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## Geologist Licensing Act in Utah has Potential to Affect CRM Archaeology

*By Matthew T. Seddon*  
*SWCA Environmental Consultants and*  
*President, Utah Professional Archaeological Council*

The State of Utah recently passed an act establishing licensing rules for professional geologists that will potentially require geology, geomorphology, and geoarchaeology performed as part of archaeological projects undertaken in order to ensure compliance with Federal historical and environmental laws to be executed by or approved by a licensed geologist. Explicitly archaeological work is excluded, but geoarchaeology and related studies, will require licensure. The act will take effect Jan. 1, 2003, web links for the text of the act and related rules and statutes are provided at the end of this article.

Representing the Utah Professional Archaeological Council (UPAC), I attended a meeting of the geology licensing board at the Division of Occupational and Professional Licensing (DOPL) in early July and an administrative hearing in mid-August to try to minimize the effects of the act on the practice of archaeology in Utah.

Based on that meeting, later discussions, and further reading, I can provide the following summary of the act and the various ways in which it may affect archaeology in Utah. However, as a disclaimer, I recommend that you read the act and keep up on it yourself; I am not a lawyer, I can't make legal recommendations, and I do not guarantee that this summary is anything more than a reflection of my personal understanding of the law and practice.

### The Act

The act defines "geology" as "the science, which treats the study of the earth in general, the earth's processes and history, investigation of the earth's crust and the rocks and other materials of which it is composed, and the applied science of utilizing knowledge of the earth's history, processes, constituent rocks, minerals, liquids, gases, and other materials for the use of mankind." (Utah State Code, Title 58, Chapter 76, Section 102(2)). The act defines

### In This Issue...

#### ACRA Business

*Message from the Executive Director* Pg. 5

*Legislative Update* Pg. 6

#### Contributed Articles

*Unspoken Rule* Pg. 8

*Competition: CRM vs Academia* Pg. 10

..continued on Page 3

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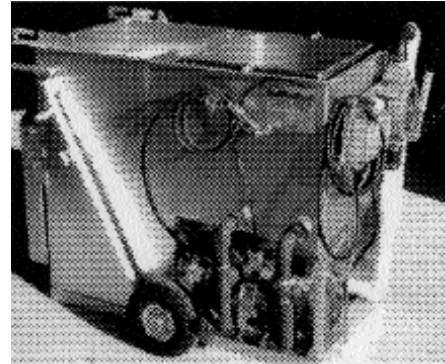
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## Geologist Licensing ..

..continued from Page 1

the practice of geology before the public as “the performance of geology including but not limited to consultation, investigation, evaluation, planning, geologic mapping, interpretation of geologic data, preparation of geologic reports, geologic cross-sections and geologic maps, inspection of geological work, and the responsible supervision thereof, the performance of which is relevant to public welfare or the safeguarding of life, health, property, and the environment, except as otherwise specifically provided this chapter.” (58-76-102(3)).

Qualifications for licensure will involve a combination of education, experience, and (after 2003) an exam. The educational requirements include a degree in “geosciences.” With a B.A., 5 years of additional supervised experience are required; with an M.A., 3 years of experience are required, and with a Ph.D., 1 year of experience is required. During 2003, licensure can be obtained simply on the basis of education and experience. After 2003, the applicant also will have to pass “(a) the ASBOG Fundamentals of Geology (“FG”) Examination with a passing score as recommended by the ASBOG; and (b) the ASBOG Principles and Practice of Geology (“PG”) Examination with a passing score as established by the ASBOG” (R156-76-302(d)).

Taken at face value, the definitions of “geology” under the act are extremely broad and could be construed to include archaeological practice. In fact, the Utah Division of Occupational and Professional Licensing (DOPL) initially said as much, arguing that since archaeology involves “stuff in the earth,” it is included under the act. Thus, UPAC was present at a number of meetings of the Geology Licensing Board to try and get an exclusion for archaeological work explicitly written into the act.

