Exhibit 1

ATTORNEY GENERAL
STATE OF MONTANA

Mike McGrath
Attorney General

Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

VOLUME NO. 51

OPINION NO. 10

EMPLOYEES, PUBLIC - Hiring of local public defender employees into the new statewide public defender system;
STATUTORY CONSTRUCTION - Construing the meaning of the word "may."
MONTANA CODE ANNOTATED - Sections 1-1-101, 1-2-102, -106, 2-3-221;
MONTANA CONSTITUTION - Article II, section 9.

HELD: Section 69 of the Montana Public Defender Act (Senate Bill 146 of the 2005 Legislature) allows but does not require the Public Defender Commission and the Office of the Public Defender to hire all current city and county public defender employees. The bill allows the Commission and the Office the discretion to decide whom to retain for the new public defender system.

December 6, 2005

Mr. James Park Taylor, Chairman
Public Defender Commission
P.O. Box 278
Pablo, MT. 59855-0278

Dear Mr. Taylor:

You have requested my opinion on the following question:

> Does Section 69 of the Montana Public Defender Act (Senate Bill 146 of the 2005 Legislature) require the Public Defender Commission and the Office of the Public Defender to hire all current city and county public defender employees on July 1, 2006 or does it allow the Commission and the Office of the Public Defender discretion to decide whom to hire for the new public defender system?

The answer to your question requires an analysis of Section 69 using the well-established rules that the Montana Legislature and Supreme Court have developed to resolve questions of statutory interpretation.

Section 69 provides, in pertinent part:

> Section 69. Transition - transfer of county and city employees to state employment - rights. (1) Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the office of state public defender provided for in [section 7]. Transferred employees become state employees on July 1, 2006.
>
> (2) All transferred employees become subject to the state classification plan on July 1, 2006, except those specifically exempted under [section 7(2) and (3)(a)].
>
> (3) The salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%.
>
> . . . .

Your question arises from subsection (1) which states: "Employees of county or city public defender offices who are employed by a county or city on June 30, 2006, <u>may</u> be transferred to state employment in the office of state public defender provided for in [Section 7]. Transferred employees become state employees on July 1, 2006." (Emphasis added.)

Our rules of statutory construction flow from the simple premise articulated by the legislature in our code. "In the construction of a statute, the intention of the legislature is to be pursued if possible." Mont. Code Ann. § 1-2-102. When a statute requires interpretation, "the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." Mont. Code Ann. § 1-1-101. "Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language . . . ." Mont. Code Ann. § 1-2-106.

The word that must be construed to answer your question is the word "may." By using this word to address the transition and transfer of county or city employees to state employment, did the legislature intend that some of these employees would be offered state employment and some would not, or did the legislature intend that all such employees must be offered employment by the state?

"May" is commonly used to express possibility. Random House Unabridged Dictionary (2nd ed., 1993). For example, our Supreme Court has interpreted "may" as found in Mont. Code Ann. § 2-3-221 in Gaustad v. City of Columbus, 265 Mont. 379, 877 P.2d 470 (1994). The code section at issue provided that attorney fees "may be awarded" to the prevailing party in an action to enforce rights under article II, section 9 of the Montana Constitution. In the referenced case the prevailing party appealed when the district court declined to award attorney fees. The Supreme Court refused to require the award of attorney fees under the statute. The Court reasoned that "[i]n construing the meaning of a statute, we presume that the terms and words used were intended to be understood in their ordinary sense. The word 'may' is commonly understood to be permissive or discretionary. In contrast, 'shall' is understood to be compelling or mandatory." 265 Mont. at 381-82 (citations omitted). The Court concluded that the award of attorney fees was discretionary with the district court and was not mandated by the statute.

Under the above analysis, the answer to your question appears to be clear: Section 69 of the Act allows the Commission and the Office of the Public Defender discretion to determine which current county and city public defender employees to retain for the new public defender system. But other means of statutory construction are useful in validating this conclusion.

The language of the bill itself strongly suggests that the legislature understood the possibility that some current employees of local public defender offices would not become state employees. Subsection (1) of Section 69 states that "Transferred employees become state employees on July 1, 2006." The adjective "transferred" is surplusage if all employees are to be transferred to state employment. The continuing reference throughout Section 69 to "transferred" employees is likewise surplusage unless the legislature intended to grant the Commission and the Public Defender office the power to transfer some, but not all of the current employees to the state system. And when the legislature desired to mandate the transfer of certain employees to the state system, it clearly expressed its intent to do so through the use of mandatory language. In Section 70(2) of the Act the legislature provided that the "Commission staff in the office of appellate defender . . . must be officially transferred to the office of state public defender." (Emphasis added.) The use of the mandatory "must" in Section 70 negates the inference that the legislature intended "may" to be mandatory in Section 69.

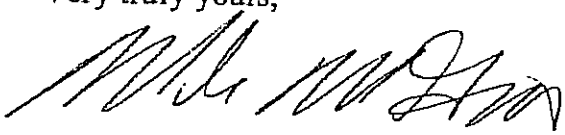
The testimony at the legislative hearings on Senate Bill 146 also supports this conclusion. At the meeting of the Judiciary Committee of the House of Representatives on March 31, 2005, the sponsor of the bill, Senator Dan McGee stated in his opening that "We are not saying that every public defender must come into a system and become a state

employee." (Tape 1, Side A.) And Representative Gutsche commented that the bill "will not make all public defenders state employees. . . ." (Tape 2, Side B.)
While the term "may" can be interpreted as being mandatory where the statutory usage or legislative history indicates that this was the legislature's intent, see, e.g., Bascom v. Carpenter, 126 Mont. 129, 136, 246 P.2d 223, 226-27 (1952), such a conclusion is inappropriate here. These other bases of statutory interpretation confirm the legislative intent. The legislature used the word "may" in its ordinary sense--conveying discretion--when it drafted and passed Senate Bill 146. See Gaustad, 265 Mont. at 382 (distinguishing Bascom on the basis of legislative history indicating intent that "may" implies existence of discretion).

THEREFORE, IT IS MY OPINION:

> Section 69 of the Montana Public Defender Act (Senate Bill 146 of the 2005 Legislature) allows but does not require the Public Defender Commission and the Office of the Public Defender to hire all current city and county public defender employees. The bill allows the Commission and the Office the discretion to decide whom to retain for the new public defender system.

