MINUTES OF THE JUDICIARY COMMITTEE
January 5, 1983

The meeting of the House Judiciary Committee was called to order by Vice Chairman Addy. All members were present except Representative Iverson who was excused. Brenda Desmond, Legislative Council, was also present.

HOUSE BILL 15

REPRESENTATIVE RAMIREZ, chief sponsor, stated this bill is at the request of the Code Commissioner. It is an effort to correct a problem in the MCA concerning cross-referencing in the statutes. An example of this is Section 15-37-202, MCA, which contains a reference to Section 15-37-201, MCA. Under the most recent Supreme Court ruling, this cross-reference refers to Section 15-37-201, MCA, as it read at the time 15-37-202, MCA, was enacted and not to 15-37-201, MCA, as it has been amended. This creates problems. Exhaustive research is necessary to find out if a statute to which there is a cross-reference has been amended.

CORT HARRINGTON, Legislative Council, stated he prepared the bill. The problem is the Gustafson Rule, which is from a 1930 case. EXHIBIT A. Under that rule, when a section contains a reference to another section of the code, the reference is to the section in its original version, without any later changes. Thus, it is necessary to go back to the session laws to find the exact version of the section enacted. In 1979 there was an attempt to change the Gustafson Rule by Section 1-2-108, subsection 2, which states that references are to those sections as amended. In 1982 the Montana Supreme Court stated that the statute can only apply prospectively for references added in 1979 or afterwards. In a section containing a cross-reference was enacted prior to 1979, the Gustafson Rule still applies. This bill says the statute would apply retroactively as well as prospectively.

There were no further proponents.

There were no opponents.

During the question period, Representative Addy asked how many attorneys would have the legislative history of a law available to them. HARRINGTON replied the people in Helena could refer to the State Law Library. Others would have to make other arrangements.

There were no further questions.

The hearing on House Bill 15 was closed.

HOUSE BILL 15

REPRESENTATIVE KEYSER moved DO PASS on House Bill 15. Representative Eudaily seconded the motion. The bill passed unanimously.

The committee went into regular hearing.

HOUSE BILL 47

REPRESENTATIVE SCHULTZ, chief sponsor, stated this bill is to require the publication of a statement, with every rule proposed and adopted under implied rulemaking authority, that the rule lacks the force and effect of law.

REPRESENTATIVE SCHULTZ said that the Montana Administrative Register is given to the various counties yet most people do not understand it. The Administrative Code Committee has to follow the rules and regulations of Montana Administrative Procedures Act (MAPA). Under this law, there is a procedure for every bill that comes through the legislature. Some of these bills contain express rulemaking authority and others just contain implied rulemaking authority. It is necessary to divide these two.

REPRESENTATIVE SCHULTZ read Section 2-4-102, paragraph 11, of the Montana Administrative Procedure Act. There is no statutory requirement that rules based on express authority have any different form from advisory rules. Thus, the two types are easily confused.

REPRESENTATIVE SCHULTZ referred to a letter addressed to Gary Wicks. EXHIBIT B. The attachment to the letter concerns the law referring to Permits for Excess Size and Weight (61-10-121). There is no express rulemaking authority in this law. The Highway Department has enacted rules under this statute and has designated that their authority is implied. (See EXHIBIT B and attachment.)

It is important for the people of Montana to know if something is a law or not. This will help protect the people.

There were no additional proponents to the bill.

There were no opponents.

REPRESENTATIVE EUDAILY asked what the difference between ARM and MAR are as referred to in the bill and material given. The sponsor replied the MAR, Montana Administrative Register, refers

to the rules as proposed and the ARM, Administrative Rules of Montana, refers to adopted rules.

REPRESENTATIVE JENSEN asked if in the future when rules are proposed if a number of laws will be questioned. The sponsor replied no, however, the state is liable if a lawsuit results from a rule that is enforced as law even though it is based on implied authority. Representative Jensen further asked if it would be necessary to amend the statutes to indicate if the authority is expressed or implied. The sponsor replied no. It would just be necessary to inform the public. Representative Jensen stated it is a waste of time and money to have rules that do not have the force of laws.