### An Exemption for Archaeology

We were generally successful in getting an exemption. The Geology Licensing Board stated that they never intended to try and license archaeology, and were very cooperative and amenable to granting an explicit exemption. An exclusion has been written into the rules that reads:

“Practice of Geology before the public does not include the following aspects of the practice of anthropology and archeology:

- (a) archeological survey, excavation, and reporting;
- (b) production of archeological plan views, profiles, and regional overviews; or
- (c) investigation and reporting of artifacts or deposits that are modified or affected by past human behavior.” (R156-76-102(5)).

While I recommend that everyone review the law and rules thoroughly and draw their own conclusions in regard to every practice they undertake, this exemption should cover most archaeological work. It should also cover a lot of ancillary studies (such as sourcing of obsidian artifacts, pollen analysis, etc.) since “artifacts or deposits that are modified or affected by past human behavior” are excluded. UPAC was pleased to score a small victory in this case.

### No Exemption for Geoarchaeology

However, we were unable to get an exemption for geoarchaeological (geomorphological, sedimentological, etc.) work performed in support of archaeology. The Geology Licensing Board and DOPL basically felt that geoarchaeological work was too close to geology in practice for an exemption to be granted in the rules. Despite numerous letters of support for an exemption for Geoarchaeology from UPAC members and other organizations such as the Society for American Archaeology, the Geoarchaeological Interest Group of the SAA, etc., DOPL basically shut the door on gaining an exemption for geoarchaeology. They argued primarily that such an exemption would cross into areas that should be defined by the Utah Legislature, and is out of the scope of what can be done in “Rules.”

As it stands, requiring licensure for geoarchaeologists would affect the practice of archaeology in Utah, particularly for excavation projects done by consultants under NEPA or NHPA. There are exemptions in the general act for purely academic research and for government agency archaeologists. As we see it, for compliance projects, any geoarchaeological work performed would need to at least be “approved” or “signed-off” by a licensed geologist. This involves having a licensed geologist affix a seal to original sets of “geological” maps/profiles, etc., and reproducing said seal in the report. The work doesn’t actually have to be performed by a licensed geologist, but the final report will have to be approved by one who will affix the seal.

..continued on Page 4

## Geologist Licensing ..

..continued from Page 3

### The Bottom Line

Thus, any firm conducting excavations in Utah involving or including geoarchaeology or geomorphology will need to either have a licensed geologist on staff or subcontract out to one, in order to get the seal onto the geoarchaeology sections and profiles in the report.

### In summary:

- 1) For all of the explicitly geological and paleontological work compliance consulting archaeologists do (or sub out) in Utah, it will need to be performed or supervised by (and signed off/ stamped) a licensed geologist after January 1, 2003.
- 2) For geomorphology, geoarchaeology, soil studies, etc., performed as part of compliance archaeology in Utah, a licensed geologist will be needed after January 1, 2003.
- 3) To be licensed, the geomorphologist or geoarchaeologist will have to have a "geosciences degree" (not a degree in archaeology with a specialization in geoarchaeology), experience, and (starting in 2004) pass the hard rock geology exam.

If I can be permitted to editorialize, there are several key points that appear to have been lost in some of the ensuing list-serv debates over this issue. The issue that UPAC has contested in this case is not licensing in general or the licensing of archaeology specifically. The concern has been that geologists are now going to be licensing work done by and for archaeological projects. Thus, now for certain projects in Utah, in addition to having your usual staff of permitted archaeologists, you will need a licensed geologist or you will need to sub out to one. Even if the impact seems minor, it is an impact. The impact is likely to be more heavily borne by small firms, who may not have a geologist on staff and who frequently compete on a cost basis. Their costs will now increase, as they either have to hire a geologist or sub out to one. Many trained geoarchaeologists will not meet the licensing

requirements, as they will not have a formal degree in "geosciences" and they will not have the training to pass the hard rock geology exam that will be required.

