VOLUME NO. 39 OPINION NO. 68

HEALTH SERVICE CORPORATIONS - Duties of State Auditor;
LEGISLATIVE BILLS - Function of statement of intent;
LEGISLATIVE BILLS - State of intent versus substantive statutes;
LEGISLATURE - Legislative bills, statement of intent;
LEGISLATURE - Legislative History Act;
STATE AUDITOR - Duties regarding health service corporations;
STATEMENT OF INTENT - Legislative enactments;
MONTANA CODE ANNOTATED - Sections 5-4-402 to 5-4-404, 33-30-105, 33-30-204;
MONTANA CONSTITUTION - Article V, section 2.

HELD: The conditions contained in that statement of intent attached to 1981 Montana Laws, chapter 452, do not relieve the State Auditor from the obligation to implement the substantive provisions of the legislation.

6 August 1982

E. V. "Sonny" Omholt
State Auditor
Sam W. Mitchell Building
Helena, Montana 59620

Dear Mr. Omholt:

You have requested my opinion concerning the responsibility of your office to implement the provisions of 1981 Mont. Laws, ch. 451. Chapter 452, introduced as House Bill 385, was enacted to generally revise the laws relating to health service corporations, to increase the annual report fees to 50 cents for each member and to require the State Auditor to conduct a performance audit of each health service corporation at least once every four years. The bill was accompanied by a statement of intent. The statement provided that it was the intent of the Legislature to collect the increased fees only if an additional employee and an enhanced appropriation were authorized. You have stated that in your opinion the Auditor's Office did not receive the additional appropriation to cover the expenses of implementing the bill and thus your question is whether you must comply with the provisions of the legislation.

1981 Montana Laws, chapter 452, made several substantive changes in the laws relating to the health service corporations. Section 33-30-204(1)(g), MCA, was amended to raise the filing fee for an annual report for each individual or family unit covered by the health service corporation from 20 cents to 50 cents. Another major provision of chapter 452 was an amendment to section 33-30-105, MCA, to provide the following requirements for a performance audit:

> (2) In addition to the examination authorized in subsection (1), at least once every 4 years, the commissioner shall conduct an examination of each health service corporation to determine if the corporation is fulfilling its contractual obligations by prompt satisfaction of claims at the highest monetary level consistent with reasonable dues or fees, and that the corporation's management exercises appropriate fiscal controls, operations, and personnel policies to assure that efficient and economic administration restrains overhead costs for the benefit of its members.

The provisions of chapter 452 are clear and unambiguous. A cardinal principle of statutory construction is that the intent of the Legislature must first be determined from the plain meaning of the words used, and if interpretation of the statute can be so determined, courts may go no further to apply other means of interpretation. Keller v. Smith, 170 Mont. 399, 533 P.2d 1002 (1976). When the language of a statute is plain and unambiguous, the language speaks for itself. Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968).

In this instance the language of the statute is very clear. The fees have been raised to 50 cents and the Auditor is required to conduct an audit at least once very four years. However, the bill was accompanied by the following statement of intent.

> A statement of intent is required for House Bill 385 to explain the purpose of the legislature in approving the increase in the fee for filing of annual reports by health service corporations. This bill raises the fee for each individual or family unit covered, from 20 cents to 50 cents, to finance

> the performance audits required on each health service corporation at least once every 4 years and to carry out other duties imposed on the Insurance Department. The Insurance Department estimates it will require one additional FTE plus a necessary appropriation to cover additional related costs such as actuarial fees, travel expenses, office space, benefits and office equipment for the FTE. The intention of the legislature is to collect the increase in the fee only if the additional FTE and appropriation are authorized.

As often happens, there is a question as to whether sufficient funds were allocated to implement the legislation. You have asserted that the Legislature failed to appropriate sufficient funds to implement chapter 452.

However, there is support in the legislative history for the position that the Legislature found that the Auditor's budget was adequate to cover additional costs imposed by the bill. See Minutes of Free Joint Conference Committee to House Bill 500, p. 5, April 4, 1981. In any event, the answer to your question can be resolved by an examination of the role of a statement of intent.

The statement of intent is a relatively new legislative tool. The source of the statement is the Legislative History Act, which was enacted by the Legislature in 1977. The Act is presently codified in Title 5, chapter 4, part 4, Montana Code Annotated. There are no Supreme Court cases that have interpreted the meaning of the statement of intent. However, the Act itself, section 5-4-402, MCA, provides:

> The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to

> how such discretion is to be exercised and the legislature's purpose for delegating the authority. [Emphasis added.]

Section 5-4-404, MCA, then provides:

> The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill and may be amended in the same manner as the bill. [Emphasis added.]

Section 5-4-403, MCA, defines "delegation of authority" as a statutory authorization to adopt rules or license an activity regulated by statute. These provisions of the Legislative History Act support my conclusion that the role of the statement of intent is not substantive. In other words the statement of intent is not law, but merely serves as a guide to executive branch agencies regarding the implementation of administrative rules or regulations.

The state constitution requires laws to be enacted by bills. Mont. Const. art. V, § 2(1). The statement of intent is not a bill but an addendum to a bill. The statement of intent, like a joint resolution, does not have the force and effect of substantive statutes. See State ex rel. Peyton v. Cunningham, 39 Mont. 197, 103 P. 497 (1919); Gildroy v. Anderson, 162 Mont. 62, 507 P.2d 1069 (1973). It is not codified with state statutes. As the Legislature's rules imply, the statement of intent is merely used to provide guidance to an agency in adopting administrative rules under authority delegated by the Legislature. See ch. 11, Joint Rules, Rules of the Montana Legislature, 47th Legislature (1981).

There is nothing in the statement of intent that would alter the standard rule for determining legislative intent based upon the plain meaning of the words used in the statute. The provisions of chapter 452 are clear and unambiguous and must be followed by the executive branch of state government.

THEREFORE, IT IS MY OPINION:

> The conditions contained in that statement of intent attached to 1981 Montana Laws, chapter 452, do not relieve the State Auditor from the obligation to implement the substantive provisions of the legislation.

Very truly yours,

MIKE GREELY
Attorney General