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LEGISLATIVE
FISCAL ANALYST

August 13, 2009

Matt Stayner
Legislative Fiscal Division
Room 110A, State Capitol
PO Box 201711
Helena, MT 59620-1711

Dear Mr. Stayner:

I am writing in response to your request for an analysis of the provisions of section 58 of House Bill No. 645, enacted as Chapter 489, Laws of 2009. Section 58 of House Bill No. 645 established a Quick Start Energy Program within the Department of Commerce for the purpose of making energy efficiency grants to public school districts for projects that provide long-term, cost-effective benefits to school facilities.

Section 58 of House Bill No. 645 requires public school districts to apply for grants and provides criteria for the Department of Commerce to use in awarding grants.

Section 58(5) of House Bill No. 645 establishes time limits on the distribution and obligation of Quick Start Energy Program funds. That subsection provides:

The department of commerce shall distribute quick start energy program funds on a reimbursement basis from May 15, 2009, until September 30, 2009. Any quick start funds not obligated under this section for reimbursement to a public school district by September 30, 2009, must be used as provided in [section 85] for the School Facilities Program Administration and Grants line item appropriation.

Section 58(5) of House Bill No. 645 is not a model of clarity and may be read in two different ways. The first sentence may be read to require that the reimbursements of the granted funds to public school districts must cease on September 30, 2009. However, the second sentence indicates that funds are only required to be obligated for reimbursement by September 30, 2009. Therefore, section 58(5) of House Bill No. 645 is somewhat ambiguous. While a statute may have some ambiguities due to a large variety of possible situations that are covered by a statute, a court is not required under due process standards to find vagueness in the terms used in a statute so as to destroy an act; rather, it is the court's duty to construe a statute so as to be consistent with the will of the Legislature and to comport with constitutional limitations. In re Montana Pacific Oil & Gas Co., 189 Mont. 11, 614 P.2d 1045 (1980). Legislative intent may be determined in a number of ways when a statute is ambiguous. The court presumes the Legislature would not pass a meaningless statute, and the court must harmonize statutes relating to the same subject so as to give each effect. The court can look to the legislative history of the statute. Great deference and respect must be given to interpretation of the statute by persons and agencies charged with its administration. Montana Contractors' Association, Inc. v. Department of Highways, 220 Mont.

392, 715 P.2d 1056 (1986), followed in Albright v. State, 281 Mont. 196, 933 P.2d 815 (1997), and Winchell v. Department of Natural Resources and Conservation, 1999 MT 11, 293 Mont. 89, 972 P.2d 1132 (1999).

I have reviewed the minutes of the House Appropriations Committee for March 23, 2009, for the afternoon meeting where the Quick Start Energy Program was discussed and conclude from that discussion that the Committee wanted to have the funds used for school energy efficiency purposes as quickly as was feasible. An interpretation of the language in section 58(5) of House Bill No. 645 that comports with that intent is therefore proper. Any portion of the funds that are not obligated by September 30, 2009, will be used for the School Facilities Program Administration and Grants program. That program is intended to provide similar grants to schools for facility improvements. Therefore, interpreting section 58(5) of House Bill No. 645 in a manner that requires the distribution of funds rather than the obligation of funds to be completed by September 30, 2009, could quite possibly merely delay the implementation of the very same project. It is extremely doubtful that the Legislature intended this result. A great deal of the discussion of House Bill No. 645 focused on the creation of jobs as quickly as possible and the purpose of the Quick Start Energy Program was to provide energy savings to public school districts. An interpretation of section 58(5) of House Bill No. 645 that allows grants to be awarded and funds for those grants to be encumbered until September 30, 2009, appears to more fully comport with the intent of the Legislature for that program.

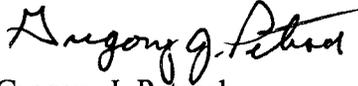
This interpretation is also consistent with general state accounting and budgeting practices under which funds that would otherwise revert may be contractually encumbered prior to the statutorily prescribed reversion date. See 40 A.G. Op. 4 (1983), in which Attorney General Greely determined that the Coal Board could encumber funds at the close of a fiscal year only by incurring a "valid obligation" against them under section 17-7-302, MCA. The Coal Board did not incur a valid obligation against its appropriation by inviting a full application for a grant after screening a preapplication because it was not legally bound to approve the application. In addition, section 17-7-302(2), MCA, provides that an appropriation may be encumbered by a written interagency or intra-agency agreement with the Department of Administration for the alteration, repair, maintenance, or renovation of a building pursuant to the provisions of Title 18, chapter 2, MCA. That is exactly the type of encumbrance that is contemplated by section 58(5) of House Bill No. 645.

In 48 A.G. Op. 26 (2000), Attorney General Mazurek analyzed the authority of the Department of Commerce to enter contracts with microbusiness development corporations. General Mazurek determined that under the authorizing statute, the Department had administrative authority to create a valid encumbrance until September 30, 1997, but once that contingency expired, the Department had no authority to contract further in order to encumber the funds. There is no legal provision allowing encumbrance of funds after the end of a fiscal year. Because the Department's commitments were made after fiscal yearend, they were not valid obligations pursuant to section 17-7-302, MCA. Therefore any unexpended balance from the appropriation should have reverted to the coal tax trust fund as of September 30, 1997.

An interpretation of section 58(5) of House Bill No. 645 that allows the funds to be legally encumbered until September 30, 2009, and reimbursed to public school districts after that date would comply with both Attorney General Opinions and with general state budgeting and accounting practices. In addition, this interpretation appears to comply with the intent of the Legislature in establishing the Quick Start Energy Program.

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

Sincerely,



Gregory J. Petesch
Director of Legal Services

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