Another key point is that this will be law, and Utah's DOPL will be very interested in enforcing it. I met their enforcement officer, and he is clearly a motivated individual who will pursue complaints vigorously (to put it nicely). Thus, even if you read the law and think that maybe you can find a way to wiggle out of it, it needs to be realized that DOPL probably will not read the law as you have. Once a complaint has been lodged, they will pursue it. Pursuing it will involve having DOPL crawl all over your files, court appearances, etc. You will probably need a lawyer, and it will probably be costly, even if you win. Thus, we have consistently felt that it is better to have an upfront exclusion than to attempt to work around the law by interpreting favorably.

Currently, UPAC is considering our options. The only potential way to gain some type of exemption for geoarchaeology or to gain a change in the rules to make it easier for a geoarchaeologist to become licensed is to pursue a change to the law itself in the legislature. As these actions will cost time and money, we are trying to decide how big of an issue this is, and how much we want to expend to continue fighting it.

As a final recommendation, I would advise ACRA-member firms working in states without existing geologist licensing acts to keep an eye out. More and more states are requiring geologist licensing, and it is far easier to get exclusions to acts while they are in legislative development.

### Links to the act and related rules:

The overall "umbrella" act, which defines licensing in general in Utah and is relevant for the general exemptions it contains, can be found at:  
[http://www.dopl.utah.gov/licensing/statutes\\_and\\_rules/58-1.doc](http://www.dopl.utah.gov/licensing/statutes_and_rules/58-1.doc)

The specific geologist licensing act can be found at:  
[http://www.dopl.utah.gov/licensing/statutes\\_and\\_rules/58-77.doc](http://www.dopl.utah.gov/licensing/statutes_and_rules/58-77.doc)

The administrative rules will be posted shortly at:  
[http://www.dopl.utah.gov/licensing/geologist\\_sub\\_page.html](http://www.dopl.utah.gov/licensing/geologist_sub_page.html)

The license application can be downloaded from:  
<http://www.dopl.utah.gov/licensing/forms/013.pdf>

## MESSAGE FROM THE EXECUTIVE DIRECTOR

*By Tom Wheaton*

New South Associates has been busy getting ready for the annual conference in Savannah at the end of October. By using an online registration service this year, we have avoided the difficult task of keeping track of who is coming, at what rate, and what they want for dinner. Not only has this eliminated much of the work and bookkeeping, it has allowed us to track registration minute by minute, and will provide easy access to information on when people registered and how successful our discounts for subsequent staff members have been.

At one month out, our registration is already ahead of previous totals with over 90 people scheduled to show up. Because of this, ACRA should receive some much needed income. The Pink House dinner was sold out several weeks ago.

If you have not registered, please visit the ACRA website. You can look over the program and register for a room and for the conference on line. This year's conference is a little different from previous year's, as we have a day and a half of workshops and extensive walking tours of the Savannah Historic District. The workshops will showcase six of our smaller members who specialize in services that many of the rest of us need from time to time. We hope this will encourage members to look to ACRA members first when looking for subs

and teaming partners. The walking tours will be provided by SCAD's (the Savannah College of Art and Design) Department of Architectural History. SCAD graduate students also will be helping with the registration table, and will have a table of their own on Saturday morning where ACRA members can meet them, pick up resumes, and discuss employment possibilities. The students also will be attending the workshops, sessions and receptions. Please take this chance to meet some of them and discuss their program and interests.

On Saturday, there will be three main talks on preservation in an urban setting by the director of Historic Savannah, the head of the Department of Architectural History at SCAD, and the head of the Archaeology program at the University of Western Florida where urban archaeology is a specialty. See the program for details.

Lastly, ACRA has moved the "Sunday morning gripe session" to Saturday afternoon so folks can leave early Sunday morning, except for board members, who will have a second board meeting on Sunday to tie up loose ends. It should be a busy and informative conference in a really lovely city during a lovely (i.e. dry and cool) month.. Don't forget to read or watch *Midnight in the Garden of Good and Evil* before you come!

