

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

September 27, 2010

Rob Stutz
Legal Director
Legislative Services Division
State Capitol
Helena, MT 59620

RECEIVED

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Montana Legislative
Services Division

Dear Rob:

I am writing in response to your email to me of Friday, September 24, inquiring whether Governor Schweitzer is interested in discussing the possibility of settling the Complaint he filed against the Legislature. You requested that if he is interested, he propose a solution. On behalf of the Governor, I am writing in response.

As you know, when the Legislature meets in session, it has two constitutional obligations: 1) to pass a balanced budget; and 2) to pass legislation that satisfies constitutional requirements. While the 2009 Legislature satisfied the first test, we do not believe it satisfied the second. This problem was exacerbated because HB 676 was not delivered to the Governor for signature until April 30, 2009, two days following adjournment of the Legislature *sine die*. Governor Schweitzer was faced with two choices: to veto the bill or let it go into law. The Governor let HB 676 go into law without his signature, as the Constitution allows.

It has been reported that lawmakers believe HB 676 was necessary to implement the federal stimulus package. HB 676 has nothing to do with the stimulus package. Since enactment of the 1972 Constitution, the Montana Legislature has disposed of millions of dollars of federal funds. To our knowledge, never before has the Montana Legislature enacted a "companion bill" to the general appropriations act.

Nonetheless, if the current and post-election leadership of the Legislature can agree now that a multi-subject companion bill will not be used to implement the general appropriations act in the 2011 session, the problems of logrolling and erosion of the Governor's veto power inherent in the multi-subject legislation go away.

We start with three general conditions to any settlement that we believe are necessary to protect the rights asserted by Governor Schweitzer in his Complaint. First, while the parties are engaged in settlement discussions, and until any settlement is signed, the litigation will proceed in accordance with court rules and schedules. Second, if the parties reach a mutually agreeable settlement, they will ask the Court jointly to stay the litigation until after the 2011 Legislature has completed its work; after the work is completed, if the terms of the settlement have been adhered to, the Governor will move the Court for dismissal of the lawsuit. Third, any agreement

reached now must be signed by current leadership from both parties and both houses, as well as by the newly elected leadership selected by the party caucuses following the November election.

With those three general conditions, Governor Schweitzer proposes, in general terms, the contours of a written settlement in which:

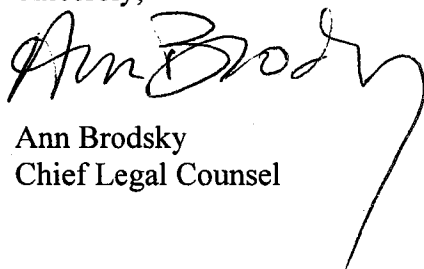
- 1) the leadership named above (from both parties and both houses, current and post-caucus) agrees that based on the arguments raised by the Governor in his Complaint, HB 676 is likely unconstitutional, and therefore the leadership will not support the use of a single "companion bill" or any other excessively broad legislation containing multiple subjects to implement the general appropriations act during the 2011 session; and
- 2) if at the conclusion of the 2011 session, the Governor in his sole discretion determines that the 2011 Legislature has adhered to the terms of the agreement, the Governor will move the Court for dismissal of his Complaint; if in his sole discretion, the Governor determines that the 2011 Legislature has not adhered to the terms of the agreement, the Governor may proceed with the Complaint and may amend it to include matters that arose during the 2011 legislative session, or for any other reason, and the Legislature will not oppose the amendment on grounds it is not timely.

We recognize that a settlement of the lawsuit would delay until another time a judicial resolution of the issue the Governor presented in his Complaint. Governor Schweitzer offers this settlement proposal hopeful that future legislatures not depart from the principles embodied in the agreement, but knowing that if a departure occurred, a future legislature – and all Montana citizens – will have been placed on notice as to the legal issues because they were raised by the Governor in his Complaint.

If members of the Legislative Council are interested in pursuing a mutually agreed-upon settlement of the lawsuit in accordance with the general terms described above, I would anticipate working with you and your attorneys to prepare a "Conditional Settlement Agreement" that you could present to your clients.

Please let me know the Legislature's response.

Sincerely,



Ann Brodsky
Chief Legal Counsel