

Exhibit for  
April 12 minutes



*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES <sup>2</sup>

PRESENT  
DATE 4/12/2011  
HR

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PO BOX 200400  
HELENA, MONTANA 59620-0400  
PHONE: (406) 444-4800

Carroll South, Executive Director  
Board of Investments  
2401 Colonial Drive, 3rd Floor  
Helena, MT 59620

April 7, 2011

Dear Executive Director South,

The House State Administration Committee would like to thank you for your informational presentation on February 8, 2011, concerning the investment of Montana's public pension funds.

During the question and answer session following your presentation, Representative Kennedy asked about the language in Montana's Constitution, Art. VIII, Section 13, subsection (3) that states: "Public retirement system assets may be invested in private corporate capital stock." Representative Kennedy's question was aimed at understanding how the Board of Investments could interpret this language as authorizing investments in anything other than private corporate capital stock.

In your reply, you mentioned that the Board's reading of the minutes of the constitutional convention indicated that "private corporate capital stock" referred to common stock and that the plain language of the constitution was that subsection (3) was clearly an exception to the prohibition against public funds being invested in private corporate capitol stock, which is contained in subsection (1).

However, in a subsequent meeting, Representative Kennedy indicated that he was not satisfied with this answer and asked the committee to request additional information. The committee agreed to accommodate Representative Kennedy's request. Thus, the House State Administration Committee respectfully requests that your agency provide a written response to the Committee to provide a more detailed explanation about the Board's interpretation of the language in subsection (3). The Committee requests this response before the Legislature adjourns.

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Executive Director Carroll South  
April 7, 2011

In lieu of direct distribution of your reply to each Committee member, you may provide a copy of your reply to our staff, Ms. Sheri Scurr (Research Analyst), who will ensure distribution to each Committee member.

Thank you for your time and consideration.

Sincerely,



Representative Pat Ingraham, Chairwoman  
House State Administration Committee

cc.

Members of the House State Administration Committee

# MONTANA BOARD OF INVESTMENTS

Department of Commerce

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April 8, 2011

Representative Pat Ingraham, Chairwoman  
House State Administration Committee  
State Capitol Building

Re: Letter dated April 7, 2011

Dear Chairwoman Ingraham:

The following response is provided to the question raised in the letter referenced above.

*"Representative Kennedy asked about the language in Montana's Constitution, Art VIII, Section 13, subsection (3) that states: "Public retirement system assets may be invested in private corporate capital stock." Representative Kennedy's question was aimed at understanding how the Board of Investments could interpret this language as authorizing investments in anything other than private corporate capital stock."*

**Response** Article VIII, Section 13, subsection (1), of the Montana Constitution states:

**"Except as provided in subsections (3) and (4), no public funds shall be invested in private corporate capital stock."**

The language from Section 13, subsection (3), referenced by Representative Kennedy is an exception to the general rule in subsection (1) prohibiting such investment. It is important to interpret this language in the context of the discussion during the Constitutional Convention as to whether "any" public funds should be invested in corporate stock. (Public funds could not be invested in corporate stock under the old constitution.) After much debate, the Convention chose to permit "only" retirement funds to be invested in corporate stock and the voters approved the language. The legislature while implementing the new constitution, limited retirement fund stock investments to 20.0 percent of assets. The restriction was later removed from the law.

In November 2000, the voters approved a constitutional amendment permitting the investment of the State Fund in corporate stock as follows:

**"State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets."**

This language is discretionary (may) and does not require that the Board of Investments (Board) invest any retirement or State Fund assets in corporate stock. To interpret this language as requiring the Board to invest all retirement fund assets in corporate stock would be a violation of the requirement in the same subsection that investment of public retirement assets be managed according to the prudent expert principles and the Board's statutory legal requirement to "diversify" investments.

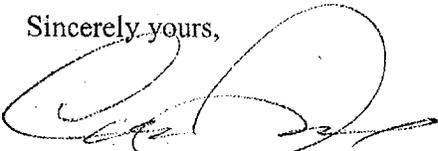
State law gives the Board broad discretion when investing public funds. The law requires the Board to "direct the investment of state funds in accordance with the laws and constitution of this state" and to: "determine the type of investment to be made." This language is interpreted to mean that if an investment is not prohibited by state law or constitution, the Board may invest public funds in any type of investment it deems prudent.

The Board is directed by state law to invest public funds under the Prudent Expert Principle, which requires the Board to:

- Discharge its duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;
- Diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and
- Discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

See Mont. Code Ann. §17-6-201. This section of state law implements and is consistent with Article VIII, Section 13, and governs all investment decisions made by the Board.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Carroll South', written in a cursive style with a large loop at the end.

Carroll South, Executive Director  
Montana Board of Investments