REPRESENTATIVE SPAETH asked if a rule that was adopted under implied authority is not a valid rule. Representative Schultz replied he thought it would not be a law that could be enforced. Representative Spaeth asked if the Highway Department adopted implied rulemaking at their own discretion. The sponsor stated yes. Representative Schultz stated the bill, if passed, would become effective October, 1983. Therefore, the rules presently in the books would not be affected. Representative Spaeth asked if there would be rules concerning the discretion of a department.

DAVID NISS, Counsel to the Administrative Code Committee, stated the intent of the Code Committee was to carry out the Administrative Procedures Act, a law passed by the legislature that requires clearly stated statutory authority for rules in order for them to have the force of law. The Administrative Procedure Act requires that they have the express statutory authority to adopt rules. In Section 61-10-121, there is no place where express authority to adopt rules is granted.

REPRESENTATIVE HANNAH asked if agencies are adopting rules without authority. The sponsor replied no - they have the authority to adopt the rules - the question is the effect of those rules. The Administrative Code Committee does not have the authority to say they are or are not doing their job. The Committee is just concerned that agencies follow the proper procedure.

The sponsor further state there are four senators and four representatives on the Administrative Code Committee. The Committee, along with their legal counsel, reviews proposed rules. The Committee then notifies departments if a discrepancy exists between the proposed rule and the authorizing statute.

REPRESENTATIVE RAMIREZ asked if it is usually clear when an agency has express authority to adopt a rule. NISS replied it

is very clearly stated if there is express authority. The wording is usually "the department shall or may".

REPRESENTATIVE BERGENE felt the bill was good. She had spoken with county officials who were confused about the present law. Representative Bergene felt the bill would help the officials.

The sponsor stated it would help protect the businessmen of Montana since they would know which administrative agency rules subject them to penalties and which are advisory only.

REPRESENTATIVE JENSEN asked if the bill would enable opponents of rules to challenge them more readily. NISS thought there would be no such effect. The agency would probably have to publish a statement if the bill is passed. It does not make the challenger a winner in a court case. Rules that are made under implied authority are valid.

REPRESENTATIVE ADDY read to the committee subsection (11) of Section 2-4-102, MCA:

> "Substantive rules are either: (a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or (b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. Such interpretation lacks the force of law."

MR. NISS stated there is a national organization that researches and drafts model legislation called the Uniform Law Commission. The Uniform Law Commissioners wrote a model administrative procedure act upon which Montana's Administrative Procedure Act is based. NISS stated that the bill is based on Section 3-109 of the Model State Administrative Procedure Act. Diana Dowling, Legislative Council, past-Senator Brown and Bob Sullivan are Uniform Law Commissioners and thus included among the 150 people from the various states who write this type of model legislation.

CHAIRMAN BROWN noted that Representative Stobie was available for comment. Representative Stobie had no comments at this time other than he supports the bill.

CHAIRMAN BROWN asked how often the Administrative Code Committee would have to request an agency to publish a statement of implied rulemaking authority. Representative Schultz replied

it varies. Some MAR issues contain only a few rules based on implied authority while others have more. There would be a cost impact if adding the implied authority language to a rule or rules increased the length of the agency's entire publication enough that another page must be printed. Since the agency pays a filing fee for each page, if it must publish an additional page, it must pay an additional filing fee. The filing fee now is $13.50.

CHAIRMAN BROWN was concerned that there were no witnesses from state agencies to testify on this bill. The sponsor replied he had thought some representatives of agencies would be available. The sponsor expected feedback from the agencies after the hearing.

There were no further questions.

CHAIRMAN BROWN announced the next meeting would be Thursday, January 6, 1983, at 8:00 a.m. Bills to be heard are HB 10 and HB 13.

REPRESENTATIVE KEYSER moved the committee adjourn.

The meeting adjourned at 9:00 a.m.

Dave Brown
DAVE BROWN, Chairman

Maureen Richardson
Maureen Richardson, Secretary

# STANDING COMMITTEE REPORT

January 4, 19 83

MR. SPEAKER

We, your committee on JUDICIARY

having had under consideration HOUSE Bill Bill No. 15

First reading copy - white

A BILL FOR AN ACT ENTITLED: "AN ACT TO MAKE RETROACTIVE AS WELL AS PROSPECTIVE THE PRESUMPTION THAT A REFERENCE TO A PROVISION OF THE MONTANA CODE ANNOTATED IS A REFERENCE TO THAT PROVISION AS IT MAY BE AMENDED OR CHANGED FROM TIME TO TIME; AMENDING SECTION 1-2-108, MCA."

