

VOLUME NO. 44

OPINION NO. 1

ADMINISTRATION, DEPARTMENT OF - Authority to fix compensation of Developmental Disabilities Planning and Advisory Council staff;
 DEVELOPMENTAL DISABILITIES PLANNING AND ADVISORY COUNCIL - Salaries of staff;
 EMPLOYEES, PUBLIC - Salaries of Developmental Disabilities Planning and Advisory Council staff;
 SALARIES - Classification of Developmental Disabilities Planning and Advisory Council staff;
 STATUTORY CONSTRUCTION - Conflicting statutes;
 MONTANA CODE ANNOTATED - Sections 2-15-121, 2-15-2204, 2-18-103, 2-18-104, 2-18-201, 53-20-206;
 OPINIONS OF THE ATTORNEY GENERAL - 40 Op. Att'y Gen. No. 68 (1984).

HELD: The Developmental Disabilities Planning and Advisory Council has the authority to set the salaries of the Council's staff without reference to the state personnel classification plan.

January 3, 1991

Julia Robinson, Director
 Department of Social and
 Rehabilitation Services
 P.O. Box 4210
 Helena MT 59604-4210

Dear Ms. Robinson:

You have requested my opinion on the following question:

Does the Developmental Disabilities Planning and Advisory Council have the authority to set the salaries of its staff without reliance upon the personnel classification plan developed by the Department of Administration?

Review of the applicable statutes reveals that the Developmental Disabilities Planning and Advisory Council (hereinafter "Council") was created in 1975 with the enactment of section 2-15-2204, MCA. Section 2-15-2204, MCA, outlines the composition of the Council and the members' terms. The Council's 22 members include elected officials, state department directors, professionals, and consumer representatives.

Section 53-20-206, MCA, outlines certain procedures and duties of the Council. Among other things, the Council is to advise governmental entities and private organizations regarding service programs for the developmentally

disabled. Subsection (4) of that statute states, "The council may employ and fix the compensation and duties of necessary staff."

However, section 2-18-201, MCA, states that the Department of Administration is to develop a personnel classification plan (which includes salary schedules) "for all state positions." Thus, there is a question of whether the state personnel classification plan, or section 53-20-206, MCA, should apply to the setting of salaries of the Council's staff.

Statutes dealing with the same subject matter are to be construed together and harmonized if possible. Crist v. Segna, 191 Mont. 210, 622 P.2d 1028 (1981). Where there is an irreconcilable conflict, the statute enacted most recently supersedes the prior-enacted statute. Dolan v. School District No. 10, 195 Mont. 340, 636 P.2d 825 (1981); State v. State Board of Land Commissioners, 137 Mont. 510, 353 P.2d 331 (1960). And a specific statute will normally prevail over a general statute. Taylor v. Department of Fish, Wildlife, & Parks, 205 Mont. 85, 666 P.2d 1228 (1983); Teamsters, Etc., Local 45 v. Montana Liquor Control Bd., 155 Mont. 300, 471 P.2d 541 (1970).

In this situation, the statutes cannot be reconciled without applying the aforementioned rules of statutory construction. Section 53-20-206, MCA, was enacted in 1975, whereas section 2-18-201, MCA, was enacted in 1973. Also, section 53-20-206, MCA, specifically provides for the setting of staff salaries by the Council, whereas section 2-18-201, MCA, is a general statute that applies to all state positions not specifically excepted or exempted in sections 2-18-103 and 2-18-104, MCA. Therefore, the applicable rules of statutory construction compel the conclusion that the provisions of section 53-20-206, MCA, allowing the Council to set the salaries of its staff, control in this instance.

The language of section 2-15-2204, MCA, also supports the conclusion that section 53-20-206, MCA, is to override the general administrative statutes when there is a conflict. Section 2-15-2204, MCA, provides that the "council is allocated to the department [of Social and Rehabilitation Services] for administrative purposes only and, *unless inconsistent with the provisions of this section and 53-20-206*, the provisions of 2-15-121 apply." (Emphasis added.) Section 2-15-121, MCA, outlines the respective duties of an agency and a department when an agency is allocated to a department "for administrative purposes only," and states that a department is to provide staff for the agency. That language, however, is inconsistent with the provisions of section 53-20-206, MCA, and as a result the provisions of the latter statute control. § 2-15-2204, MCA.

In 40 Op. Att'y Gen. No. 68 (1984), a question similar to the one at hand was addressed. Compensation of the state librarian and the director of the Montana Historical Society was dealt with in statutes enacted respectively in

1945 and 1963. §§ 22-1-102, 22-3-107, MCA. When the 1973 Legislature enacted the comprehensive plan for classification and pay of all state employees, the positions of state librarian and Historical Society director were not specifically exempted by section 2-18-103 or section 2-18-104, MCA. Thus, the issue arose of how the salaries were to be set, and the Attorney General concluded that the salaries were not exempt from the state personnel classification plan.

However, the issue in 40 Op. Att'y Gen. No. 68 (1984) involved the more recent enactment of a general statute. Here we are dealing with the more recent enactment of a specific statute and the rules of statutory construction require that the more recent specific statute be given effect without further analysis of statutory intent.

THEREFORE, IT IS MY OPINION:

The Developmental Disabilities Planning and Advisory Council has the authority to set the salaries of the Council's staff without reference to the state personnel classification plan.

Sincerely,

MARC RACICOT
Attorney General