



Montana Legislative Services Division
Legal Services Office

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

SEP 01 2004

M S F
General Court

August 23, 2004

Senator Royal Johnson
2915 Illinois Street
Billings, Montana 59102

Dear Senator Johnson:

I am writing in response to your request for an analysis of section 39-71-2352, MCA. You have asked for an interpretation of subsection (6) of section 39-71-2352, MCA, concerning the transfer of funds from the state general fund to the state fund for the payment of claims for injuries resulting from accidents that occurred before July 1, 1990 (old fund). Section 39-71-2352(4), MCA, defines "adequately funded" as the present value of the total cost of future benefits remaining to be paid and the cost of administering the claims. Section 39-71-2352(5), MCA, requires that funds in excess of the calculated "adequately funded" amount must be transferred to the state general fund. Section 39-71-2352(6), MCA, provides that if in any fiscal year claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount necessary to pay claims for those injuries must be transferred from the general fund to the account provided for in section 39-71-2321, MCA (old fund account).

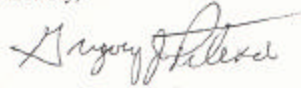
If the condition contained in section 39-71-2352(6), MCA, occurs, you have specifically asked whether the amount to be transferred from the state general fund to the old fund account is the amount by which the old fund account is not "adequately funded" or some other amount. Your question requires the application of standard rules of statutory construction to the provisions of section 39-71-2352, MCA. The rules of statutory construction require the language of a statute to be construed according to its plain meaning. If the language is clear and unambiguous, no further interpretation is required. The Supreme Court will resort to legislative history only if legislative intent cannot be determined from the plain wording of the statute. Levell v. State Compensation Mutual Insurance Fund, 260 Mont. 279, 860 P.2d 95 (1993). Section 39-71-2352(6), MCA, requires the transfer from the general fund to the old fund account, the "amount necessary to pay claims". That amount is different than the amount that is not "adequately funded". There are two components that make up the definition of "adequately funded": the total cost of future benefits remaining to be paid and the cost of administering the claims. If the Legislature had intended to transfer the amount that is not "adequately funded", it could have done so. However, it did not. Section 1-2-101, MCA, provides that in the construction of a statute, 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. See Taylor v. Rann, 106 Mont. 588, 80 P.2d 376 (1938).

In addition, the requirement for the transfer of state general fund money to the old fund account was enacted by Chapter 16, Special Laws of August 2002. The definition of "adequately funded" was enacted by Chapter 184, Laws of 1999. If the Legislature intended to require the transfer of the amount that is not "adequately funded" it could have used the existing statutory language.

The fact that it did not use the existing statutory language precludes an interpretation using that language. In conclusion, the amount to be transferred from the state general fund to the old fund account is not the amount by which the old fund is not "adequately funded". The amount to be transferred is the "amount necessary to pay claims".

I hope that I have addressed your question. If I can provide additional information or if you have other questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Gregory J. Petesch".

Gregory J. Petesch
Director of Legal Services

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