Respectfully report as follows: That HOUSE BILL Bill No. 15

DO PASS

DAVE BROWN
Chairman.

STATE PUB. CO.
Helena, Mont.

Exhibit A
N. Bill 15



v. *Cutler*, 3 Mich. 566, 64 Am. Dec. 105; *Howard* v. *Shaw*, 8 Mees. & W. 118, 151 Eng. Rep. [Reprint] 973.)

Upon the termination of the contract by defendant, he became a tenant at will (1 Tiffany on Landlord & Tenant, p. 313; *Bush* v. *Fuller*, 173 Ala. 511, 55 South. 1000), and while there was no specific and definite agreement to pay rent, the law implies a promise on his part to make compensation or pay a reasonable rent for his occupation. (*Carpenter* v. *United States*, 17 Wall. (84 U. S.) 489, 21 L. Ed. 680; *Chambers* v. *Ross*, 25 N. J. L. 293; *Chamberlain* v. *Donahue*, 44 Vt. 57; *Wilkinson* v. *Wilkinson*, 62 Mo. App. 249; *Woodbury* v. *Woodbury*, 47 N. H. 11, 90 Am. Dec. 555.)

We are of the opinion that there is sufficient competent evidence to support the judgment.

For the reasons given the judgment is affirmed.

MR. CHIEF JUSTICE CALLAWAY and ASSOCIATE JUSTICES MATTHEWS, GALEN and ANGSTMAN concur.

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GUSTAFSON, APPELLANT, *v.* HAMMOND IRRIGATION DISTRICT, RESPONDENT.

(No. 6,633.)

(Submitted February 24, 1930. Decided March 27, 1930.)

[287 Pac. 640.]

*Irrigation Districts — Issuance of Refunding Bonds — Statutes and Statutory Construction.*

Statutes and Statutory Construction—Effect of Reference in One Act to Another as to Manner of Execution of Power Granted.

1. Where an Act refers to another as to the manner in which a thing is to be done (issuance of bonds), the provisions of the one referred to must be considered as incorporated in the one making the reference.

Same—Adoption of Statute by Reference—Subsequent Modification or Repeal of Adopted Statute Without Effect on Adopting Statute.

2. Where a statute is adopted by reference it is to be construed as an adoption of the law as it existed at the time the adopting

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1. See 23 Cal. Jur. 685, 686; 25 R. C. L. 905.

statute was passed and, therefore, is not affected by any subsequent modification or repeal of the statute adopted.

Same—Irrigation District Refunding Bonds—Above Rule Applied.

3. In June, 1929, proceedings for the refunding of irrigation district bonds were had under section 7210, Revised Codes 1921, as amended by Chapter 157, Laws of 1923, providing for the authorization of such bonds in the mode prescribed by section 7226 as amended by the same Chapter. Section 7210 was amended by Chapter 185, Laws of 1929, which Act, however, did not become effective until July 1, 1929. Section 7226 was repealed by Chapter 155 of the 1929 Laws and was not in effect when the bonds were authorized. *Held*, on appeal from a judgment dismissing an action to enjoin the issuance of the bonds, and under the above rule, that the repeal of section 7226, incorporated by reference in section 7210, did not affect the latter section and that injunction was properly denied.

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Statutes, 36 Cyc., p. 970, n. 94, p. 1094, n. 22.

*Appeal from District Court, Rosebud County; G. J. Jeffries, Judge.*

ACTION by Vic Gustafson against the Hammond Irrigation District of Rosebud County and others. Judgment for defendants, and plaintiff appeals. Affirmed.

Cause submitted on briefs of counsel.

*Mr. F. F. Haynes,* for Appellant.

*Mr. H. V. Beeman* and *Messrs. Gunn, Rasch, Hall & Gunn,* for Respondent.

MR. JUSTICE ANGSTMAN delivered the opinion of the court.

Plaintiff, as a taxpayer on lands situated within defendant irrigation district, brought this action to enjoin the sale of refunding bonds. A general demurrer to the complaint was sustained. Plaintiff, declining to amend the complaint, suffered judgment to be entered dismissing the action. He appealed from the judgment.

