

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

November 14, 2007

Board Members
Public Employees' Retirement Board
100 North Park, Ste. 200
P.O. Box 200131
Helena, MT 59620-0131

Dear PERB Members:

I am writing to express my concerns about recent news accounts of a lawsuit against the Public Employees' Retirement Board (PERB) brought by the Montana Police Protective Association (MPPA). Some of you were members of the PERB when, two years ago, I brought to you my concerns with the Board's open meeting violations in relation to the hiring of its Executive Director. The recent lawsuit brought by the Montana Police Protective Association involves the same constitutional "Right to Know" provision, although in relation to a different underlying situation, so perhaps it goes without saying that it caught my attention.

From all accounts, the Montana Police Protective Association seeks access to information in the possession of PERB in order to conduct its own assessment of the assumptions and conclusions that were made by PERB's actuarial consultant regarding the Deferred Retirement Option Program (DROP). Under this Program, police officers can stay on the force after 20 years, but their retirement is frozen at the 20-year level and does not increase with additional years of service during the DROP period, although the employed officers continue to pay into the fund. At least some of the information sought is information held by PERB about the MPPA's own members. News accounts indicate that PERB has refused to provide the requested information because it believes that such a release would violate the privacy rights of the retirement fund members and their beneficiaries.

I appreciate that it is not always easy to balance Montana's constitutional right to know against Montana's constitutional right to privacy. However, the lawsuit raises the obvious question of how the public, or in this case MPPA and the members and beneficiaries of the retirement program, can test the actuaries' conclusions about the program without having access to the underlying data and information available to PERB's actuaries.

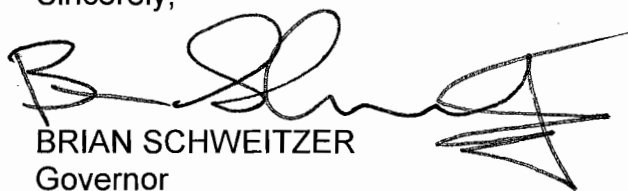
Members, PERB
November 14, 2007
Page 2

Additionally, both a reading of the lawsuit and news accounts of PERB's decision, indicate that the Montana Police Protective Association was willing to work jointly with PERB to obtain a court protective order limiting disclosure of any private individual identifying information to MPPA's actuarial consultant, only. That pragmatic resolution sounds like it would be a "win-win" for all parties, by both guaranteeing the "right to know" without compromising individual privacy. I ask you to please explain to me how disclosure of this information with a protective order preventing its further dissemination could constitute a violation of any member's or beneficiary's privacy rights.

At this juncture, with the lawsuit having already been filed, I ask you, as a Board, to seek to resolve this dispute expeditiously. Please keep me advised of your actions in this matter.

Thank you.

Sincerely,


BRIAN SCHWEITZER
Governor

cc: Roxanne Minnehan, Executive Director