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TO: Legislative Finance Committee members

FROM: Jeremy Gersovitz, Staff Attorney

RE: History and implications of school funding suit

DATE: August 10, 2010

Mister Chair, members of the committee--I have been asked to give the following report on what has been dubbed the school funding or Columbia Falls suit.

You may recall this suit goes back some eight years.

The plaintiffs in the suit--a coalition of school districts, unions, education associations and parents argued the State had played fast and loose when administering and funding Montana's constitutionally mandated public school system.

Ultimately the Montana Supreme Court held that the primary problem with the then-existing funding system was that it did not correlate with what constitutes a quality education. The legislature had not defined quality and thus it could not be determined that the current funding system was designed to secure a quality education. Further, the funding formula was not linked to any factors that might constitute a quality education.

Stated another way, *Columbia Falls* requires the school funding system be based upon the costs of meeting the standards that govern the operation of the state's schools. Once adequate levels of funding are determined, the state must then fund its share of the cost of the system. The state's share must be an amount that is adequate at the BASE or foundation levels to allow districts to meet the standards. This applies to the overall costs of the elementary and secondary systems. The Montana Supreme Court noted the following as evidence that the current system was constitutionally deficient: school districts increasingly budgeting at or near their maximum budget authority; growing accreditation problems; many qualified educators leaving the state to take advantage of higher salaries and benefits elsewhere; the cutting of programs; the deterioration of school buildings and inadequate funds for repair and construction; and increased competition for general fund dollars between special and general education.

In response, in 2005 the Montana Legislature ultimately defined the basic system of free quality public elementary and secondary schools, that talismanic phrase which is employed in Article X, section 1(3) of the state constitution. For the full definition I'd direct you to Section 20-9-309, Montana Code Annotated.

The plaintiffs returned to court in early February of 2008, arguing that despite a 25 per cent increase in state funding over the past four years, many school districts still struggled with budget issues and cuts. Following a five and a half day hearing, on December ninth, 2008,

District Court Judge Jeffrey Sherlock issued a two paragraph order denying any supplementary relief in the case.

Six days after his abbreviated order, Judge Sherlock followed it up with a 59 page monster set of findings of fact and conclusions of law. That's what he found the evidence showed--and the law he applied to those facts--in order to ultimately reach the conclusion he did. Normally judges are reluctant to issue what are called advisory opinions, that being how a court would rule should a matter be litigated. Here Judge Sherlock specifically wrote that "as loath as this court is to provide an advisory opinion, it will make a few comments so as to avoid future problems."

This advice, which of course is not binding upon the legislature, does form somewhat of a handy checklist nonetheless.

In Finding of Fact 119, the Judge set out that while the State has made excellent contributions to ongoing state aid from 2005 through 2008, that increase is expected to drop to one point nine percent. He wrote, and I am quoting, in order to avoid future problems this figure should reflect to the trend of 2005-2008.

In finding of fact 120, the Judge wrote that although the total state aid to the school districts' general funds has increased from 2004 until today, the Court notes a slight relapse in 2009 and then goes on to write: in the view of this Court, this figure should not be declining, but should either be increasing or at least staying the same.

In Finding of Fact 121, the Court notes that the costs of special education need to be addressed. As the Court had said in Finding of Fact 72, special education funding was not keeping up with increasing costs. The court also noted the increased competition for general fund dollars between special and general fund education continues.

In Finding of Fact 122, the court wrote that increasing salaries for rural and isolated districts would have a noticeable impact on recruitment and retention problems.

The court did note, and I am quoting, "the magnitude of these problems is far less than the problems confronting this Court in 2004. In the view of this court, the problems just mentioned in the preceding findings do not warrant this court's interference in the legislative process."

I am happy to answer any questions you may have. Thank you .