From the complaint it appears that the commissioners of the irrigation district, on May 15, 1929, determined that it was

advisable and necessary to issue refunding bonds in the sum of $17,000, for the purpose of redeeming outstanding warrants of the district. Proceedings were regularly taken in accordance with the provisions of section 7226, Revised Codes 1921, as amended by section 13, Chapter 157, Laws of 1923, resulting in a decree of the court, entered on June 13, 1929, approving, confirming and ratifying the bond issue. It is alleged that all of the proceedings relating to the bond issue are void for the reason that section 7226, as amended, had been repealed by Chapter 155 of the Laws of 1929 and was not in effect at the time the proceedings took place.

[1–3] Section 7210, Revised Codes of 1921, as amended by section 7, Chapter 157, Laws of 1923, relating to the issuance of bonds by an irrigation district, contains this clause: "When bonds, however, are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of such district, such bonds may be authorized and issued in the manner provided for by section 7226 of this Code." Section 7226 was also amended by Chapter 157. The expression, "section 7226 of this Code," as used in section 7210, as amended, had reference to section 7226, as amended by Chapter 157.

By reference to section 7226 in section 7210, as amended, the provisions of the former section must be considered as incorporated in the latter. (*State ex rel. Hahn* v. *District Court*, 83 Mont. 400, 272 Pac. 525.) Thus the law stood, with reference to the method of issuing refunding bonds, until March 16, 1929, when Chapter 155 of the Laws of 1929 became effective, which expressly repealed section 7226, as amended.

All of the proceedings relating to this issue of bonds took place after March 16, 1929, and before the amendment of section 7210 by Chapter 185, Laws of 1929, which became effective on July 1, 1929. (Sec. 90, Rev. Codes 1921.)

The determinative question here presented is: Did the repeal by Chapter 155 of section 7226, as amended, affect

section 7210 as it stood after the amendment in 1923, and particularly in so far as it adopted by reference the provisions of section 7226? We think not.

The rule is that "the adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and therefore is not affected by any subsequent modification or repeal of the statute adopted." (36 Cyc. 1152.) This rule seems to be universal in the case of the adoption of a specific statute as here, as distinguished from the general law relating to a particular subject. (25 R. C. L., sec. 160, pp. 907, 908; *Hutto* v. *Walker County*, 185 Ala. 505, Ann. Cas. 1916B, 372, 64 South. 313; *Perkins* v. *Winslow*, (Del. Super.) 133 Atl. 235; *State ex rel. Sayer* v. *Junkin*, 87 Neb. 801, 128 N. W. 630; *Crohn* v. *Kansas City Home Tel. Co.*, 131 Mo. App. 313, 109 S. W. 1068; *Flanders* v. *Town of Merrimack*, 48 Wis. 567, 4 N. W. 741; *Williams* v. *State*, (Fla.) 125 South. 358; *Burns* v. *Kelley*, 221 Ky. 385, 298 S. W. 987; *People* v. *Kramer*, 328 Ill. 512, 160 N. E. 60.)

Since the repeal of section 7226, as amended, did not affect section 7210, in which section 7226 has been incorporated by reference, it follows that the complaint does not state facts sufficient to constitute a cause of action, and the court properly sustained the demurrer thereto.

The judgment is affirmed.

MR. CHIEF JUSTICE CALLAWAY and ASSOCIATE JUSTICES MATTHEWS, GALEN and FORD concur.

Rehearing denied April 3, 1930.

HB 15
Exhibit A

S T A T E  R E P O R T E R
Box 749
Helena, Montana

VOLUME 39

NO. 81-314

STATE OF MONTANA,

Plaintiff and Appellant,

v.

GERMAINE D. CONRAD and
ROBERT F. PALMER,

Defendants and Respondents.

Submitted: Oct. 19, 1981
Decided: Apr. 12, 1982

PUBLIC OFFICERS, Appeal in Official Misconduct Action regarding Alleged violation of the Open Meeting Law, Whether the State's Allegations in the Motion for Leave to file an Information Charging Official Misconduct Established Probable Cause that Defendants Committed the crime Charged, Whether the Statute defining Official Misconduct as 'Knowingly Conducts a meeting of a public agency in violation of 2-3-203' is void for Vagueness--COUNTIES

Appealed from the Fourth Judicial District Court, Missoula County, Hon. Gordon Bennett, Judge

For Appellant: Mike Greely, Attorney General, Helena
Robert L. Deschamps, III, Missoula

For Respondents: Moses Law Firm, Billings
Edward A. Cummings, Missoula

Mr. Deschamps argued the case orally for Appellant; Mr. Charles F. Moses and Mr. Cummings for Respondent.