Very truly yours,



MIKE McGRATH
Attorney General

mm/je/jym

Exhibit 2

ADMINISTRATION – PROJECTS

1. Accounting and Budget Structure and Systems - Develop options for the Public Defender system's accounting and budgeting structure and define the accounting and budgeting requirements.
   - Begin immediately to track costs in an appropriate manner so that information about the startup and ongoing efforts of the system can be reported to internal management and other interested parties. Develop fund accounting reports and policies and procedures relevant to the management of system information.
   - Provide options for accounting and coding of system information that relates costs to caseload. Have a coding system in place by July 1, 2006 and the appropriate training of personal to input coding in the various information feeder systems.
   - Prepare to provide the accounts payable function for the system as of July 1, 2006.

2. Information Technology - Define the information technology needs of the system and develop and implement a plan to have these systems in place by July 1, 2006.
   - The desk top environment for the central and district offices.
   - The use of state information technology applications.
   - The development, installation, and management of a case management system.

3. 2007 Budget – Develop a more detailed timeline and budget for fiscal 2006 and 2007 and for each component of the system and compare this estimate to the appropriation provided by the 59th legislature.

4. Provide staff assistance to Commission and the Chief as they develop the strategic plan and approve a system budget.

5. Provide staff assistance for the development of indigent's eligibility form, rules, and procedures.

6. Provide the systems and procedures necessary to bring district personnel into the state payroll process.

7.

Exhibit 2

COLLECTIVE BARGAINING AGREEMENT

between

MISSOULA COUNTY

and

TEAMSTERS LOCAL NO. 2

Public Defenders Unit

JULY 1, 2005

TO

JUNE 30, 2006

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PREAMBLE

Section 1. This Agreement is made and entered into between the County of Missoula, Missoula, Montana, hereinafter referred to as the Employer, and Teamsters Local Union #2 affiliated with The International Brotherhood of Teamsters, hereinafter referred to as the Union.

Section 2. In consideration of the covenants herein recited, which have been established through collective bargaining procedures as provided for under the Montana Public Employees Collective Bargaining Act, this Agreement has as its purpose the promotion of harmonious relations between the Employer and the Union; for the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of pay, hours of work, fringe benefits, employee safety and other terms and conditions of employment.

Article 1 – Recognition

Section 1. The Employer recognizes the Union as the exclusive representative for all employees covered by this Agreement.

Section 2. This Agreement shall cover all full-time and part-time Public Defender Attorneys employed by Missoula County, excluding the Chief Public Defender and research attorney.

Article 2 - Union Security

Section 1. Each employee covered by this Agreement shall, as a condition of initial and continued employment, be required to either maintain membership in, or pay a representation fee to the Union. The amounts of dues and/or representation fees shall be determined by the Union. An employee shall have thirty (30) days after their initial date of hire in a bargaining unit position to comply with the terms of this Article. Any employee who fails to comply with this requirement shall be terminated within ten (10) working days after written notice to the Employer from the Union. The Employer will send a notice to the Union of all new hires within ten (10) days of the date of hire.

Section 2. The Union shall indemnify and hold the Employer harmless against any claim made and against any suit instituted against the Employer, on account of any action taken in accordance with this Article.

Article 3 - Union Dues Check-off Authorization

Upon written authorization of a bargaining unit employee on forms provided by the Union, the Employer shall deduct from the pay of the employee the initiation fees and regular monthly dues or representation fees and shall forward such fees to the Union Treasurer.

Article 4 - Protection Clause

No employee shall suffer a reduction of wages, working conditions or classifications because of the adoption of this Agreement unless such changes have been specifically enumerated, identified, and mutually agreed upon and ratified by both parties to this Agreement.

Article 5 - Non Discrimination

In accordance with 49-3-201, MCA, the employer shall recruit, appoint, assign, train, evaluate, and promote personnel without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

Article 6 - Union Rights

Section 1. The Employer recognizes the right of the Union to designate job stewards and alternates. The job steward and/or alternate may investigate and present grievances to the Employer during working hours. The Union shall notify the Employer in writing of the name(s) of any employee(s) designated as Union steward and to notify the Employer, in writing, of any change in the person(s) so designated.

Section 2. Authorized agents of the Union shall have access to the Employer's place(s) of work during working hours for the purpose of ascertaining that the Agreement is being adhered to and to investigate or adjust disputes, provided that there shall be no interruption of work.

Article 7 - Management Rights

Section 1. In accordance with 39-31-303, MCA, the Employer retains all rights not expressly restricted or waived in this Agreement, including, but not limited to the rights to:

1) direct employees;
2) hire, promote, transfer, assign, and retain employees;
3) relieve employees from duties because of lack of work or funds under conditions where continuation of such work would be inefficient and nonproductive;
4) maintain the efficiency of government operations;
5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency; and
7) establish the methods and means by which work is performed.

Article 8 - Probationary Period & Trial Period

Section 1. All new bargaining unit employees shall have a six-month probationary period, except that one extension of up to three months may be made at the discretion of the department head. During this probationary period, an employee may be discharged with or without cause, and shall not have recourse through the contractual grievance procedure. Seniority shall accrue dating back to the first day worked in a bargaining unit position after the successful completion of the probationary period.

Section 2. Any bargaining unit employee who is promoted shall serve a trial period of six (6) months. If an employee does not perform satisfactorily during this trial period, the employee must be: (1) returned to the employee's former position, (2) placed in another position for which the employee is qualified, (3) subject to corrective action, or (4) terminated for just cause in accordance with Article 26 of this agreement.

Section 3. A probationary employee who transfers into a bargaining unit position from a different county position shall be required to serve a new probationary period as set forth in Section 1 above. A non-probationary employee who transfers into a bargaining unit position shall not be required to serve another probationary period.

Section 4. In the event a probationary employee leaves the bargaining unit and subsequently returns to a position covered by this Agreement, all previous service time shall apply against the probationary period requirements provided that such reemployment occurs within one (1) calendar year from the date of departure.

Article 9 - Seniority

Section 1. Seniority is defined as an employee's continuous length of service in a bargaining unit position under this Agreement. Seniority shall be terminated when an employee terminates.

Article 10 - Promotions

Section 1. In filling any new or vacant bargaining unit positions, the employer shall consider employees' qualifications and capabilities. Where qualifications and capabilities are substantially equal, seniority shall serve as a tie-breaker.

