LEGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor
Tori Hunthausen,
Chief Deputy Legislative Auditor

Deputy Legislative Auditors:
James Gillett
Angie Grove

May 8, 2008

Sheila M. Steams
Commissioner of Higher Education
Montana University System
25800 Broadway
PO Box 203101
Helena, Montana 59620-3101

Dear Commissioner Stearns:

I received your formal request for a performance audit of the Student Assistance Foundation and the Montana Higher Education Student Assistance Corporation. The documentation I have available indicates I do not have audit jurisdiction over the Student Assistance Foundation and the Montana Higher Education Student Assistance Corporation. And, while I sincerely appreciate the assistance and cooperation offered by your office and by the Board of Regents, I cannot expend public funds auditing non-public entities.

My decision is based upon the following:

During the 2007 legislative session House Bill No. 578 was introduced by Representative John Musgrove. The proposed legislation would have amended the definition of "State Issuer" and clarified that the Legislative Auditor would have full access to the fmancial records of any state issuer. House Bill No. 578 was not passed and, therefore, not signed into law. This is a persuasive indication that the legislature did not intend to expand my audit jurisdiction over the Student Assistance Foundation and the Montana Higher Education Student Assistance Corporation.

Dorsey & Whitney, LLP, in a legal opinion issued November 21, 2006 to the Board of Directors of the Student Assistance Foundation (SAF) concluded, in part: "…we believe the Court would hold that SAF is an entity legally distinct from the State of Montana and its agencies (including the Board of Regents) and that it is not a state agency because (i) the act under which SAF was formed does not refer to it as an agency of the State of Montana, and (ii) SAF is not funded by the State of Montana, its assets and obligations are its own, and neither the State of Montana nor the Board of Regents is entitled to nor obligated for the assets and liabilities of SAF."

Using language similar to that noted above, Dorsey & Whitney, LLP, in a legal opinion issued November 21, 2006 to the Board of Directors of the Montana Higher Education Student Assistance Corporation (MHESAC) concluded, in part: "…we believe the Court would hold that MHESAC is an entity legally distinct from the State of Montana and its agencies (including the Board of Regents) and that it is not a state agency because (i) the act under which MHESAC was formed does not refer to it as an agency of the State of Montana, and (ii) MHESAC is not funded
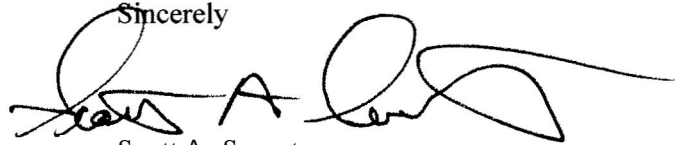
by the State of Montana, its assets and obligations are its own, and neither the State of Montana nor the Board of Regents is entitled to nor obligated for the assets and liabilities of MHESAC."

In 2005, the Department of Administration and the Legislative Audit Division requested the Governmental Accounting Standards Board's (GASB) advice on the status of MHESAC as part of the state of Montana's financial reporting entity. After reviewing information submitted by Montana, GASB staff concluded that including MHESAC in the state's financial reporting entity was a borderline decision. As a result, the Department of Administration has chosen to report MHESAC as a related party in the notes to the state financial statements rather than including MHESAC financial information on the face of the statements.

The notes (Note 1 A.) to the state financial statements for Fiscal Year Ended June 30, 2007, disclose that MHESAC and the SAF are not considered part of Montana's reporting entity.

For these reasons, I respectfully decline to conduct a performance audit of the Student Assistance Foundation and the Montana Higher Education Student Assistance Corporation.

Sincerely

Scott A. Seacat
Legislative Auditor

cc: Legislative Audit Committee Members
         Board of Regents
         Fred Flanders, Chair, MHESAC
         James Bell, Chair, SAF
         James Stipcich, President, SAF
         David Ewer, Governor's Office of Budget and Program Planning

S:\Admin_RestrictediDAILY\ss_Steams SAF MHESAC audit requesl.doclbb