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### Documents from the November 20, 1971 meeting of the Associated Students of the University of Montana (ASUM)

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TO: Student Body Governments of Montana Schools of Higher Education

FROM: Jim Betty

RE: MONTPIRG Organizational Meeting November 20, 1971

DATE: November 8, 1971

The concept of a "public interest research group" (PIRG) has been briefly introduced to the students of higher education in Montana. The particular structure and function of a Montana Public Interest Research Group (MONTPIRG) have not been decided upon. Representatives from each of the schools of higher education in Montana will meet on November 20, 1971, to consider the organization of MONTPIRG in the best interest of Montana consumers and the natural environment of this state. The student body government on each Montana campus should make every effort to send at least one representative.

The first organizational meeting of MONTPIRG will be held Saturday, November 20, 1971, (10 a.m. until 2 p.m.). The meeting will be in St. Charles Hall (oldest and highest building) on the Carroll College campus in Helena, Montana. Please be on time and bring a sack lunch. The four-hour meeting is short, but necessary for those representatives who have a long drive. Informal discussion will follow this meeting for those who can stay on.

Jim Walsh, law student at the University of Montana, will keynote this meeting. He will explain the general structure of a PIRG and suggest the objectives for our organizational meeting. I will act as moderator until such time as another format is decided upon by this body of representatives, sitting as a whole.

The ideas and suggestions of each representative to this meeting will be encouraged and listened to. The enclosed materials are provided as stimulation for representatives' thinking about the organization of a PIRG in Montana. Consideration should be given to the particular characteristics of Montana (e.g. geography, the student population, makeup of citizens) as they apply to structuring and selling MONTPIRG. Each campus representative should come prepared to relate the status quo of MONTPIRG on his campus.

We will make an effort to discuss the following subject areas:

- 1) State coordination of MONTPIRG promotion efforts on the individual campuses in state, and in Montana generally.
- 2) Determine the nature and scope of problems MONTPIRG will be designed to research and advocate.
- 3) Financial base and needs of MONTPIRG.
- 4) State and campus representation for MONTPIRG organization.
- 5) Type of incorporation for MONTPIRG.
- 6) Structure of MONTPIRG.

I will look forward to meeting each of your campus representatives on November 20. Please call me (243-5741) or Jim Walsh (728-4297) if you have any questions. I am sure we can all look forward to an expedient and productive meeting.

Thank you,

James Betty  
University of Montana



## CONSIDERATIONS FOR ORGANIZING A MONTANA PUBLIC INTEREST RESEARCH GROUP

### MONTPIRG THE BASIC IDEA

#### WHAT IS MONTPIRG?

MONTPIRG is an effort by Montana students to work within the existing educational and social system to analyze and help solve Montana's pressing problems, in such areas as environmental preservation and consumer protection. MONTPIRG'S primary goals can be simply stated:

1. that private economic decisions which have significant impact on general public welfare be adequately studied and discussed.
2. that the formulation of administration and governmental policies and decisions take into consideration the views of all groups in society;
3. that a new method be established to insure consideration of the public interest in private economic decisions or governmental policies.



## MONTPIRG BACKGROUND

In October of this year, Brent English, an aid to consumer advocate, Ralph Nader, visited the Montana campuses. His objective was to present a program creating a student-financed, student-controlled staff of full-time professionals which would work to solve public problems in Montana. The staff would be financed by an assessment of \$1.00 per student per quarter. An elected student board of directors would direct the work of the staff.

It should be emphasized that Mr. Nader's connection with MontPIRG is inspirational. Neither he nor Mr. English have exercised control over the development of MontPIRG, nor will they in the future. MontPIRG is a Montana public service organization run by Montana students.

Two states--Oregon and Minnesota--have developed programs similar to MontPIRG. This gives MontPIRG a tremendous advantage since it can draw from the experiences of these two programs, yet still retain its specific nature in dealing with only Montana problems.

Brent English has offered to assist in the organizational process of MontPIRG. He was instrumental in setting up Oregon and Minnesota's programs and can supply valuable information concerning ideas that can be utilized and possible problems that might be confronted.