Article 11 - Layoff and Recall

Section 1. In selecting employees for layoff in a reduction in force, the employer shall consider the employees' qualifications and capabilities. Where qualifications and capabilities are substantially equal, the least senior employee in any job classification covered under this Agreement shall be laid off first. An employee who receives a layoff notification in accordance with this section shall be entitled to bump the least senior employee in another bargaining unit job classification at a lower pay grade, provided:

(1) the employee has the qualifications and ability necessary to perform the work in that classification, and (2) the employee notifies the employer in writing of the employee's intent to bump within ten (10) working days after receiving the above layoff notice.

Section 2. Employees who are laid off under this Article shall have their names placed on a recall list for a period of two (2) years from the effective date of layoff. In the event that the position from which an employee was laid off is reinstated, the employer will mail a recall notice by certified mail to the employee at the employee's last known mailing address. The employee will have ten (10) working days to accept reinstatement to the employee's former position and fourteen (14) days thereafter to report for work. If the employee declines reinstatement or fails to respond to the recall notice, the employee's name shall be removed from the recall list and the employee shall have no further reinstatement privileges. The employee is responsible for ensuring that an accurate and up to date mailing address is on file.

Section 3. An employee who is recalled under this Article will be considered as continuously employed for purposes of calculating vacation leave, sick leave or any other benefits set forth in this Agreement that are based on length of continuous service with Missoula County. The employee will not accrue additional leave benefits for any time during which the employee was laid off prior to reinstatement. The salary for an employee who is recalled under this Article shall be established at the rate it would have been if the employee had not been laid off.

Section 4. A laid off regular (non-probationary) employee may apply for bargaining unit positions other than the position from which the employee was laid off. If the employee is qualified and capable of performing the duties and responsibilities of such a position, the employee shall have an absolute preference for the position. If two or more laid off regular employees are substantially equally qualified and capable of performing the work, seniority shall prevail.

Section 5. The preference provided under this Section is effective beginning on the date on which an employee is notified in writing of the layoff and extends for a period of two (2) years from the effective date of the employee's layoff, or until the employee is placed in another position under this section, whichever occurs first. During this preference period, the employer will mail notices of all vacant county positions to laid off employees at their last known mailing address. Failure to respond to a vacancy notice shall not adversely affect an employee's recall rights.

Article 12 - Hours of Work

Forty hours in a seven-day work period, Sunday through Saturday, shall constitute a work week. Regular workdays shall be Monday through Friday. An employee who works hours in excess of forty (40) in a work week shall accrue compensatory time on an 'hour for hour' basis. For the purposes of this Section, vacation leave, sick leave, personal leave, use of accrued compensatory time, and holiday leave (either use of

accrued holiday leave or holiday leave taken when the holiday occurs on a day the employee is regularly scheduled to work) will be treated as hours worked. An employee must receive prior approval to accrue compensatory time under this Section.

Upon transfer of employment to the State of Montana in July 2006, (See Article 30) employees will be compensated for accrued compensatory time for all hours in excess of sixty (60) in their final paycheck from Missoula County.

Article 13 - Travel Reimbursement and Advances

Section 1. The Employer shall pay for related travel expenses, such as lodging, per diem, and transportation, in accordance with County of Missoula Travel Policy as established by the Board of County Commissioners.

Section 2. Employees shall be eligible for travel advances. Requests for and reconciliation of travel advances shall be accomplished in accordance with county policy. If County policy changes the Union will be notified and provided an opportunity to meet and discuss the changes.

Article 14 - Professional Fees

Section 1. Missoula County shall pay professional fees and dues required of public defender attorneys to maintain their licenses to practice law, including membership in the State Bar of Montana. The Employer will provide each employee with one of the following: (1) a complete set of current Montana Code Annotated, published by the Montana Legislative Services Division, or (2) the current Montana Rules of Court, published by West Publishing, the Montana Deskbook, published by the Montana State Bar Association, and the Montana Law Enforcement Reference Guide, published by the Montana Legislative Services Division. Employees shall be responsible for indicating which one of the above options they select within thirty (30) calendar days of the date the Employer is notified of contract ratification, or July 30, whichever occurs later.

Section 2. Upon employment by Missoula County, the Employer shall cover the cost of one of the following: (1) an employee's membership in the National Association of Criminal Defense Lawyers, or (2) an employee's membership in the Montana Association of Criminal Defense Lawyers.

Section 3. Employees may request for the public defenders office to purchase individual memberships in professional organizations. Such requests shall be considered on a case by case basis.

Article 15 – Conflicts of Interest

Section 1. Conflicts of interest may arise:

- When professional judgment is affected by political, financial, business, property, or personal interests;
- When representing more than one defendant, if the duty to one of the defendants comes into conflict with the duty to defend any of the other defendants;
- When counsel formerly participated in the prosecution of a defendant; or
- When counsel is related to the prosecutor as a parent, sibling, child or spouse.

The above list is for general example and is not intended to limit the conditions under which a conflict of interest may arise.

Section 2. Should an actual or potential conflict of interest arise, employees shall notify the Chief Public Defender at the earliest opportunity. The Chief Public Defender shall retain the sole discretion to determine whether a conflict of interest exists and, if so, how the conflict shall be managed.

Article 16 - Vacations

Section 1. All employees shall be entitled to use earned paid vacation leave upon completion of six (6) months employment with the County.

Section 2. Each employee shall earn vacation credits as follows:

- From the first day of employment through ten (10) years of employment at the rate of fifteen (15) working days for each year of service.
- After ten (10) years through fifteen (15) years of employment at the rate of eighteen (18) working days for each year of service.
- After fifteen (15) years through twenty (20) years of employment at the rate of twenty-one (21) working days for each year of service.
- After twenty (20) years of employment at the rate of twenty-four (24) working days for each year of service.

Section 3. Proportionate leave credits shall be earned and credited at the end of each pay period. Prior Montana public employment shall be credited by submitting the required documentation to the personnel office. Years of employment used to adjust the accrual rate will be calculated using the employee's service date. Regular part time, temporary and seasonal employees shall earn vacation leave credits on a prorated basis

according to the actual hours worked in a pay period provided they have worked the six (6) month qualifying period.

Section 4. Vacation credits shall not accrue during a leave of absence without pay.