## LEGISLATIVE UPDATE

*By Nellie Longworth*

### Happenings in Washington, D.C., at the End of the 107th Congress

When September arrived in the nation's capital, Congress started working frantically to finish its business prior to the elections. At stake are the slim majorities in both House and Senate and all want to get home to work on election business as quickly as possible. Hopes for adjournment in early October are fading as none of the 13 FY03 Appropriations bills are completed. Iraq, homeland security, energy, and defense all need votes as time is running out. Many are now predicting that Congress will pass CR's (continuing resolutions) for FY03 funding in mid-October and then return to Washington after the elections.

#### A Quick Look at Issues We Have Been Following.....

##### President Bush Signs Executive Order Streamlining Environment Reviews

Efforts to streamline the environmental review administrative process required of all agencies took a step forward this week with the signing of an Executive Order (EO) by President Bush. The Bush EO, while not specifically mentioning NEPA, encourages federal agencies to conduct concurrent environmental reviews of high priority highway projects "in a timely and environmentally responsible manner." An interagency task force has been set up to promote cooperation between the agencies. The Advisory Council on Historic Preservation sits on more than one of these "streamlining" task forces and says that while there is a call for a more timely process, there has been no mention of changes being made to Section 106.

##### Historic Preservation FY03 Appropriations

The Department of Interior appropriations are seesawing their way through Congress. *Good news:* The House passed HR 5093 and included an increase for the Historic Preservation Fund to \$76.5 million (+ \$17.5

million above President's Budget). This breaks down to \$40 million for the States, \$4 million for the tribes, \$30 million for Save America's Treasures (SAT), and \$2.5 million for the National Trust Historic Sites Fund. *Bad news:* The Senate reduced its level to the President's recommendation of \$67 million (\$34 million for the States, \$3 million for the tribes, \$30 million for SATs and 0 for the Trust's Fund.) In a show of grassroots support for the House level, 500 organizations, including ACRA, signed onto a letter of support delivered to Senate Appropriations Committee members. If the Senate level prevails, States and tribes would suffer serious cuts to a program that is already operating at survival level. It is hoped that when the Senate floor action is complete, the House and Senate differences will be resolved in the House-Senate conference at a higher level.

The battle to retain adequate federal funding of programs that support cultural resource management extends beyond Interior appropriations to include transportation, agriculture, housing, and historic military housing.

##### The 2002 Farm Bill

The Farm bill that became law in May includes a provision protecting archaeological and historical sites. Farmers and ranchers with historical and archaeological resources on their property can protect their land with easement income through the Farmland Protection Program (FPP) that contains language to prohibit conversion to nonagricultural use. The Farm Bill also included a program to fund the restoration of historic barns, but that is on hold as funding has not been appropriated for FY 2003. The Farmland Protection Program is a well-run program and has been granting easement payments for prime, unique and other special lands for a number of years. It has just been announced that there will be \$48 million for funding FPP in FY02 and word is that there are historic farms in the pipeline. The bad news is that there is no money for technical assistance to process the funds so all is in limbo until it is reconciled.



### 1906 Antiquities Act Action

Once again, the GOP in the House has attempted to amend the Antiquities Act of 1906 to provide greater congressional control over the President's power to list national monuments. The proposal - HR 2114 - restricts the President's power to protect endangered resources from inappropriate use by requiring notification two months in advance to the congressional delegation of the affected States. It also requires that, should a designation be made by the President, it will sunset in two years if Congress does not endorse it in law.

HR 2114 was cleared for floor action in the House in June, but a supporter of the 1906 law insisted on introducing a compromise amendment to require Congress to vote on a monument designation within two years to circumvent inaction for political purposes. This was a popular amendment that clearly required more debate than allowed for bills on consent calendar, and thus, the bill was pulled from the schedule. There has been no action on this in the Senate.