A fundamental step will be to set up a temporary state committee of representatives from each of the Montana campuses. The purpose of this committee will be to decide upon the nature of MontPIRG in accordance with the needs of specific campuses as well as the state as a whole. It will also provide an opportunity for a network of communication through which organizational and campaign goals and procedures can be coordinated. This committee will be the generating force in procuring state-wide public support of MontPIRG.

Since MontPIRG is a Montana organization concerned with Montana citizens and their problems, it is important that it command a broad range of public support. This support will come from three areas: students, community and state government.

Student support can be gained in a number of ways. The effectiveness of well-organized state-wide campus publicity drives cannot be overstressed. Pamphlets and posters, speeches to classes and campus groups, and endorsement by faculty members, school administration, and student government can all aid in gaining campus support. Some schools might find it beneficial to hold elections to determine student support of MontPIRG.

Another method which has proven successful is the use of a petition referendum. This method has two advantages:

1. None of the larger schools has ever had a majority of its students vote in any campus election, much less approve a question by an absolute majority. If MontPIRG wishes to claim the support of a majority of students, a new method to demonstrate student support is necessary. Petitioning is the best method.
2. The petition referendum provides a one-to-one encounter. MontPIRG organizers will be able to explain MontPIRG's concept to as many students as possible, giving them the opportunity to ask questions and discuss ideas.



MONTPIRG BACKGROUND  
CONTINUED

If the petition referendum is adopted as the chief means of demonstrating student support, then a suitable statistical method by which MontPIRG's petitions can be verified should be adopted as well.

Since there are only 25,000 students in the Montana university system, and since it has been suggested that \$100,000 will be needed for financing MontPIRG, suggestions have been made for including Montana high schools in MontPIRG's financial and organizational base. But this may create a number of basic problems. Some of these include, parental disapproval, wide-range publicity requirements, collection procedures for high school student contribution to MontPIRG, and determination of high school voice in MontPIRG organization. These problems as well as the accuracy of the \$100,000 figure as an estimate will be important topics of discussion in future deliberations.

In addition to seeking student support, endorsements should be sought from Montana legislators, administrators and court officials. MontPIRG's representatives should meet with Governor Anderson and Attorney General Woodahl. The entire Montana congressional delegation should be personally contacted.

MontPIRG should hold discussions with key member of the Montana business community. Many groups within the state can prove helpful toward furthering MontPIRG's objectives and should be asked to give their support. The public can be informed by numerous speeches, radio, television, newspaper articles, and other media.

Since MontPIRG is a Montana organization concerned with Montana citizens and their problems, it is important that it command a broad range of public support. This support will come from three areas: students, community and state government. Student support can be gained in a number of ways. The effectiveness of well-organized, state-wide rallies, including drive-a-car to the legislature, speeches and posters, school administration, and student government can be facilitated by having campus agents. These agents should find it beneficial to hold discussions to determine student support of MontPIRG. Another method which has proven successful is the use of a petition referendum. This method has two advantages: 1. Since the larger schools have over half the majority of the students vote in any campus election, such less approval a question by an absolute majority. If MontPIRG wishes to claim the support of a majority of students, a new method to demonstrate student support is necessary. Petitioning is the best method. 2. The petition referendum, unlike a one-to-one encounter, MontPIRG organizers will be able to explain MontPIRG's concept to as many students as possible, giving them the opportunity to ask questions and discuss ideas.



## HOW WILL MONTPIRG WORK?

There will be three levels in MontPIRG's organization: the local boards on each campus, the state board of directors and the professional staff.

Students on each campus who contributed to MONTPIRG will elect the local board members for a term of one year. Local members shall be duly-enrolled students. Local boards will conduct hearings so that students and citizens can present issues of general public interest. The local boards will also inform students of state board and professional staff activities. In addition, they will suggest ways to utilize academic resources at their institutions, and will seek students and faculty on each campus who are willing to research particular areas. This research, together with recommended courses of action, will be brought to the attention of the state board of directors by local boards. The local boards will provide school and local newspapers with information. The local boards will also maintain a liaison with university officials, student government representatives and the community.