Section 5. Annual vacation leave may be accumulated to a total not to exceed two (2) times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time shall be forfeited if not taken within ninety (90) days from the last day of the calendar year in which the excess was accrued. If the employee submits a reasonable request to use the excess vacation leave prior to March 30th of any given year and such request is denied, the employee shall not forfeit the leave and will have until the end of the year to use the excess vacation leave.

Section 6. Upon termination of employment with the County, any employee who has worked the qualifying period will be paid for the unused vacation credits at the rate of pay in effect at the time of termination.

Section 7. Employees on paid vacation leave over a paid holiday shall receive the holiday pay and not be charged with a paid vacation day for that day.

Section 8. Sick leave may be substituted for vacation leave at the employee's request for any valid reason under the provisions of Article 19.

Article 17 - Holidays

Section 1. All full-time employees covered by this Agreement shall be entitled to pay for eight hours at their existing rate of pay in effect at the time of the holiday for the following legal holidays as set forth in M.C.A:

1. New Year's Day, January 1;
2. Martin Luther King Jr. Day, the third Monday in January;
3. Presidents' Day, the third Monday in February;
4. Memorial Day, the last Monday in May;
5. Independence Day, July 4th;
6. Labor Day, the first Monday in September;
7. Columbus Day, the second Monday in October;
8. Veteran's Day - November 11;
9. Thanksgiving Day, the 4th Thursday in November;
10. Christmas Day, December 25th;
11. State General Election Day in November of even numbered years;

Section 2. In addition to the above, any day or days added by the State Legislature as paid legal holidays for public employees will be granted; any day or days repealed by the State Legislature shall cease to be granted.

Section 3. In order to be eligible for holiday pay, employees shall be in a pay status the last scheduled day before or the first scheduled day after the holiday or have an excused absence. Paid leave shall be considered excused absences.

Section 4. In addition to receiving pay for the eight hour holiday, employees required to work on a holiday listed in Section 1 of this Article shall accrue compensatory time off with pay equivalent to the number of hours worked in accordance with Article 12 of this agreement.

Section 5. If a legal holiday falls on a Sunday, the following Monday will be considered the holiday. If a legal holiday falls on a Saturday, the preceding Friday will be considered the holiday. When a legal holiday falls on a regular employee's scheduled day off, the employee shall treat either the last preceding or the next following workday as the holiday, unless otherwise mutually agreed by the employee and the department head.

Article 18 - Personal Leave

Section 1. Each regular full time (non probationary) employee covered by this Agreement shall be eligible for eight (8) hours personal leave with pay per fiscal year.

Section 2. Personal leave shall be scheduled at a time that is mutually agreeable to the employee and the employee's immediate supervisor.

Section 3. Regular part time (non probationary) employees scheduled to work at least twenty (20) hours per week shall be eligible for personal leave on a prorated basis.

Section 4. There shall be no cash reimbursement for unused personal leave at any time.

Section 5. Personal leave shall not be subject to accrual from year to year.

Article 19 - Sick Leave

Section 1. Each employee shall earn sick leave credits from the first day of employment at the rate of one (1) working day per month with no limit as to the number of sick days which may be accumulated.

Section 2. Regular part time, temporary and seasonal employees shall earn leave credits on a prorated basis.

Section 3. An employee must be continuously employed for ninety (90) calendar days to be eligible to use earned sick leave. An employee shall not accrue sick leave credits during a leave of absence without pay.

Section 4. Paid sick leave may be used for the following:

A) Illness or injury of the employee;

B) Illness, injury or death in the employee's immediate family requiring the employee's personal attendance. Immediate family shall mean spouse, parents, grandparents, siblings, children, or grandchildren of the employee or spouse of the employee, son in law or daughter in law.

C) Quarantine for contagious disease control, provided that certification is obtained from the attending physician.

D) Maternity related disability, including prenatal and postnatal care, birth, miscarriage, abortion or other medical care for either the employee or the child.

E) Doctor or dental appointments for treatment of the employee's illness, injury or preventative care.

F) To attend or make arrangements for a funeral of a member of the employee's immediate family or other closely related individual, for a period of time not to exceed four (4) consecutive working days. This leave may be extended to five (5) consecutive days if the funeral is more than five hundred (500) miles from the City of Missoula.

G) For the placement of a child for adoption or foster care of a child.

Section 5. Upon termination, an employee who has worked the qualifying period shall be entitled to be paid an amount equal to one quarter (¼) of the amount attributed to the accumulated sick leave. Payment for accumulated sick leave shall be computed on the basis of the employee's regular rate of pay at the time of separation from the County. Employees on layoff may elect to defer the cash out of sick leave credits until the expiration of their recall rights.

Article 20 - Military Leave

Section 1. An employee who is a member of the organized militia of the State of Montana or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been employed for a period of at least six (6) months shall be given leave of absence with pay for a period of time not to exceed fifteen (15) working days in a calendar year for attending regular encampments, training cruises, and similar training programs of the organized militia or of the military forces of the United States. Military leave shall not be used for weekend drills. This leave will not be charged against the employee's annual leave.

Article 21 - Jury Duty

Section 1. An employee on authorized jury duty or witness leave shall receive their normal daily wage. A part time employee will receive compensation for those hours the employee is normally scheduled to work. Hours paid for jury duty do not count as hours worked for the purpose of calculating overtime.

Section 2. The employee shall collect all fees and allowances payable as a result of serving on jury duty or as a witness in district court and should inform the clerk of the court of their employment status, precluding payment of fees by the court. Any expense or mileage allowance paid by the court shall be retained by the employee. If an employee elects to charge juror or witness time off against annual leave or compensatory time, the employee shall not be required to remit to the County any fees paid by the court.

Article 22 - Other Leaves

Section 1. The Employer may, at its sole option, grant leaves of absence without pay to employees, on such terms and conditions as it, in its sole discretion, determines; provided however, that such employee shall not accrue any benefits during such leave.

Section 2. Payment of insurance contributions for employees on leave without pay shall be according to Missoula County personnel policies.

Section 3. Emergency storm closures will be handled in accordance with Missoula County personnel policies.

Section 4. Employees may request the use of annual vacation leave, personal leave, compensatory time or other appropriate paid leave or leave without pay, for necessary absences for purposes such as adoption, foster care, paternity leave, infant or child care, elder care, or care of members of the employee's immediate family, or serious health condition that makes the employee unable to perform the essential functions of the employee's job. The Employer shall provide Family and Medical Leave in accordance with federal law and Missoula County Personnel Policies.