### Owner Consent for National Register Listings in Energy Bill

An owner consent requirement for National Register listing surfaced in the current Energy bill - HR 4 - in response to problems created by the Federal Energy Regulatory Commission (FERC). FERC has required a full environmental review when historic pipelines were impacted by an undertaking rather than a simplified process developed for non-historic pipelines. Language, supported by the industry, was included in the House-passed Energy Bill, stating that owner consent was required for National Register listing of historic pipelines and would affect those already listed as well as new listings. The Advisory Council on Historic Preservation intervened with a regulatory proposal to exempt historic pipelines from the Section 106 process. This proposal was accepted by the industry, and the owner consent language was removed in the Senate. The bill now awaits a House-Senate conference and it is hoped that the Senate removal of the owner consent language will prevail.

### Heritage Areas and Private Property Rights

Private property rights advocates have stalled a Heritage Areas measure in the House - HR 2388 - to enact guidelines and management criteria for the designation of

national heritage areas. The measure would further cap federal funding for any single area. To date, HOWEVER, there are 23 National Heritage Areas with 38 being studied for designation in the National Park Service. It is not surprising that, during an election year, bills are moving through Congress to create the following.

- A National Heritage Area in Northwestern Pennsylvania where Colonel Edwin Drake drilled the world's first successful oil well in 1859
- A National Mormon Pioneer Heritage Area in Utah
- A Northern Rio Grande National Heritage Area in northern New Mexico
- An Arabia Mountain National Heritage Area in Georgia
- Freedom's Way National Heritage Area in 36 communities in Massachusetts
- A Great Basin National Heritage Area in Nevada and Utah as the second national heritage area west of the Mississippi River
- To authorize \$10 million for the John H. Chafee Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island

### Tribal Sacred Lands Bill

In an end of the year move, HR 5155 has been introduced to accommodate Native American access to federal land on which there are sacred sites for religious purposes. The measure was introduced in July in the House and appears to be opposed by the Republicans. There have been no hearings, it has not been introduced in the Senate and it is a good bet that it will go nowhere. However, it is very close to congressional adjournment and unpredictable actions can make the impossible happen. This is being closely watched.

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*Prepared by Nellie L. Longsworth, Consultant, for ACRA who agrees that, without prior written permission from NLL, they will not post weekly or special reports on paper or any computer network, homepage or bulletin board accessible by any entity or individual other than its members, officers, directors, board members, staff, and any others listed above. ACRA may, however, make "fair use" of the weekly news or special reports or periodical newsletters and may rewrite or paraphrase and distribute information contained in them.*

## UNSPOKEN RULES

*By Diane Katz, Ph.D.*

### **Few organizations have a truly creative and inclusive process for making decisions. Where does yours fit?**

“Our meeting today is to decide how to handle the situation that occurred last week. I want your opinions, and I want to hear from everyone.”

You're sitting in a meeting, and the boss has just spoken. The situation referred to has serious repercussion for the organization. You try to figure out what the boss, for who you've worked for several years, wants to do. You think you have figured out the type of response that she wants, so your reply is a safe, nonthreatening one. Your desire for being in line is stronger than your desire to be creative. You like your job and want to keep it.

“Organizational yadda yadda” is my term for the machinations that take place when groups make decisions. I have worked with businesses for more than 30 years, and very few have truly creative, inclusive, comprehensive processes for making decisions. The situation depicted where opinions are not sought happens every day.

As you make decisions that affect you and your internal and external customers, you are often aware of the company's “unspoken rules,” which you learned early on in your employment. Unspoken rules are difficult to articulate, yet impact organizational success. Perhaps no one told you the rules in your first month, but you quickly observed and absorbed the way company culture affected decision making in your organization. You learned when it was okay to speak, when it was okay to disagree, and how conflicts were really resolved.

Over the years, I have observed a variety of decision-making styles in groups large and small, profit and not-for-profit. It's clear that when management sets the tone, the rest of the crew follows suit. Where does your organization fit?

### **'It Fits' Decision Making**

Managers may ask for your opinion, but you now that your opinions had better be in line with the prevailing winds. The boss starts by declaring in what direction the company should move. There is an invitation for open discussion, but anything not in line with the boss's thinking is not accepted. A resistance to change is evident by the attention, nods, perks, etc., being given to those who make suggestions that support the boss's direction.