Local board members will elect the director(s) to represent their college or university in MONTPIRG'S state board of directors. By a 2/3 vote of the respective local board members, a director may be removed. Directors will be students and members of the local boards. Each campus which adopts MONTPIRG'S financial procedure will be entitled to be represented on the state board of directors by one director for each 2,000 students who contributed to MONTPIRG. Any school with less than 2,000 contributing members will be entitled to one director. Alternative representatives will be chosen on the following basis: for one regular representative-one alternate; for two or three representatives-two alternates; for four or more representatives-four alternates.

The state board of directors will control the funds collected by MONTPIRG'S financial procedure. A voting majority of 2/3 of the state board of directors shall commit MONTPIRG to a given public interest area or problem. These "directives" shall serve the purposes for which MONTPIRG was organized and will provide the basis for the work of the staff. The state board of directors will meet once every two months. All contracts must be approved by the board of directors. The chairman, vice chairman, secretary and treasurer of the board of directors will be elected by a majority of its members and removed by a two-thirds (2/3) vote.

The staff will consist of those professionals hired to assist the state board of directors to fulfill the purposes of MONTPIRG. The staff will be responsible to the board and will report to the board at each regular meeting. The staff will also prepare reports which implement the directives adopted by the state board of directors. These reports will be the basis for private consultation with industry or government officials. If these consultations do not produce satisfactory results, the reports will be presented to the public through public hearings, news conferences, TV appearances, newspaper articles, or speeches at suitable forums. If satisfactory results are still not forthcoming, and the public, by law, has already established the standards which control the activities in question, the staff will be qualified to appear before public administrative or judicial institutions.



## HOW WILL MONTPIRG WORK?

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MONTPIRG will be financed by a registration assessment of an additional one dollar per term per student. Any student who does not wish to contribute will be entitled to a full refund during, but no later than the third week of each term at a convenient located office. No money will be taken irrevocably, and the majority should have the opportunity to persuade the minority of its point of view.

This financial procedure is fair for several reasons:

1. A majority of students in the state system of higher education sign a petition approving and requesting that MONTPIRG'S financial procedure be established. Since a majority of students will have given concrete evidence that they wish to contribute to MONTPIRG. MONTPIRG feels that it should make it as simple as possible for the majority to contribute. Also, just because the petition results do not represent 100% of the student population this is not an indication that those whose signatures did not appear were opposed. As with any public effort, the main problem is the contacting of the entire public involved.
2. The refund procedure is simple. Location of the office will be published prior to refunding. The office will be readily accessible. A student need only present his student card to obtain a refund. There will not be multitudinous forms to fill out, nor stairs to climb.

An automatic check-off system at registration has been suggested. Unfortunately, a check-off system would be prohibitive in terms of cost. Under the suggested MONTPIRG financial procedure, there are not additional processing costs since the costs are the same, whether \$157.00 or \$158.00 is printed on the card. All that would be necessary is a bookkeeping entry and a check to MONTPIRG. It would be wasteful to adopt a system with up to \$20.00 in processing costs per \$100,000 collected when another system is available, specifically approved by a majority of students and is essentially cost-free.

MONTPIRG sees another disadvantage to the check-off system. A new student would have little knowledge on which to base a decision as to whether or not he wishes to support MONTPIRG. The three weeks between registration and the refund would allow time to become informed about MONTPIRG, thus giving him an opportunity to make an intelligent decision.

The only objection to the MONTPIRG financial procedure is that it seemingly has an element of coercion. Most people recognize the value of the individual to maintain absolute control over his private property. But in any society as complex as ours, there are bound to be conflicting values. A basic conflict exists between the rights of the individual and his duty toward society as a whole. Values such as environmental preservation and fair consumer practices are the latter category. Society has long realized that the individual and society will each have to compromise for the betterment of both. Thus, it rarely occurs to anyone to seriously object to the concept of government taxation.



## HOW WILL MONTPIRG WORK?

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Similarly, MONTPIRG will benefit society as a whole. Considering the potential benefits to be derived from MONTPIRG and the wishes of the majority, it is fair to suggest that the minority of individuals who do not wish to support MONTPIRG be slightly inconvenienced. Recognizing their right to object, however, MONTPIRG will minimize the inconvenience to the minority.

