

VOLUME NO. 41

OPINION NO. 8

ANTIQUITIES - Preservation review board's duties to determine what are heritage properties;
HISTORICAL SOCIETY - Preservation review board's duties to determine what are heritage properties;
PRESERVATION REVIEW BOARD - Duties to determine what are heritage properties;
STATE AGENCIES - Duties concerning identification of heritage properties;
MONTANA CODE ANNOTATED - Sections 22-3-421 to 22-3-442;
MONTANA LAWS OF 1979 - Chapter 563;
MONTANA LAWS OF 1983 - Chapter 351.

HELD: The Antiquities Act gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties."

4 April 1985

Robert Archibald, Director
Montana Historical Society
225 North Roberts Street
Helena MT 59620

Dear Mr. Archibald:

You have asked for my opinion on the following question:

Does the State Antiquities Act confer authority to any entity other than the State Historic Preservation Review Board to determine which properties on state-owned land are "heritage properties"?

The State Antiquities Act was adopted in 1979 and is codified in sections 22-3-421 and 22-3-442, MCA. It provides for the preservation of "heritage property" and paleontological remains. "Heritage property" is defined in section 22-3-421(2), MCA.

"Heritage property" means any district, site, building, structure, or object located upon or beneath the earth or under water that is significant in American history, architecture, archaeology, or culture.

As heritage properties are identified, they may be added to the statewide inventories of heritage properties and included in the National Register of Historic Places, the official list of the nation's heritage properties worthy of preservation because of national, state, or local significance. § 22-3-421(7), MCA.

The State Preservation Review Board, hereinafter referred to as the Review Board, is the entity primarily concerned with the administration of the Antiquities Act. The membership of the Review Board must include professionals in the fields of archaeology, history, architecture, architectural history, and paleontology. § 2-15-1512(2), MCA. Nominations of heritage properties to the National Register of Historic Places are recommended and either approved or disapproved by the Review Board. § 22-3-422(1) and (2), MCA. The Review Board is also charged with the responsibility of approving or disapproving additions to statewide inventories of heritage properties. § 22-3-422(3), MCA.

The State's inventory file is maintained by the historic preservation officer who is also responsible for conducting an ongoing survey to "identify" heritage properties. § 22-3-423(2) and (3), MCA. The historic preservation officer's duty to identify heritage properties is shared with state agencies, who are required to adopt rules for identifying and preserving heritage properties located on state lands, in order to avoid actions that would substantially alter the

properties. If a state agency does not adopt its own rules, it must comply with model rules developed by the historic preservation officer. § 22-3-424(1), MCA.

Your inquiry concerns whether the duties of the state agencies include the final decisionmaking as to which properties are determined to be heritage properties. A response to your inquiry requires an interpretation of the language of those statutes to which I have referred.

The fundamental rule of statutory construction is that the intent of the Legislature controls. This intent must first be determined from the plain meaning of the words used. Montana Association of Underwriters v. State Department of Administration, 172 Mont. 211, 563 P.2d 577 (1977). When there is doubt about the meaning of the statutes, their history may be considered to ascertain the legislative intent. State ex rel. Snidow v. State Board of Equalization, 93 Mont. 19, 17 P.2d 68 (1932).

A statute must be interpreted in a reasonable manner to give effect to it as a whole. Nice v. State, 161 Mont. 448, 507 P.2d 527 (1973). With respect to Montana's Antiquities Act, the language of section 22-3-422(3), MCA, clearly gives the Review Board the authority to approve or disapprove additions to the statewide inventories of heritage properties. Section 22-3-422, MCA, was adopted by the Legislature in 1979 as House Bill 785. Any ambiguity as to the meaning of subsection (3) may be resolved by reference to a discussion of the 1979 legislation before the Senate Natural Resources Committee. The Committee received testimony that House Bill 785 was intended to clarify the meaning of an historic site, to allow the State's heritage preservation staff to give direction to the overall program, and to centralize authority in the State with respect to historical sites. Minutes of the Senate Natural Resources Committee, March 7, 1979, on House Bill 785 (Ch. 563).

The revisions to the Antiquities Act that were adopted in 1983 were included in Senate Bill 246, a bill introduced at the request of the State Historical Society. Senate Bill 246 gave the historic preservation officer authority to adopt rules for the identification and preservation of heritage properties on state lands, which rules are to be followed by state agencies who

fail to make their own rules. The testimony submitted by the director of the Montana Historical Society indicates that the bill was not intended to change the basic responsibilities of the original 1979 act. Minutes of the Senate Education and Cultural Resources Committee, January 28, 1983, on Senate Bill 246 (Ch. 351).

I conclude, based on the plain meaning of the statutes and the legislative committee minutes, that the ultimate decision as to which properties are "heritage properties" is within the exclusive authority of the Review Board. The duties of state agencies with respect to the "identification" of heritage properties are shared with the historic preservation officer, and involve steps that are separate and distinct from the duty of the Review Board to determine which properties are to be approved or disapproved as additions to the statewide inventories of heritage properties, under section 22-3-422(3), MCA. "Identification" of heritage properties, in the context of the State Antiquities Act, refers to the recognition of properties that are significant in American history, architecture, archaeology, or culture, which may, in turn, be determined to be heritage properties by the Preservation Review Board.

THEREFORE, IT IS MY OPINION:

The Antiquities Act gives exclusive authority to the Preservation Review Board to determine which properties on state-owned lands are "heritage properties."

Very truly yours,

MIKE GREELY
Attorney General