In this culture, employees are disempowered, creativity is at a minimum, and competition among peers is high. Everyone works hard to please the boss, even if it is at a long-range cost to the organization.

### **'Shifting Winds' Decision Making**

The boss says to everyone, “Let's go east.” All eyes point east, all actions take an eastward disposition, and the drum rolls begin. Next, he says, “Now that I have thought of it, east will not serve us well. We really need to go west.” “Aye, aye, Captain,” you and the rest of the crew dutifully chant. The rudder turns, everyone trashes previous plans, and “Westward, ho,” it is. Then there is yet another change of direction.

Obviously, in this culture, organizations get stalled, employees get frustrated, and the direction and motivation are lost. People do not feel as if they make much of an impact; they feel stuck in limbo, waiting for the next change of mind. The changes come without a satisfying explanation, so employees and managers feel as if they are just drones. If there is any dissatisfaction expressed, employees are told. “Accept change— it is inevitable.” Resources are not valued – if the boss can change things so easily and time frames are difficult to meet, how can there be a feeling of being valued? The staff feels afraid to make a move. Stress grows higher, and there is an increased risk of employee burnout.



### **‘Take No Prisoners’ Decision Making**

At one Fortune 500 company, a mid-level manager was having a pow-wow with his staff. They were about to attend a meeting where an evaluation of a new program was going to take place. The boss was dead set against the new program. He told the staff what to say and how to say it – in *no uncertain terms*. Of course during the meeting these staff members were all highly obstructive and negative. His staff knew that not only shouldn't they disagree with their boss, but that they had to vehemently agree with him, support him, and even lie for him.

In situations such as these, employees are intimidated and the workplace becomes highly bureaucratic. Cloning occurs – the staff all starts to look and sound alike – and being different is openly penalized. Stifled creativity; a lack of diversity of ideas, constant fear of alienating the boss: Not a fun place to work!

### **‘Never-Ending’ Decision Making**

Some managers view themselves as highly participative, and they cultivate a management style that encourages contributions from a diverse group of employees. This is a healthy style when practiced within well-defined limits. Yet, overly participative managers can sit with an employee in a one-on-one and discuss an issue to death. Input is never structured, the employee may not know where the boss wants to go, and the discussion goes on painfully long, long after there is even interest on the topic. Of course it's not a bad thing to encourage participation, but the process becomes tedious when it lacks structure and disciplined time frames.

Within this style, employees begin to feel as if they are on a leaderless team. When times require quick decisions, this approach is especially harmful. The boss is viewed as weak, and factions start to vie for power. Employees get to a point where they will say and do anything to just get the process moving.

### **‘Productive’ Decision Making**

In the best decision-making style, the boss communicates the organization's direction in broad terms. Participation, even disagreement, is encouraged as long as it is done professionally and constructively. Time frames are set for decision making, and the process is clearly articulated: “This is how we will go about it here.”

People feel valued and empowered. Rarely is “Why didn't they consult me?” heard. Creative problem solving is at a maximum, allowing the organization to be nimble and able to respond to market shifts. Decisions are made in an efficient amount of time, and outcomes are communicated to all the relevant levels in the organization. This is the decision-making style to aspire to, and, yes, it is easier said than done!

Take a look at your organization. If your decision-making process is working, congratulations. If most organizational members feel valued and empowered, if the decisions that are reached are creative and inclusive, bravo. But if you feel that you have minimal to no input, work to get it – sell to your boss the benefits of improved productivity and reduced turnover.

Change can happen – whether you are the leader, a manager, or an employee. It's your decision.

*Diane Katz, Ph.D., works with the Tucson, Arizona-based Harmony, LLC.*

## COMPETITION: CRM INDUSTRY VS ACADEMIA

*By Tim Engelhardt, HRA*

We in the CRM industry have a love-hate relationship with academia. Our roots are there but we've learned to make a living outside of the educational institutions. The hate comes when we are faced with competition from our public institutions of higher learning.