Article 23 – Compensation & Salary Administration

Section 1. Entry Rates - Entry (hire) rates for each job classification are listed in Exhibit A.

Section 2. Longevity - In addition to base wages, after completing four (4) years of service as a public defender attorney, each attorney is entitled to an increase in salary of $1,000 annually on the anniversary date of employment as a public defender attorney. After completion of five (5) years of service as a public defender attorney, each attorney is entitled to an additional salary increase of $1,500 annually on the anniversary date of employment. After completion of six (6) years of service as a public defender attorney

and for each year of service thereafter up to completion of the eleventh (11th) year of service, each public defender attorney shall be entitled to an additional annual increase in salary of $500 per year.

Section 3. Retention Bonus - Effective during the pay period during which a bargaining unit employee's three-year anniversary date of employment falls, a bargaining unit employee shall be eligible for a lump-sum retention bonus of $500.

Section 4. Salary Administration - An employee who is promoted to a higher-level Attorney position within the bargaining unit shall receive a pay increase of 10%, or shall be placed at the base of the minimum rate for the higher grade, whichever results in a greater pay increase.

Section 5. The Public Defender reserves the right to hire employees for Attorney I positions, under a training assignment, who do not meet the minimum qualifications for that position. Employees hired under such a training assignment shall be paid 10% less than the minimum rate for the Attorney I position until such time that they meet the minimum qualifications. Employees who complete their probationary periods prior to meeting the minimum qualifications shall receive the end-of-probationary period increase as outlined in Section 5 of this Article.

Section 6. End of Probationary Period Increase - An employee who successfully completes the employee's probationary period shall receive a pay increase of 2%, effective on the first day of the pay period during which the employee's probationary period is completed.

Article 24 - Group Insurance

Section 1. The Employer will make group health and dental insurance available to employees covered under this Agreement on the same terms of the group health insurance plan generally applicable to County employees.

Section 2. The Employer will contribute the full premium amount for single full-time employee coverage under the health insurance plan and make coverage for employee's eligible dependents available for purchase.

Section 3. The Employer will contribute the full premium amount for single full-time employee coverage under the group dental insurance plan and make coverage for employee's eligible dependents available for purchase.

Section 4. The Employer will make group optical insurance available to employees covered under this Agreement on the same terms of the group optical insurance plan generally applicable to County employees.

Section 5. The Employer will provide term life insurance to eligible employees at the same level provided to all other County employees.

Section 6. The Employer will make the flexible benefits plan available to employees covered under this Agreement on the same terms of the flexible benefits plan generally applicable to all County employees.

Article 25 - Job Descriptions and Career Ladder

Section 1. Job descriptions for each of the positions included in the bargaining unit are attached as Addendum "A" and by reference are made part of this Agreement. The development of such job descriptions shall be the exclusive purview of the Employer, however, the Union shall be notified in writing of any changes in such specifications at least ten (10) days before such changes become effective and the Employer agrees to meet and discuss new classifications, and changes in existing job descriptions, at the Union's request.

After a period of one year from the date of employment in an Attorney I position, an employee shall be promoted to Attorney II. This promotion shall be effective on the first day of the pay period during which the employee's one-year anniversary falls. Once an employee meets the minimum qualifications of the Attorney III position, the employee shall be promoted to that level on the first day of the pay period during which the employee meets those qualifications.

Article 26 - Discipline, Discharge and Suspension

Section 1. No employee shall be discharged, disciplined or suspended without just cause. To be valid, formal disciplinary action as described above must be documented in writing and issued to the employee, with a copy to the Union, within ten (10) working days of the date on which the Employer completes its investigation. The Employer may make a written request to the Union, and the Union agrees to grant additional time of up to (30) days to investigate the incident.

Article 27 – Grievance and Arbitration

GRIEVANCE PROCEDURE:

Section 1. A grievance is defined as a dispute or disagreement raised over a specific provision of this Agreement. The grievance shall be resolved by the following procedure.

Step 1. Any dispute involving the interpretation, application or alleged violation of a specific provision of this Agreement shall be taken up with the employee's immediate supervisor within ten (10) working days after the first knowledge of the occurrence of the grievance. Any grievance that is not

presented within the preceding time limit shall be forever waived. All grievances must be discussed with the immediate supervisor prior to the filing of a formal grievance, and no formal grievance may be filed until the immediate supervisor has been given five (5) working days to attempt resolution. Any grievance filed by the Employer shall begin at Step 3 of this grievance procedure.

Step 2. If the grievance is not resolved at Step 1, the grievant and the Union shall have ten (10) working days from the receipt of the immediate supervisor's response at Step 1 in which to present the grievance in writing to the Chief Public Defender. The grievance shall contain a complete statement of the grievance and the facts upon which it is based, state the provisions of the Agreement claimed to have been violated, and the remedy or correction requested. The Chief Public Defender shall have ten (10) working days within which to provide a response in writing, to the Union representative with a copy to the grievant.

Step 3. If the grievance is not resolved at Step 2, the Union shall have ten (10) working days from the receipt of the Chief Public Defender's response in which to refer the grievance to the County Commissioners. The County Commissioners shall have ten (10) working days to respond to the grievance in writing.

ARBITRATION:

Section 1. If the grievance is not resolved pursuant to the above steps, the Union shall have ten (10) working days from the receipt of the County Commissioner's decision to submit the grievance to arbitration which decision shall be in writing to the County Commissioners.

Section 2. Whenever a grievance is submitted to arbitration, the Union representative and the Employer shall mutually agree upon the arbitrator to render a decision. In the event the parties are unable to agree on an arbitrator, the Director of the Federal Mediation and Conciliation Service shall be requested to submit a list of seven (7) names of arbitrators. Each party shall alternately strike a name from the list presented until one name remains. That person shall be the arbitrator. A coin toss shall determine which party strikes the first name.

Section 3. The findings and decision of the arbitrator will be final and binding and enforceable on all parties. The expense of the arbitrator shall be borne equally by the parties to the arbitration and each side shall bear the expense of preparing and presenting its case.

Section 4. The arbitrator shall have no right to amend, modify, nullify, add to, or subtract from the terms and conditions of this Agreement. The arbitrator shall consider and decide only the specific issue(s) submitted in writing by the Employer and the Union

and shall have no authority to make a decision on any other issue not so submitted. The Arbitrator shall have no authority to establish language for this Agreement, wage rates, new or changed job descriptions or fringe benefits.

