

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 16

ADMINISTRATIVE LAW - Uniform Fire Code; deference to agency interpretation;
FIRE MARSHAL - Interpretation of the Uniform Fire Code;
SERVICE STATIONS - Operation of key lock systems;
UNIFORM FIRE CODE - Interpretation;
UNIFORM FIRE CODE - Key lock systems allowed;
ADMINISTRATIVE RULES OF MONTANA - Sections 23.7.101, 23.7.111;
MONTANA CODE ANNOTATED - Sections 7-33-4208, 50-3-102, 50-3-103;
UNIFORM FIRE CODE - Sections 1.102(a), 79.703(b).

HELD: Service stations may operate unattended key lock systems for commercial, industrial, governmental and manufacturing establishments during the hours they are not open to the public.

2 June 1981

David W. Gliko, Esq.
City Attorney
P.O. Box 5021
Great Falls, Montana 59403

Dear Mr. Gliko:

You have requested an opinion as to whether service

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stations may operate a twenty-four hour key lock system without the continuous supervision of an attendant. Under such a system, the service station provides certain customers with keys that allow them to obtain fuel when no attendant is on duty at the station.

Pursuant to sections 50-3-102 and 103, MCA, the State Fire Marshal has adopted the Uniform Fire Code, 1979 Edition, for use throughout the State of Montana. AFM § 23.7.111. The city of Great Falls has also adopted the code pursuant to section 7-33-4208, MCA. One of the purposes of the code is to prescribe uniform regulations consistent with nationally recognized practice for safeguarding, to a reasonable degree, life and property from fire hazards arising from storage and use of hazardous substances. U.F.C. § 1.102(a). Section 79.703(b) of the code provides:

(b) Supervision. The dispensing of Classes I and II liquids into the fuel tank of a vehicle or into a container shall at all times be under the supervision of a qualified attendant. Service stations not open to the public do not require an attendant or supervisor. Such stations may be used by commercial, industrial, governmental or manufacturing establishments for fueling vehicles used in connection with their business. The attendant's primary function shall be to supervise, observe and control the dispensing of Classes I and II liquids while said liquids are being dispensed. It shall be the responsibility of the attendant to prevent the dispensing of Classes I and II liquids into portable containers not in compliance with section 79.702(d), control sources of ignition, and to immediately handle accidental spills and fire extinguishers, if needed.

If the dispensing of Classes I and II liquids at a service station available and open to the public is to be done by a person other than the service station attendant, the nozzle shall be a listed automatic-closing type.

The question has been raised whether the use of the term "such," underlined above, means that only service stations not open to the public at any time may dispense

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fuels without the presence of an attendant. Administrative rules, like state statutes, should be interpreted according to the plain meaning of the words used. See State v. Green, 586 P.2d 595, 603 n.24 (Alaska 1978), Rierson v. State, ___ Mont. ___, 614 P.2d 1020, 1023 (1980). My function in construing a statute is simply to ascertain and disclose what is contained in the language used and not insert or infer what has been omitted. See Chennault v. Sager, ___ Mont. ___, 610 P.2d 173, 176 (1980). Here, the section in question does not specify that the station may not be open to the public at any time.

The State Fire Marshal has interpreted the provision to allow public service stations to operate key lock systems during those hours they are not open to the public. In struggling with statutory construction problems, great deference must be shown to interpretation given to a statute by the officers charged with its administration. Montana Power Company v. Cremer, ___ Mont. ___, 596 P.2d 483 (1979). As the State Fire Marshal is charged with the enforcement of the Uniform Fire Code "in every area of Montana," ARM § 23.7.101, municipalities within the State that adopt the code, without variation from the state version, are subject to the interpretation adopted by that agency.

THEREFORE, IT IS MY OPINION:

Service stations may operate unattended key lock systems for commercial, industrial, governmental and manufacturing establishments during the hours they are not open to the public.

Very truly yours,

MIKE GREELY
Attorney General