Exhibit B
DATE: September 30, 2008

MEMORANDUM

TO: Vickie Zeier, Clerk and Recorder/Treasurer

FROM: Michael Sehestedt
Deputy County Attorney

RE: Elector Challenges-Electors Moving Within Missoula County

Issue: Is a registered elector who has moved from one Missoula County address to another Missoula County address without changing their voter registration address subject to challenge as not registered as required by law.

Held: No, an elector who has moved within Missoula County and failed to notify the Election Administrator of a change in address is specifically permitted to vote at the precinct where they are registered by Section 13-2-512 MCA.

Discussion:

Background

Late yesterday (September 29, 2008) the Elections Office received a large number of affidavits challenging registration of Missoula County electors.

The challenges are based on a comparison of the United States Postal Service’s National Change of Address Data Base with the challenged electors’
The provisions of section 13-2-512(1) MCA are dispositive of the challenges to those electors who are merely alleged to have moved within Missoula County. The elector must be allowed to vote at the precinct where the elector is registered to vote.

The right to vote at the precinct where the elector is registered is applicable only to the first election, at which the elector offers to vote, after the change of residence within the County. Since there is nothing in the challenge to suggest that the challenged elector has offered to vote at other earlier elections since the change in residence, the challenges fail to state a basis to disqualify the elector.

While the foregoing is dispositive of these challenges to those electors who have moved within Missoula County there are fundamental flaws (in addition to ignoring Section 13-2-511 (1) MCA) in the challenger’s reasoning that should be addressed.

Section 13-2-208 (1) MCA is addressed solely to the initial registration of electors. The challenge does not even suggest that the elector never resided at the address given in the initial registration. Rather the challenge is merely that the elector no longer resides at the address given in the registration.

The transfer of registration is governed by Title 13, Chapter 2, Part 5 which, as set out above, permit an elector to vote once, following a change of residence within a County at the precinct where the elector was registered prior to the change of residence within the County.

If the challenged elector in fact resided at the address given in the registration at the time of registration, then there is no violation of Section 13-2-208(1). Since the challenge does not contest residence at the time of registration it is insufficient to establish a violation of Section 13-2-208 (1) MCA.

Since nothing in the affidavit establishes that the challenged elector is not registered as required by law, the challenge must be rejected.

While these challenges must be rejected, I would urge you to continue to remind election judges of the requirement that each elector give their current address and require each elector who gives an address different from the address shown in the precinct register fill out a transfer form or new registration before being allowed to vote. (See Section 13-2-512(3) MCA)
registered address. The allegation is that when an elector no longer resides at the address shown on their voter registration, then the elector no longer meets the requirements of a registered elector under Section 13-2-208 (1) MCA and hence is subject to challenge under Section 13-13-301 (2) (d). The affidavit further requests cancellation of the elector registrations for failing to meet the qualifications set out in Section 13-1-111 MCA.

The challenges received fall into three categories:

1) Electors for whom the National Change of Address Data Base shows a new address within Missoula County
2) Electors for whom the National Change of Address Data Bank shows a new address outside Missoula County but still within Montana, and
3) Electors for whom the National Change of Address Data Base shows a new address outside Montana.

This memo addresses only those challenges in the first category of electors whose address has changed from one address in Missoula County to another address in Missoula County.

Legal Analysis

While the question of residence is more complicated than merely mailing addresses (see Section 13-1-112 MCA) and requires both physical relocation and intent to remain at the new location for purposes of this memo it will be assumed that the change of address does in fact constitute a change of residence.

In the case of registered electors moving within a County and failing to update their registration address, the legislature has provided clear and unambiguous guidance, saying in Section 13-2-512 (1) MCA that:

An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a transfer or new registration form may vote in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector’s registration has been canceled as provided in 13-2-402.