Horror stories abound. We have heard of university-based CRM programs offering labor rates to private clients of \$8.30 per hour for field crew, \$13.00 for a field director and \$32 for a project manager. They pay low wages to students and charge the client 26% overhead and no profit. We've heard of bids ranging from \$35,000 to \$250,000 for a project, with the \$35,000 coming from a university program. In the Rockies, several private CRM firms were underbid by 70% on an excavation project by a state university program. For years, a department of transportation in a major state has had an exclusive contract to direct all their work to a state university. So, how do we compete with the university systems? Generally, if we are aware they are bidding, we simply don't waste our time. But occasionally there are successes and this is the story of one of them.

In the summer of 1995, the University of Montana (UM) set out to hire an instructor for their anthropology department. Instead, they purchased a private five-person CRM firm located in a neighboring state and moved their new acquisition to the campus at Missoula. Their new entity became the Cultural Heritage Resource Office (CHRO), with a mandate, among other things, to "aggressively...compete with private companies."

When word got out, two principals and our attorney from Historical Research Associates, Inc. (HRA), met with the head of UM's Anthropology department, the Dean of the College of Arts & Sciences, and the Vice President for Research and Development, to find out if the rumors were true. We were told that UM didn't "buy" a firm, that they simply purchased the assets (itemized down to the number of rubber bands and paper clips) and hired the staff, that this type of deal was not at all unusual, and they didn't understand why we should be concerned at all. They expounded on their mandate to educate students and their right to exercise their academic freedom. Their arrogance at simply being questioned by mere private citizens and their claim of total innocence of any questionable action incensed us.

We went back to our office and immediately agreed to fight this new program. We decided to obtain all the information that led up to the acquisition and then to continually monitor the activities of the program. Within a few days of the meeting with UM, HRA filed a request for information under the Freedom of Information Act. UM had no option but to comply with the request.

The initial set of documents received from UM confirmed our fears and stirred our anger at the sweetheart deal that was put together for the former owners of the acquired firm. The details of the arrangement are numerous and complicated and are not essential to the telling of this story (but it would make for a very interesting conversation over a few beers). The documents revealed that in order to establish the program with private sector clients, the CHRO requested – and received - permission to offer reduced overhead rates beginning at 29.5% and increasing 10% per year up to a maximum of 49.5%. To support their request, the principals of the CHRO pointed out that because of the highly competitive nature of CRM work, a high overhead rate will "doom the CHRO to failure."

HRA, through monthly document requests, tracked the financial and personnel activity for two years. We documented in periodic fact sheets the number of students hired, wages paid, contracts won, invoices generated, payments received and other general financial performance. After about one year, we were able to document that the CHRO had lost \$214,000. It had very questionable accounts receivable of another \$225,000. After two years, the program had cost UM over \$400,000 and only 9% of the total labor cost went into student wages. During this period, the terms of the original acquisition were changed more than once and there was turnover in some of the original personnel.

Throughout this two-year period of monitoring, HRA continued to question UM and Montana's Commissioner of Higher Education about the legitimacy and cost of the program. In addition, we talked with other business owners, trade associations, legislators, and a member of the Montana Board of Regents, the appointed governing board responsible for the operation of the Montana University system (which consists of two major universities and four other smaller campuses as well as

several vocational training campuses). Because of the significantly increased visibility of the program, UM committed to conduct an internal audit of the program in July of 1996. The audit was scheduled for completion in August. UM deferred any further discussions or actions until the audit results were available. By the end of the year, when the audit was still not complete, it was evident to us that the audit was actually a delaying tactic.