Section 5. The arbitrator shall be without power to make decisions contrary to, or inconsistent with, or modify or vary in any way the application of rules, laws, or regulations having the force and effect of law.

Section 6. Waiver: If a grievance is not present within the time limits set forth above, it shall be considered "waived." If a grievance is not appealed to the next step in the specific time limit, or any agreed extension thereof, it shall be considered denied. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual agreement of the Employer and Union.

Article 28 - No Strike - No Lockout

Section 1. The Union agrees that, for the term of this Agreement, there shall be no work interruptions, slowdowns, or strikes. In the event of unauthorized interruptions the Union agrees that it will join the Employer in requiring its members to return to work immediately. The Employer agrees that, during the term of this Agreement, there shall be no lockout of bargaining unit employees.

Article 29 - Severability

Section 1. Should any article, section, subsection, phrase or other portion of this Agreement be declared to be contrary to or in violation of any Federal or Montana State Law, the remainder of this Agreement shall not be affected or invalidated. The parties to this Agreement agree to renegotiate any invalidated provisions of this Agreement.

Article 30 - Term of Agreement

Section 1. This Agreement shall become effective and be in force from July 1, 2005, and remain in full force and effect to and including June 30, 2006. Effective July 1, 2006, all public defender operations at Missoula County shall be transferred to the State of Montana, and this contract shall be terminated, according to the provisions of SB 146, Section 69, as passed by the 2005 Montana Legislature.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT THIS 10th DAY OF November, 2005.

FOR THE EMPLOYER:

JEAN CURTISS, Chairman
Board of County Commissioners

BILL CAREY, Commissioner

BARBARA EVANS, Commissioner

STEVE JOHNSON, Director
Human Resources

FOR THE UNION:

DAN DOOGAN, Business Agent
Teamsters Local No. 2

Team Member

Team Member

Team Member

ACCORD AS TO FORM AND CONTENT:

Michael W. Sehestedt, Chief Civil
Deputy County Attorney

ATTEST:

Vickie Zeier
Clerk and Recorder

EXHIBIT A

ENTRY RATES

New employees hired during the term of this Agreement shall normally be paid at the following rates:

Job Title	FY 06 Entry Rate
Attorney I	$19.00
Attorney II	$22.00
Attorney III	$25.00

The above entry rates are effective on June 19, 2005. No bargaining unit employee shall be paid less than the entry rate for the employee's position, as set forth above, unless the pay rate is established as part of a bona fide training assignment under Article 23, Section 5.

Effective on the first day of the pay period closest to, but not after June 30, 2006, bargaining unit employees shall receive across-the-board pay increases equivalent to those received by attorneys in the Missoula County Attorney's Office for FY07 .

ADDENDUM A (1)

COUNTY OF MISSOULA
ATTORNEY I - PUBLIC DEFENDER
5/2002

THIS POSITION HAS BEEN DETERMINED TO BE EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT.

DEFINITION: Performs basic criminal defense legal work for the office of the Public Defender, limited to cases before the Justice Courts.

EXAMPLE OF DUTIES: (The following are intended to illustrate typical duties; they are not meant to be all inclusive or restrictive.)

ESSENTIAL DUTIES:
Defends indigent criminal defendants in the Justice Courts. May represent defendants in District Court as assigned.

Reviews investigative reports from law enforcement officers, charging documents and interviews defendant and witnesses to determine the facts of the case and to decide on case strategy.

Prepares for and appears with clients at all court appearances such as arraignments, guilty pleas, jury and non-jury trials, sentencing hearings, etc. Responds to motions and arguments from the prosecution. Conducts all phases of trial.

Prepares, examines and introduces witnesses, including experts, and exhibits. Gathers evidence and arranges for tests of physical evidence. Performs legal research, prepares and files legal motions, briefs and other documents.

Negotiates plea bargaining agreements on behalf of the defendant.

May prepare and present appeals of cases when, in the Public Defender's opinion, an appeal is in the interest of justice.

OTHER DUTIES:
Performs related work as required or directed.

SUPERVISION RECEIVED: Works under the general supervision of the Chief Public Defender.

SUPERVISION EXERCISED: None.

WORKING RELATIONSHIPS: Deals with a wide variety of people that may involve difficult negotiations; acts as an expert in a professional field.

PHYSICAL/ENVIRONMENTAL DEMANDS: The work requires little physical activity and the employee commonly remains in an office or court setting. Requires exposure to stressful situations. Requires visiting clients in detention centers.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

KNOWLEDGE: Working knowledge of criminal procedure and the rules of evidence. Working knowledge of state criminal code, State and Federal case law. Working knowledge of jury and non-jury trial procedures. Basic knowledge of various civil areas of the law.

SKILLS: Skill in the use of a personal computer (word-processing).

ABILITIES: Ability to prepare complex legal documents. Ability to communicate effectively in the English language, orally and in writing. Ability to establish and maintain effective working relationships with diverse individuals and groups.

MINIMUM QUALIFICATIONS:

EDUCATION: Requires a Juris Doctor degree.

EXPERIENCE: Requires one year of experience in the practice of law. Criminal law experience is preferred.

SPECIAL REQUIREMENTS: Applicants must be admitted to the practice of law in the State of Montana prior to employment.

ADDENDUM A (2)

COUNTY OF MISSOULA
ATTORNEY II - PUBLIC DEFENDER
5/2002

THIS POSITION HAS BEEN DETERMINED TO BE EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT.

DEFINITION: Performs legal duties in criminal defense for the Office of the Public Defender.

EXAMPLE OF DUTIES: (The following are intended to illustrate typical duties; they are not meant to be all inclusive or restrictive.)

ESSENTIAL DUTIES:
Defends indigent criminal offenders including adults and juveniles and represents persons in involuntary commitment proceedings. Represents children in Guardian Ad Litem cases.

Reviews investigative reports from law enforcement officers, charging documents and interviews defendant and witnesses to determine the facts of the case and to decide on case strategy.

Prepares for and appears with clients at all court appearances such as arraignments, guilty pleas, jury and non-jury trials, sentencing hearings, etc. Responds to motions and arguments from the prosecution. Conducts all phases of trial.