The financial controls of MONTPIRG are as follows:

1. A copy of MONTPIRG will be open to the public for inspection.
2. All corporate contracts must be approved by the state board of directors.
3. No loans may be made to employees or directors.
4. No gifts or donations may be made to any individual or organization exceeding \$50.00 per year.

It should be emphasized that the success of MONTPIRG depends on the continuing contributions and participation of a great number of students. If the performance of the board or the staff is unsatisfactory, requests for refunds could limit the operations or possibly terminate MONTPIRG. It would be difficult to design a check better able to insure that the actions of the board and the staff represent the wishes of Montana students.

Under discussion of control is the possible problem of the breadth of MONTPIRG'S stated goals. Within such goals, MONTPIRG could conceivably include almost any worthy cause. However, MONTPIRG is limited by the very nature of its organization.

1. It will be relatively small, with a limited budget, and therefore, must select major issues of concern;
2. Because MONTPIRG is a Montana organization, it will be limited to problems within the state of Montana.
3. Because of the state-wide nature of MONTPIRG it will generally concentrate on issues concerning large portions of the state. Small local problems could come under the scrutiny of the local boards, but the issues chosen by the state board of directors will be somewhat larger in scope.



#### MONTPIRG LEGAL ISSUES:

Montpirg will be organized and operated as a nonprofit corporation. This corporation will be controlled by a state-wide student board of directors selected by students at schools collecting money for Montpirg.

The student board will be responsible for setting policy; it will also be responsible for handling all money received by Montpirg, arranging for re-funds to students and hiring professionals and other personnel.

#### TAX STATUS OF COLLEGES AND UNIVERSITIES:

A question in the minds of college administrators and trustees will be whether Montpirg's activities will jeopardize a college's own tax-exempt status. Since Montpirg will be engaged in controversial activities, the issue is whether colleges, by collecting money for Montpirg, can be considered to be involved in activities which might cost them their tax-exempt status.

The issue, factually, is nonexistent; there is almost no possibility that involvement with Montpirg could threaten a school's tax-exempt status. But the issue is likely to be raised. The following discussion should prove useful in quieting such fears.

Colleges and universities are tax-exempt institutions as provided in United States Code 501 (c)3:

(Tax-exempt organizations include) "corporations...organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, and for...no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office."

There are two restrictions on activities of tax-exempt institutions which could conceivably be violated by a school's involvement with Montpirg:

(1) participation in political campaigns. This prohibition is held to be absolute; and

(2) attempting to influence legislation. The critical test here is "substantial." It must also be determined what activity is considered "lobbying" (non-exempt) within the meaning of this restriction.

With regard to both of these restrictions, the theory we might wish to advance is that in collecting money for Montpirg colleges and universities will be acting only as collecting agents, collecting money from students as a special fee, not part of the regular incidental, comprehensive, or student activity fee; this money will be deposited in an independent fund to be re-mitted to Montpirg. The essential element of this theory is that the money collected for Montpirg does not belong to the schools collecting it.

Nevertheless, it can be argued against us that no refunding procedure, no matter how convenient, can remove the mandatory nature of a fee which all



fee paying students are required to pay as a prerequisite to enrollment. Furthermore, it can be argued that it is only the presence of a student on campus which enables us to have access to his money; and, that, for these reasons, and because of the fact that a school unquestionably exercises control over the money collected for Montpirg simply by collecting it, the money collected for Montpirg must be considered money belonging to the college or university collecting it. Following this theory, it can then be claimed that Montpirg's operations are activities which the schools engage in--in each case, to the extent to which the money collected for Montpirg represents a given percentage of the school's budget or a percentage of the total revenues received by the school from all sources.

There is some authority for regarding schools merely as collecting agents, but, even viewing the relationship between Montpirg and the schools in the light least favorable to us, the restrictions in 501 (c)3 should not present any problems in practice.

#### CONSIDERATION:

Some college administrators will question whether we can guarantee that Montpirg will not, at some future time, engage in partisan politics. It appears that the Internal Revenue Service regards this 501(c)3 prohibition as absolute: any involvement by Montpirg in any political campaign could jeopardize a school's tax-exempt status. In a recent Letter Ruling, the IRS endorsed a statement by the American Council on Education as providing "fair and reasonable guidelines" for interpreting 501 (c)3 (1970 P-H Fed. paragraph 55,162). The following portion deals with the effect of political activity on tax exemption.

