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MEMORANDUM

DATE: September 3, 2015

TO: Laurence A. Hubbard

CC: Mark Barry
Curtis Larsen

FROM: Nancy Butler

SUBJECT: Parking Garage

Question: May MSF purchase from the City of Helena, the parking garage (land and garage) in use by MSF?

Background and Discussion:

Purchase of a parking garage by MSF would be considered the purchase of property, or stated another way, the acquisition of an asset. Due to the necessity to have a budget approved by the Board for spending authority to make such a purchase, the Board's approval will be necessary. In addition we need to review the Board's and MSF's ability to make the acquisition of a parking garage. It is clear that in accordance with 39-71-2320, MCA, see below, MSF can own property that is "acquired through the use of money belonging to the state fund".

The actual acquisition of a parking garage- (or any other item necessary for the business of MSF) is supported by statutes delineating the Boards and MSF powers. As seen in 39-71-2315, MCA, below, the board may exercise "any power, authority or jurisdiction over the administration of the state fund or in connection with the insurance business" of the state fund. The insurance business includes far more than specific insurance products and functions. Many functions and products in support of the insurance business fall within "administration" of the state fund. Parking for employees that provide the insurance functions, is just such a support or administrative function. MSF has similar powers as provided in 39-71-2316, MCA, below, "the state fund may: p) perform all functions and exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund."

In addition, MSF will come under Title 33 effective January 1, 2016. Real estate is addressed in 33-12-307, MCA, and states as follows: "... (3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's or the insurer's affiliates' business operations, including home office, branch office, and field office operations.

(b) Real estate acquired under this subsection (3) may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) and is so qualified by the insurer.” This statute additionally supports acquisition of real estate for MSF operations. However, it will not be directly applicable until January 1, 2015.

The Board also has the power to provide for the office space of the state fund, see 2-15-1019, MCA, below, “ (3) The board may provide for its own office space and the office space of the state fund.” It is a given that office space and parking cannot be disconnected. MSF employees typically drive to work, which is not surprising in our rural state. In addition, public transportation is almost non-existent. Access to parking in Helena is generally not a concern, except when an office is located in a downtown area. This typically means less parking space and an increased density of vehicles in need of parking. The safety and security of employees while parking and walking to the office is important as well as the ability to avoid “slip and falls” due to winter weather. A covered parking structure that is connected to the MSF office building, as is the current structure, more than addresses those needs.

Summary

MSF may own property that is acquired through its own funds. The Board and MSF have the authority to provide for administration of MSF, and parking for employees (just like furniture and computer equipment) are necessary for the administration of MSF. In addition, Title 33 addresses ownership of real estate by an insurer which provides for accommodation of an insurers business operations. Finally, the Board has authority to provide for office space for MSF and providing parking is an indubitable part of providing office space, particularly in our downtown location.

MSF received a legal opinion in approximately 2008 from the Crowley firm in regards to ownership of real property for office space. We could request an update for their opinion on ownership of real property for a parking garage as well. (see attached letter)

In conclusion, I do not see any legal impediment to the purchase of the parking garage by MSF, if approved by the Board, based on the above analysis.

39-71-2320. Property of state fund -- investment required -- exception. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in [2-15-1808](#), and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section.

39-71-2315. Management of state fund -- powers and duties of the board -- business plan required. (1) The management and control of the state fund is vested in the board, subject to the statutory limitations imposed by this part.

(2) The board is vested with full power, authority, and jurisdiction over the state fund except that the board may not dissolve or liquidate the state fund. To fulfill the objectives and intent of this part, [the board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the administration of the state fund](#) or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the

governing body of a private mutual insurance carrier and subject to the regulatory authority of the insurance commissioner in Title 33, except as provided in [section 1]. Bonds may not be issued by the board, the state fund, or the executive director. (effective 1-1-16)

39-71-2316. Powers of state fund. (1) For the purposes of carrying out its functions, the state fund may:
(p) perform all functions and [exercise all powers of a private insurance carrier that are necessary, appropriate, or convenient for the administration of the state fund.](#)

2-15-1019. Board of directors of state compensation insurance fund -- legislative liaisons. (1) There is a board of directors of the state compensation insurance fund.
(2) The board is allocated to the department for administrative purposes only as prescribed in [2-15-121](#). However, the board may employ its own staff.
(3) [The board may provide for its own office space and the office space of the state fund.](#)

June 13, 2008

Nancy Butler
[insert title and address]

RE: Acquisition and Ownership of Real Property

Dear Ms. Butler:

You have requested an opinion from our firm regarding the authority of the Montana State Fund (“MSF”) to acquire and own real property for purposes of providing office space for MSF’s general operations. It is our opinion that MSF may acquire and hold title to real property in its own name, and that such property would be considered MSF’s sole property. Our opinion is based on the statutes specifically governing MSF, as well as the statutes governing private insurance carriers.

MSF is the assumed business name of the State Compensation Insurance Fund, created by § 2-15-1019, MCA. MSF is a “nonprofit, independent public corporation.” § 39-71-2313, MCA. MSF’s Board is authorized to:

perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier . . .

See § 39-71-2315(2), MCA. Private insurance carriers are authorized to “acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's or the insurer's affiliates' business operations.” § 33-12-307(3), MCA. Moreover, the Board is expressly authorized to provide for its own office space and the office space of the MSF. § 2-15-1019(3), MCA. Under these provisions, we believe the only reasonable conclusion is that MSF can acquire and hold title to real property for the operation of a office facilities for its own business operations.

MSF can hold title to real property in its own name. In fact, to the extent that MSF funds are used to acquire the property, it must be titled in MSF’s own name and shall constitute MSF’s “sole property.” § 39-71-2320, MCA. As a result, MSF’s acquisition and management of a new building, would exempt from review by the Department of Administration and the Capitol Complex Advisory Committee, because it would not constitute a “state building.” § 2-17-811, MCA. As a result, the MSF Board has independent statutory authority to acquire a new building for purposes of housing the operations of MSF.

Thank you for the opportunity to assist MSF in this matter. Please contact me or Michael Green if you have any additional information.

Sincerely yours,

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

Joseph P. Mazurek

JPM:mwg