

## VOLUME NO. 35

## Opinion No. 58

**EXECUTIVE REORGANIZATION ACT — Effect on agencies assigned to departments for administrative purposes only; PUBLIC ACCOUNTANTS — Board of, effect of executive reorganization act; PROFESSIONAL AND OCCUPATIONAL LICENSING — Department of, powers and duties under executive reorganization act; STATUTES — Construction of inconsistent statutes. Sections 82A-102, 82A-108, 82A-1603, 82A-1604, 84A-1605, and 66-1816, R.C.M. 1947.**

**HELD:** The statutes relating to the board of public accountants, contained in chapter 18 of Title 66, R.C.M. 1947, were amended by implication by the Executive Reorganization Act of 1971, contained in Title 82A, R.C.M. 1947, thereby transferring the duties specified in sections 82A-1603 and 82A-1604, R.C.M. 1947, from the board of public accounts to the department of professional and occupational licensing and the director thereof.

January 10, 1974

Mr. Ed Carney, Director  
Department of Professional  
and Occupational Licensing  
LaLonde Building  
Helena, Montana 59601

Attention: Timothy J. Meloy  
Staff Attorney

Dear Mr. Carney:

You have asked my opinion on the following question:

Were the statutes relating to the Board of Public Accountants, contained in chapter 18 of Title 66, R.C.M. 1947, amended by implication by the passage of the Executive Reorganization Act of 1971, thereby transferring the duties specified in sections 82A-1603 and 82A-1604, R.C.M. 1947, from the board of public accountants to the department of professional and occupational licensing and the director thereof?

The intent of the legislature in passing the Executive Reorganization Act of 1971 is expressed in section 82A-102, Revised Codes of Montana, 1947, which states in part:

(2) It is the public policy of this state and the purpose of this title to create a structure of the executive branch of state government which is responsive to the needs of the people of this state and sufficiently flexible to meet changing conditions; to strengthen the executive

capacity to administer effectively and efficiently at all levels; to encourage greater public participation in state government; **to effect the grouping of state agencies into a reasonable number of departments primarily according to function**; to provide that the responsibility within the executive branch of state government for the implementation of programs and policies is clearly fixed and ascertainable; **and to eliminate overlapping and duplication of effort within the executive branch of state government.** (Emphasis supplied)

The legislature defined the meaning of "for administrative purposes only", as used in the Act, in section 82A-108, R.C.M. 1947, which reads:

(1) An agency allocated to a department for administrative purposes only in this title **shall**:

(a) Exercise its quasi-judicial, quasi-legislative, licensing, and policy-making functions independently of the department and without approval or control of the department.

(b) Submit its budgetary requests through the department.

(c) Submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title **shall**:

(a) Direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency.

(b) Include the agency's budgetary requests in the departmental budget.

(c) Collect all revenues for the agency and deposit them in the proper fund or account; except as provided in section 82A-1603 (6), the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) Provide staff for the agency. Unless otherwise indicated in this title, the agency may not hire its own personnel.

(e) Print and disseminate for the agency any required notices, rules, or orders adopted, amended or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this title **shall**:

(a) Represent the agency in communications with the governor.

(b) Allocate office space to the agency as necessary, subject to the approval of the department of administration. (Emphasis supplied)

The department of professional and occupational licensing (hereinafter referred to as the "department") was created by section 82A-1601, R.C.M. 1947. The former state board of public accountancy was renamed the board of public accountants and was transferred to the department "for administrative purposes

only” by section 82A-1602 (2). In addition to the general delineation of the duties of the department and the boards assigned to it contained in section 82A-108, supra, the legislature enacted sections 82A-1603 and 82A-1604, R.C.M. 1947. These sections enumerate specific functions which are to be exercised by the department and its director.

In enacting section 82A-102, supra, the legislature expressed specific intent to group agencies together into departments according to function in order to eliminate overlapping and duplication of effort. The legislature went further, in section 82A-108, supra, to define the duties of the newly created departments and the agencies assigned to them. As the emphasized portions of section 82A-108, supra, indicate, the legislature used mandatory language in delineating the duties of the departments and their assigned boards.

Sections 82A-1603 and 82A-1604, supra, are lists of duties of the department and its director, specifically in addition to the general duties of all departments as stated in section 82A-108, supra. Many of these duties had been conferred upon the individual boards before the creation of the department. For example, section 82A-1603 states in part:

... [T]he department shall:

(a) Provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing. ...

Section 82A-1604, supra, states in part:

... [T]he director shall:

(3) Hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

Section 66-1816, R.C.M. 1947, states in part:

... The board shall keep records of its proceedings ... The board may employ such personnel and arrange for such assistance as it may require for the performance of its duties. ...

Obviously, these statutes are inconsistent, those in Title 82A conferring upon the department and its director certain duties which the boards had been given authority to perform before the creation of the department.

Concerning the construction of inconsistent statutes, the Montana Supreme Court has said:

Where two acts of the Legislature deal with the same subject, effect must be given to both, if possible. But if their provisions are so repugnant as to be irreconcilable, or if the later Act is inconsistent in its

provisions with the first, and plainly shows upon its face that it was the intention of the Legislature in enacting it that it should be the only law on the subject, the prior statute is to be treated as repealed by it. **State ex rel. Jackson v. District Court**, 107 Mont. 30, 33, 79 P.2d 665 (1938).

There is no question that the legislature intended to remove certain functions from the board of public accountants, as well as the other boards assigned to the department, when it created the department of professional and occupational licensing. The legislature in sections 82A-108, 82A-1603, 82A-1604 and 82A-1605, R.C.M. 1947, specifically defined the duties of the department and the boards assigned thereto. Any provisions of Title 66 which are in conflict with these provisions are impliedly amended or repealed by the later Act.

**THEREFORE, IT IS MY OPINION:**

That the statutes relating to the board of public accountants, contained in chapter 18 of Title 66, R.C.M. 1947, were amended by implication by the Executive Reorganization Act of 1971, contained in Title 82A, R.C.M. 1947, and the duties specified in sections 82A-1603 and 82A-1604, R.C.M. 1947, were transferred from the board of public accountants to the department of professional and occupational licensing and the director thereof.

Very truly yours,

**ROBERT L. WOODAHL**  
Attorney General