Prepares, examines and introduces witnesses, including experts, and exhibits. Gathers evidence and arranges for tests of physical evidence.

Negotiates plea bargaining agreements on behalf of the defendant.

Prepares and presents appeals of cases at all levels when, in the Public Defender's opinion, an appeal is in the interests of justice. Handles appropriate post conviction matters.

Prepares for and participates in sentence review proceedings.

OTHER DUTIES:
Responsible for case preparation to include legal research, filing motions, preparing briefs and other documents.

Performs related work as required or directed.

SUPERVISION RECEIVED: Works under the general direction of the Chief Public Defender.

SUPERVISION EXERCISED: None.

WORKING RELATIONSHIPS: Deals with a wide variety of people involving difficult negotiations; acts as an expert in a professional field.

PHYSICAL/ENVIRONMENTAL DEMANDS: The work requires little physical activity and the employee commonly remains in an office or court setting. Requires exposure to stressful situations. Requires visiting clients in detention centers, mental health facilities, at home or school.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

KNOWLEDGE: Considerable knowledge of criminal procedure and the rules of evidence. Considerable knowledge of state criminal code, State and Federal case law. Considerable knowledge of jury and non-jury trial procedures. Basic knowledge of various civil areas of the law.

SKILLS: Skill in the use of a personal computer (word-processing).

ABILITIES: Ability to prepare complex legal documents. Ability to communicate effectively in the English language, orally and in writing. Ability to establish and maintain effective working relationships with diverse individuals and groups.

MINIMUM QUALIFICATIONS:

EDUCATION: Requires a Juris Doctor degree.

EXPERIENCE: Requires two years of progressively responsible experience in the practice of law. Criminal law experience is preferred.

SPECIAL REQUIREMENTS: Applicants must be admitted to the practice of law in the State of Montana prior to employment.

ADDENDUM A (3)

COUNTY OF MISSOULA
ATTORNEY III - PUBLIC DEFENDER
5/2002

THIS POSITION HAS BEEN DETERMINED TO BE EXEMPT FROM THE OVERTIME PROVISIONS OF THE FAIR LABOR STANDARDS ACT.

DEFINITION: Performs the most complex and responsible criminal legal work in the Office of the Public Defender.

EXAMPLE OF DUTIES: (The following are intended to illustrate typical duties; they are not meant to be all inclusive or restrictive.)

ESSENTIAL DUTIES:
May be assigned cases involving the most complex legal issues. Defends indigent criminal offenders including adults and juveniles and represents persons in involuntary commitment proceedings. Represents children in Guardian Ad Litem cases.

Reviews investigative reports from law enforcement officers, charging documents and interviews defendant and witnesses to determine the facts of the case and to decide on case strategy. Responsible for filing pre-trial motions.

Prepares for and appears with clients at all court appearances such as arraignments, guilty pleas, jury and non-jury trials, sentencing hearings, etc. Responds to motions and arguments from the prosecution. Conducts all phases of trial.

Prepares, examines and introduces witnesses, including experts, and exhibits. Gathers evidence and arranges for tests of physical evidence. Performs legal research, prepares and files legal motions, briefs and other documents.

Negotiates plea bargaining agreements on behalf of the defendant.

Prepares and presents appeals of cases at all levels when, in the Public Defender's opinion, an appeal is in the interests of justice. Handles appropriate post conviction matters. Prepares for and participates in sentence review proceedings.

At the direction of the Chief Public Defender may exercise supervision of a limited number of staff attorneys.

OTHER DUTIES:
Responsible for case preparation to include legal research, filing motions, preparing briefs and other documents.

May be assigned to act on behalf of the Chief Public Defender in her absence.

Performs related work as required or directed.

SUPERVISION RECEIVED: Works under the general direction of the Chief Public Defender.

SUPERVISION EXERCISED: May be responsible for the supervision of a limited number of staff attorneys at the direction and request of the Chief Public Defender.

WORKING RELATIONSHIPS: Deals with a wide variety of people involving difficult negotiations; acts as an expert in a professional field.

PHYSICAL/ENVIRONMENTAL DEMANDS: The work requires little physical activity and the employee commonly remains in an office or court setting. Requires exposure to stressful situations. Requires visiting clients in detention centers, mental health facilities, at home or school.

REQUIRED KNOWLEDGE, SKILLS AND ABILITIES:

KNOWLEDGE: Considerable knowledge of criminal procedure and the rules of evidence. Considerable knowledge of state criminal code, State and Federal case law. Considerable knowledge of jury and non-jury trial procedures. Basic knowledge of various civil areas of the law.

SKILLS: Skill in the use of a personal computer (word-processing).

ABILITIES: Ability to prepare complex legal documents. Ability to communicate effectively in the English language, orally and in writing. Ability to establish and maintain effective working relationships with diverse individuals and groups.

MINIMUM QUALIFICATIONS:

EDUCATION: Requires a Juris Doctor degree.

EXPERIENCE: Requires four years of progressively responsible experience in the Missoula County Public Defenders Office. Credit may be given for any full year of prior experience in a Public Defenders' Office.

SPECIAL REQUIREMENTS: Applicants must be admitted to the practice of law in the State of Montana prior to employment

Exhibit 4

REPRESENTATION OF CHILD IN DEPENDENT/NEGLECT PROCEEDINGS

GOAL: To actively and effectively represents the wishes and interests of children use all legal means to effectuate the wishes of the child which may include reunification with the birth family. Attorneys representing children shall comply with the general standards for public defenders as well as these specific standards.

A. TRAINING

I. The attorney has received a minimum of _____ hours of training in representing children of which at least _____ hours were devoted to the Indian Child Welfare Act.

II. Training shall include the following:

a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children with special needs;
h. The causes and available treatments of child abuse;
i. Child welfare and family preservation services available in the community;
j. Services the State will and won't routinely pay for;
k. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
l. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
m. Local and state experts who can provide independent evaluations of the child;
n. Local and state experts who can provide attorneys with consultation and testimony on the special needs of Indian children and cultural differences

C. HANDLING OF THE CASE

I. The attorney shall actively participate in every critical state of the proceedings and shall:
a. obtain all pleadings and notices;
b. determine if a conflict of interest exists between siblings and, if so, take the appropriate steps insure that each sibling has independent counsel;
c. determine if the child has a disability because of age or other reason. If so, determine if there are any steps to take to effectively represent the child;

d. in an age appropriate way, explain the facts and the law of the case and the ramifications of taking various positions both for the child and for other family members;
e. consult with the child's therapist and caregivers;
f. interview the witnesses who will be testifying in any proceeding;
g. prepare for each proceeding;
h. try, when appropriate, to persuade the child to a certain position but may not advocate a position contrary to that of the child;
i. if a child can't or doesn't express a position or preference, the attorney may advocate the best interest of the child.