Opinion by Chief Justice Haswell; Justices Harrison, Shea, Weber, Morrison, and Hon. B.W. Thomas, District Judge, sitting in place of Justice Sheehy, concurred. Justice Daly specially concurred.

Affirmed.

State of Montana, Plaintiff and Appellant, v.
Conrad, Defendant and Respondent
39 St. Rep. 680

Mr. Chief Justice Haswell delivered the Opinion of the Court.

This is an appeal from an order denying the State's motion for leave to file an information charging the defendants with official misconduct. We affirm.

The facts disclose that defendant Robert Palmer was sworn in as a Missoula County Commissioner on the morning of January 5, 1981. Defendant Germaine Conrad was already a County Commissioner. The third County Commissioner was Barbara Evans. Charles Brooke was the Commission's administrative officer.

Later on that same day, after Palmer had been sworn in, he and Conrad met to discuss a reorganization plan for staff personnel. Following the meeting, Brooke was directed to make up documents to outline and implement the plan that had been approved by Conrad and Palmer. Brooke was to have the supporting documents prepared in time for the commissioners' meeting scheduled for the next day, January 6. At that time the plan was to be presented to the third commissioner, Barbara Evans. Evans did not participate in any of the discussions. Both respondents admit they consciously excluded Evans from the discussions and did not want her to know about them or the reorganization plan prior to the January 6 board meeting.

Thereafter, the incident was investigated by the Missoula County Attorney and the Attorney General. They concluded that there was probable cause to believe that there had been a violation of Montana's open meeting law and the official misconduct statute, section 45-7-401(1)(e), MCA. The pertinent open meeting statutes and the official misconduct statute are set out below:

"OPEN MEETINGS

"2-3-201. Legislative intent--liberal construction. The legislature finds and declares that public boards, commissions, councils and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

"2-3-202. Meeting defined. As used in this part, 'meeting' means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

"2-3-203. Meetings of public agencies to be open to public--exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds shall be open to the public.

". . .

"45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

". . .

"(e) knowingly conducts a meeting of a public agency in violation of 2-3-203."

On March 6, 1981, the County Attorney filed an affidavit and motion for leave to file an information charging the defendants with official misconduct. The affidavit set forth facts essentially as outlined above. On April 27, 1981, the District Court denied the State's motion by an opinion and order. This appeal followed.

The issues on appeal are:

1. Whether the allegations in the affidavit establish probable cause that the defendants committed the crime charged.

2. Whether section 45-7-401(1)(e), MCA, is void for vagueness.

We affirm the trial court's decision and find the State's motion for leave to file an information was properly denied.

Initially, we find the affidavit establishes probable cause of a violation of Montana's open meeting law. The allegations in the affidavit must be taken as true. See, Little v. Rhay (1973), 809 Wash.App. 725, 509 P.2d 92, and State v. Wolfe (1968), 156 Conn. 199, 239 A.2d 509. These allegations directly allege that Brooke's plan was approved by Palmer and Conrad on January 5 and that "both [Palmer and Conrad] admitted that they consciously excluded Evans from their discussions and did not want her to know about them or their reorganization plan prior to the January 6th Board Meeting." We have previously held that a county commissioners' meeting conducted between two commissioners by telephone in which the third commissioner had no notice and did not participate violated Montana's open meeting law. Board of Trustees etc. v. Board of County Commissioners (1980), ____Mont.____, 606 P.2d 1069, 37 St.Rep. 175.

In Board of Trustees, supra, we held:

"The record also indicates that due to the framework in which the meeting was held, i.e., by means of telephone conversation, and due to the fact that Commissioner McClintock was not informed of the meeting, it was not an 'open meeting' as required in Montana . . .

"This type of clandestine meeting violates the spirit and letter of the Montana Open Meeting Law." 606 P.2d at 1073, 37 St.Rep. at 180.

