



The following is the body of an email sent to OPI staff, the Superintendent of Public Instruction, and the Governor on December 7, 2007.

Dave,

First I want to say how much I appreciate the fact that you called yesterday to discuss our concerns as a Student Information System vendor. Second, I want you to know that we believe OPI has considered the best interests of Montana education as they have made their decisions about the implementation of the AIM system, and as long-time Montana educators we appreciate those efforts.

However, we feel there have been some serious oversights, and I would like to offer the following perspective for consideration when OPI or other regulatory agencies instigate new policy.

Please consider the following analogies:

**Analogy 1:** Lets suppose the government decides as a matter of public safety that a new feature needs to be added to all automobiles. Now imagine that the government contracts with car company A to develop and implement that new feature, of course paying them a handsome sum to do so, at the same time telling companies B, C, D, etc. that it will be required in the future that all their cars have that feature. As a consumer, you're shopping for a car and of course in a "free" marketplace Company A will stress that they have the feature in place (development paid for by the government). If the other companies have the feature (developed at their own expense) then you may consider their car because of superior features or past successful experiences with that brand of car. To me that doesn't sound so "free" after all, and as a kicker the government will change the required feature every six months, pay company A to make the changes in their cars, while expecting the other companies to voluntarily implement the changes to maintain their position in the market!

**Analogy 2:** The USGA and R&A, the ruling bodies for golf, decide that the technology in golf clubs has gotten out of hand, and feel they must implement some controls on drivers for "the good of the game". They hire Nike™ to develop some specifications and a conforming driver (again paid for by the ruling bodies), informing other golf club manufacturers that these are the only specifications that will now be allowed in approved competitions. Now as a consumer I'm perfectly happy with my Ping™ driver, but in order to compete I must conform to the rules, and what are my choices? I can hope Ping™ will develop a conforming driver (at their own expense) but you know that Nike™, as part of their marketing campaign, will stress their importance in the development process, and that when the specifications change in six months that they will retrofit their drivers at no expense to the customer (no need to charge the customer since the ruling bodies already paid for the changes). Ping™ doesn't have a chance!

**Analogy 3:** As I told you yesterday, this software is a very small part of our business. The large part of our business is providing a health care service, through a competitive bid process, to state agencies that was mandated by federal regulations. We have been providing that service to Montana for seventeen (17) years, do so in thirteen other states, and there are essentially three vendors in the country providing that service. Imagine now that the federal government decided to change those regulations for the good of the health care community, and further decided to contract with one of the three vendors to draft the new regulations. Does that company not have an unbelievably unfair advantage in competing for bids for a service that they essentially have defined!

As I'm sure you can tell by now, we feel like Company B and Ping™, and in the third situation we'd be in court in a heartbeat doing all we could to prevent what we would consider an unfair business practice.

Thanks for your ear today. We have no interest in pursuing this further, but in future similar transactions we feel further considerations must be given to the consumers and competing vendors.

Ben Schmitt  
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