H. Towle
Attorney at Law
10449 Upland Trail
Missoula, MT 59804

Re: Commercial Area Exemption

Dear Ms. Towle:

This will respond to your letter of August 23, 2006 requesting "an informal opinion as to the geographic scope of the commercial zone exemption in 69-12-102(c) as it relates to the for-hire transportation of household goods in the City of Missoula." I apologize for the tardy response.

Section 69-12-102(1)(c), MCA, reads:

> This chapter does not affect: the transportation of household goods and garbage by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas of a city, town, or village, as determined by the commission[.]

This section was amended to its present form in the 1995 session. Before 1995 the section read as follows:

> This chapter does not affect: the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission[.]

In legislative format, the changes in SB 378 in 1995 were as follows:

> This chapter does not affect: the transportation of ~~property~~ <u>household goods and garbage</u> by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States

> census or in the commercial areas ~~thereof~~ of a city, town, or village, as determined by the commission[.]

As you can see, the 1995 amendments to § 69-12-102(c) changed the meaning of that section significantly. Prior to 1995 that section created an exemption for certain transportation in cities (towns or villages) of less than 500, or in the commercial areas of those cities. By rule (ARM 38.3.106) the Commission implemented that exemption as follows:

> For the purposes of applying the exemption from the Montana Motor Carrier Act contained at 69-12-102[c], MCA, the term "commercial areas" shall include all points within a distance not exceeding two miles from the post office of any city, town or village with a population of less than 500 persons, according to the latest United States census.

After 1995 § 69-12-102(c) creates a certain exemption in cities of less than 500, but also in the commercial areas of any city, as determined by the Commission. This post-1995 exemption has never been implemented by the Commission. As you can see, ARM 38.3.106, adopted in 1972 and never amended, applies to the pre-1995 exemption. The Commission has not undertaken a rulemaking to determine the size of commercial areas in cities with a population of greater than 500.

The Commission has not implemented the post-1995 exemption because it was not aware until now that the 1995 legislature made the significant change described above. Commission staff continues to enforce the pre-1995 exemption. Such enforcement has not brought to the Commission's or the Commission staff's attention the significant change to the exemption section made in 1995.

Based on the fact, as described, that the Commission was not aware of the significance of the 1995 amendment until it received your letter; and based on the fact that Commission staff actively followed the bill (Senate Bill 378) that amended § 69-12-102(c) and has no recollection of any committee or floor discussion of the change to that section at issue; and given that there is no discussion of the change at issue in the legislative history of SB 378; and based on my conversation with counsel for Legislative Services Division (LSD), it is my conclusion that the expansion of the exemption was inadvertent. LSD has a policy of cleaning up and improving the language of the Montana Code as sections are opened up by the legislature for amendment. (Obviously, that policy does not include changing the meaning of the law.) In this case, I think that in trying to remove the word "thereof" the bill drafter failed to complete the reference to cities of less than 500, and thereby changed the meaning significantly, as discussed. Section 69-12-102(c) was opened by the 1995 legislature to substitute "household goods and garbage" for "property." This change was integral to the purpose of SB 378, is referenced in the SB 378 legislative history, and is recalled by Commission staff.

The Commission is aware that it cannot fail or refuse to implement the plain meaning of a statute based on its conclusion that the legislature did not mean what the statute plainly says. However, given that the legislature meets in regular session in two months, the Commission will not act now to change its implementation of § 69-12-102(c). The 2007 legislature can again consider that section. If the legislature makes no change to the section then the Commission will accordingly begin a rulemaking to define the scope of the commercial area exemption, pursuant to present law. If the legislature changes the section, then the Commission will implement the section consistent with legislative direction.

I hope this has been responsive. Please contact me with questions or comments.

Sincerely,

Robin A. McHugh
Administrator, Legal Division

RAM/cj

Cc: Commissioners
Wayne Budt, Administrator, PSC Transportation/Centralized Services Division