"Educational institutions traditionally have recognized and provided facilities on an impartial basis to various activities on the college campuses, even those activities which have a partisan political bent, such as for example, the Republican Democratic, and other political clubs. This presents no problem. However, to the extent that such organizations extend their activities beyond the campus, and intervene or participate in campaigns on behalf of candidates for public office, or permit nonmembers of the university community to avail themselves of university facilities or services, an institution should in good faith make certain that proper and appropriate charges are made and collected for all facilities and services provided. Extraordinary or prolonged use of facilities, particularly by nonmembers of the university community, even with reimbursements, might raise questions. Such organizations should be prohibited from soliciting in the name of the university funds to be used in such off campus intervention or participation."

We can provide the best legal assurance on this point by including in our Articles of Incorporation a statement such as:

"This Corporation shall not participate or intervene in or contribute to any political campaign on behalf of any candidate for public office within the meaning and intent of 26 U.S.C. 501 (c)3".

Any violation of such an article would nullify any informal or contractual relationship between a school and Montpirg which was agreed to on the basis of Montpirg's stated purposes.



#### CONSIDERATION:

With regard to lobbying (attempting to influence legislation), the leading case interpreting the meaning of "substantial" in 501 (c)3 is Seasongood v. Commissioner of I.R. (Ct. App., 6th Cir., 1955) 227 F.2d 907. In Seasongood it was held that where less than five (5) percent of the resources of a good government league were devoted to "political" activities, such "political" activities, in relation to all other activities of the league, were not "substantial" within the meaning of the I.R. Code provision. Subsequent decisions have upheld the principle that non-exempt activities which were "less than substantial" would not result in the loss of an organization's tax-exempt status under 501(c)3. Therefore, even considering a school's relationship with Montpirg in its most unfavorable light (money collected for Montpirg being school funds, all of this money used for lobbying), it is inconceivable that a court could find that the money collected for Montpirg to be used for non-exempt purposes constituted a "substantial" portion of any school's budget within the interpretation the courts have given this word in the Internal Revenue Code.

#### CONSIDERATION:

After Montpirg is organized and operating, it may be possible for Montpirg to qualify as a tax-exempt organization under 26 U.S.C. 501 (c)3 by applying to the IRS for such a status. If this would not necessitate an undesirable restriction on our "lobbying" activities, a tax-exempt status would enable us to solicit tax-deductible contributions from foundations and private individuals.

The test in determining whether Montpirg qualifies as a tax-exempt organization will be the extent to which it engages in non-exempt activities. The only non-exempt activity contemplated so far is "lobbying", whatever that is. Most of Montpirg's activities will be exempt within the meaning of 501 (c)3. Research and information-gathering conducted by Montpirg and the publication of research findings are "scientific" or "educational" activities, or they may fall in the category of "testing for public safety". Litigation carried on in the public interest generally falls within the meaning of "charitable", the term under which the Public Interest Law Firms qualify as tax-exempt organizations. Similarly, drafting model legislation is likely to be considered a public service and therefore also "charitable". There is also some authority which indicates that various kinds of activities which ultimately lead to support or opposition to specific legislation are considered exempt by the I.R.S. For example, publishing a statement on an issue which presents a balanced view is likely to be considered "educational" and a public service, even though the discussion leads to a conclusion which recommends or opposes specific legislative action. Similarly, appearing before a legislative committee to testify as an expert (presenting a balanced view, with conclusions supporting or opposing specific legislation) may be viewed as a public service activity.

Therefore, the extent to which we choose to engage in activities which are considered non-exempt may well fall within the 5% rule (less than 5% of the total time and effort expended on all activities). At the point where Montpirg actually becomes organized we should examine the possibilities of a tax-exempt status with care. If there is reasonable prospect that Montpirg can qualify as a tax-exempt organization, there is certainly no harm in applying for an IRS ruling...and in fact much to be gained from such a ruling favorable to Montpirg.



MONTANA'S HIGHER EDUCATIONAL SYSTEM: BOARD OF REGENTS AND OF EDUCATION:  
POWERS OF THE UNIT (INDIVIDUAL SCHOOLS) PRESIDENTS AND LOCAL BOARD OF  
EDUCATION.