EXHIBIT 3

PRESENTATION OF PARENTS IN DEPENDENT/NEGLECT CASES

GOAL: To actively and effectively represent parents whose children are the subject to actions under the Child Abuse and Neglect laws of Montana and afford them every legal opportunity to preserve their parental rights. Attorneys representing parents shall comply with the general standards for public defenders as well as these specific standards.

A. TRAINING

I. The attorney has received a minimum of _____ hours of training in representing parents of which at least _____ hours were devoted to the Indian Child Welfare Act.

II. Training shall include the following:

a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children with special needs;
b. The causes and available treatments of child abuse;
c. Child welfare and family preservation services available in the community;
d. Services the State will and won't routinely pay for;
e. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
f. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
g. Local and state experts who can provide attorneys with consultation and testimony on the special needs of Indian children and cultural differences.

C. HANDLING THE CASE

I. The attorney shall actively participate in every critical stage of the proceedings and shall:

a. Interview the client and discuss possible witnesses;
b. If the client is a parent who's location is unknown, all standards means (telephone book, internet, putative father registrar, etc.) shall be used to locate the parent. Other parents who are available shall be consulted as to the location of the missing parent;
c. Interview the state's witnesses and prepare cross-examination;
d. Discuss and review with the client all documentary evidence;
e. Review applicable law and case law;

f. Interview social workers, case aides, family members, foster parents, treatment providers and others who may have knowledge or the child and family;
g. If the child has been removed, determine what efforts have been made to reunite or maintain the family before the filing of the legal action;
h. Stay in regular contact with the client, writing letters and making telephone calls, as necessary;
i. Remain in contact with the social worker on the case and monitor case progress between court hearing.

Montana Legislative Services Division

Legal Services Office

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

December 1, 2005

Senator Mike Cooney
713 Pyrite Court
Helena, Montana 59601

Dear Senator Cooney:

I am writing in response to your request for an analysis of the impact of section 69(3) of Senate Bill No. 146, enacted as Chapter 449, Laws of 2005, on certain collective bargaining agreements. That provision provides that the salary of transferred county or city employees on July 1, 2006, must be the same as it was on July 1, 2005, plus any salary increases provided for by the county or city not exceeding 4%. Section 69, Chapter 449, Laws of 2005, was enacted in a form that was unchanged from the time that the bill was introduced at the request of the Law and Justice Interim Committee. You have asked several specific questions concerning the collective bargaining agreement covering the Yellowstone County Deputy Public Defenders that I will address in turn.

As a part of your request you have provided me with a copy of the collective bargaining agreement between Yellowstone County and Teamsters Local Union #190. That collective bargaining agreement provides that certain public defenders will be advanced to the next step of their salary schedule effective July 1, 2005, the beginning of fiscal year 2006. If a Yellowstone County Deputy Public Defender transfers to state employment on July 1, 2006, then pursuant to section 69(3), Chapter 449, Laws of 2005, the Deputy Public Defender's salary will be the same as it was on July 1, 2005. Under this scenario, the Deputy Public Defender will retain the step increase that became effective on July 1, 2005.

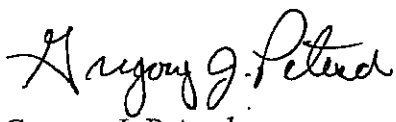
You have indicated that as part of the collective bargaining agreement, certain public defenders may be promoted between July 1, 2005, and July 1, 2006, resulting in at least a 5% increase in the public defender's salary. You have asked if that provision would violate section 69, Chapter 449, Laws of 2005. Chapter 449, with certain limited exceptions that do not apply to this analysis, became effective on April 28, 2005. However, section 69, Chapter 449, Laws of 2005, applies to public defenders on July 1, 2006. Therefore, the collective bargaining provision concerning promotions and salary increases does not violate Chapter 449, Laws of 2005. A more appropriate question would appear to be whether Chapter 449, Laws of 2005, impairs the collective bargaining agreement. Article II, section 31, of the Montana Constitution and Article I, section 10, of the United States Constitution prohibit the impairment of contracts. In analyzing a contract clause challenge, the Montana Supreme Court adopted a three-tier analysis: (1) Is the state law a substantial impairment of contractual relationship? (2) Does the state have a significant and legitimate purpose for the law? (3) Does the law impose reasonable conditions

through (4) of section 69, Chapter 449, Laws of 2005, is to establish the salary of a transferred employee for the fiscal year beginning on July 1, 2006, and to have the state classification system apply to those employees in succeeding years if the state classification system provides for a salary increase. Transferred employees could not have their salaries reduced as a result of the state classification system, but would be held harmless until the state pay level reached the salary provided pursuant to section 69(3), Chapter 449, Laws of 2005. These conclusions are buttressed by section 69(5), Chapter 449, Laws of 2005, which provides that section 69 does not preserve the right of any former county or city employee to any salary or compensation, including longevity benefits, that was not accrued and payable as of June 30, 2006.

Your final inquiry concerns whether the 4% limit on a salary contained in section 69(3), Chapter 449, Laws of 2005, would apply to an employee who transfers from county or city employment after July 1, 2006, because the limit expressly applies to the salary of transferred county or city employees on July 1, 2006. I believe that this question is addressed by section 69(1), Chapter 449, Laws of 2005. That subsection provides that employees of county or city public defender offices who are employed by a county or city on June 30, 2006, may be transferred to state employment in the Office of the State Public Defender provided for in section 47-1-201, MCA. Transferred employees become state employees on July 1, 2006. It does not appear that a county or city employee can transfer to state employment after July 1, 2006. A county or city employee who chooses not to transfer to state employment on July 1, 2006, would have to apply for a position with the Office of the State Public Defender pursuant to section 47-1-201(3), MCA, and, if hired, would be a newly hired employee and not a transferred employee.

I hope that I have adequately addressed your questions. If you have any additional questions, please feel free to contact me.

Sincerely,



Gregory J. Petesch
Director of Legal Services

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