STATE ADMINISTRATION
Exhibit No. 3
Date 3-26-07
Bill No. HB-729

MISSOULA
Independent

Support for HB 729

Under current Montana law, private parties can fulfill their obligation to give public notice for various purposes, such as publication of a summons in a civil action (M.C.A. §25-3-302), by placing an advertisement in "a newspaper of general circulation." But until recently, county governments were required to utilize a newspaper of general **paid** circulation with a USPS **periodicals mailing permit**. During the 2005 session, the Legislature passed a bill to revise MCA 7-1-2121, which appeared to be the relevant law, but the Montana Newspaper Association later pointed out an inconsistency with MCA 7-5-2411 and discouraged county governments from taking advantage of the new law. HB 729 cures the inconsistency by making revisions identical to those made in 2005 to the parallel statute. The changes will allow county governments to finally seek competing bids for their legal advertising from viable free papers like the Missoula *Independent*.

The bill is simple. It is fair. And it will benefit county governments and taxpayers.

Free rack distribution is a legitimate approach to newspaper publishing. Yellowstone and Silver Bow counties have substantive free weekly newspapers that would be suitable for public notices, but like the *Independent*, they do not fulfill the requirement for paid circulation set forth in MCA 7-5-2411. Looking toward the future, it's easy to imagine many more free weeklies taking root in other Montana cities. There's a current effort already underway in Helena and a likely effort developing in Livingston. The time has come for state law to recognize the trend.

Contrary to what you might hear from potential opponents of this bill, free papers can and do adhere to strict and reliable standards of counting and reporting their circulation, standards at least as strict and reliable as most paid newspapers in the state. The average net circulation of a single issue of the Missoula *Independent* currently exceeds 20,000 copies, making it the fourth largest newspaper in the state, measured by readership. Distribution is carefully managed. The *Independent* counts the number of copies dropped at each of our more than 600 pick-up points and likewise counts the number of copies left behind every week. Four times a year, an independent auditor from Verified Audit Circulation, a private San Francisco-based company, secretly monitors our carriers delivering the paper and verifies the accuracy of the count.

HB 729 includes a provision requiring such audits (or alternately, a sworn statement to the postal service and corresponding second-class mailing permit), for any newspaper seeking to publish county notices. The audit requirement ensures accurate representation of circulation figures.

"A newspaper of general circulation" has been defined by long-standing precedents established by the Montana Supreme Court. Under Montana law, for the practical purposes set forth in this bill, the legal definition of "a newspaper of general circulation" is every bit as clear and effective as "a newspaper of general paid circulation with a periodicals mailing permit."

In *State ex. rel. Bowler v. Board of County Commissioners of Daniels County, et. al., (1938)* 106 Mont. 251, 76 P 2d 648, the Montana Supreme Court established guidelines defining a newspaper of general circulation as containing "news of a general character and interest to the community." In other words, **newspapers have news in them**.

There is no defensible basis for the contention that advertising circulars like the *Adit* in Helena could be considered newspapers under HB 729. Advertising circulars are not considered newspapers of general circulation under Montana law, because they do not satisfy the requirements of the *Bowler* decision. HB 729 does not change that.

For comparison, the corresponding criteria for a periodicals permit set by the United States Postal Service require merely that half of the issues contain no more than 75 percent advertising. The USPS requirements say nothing about general reader interest or subject matter. In fact, course catalogs and private newsletters from fraternal organizations qualify, although they would likely fail the standard set by the *Bowler* decision. Nor does the USPS strictly demand any minimum circulation or independent verification of claimed distribution. **For the purposes of identifying viable publications for legal notices, the requirements for a periodicals mailing permit are effectively less stringent than the requirements of HB 729, which specify a newspaper of general circulation.**

In *Shelley v. Normile et al.,* 109 Mont. 117, 94 P.2d 206 (1939), the Montana Supreme Court affirmed the *Bowler* decision and addressed the issue of circulation, ruling that a newspaper of general circulation must reach a diversity of readers. Consequently, any publication that fails to reach a sufficiently large and representative group of citizens cannot be considered a newspaper of general circulation under Montana law, regardless of whether it's free or paid circulation.

Under HB 729, the legal definition of a newspaper of general circulation will not be changed or relaxed in any substantive manner. Advertising circulars, like the *Adit* in Helena, and all other publications that fail the legal definition of a newspaper under the current state law, would still fail the same well-established legal tests. The people's right to know will not be eroded in any way.

As a practical matter, the requirements for paid circulation and a periodical mailing permit no longer have any purpose. They function merely to protect the commercial interests of newspapers that meet the criteria by limiting competition, consequently increasing costs for taxpayers. Montana's counties would be better served if the relevant

statutes were changed to omit the archaic criteria for paid circulation, which is precisely what HB 729 will do, simplifying the code to "newspaper of general circulation."

HB 729 is really a very simple bill. It merely remedies an inconsistency in the current law by recognizing that some legitimate newspapers of general circulation are free and have no need for a periodicals permit. The competition engendered by the bill will undoubtedly benefit the taxpayers.

I urge the committee to move this bill forward. Thank you very much for your attention.