Although an ostensible broad grant of power is contained in the constitutional provision, Montana Constitution Art. 11 Education 1889, the reservation to the legislature of the power to prescribe and regulate the powers and duties of the board has been construed by the Montana Supreme Court as placing the complete control of higher education in the hands of the legislature. The board has power only within the "jurisdiction" that is provided by statute, State v. Brannon, 86 Mont. 220, 283 P.202, 208 (1929); State ex rel. Veeder v. State Board of Education, 97 Mont. 121, 33 P.2d 516 (1934).

The regents have been given authority under Revised Codes of Montana, 1947 section 75-8601, to "prescribe tuition rates....and incidental fees for students in institutions under their jurisdiction". The public community colleges and the universities located in Montana are within the board's jurisdiction, R.C.M. title 75, chapter 81; R.C.M., 1947, 75-8403.

The legislature has empowered the Board of Regents to:

(13) Have general control of all receipts and disbursements of the system.

(14) Confer upon the executive board of each of the units of the system, such authority as may be deemed expedient, relating to immediate control and management, other than authority relating to financial matters ..." (emphasis added)

(15) Confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit such authority relating to the immediate control and management, other than financial ....

R.C.M., 1947, section 75-8501. Local executive boards are authorized for each unit of the system, R.C.M., 1947, section 75-8510. These local boards are authorized to:

"Have such immediate direction and control, other than financial, of the affairs of the respective units as may be conferred by the regents". R.C.M., 1947, section 75-8511.

This brief statutory introduction is intended to illustrate that:

(1) Any means of collecting the funds from the students through the registration procedure must be approved by the board of regents. The individual units have no say in this matter, except naturally through influence with the board of regents. This latter consideration is not insubstantial.

(2) Precedents for the method of collection currently being considered must be found, e.g. student fees used for the retainer of private counsel to represent the students, the litigation at Bozeman concerning the construction of the stadium, the collection by a university or public institution of money for charitable purposes (United Good Neighbor).



- (3) We must seriously consider what type of base support we will be seeking, e.g. whether our interests will extend to students at colleges and high schools, or to the community.

I will have additional information and will clarify any questions that may be brought up at the 20 November meeting in Helena.

Submitted by:

Jim Walsh

PAGE FIVE--LEGAL CONSIDERATIONS OF MONTPIRG



November 18, 1971

County Commissioners  
Missoula County Courthouse  
Missoula, Montana 59801

Dear Gentlemen:

Pursuant to the powers and obligations conferred upon you under the Revised Codes of Montana 1947, 23-3101 and 23-3103, relating to your power and duty to create election precincts and to designate polling places, on behalf of the several thousand students registered to vote in the city and the county of Missoula, I respectfully request you to designate the main campus area as an election precinct and to designate the main floor of the Lodge as a polling place.

In support of this request, I would note that with the passage of the 18 year old vote, the number of potential electors swelled by some 35,000 in our state. Nearly all, if not all, of the more than 2,000 students residing in the dormitories on the main campus are eligible to vote in Missoula. To add this number of voters to the numbers of the voters residing in the 14th precinct will create chaos in June and November during the presidential elections, and I anticipate nearly every student eligible will register and will vote in the elections.

Secondly, the provisions of 23-3103, RCM 1947, require you to establish precincts of as near equal number of electors as possible. Certainly, when precinct 14 was designated, there was no way to foresee that some 2,000 newly enfranchised voters would emerge in the geographical compact area of the main campus. However, today it is known that precincts of as near equal numbers of electors are not resulting. Clearly, the 14th precinct as presently designated has the possibility of far more electors than any other precinct in Missoula county. Both the principles of facilitating participation in the electoral process and the weight of law require remediable action.

Haste is necessary. Under 23-3101, no change may be made after January 1. A presidential election year in which over 80% voter turnout may be expected is rapidly approaching. Inaction now can only result in chaos and confusion, overburdening election judges and disrupting the election process next year.

I respectfully urge you to act upon my request soon.

Sincerely,

John R. Christensen

JRC/rb

CC: Jeanne Morris, Republican Chairman  
Charles Shields, Democratic Chairman