Montana's biannual legislative session was set to begin in January 1997. The university system depends on the legislature for much of its funding and consequently university administrators have a large contingent assigned to every legislative session. Because HRA had not received any cooperation from UM, we hired a lobbyist to help introduce legislation that would ban the university system from competing with the private sector. Once we began to inform legislators of the CHRO and the actions of UM, using the fact sheets produced along the way, we found that many people in businesses and in the legislature were very interested in the issue - not only with the university, but with any state government agency competing with private-sector businesses.

UM's audit of the CHRO continued to be delayed well into the legislative session. HRA convinced a powerful legislator, who headed the appropriations committee responsible for the university system, to hold up passage of the entire university system budget until he received a copy of the audit. Because of this pressure, UM finally completed the audit it had begun seven months earlier. The audit turned out to be merely a verification that the university accounting practices were followed. There was no mention of the policies and procedures involved in the acquisition transaction or the operations of the CHRO or the almost one-half-million-dollar loss. It was apparent to everyone that the audit was a sham and a delaying tactic. The anger was beginning to build.

Relations between the university system and the Montana legislators have always been strained. Montana is a rural state and many of its legislators are farmers and small business people. When lobbying for funds, university officials seem to have difficulty relating (assuming they actually do try to relate) to these folks. Unfortunately, an often-heard term in the halls of the capitol when discussing university issues was: "oh yea, those arrogant b.....ds". A bill, patterned somewhat on a similar law in the state of Arizona, was introduced into the House of Representatives to prohibit any state agency from entering into competition with private business. A lot of legislators, recognizing the problem and relishing a little retribution, jumped on the bandwagon as co-sponsors and supporters. Within days of the first hearing of the bill, the university officials' focus moved from securing funding to

defending their position and actions on competition. Suddenly - and finally - our complaints were being taken seriously by the university system.

The bill that was introduced was put together early in the session. Most bills are drafted long before the session begins and with this late start, the bill was flawed. But it got a lot of attention, was passed by the House, and eventually died in a Senate committee in the very last week of the session. The issue was on everyone's radar and it was evident that it would be addressed again in the next legislative session, a little less than two years away.

The university officials, whose legislative agenda was badly derailed, realized they had to get rid of this issue before the next legislature. The Board of Regents convened a committee composed of Regents, university officials, and business leaders to propose a policy. A year later, a policy was proposed and accepted by the Regents. While the policy does not specifically ban competition, it does present a procedure for a complainant and it also specifies a time frame to resolve the complaint. The policy can be seen on the Internet at:

<http://www.montana.edu/wochelp/borpol/bor1900/bor1900.htm>

While the Regents' committee was developing the policy, UM abandoned the CHRO as a vehicle to contract for CRM projects. One of the original staff was retained as an instructor, which had been the original intent three years earlier. The remainder of the original staff was eventually let go and some of the assets, such as vehicles, were sold or were repossessed.

It's been quiet (from our view) on the UM campus the last few years, with the Anthropology Department focused on educating students rather than on generating revenue. With the University competition issue diffused, the following legislature did not pick up the competition gauntlet with the same enthusiasm they displayed in 1997. And frankly, HRA had accomplished our goal, and we did not continue to champion any further legislation.

The Regents' policy states that the Commissioner of Higher Education must submit an annual report on the implementation of the policy. Most of the campuses, including the two major universities, submitted their annual reports in 1999. There have been no reports prepared since then. With the immediate pressure off, it appears the universities are ignoring the policy. However, for private businesses the threat of using the policy remains.

It was a long and expensive process for HRA to defeat the threat of the CHRO. In the end, we won and we think our state is the better for it. But Montana is just one state and we continue to see competition in other areas from other state universities.

# ACRA

## EDITION

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ACRA now has an online discussion group just for members. "MembersOnly" is a listserv that operates much the same way as ACRA-L, with the exception that it is only available to ACRA members. Its purpose is to offer the board, members, and the executive director a venue to share the latest news from ACRA; promote dialogue between members on current issues; and enable members to post announcements or inquiries.

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### ACRA Edition

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This publication's purpose is to provide members with the latest information on the association's activities and to provide up-to-date information on federal and state legislative activities. All comments are welcome.

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