Having found that probable cause existed under the allegations of the affidavit, we next consider whether section 45-7-401(1)(e), MCA, is void for vagueness. In doing so we note the legislative history of the open meeting law contained in the District Judge's scholarly opinion and order:

"Montana's 'open meeting law' (Sections 2-3-210, et seq.) was passed in 1963 (Chapter 159). Its first section stated:

"'Section 1. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this act that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the act shall be liberally construed.'

"This section, heavily plagarized from a 1953 California statute (Section 54950), added to that statute the reference to 'deliberations'. The second section of our statute (now Section 2-3-203) provided in pertinent part:

"'All meetings of public or governmental bodies . . . at which any action is taken . . . shall be open to the public' (with exceptions).

"This mandatory section did not deal with 'deliberations' at all. The statute did not define such things as 'action', 'deliberation', 'meeting' or 'open' and it provided for no notice requirements. No sanctions were suggested.

"Sanctions were added by the 1975 legislature (Chapter 474) by the addition of a subsection (e) to R.C.M. Section 94-7-401 (now 45-7-401, the official misconduct criminal statute passed as part of the 'new' criminal code in 1973 (Chapter 513)), which then provided in pertinent part:

"'A public servant commits the offense of official misconduct when, in his official capacity, he . . . knowingly conducts a meeting of a public agency in violation of section 82-3402 [2-3-203].'

". . .

"Having in 1975 incorporated the mandatory provision of the open meeting law in the criminal code by section numbered reference, thereby making its violation criminal and providing a penalty therefor, the legislature in 1977 (Chapter 567) got to tinkering with the open meeting law and the incorporated section. As to that section, they removed the words 'at which any action is taken' from the language quoted above. Thus, while the original section required that meetings at which action was taken be open, the section as amended required that all public meetings be open, whether action was taken or not. But in the same chapter, the legislature provided, for the first time, a definition of the term 'meeting' in a newly designated and numbered R.C.M.

Section (83-3404, now 2-3-202):

"'As used in this chapter, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss or act upon a matter over which the agency has supervision, control, jurisdiction or advisory power.'

"It will be noted, inter alia, that a quorum was required and that the purpose of the meeting could be to hear or discuss as well as to act. This Chapter also made voidable any discussion made in violation of the act. In this amendment of the open meeting law, no reference was made to the criminal code, either in the title or the body of the act."

In Connally v. General Construction Co. (1926), 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322, the United States Supreme Court established a standard for the determination of vagueness which has been followed to this day:

"That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law." 269 U.S. at 391, 46 S.Ct. at 127, 70 L.Ed. at 328.

The Court reiterated this standard in Winters v. New York (1948), 333 U.S. 507, 68 S.Ct. 665, 92 L.Ed. 840, quoting from State v. Diamond (1921), 27 N.M. 477, 202 P. 988, 20 A.L.R. 1527:

"'Where the statute uses words of no determinative meaning, or the language is so general and indefinite as to embrace not only acts commonly recognized as reprehensible, but also others which it is unreasonable to presume were intended to be made criminal, it will be declared void for uncertainty.'" 333 U.S. at 516, 68 S.Ct. at 670-71, 92 L.Ed. at 850.

This Court has established a standard similar to that used in Connally and Winters. In State v. Perry (1979), ____Mont.____, 590 P.2d 1129, 36 St.Rep. 291, quoting from State ex rel. Griffin v. Greene (1937), 104 Mont. 460, 67 P.2d 995, we held that "unless [a statute] is sufficiently explicit so that all those subject to the penalties may know what to avoid, it violates the essentials of due process." 590 P.2d at 1132, 36 St.Rep. at 294.

It is also clear that no person should be required to guess at whether a contemplated action is criminal. The United States Supreme Court has stated the principle in the following language:

"As a matter of due process, 'no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands

or forbids.'" Hynes v. Mayor of Oradell (1976), 425 U.S. 610, 620, 96 S.Ct. 1755, 1760, 48 L.Ed.2d 243, 253.

Similarly, in Connally, supra, the Court said:

"And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." (Citations omitted.) 269 U.S. at 391, 46 S.Ct. at 127, 70 L.Ed. at 328.

We hold that section 45-7-401(1)(e), MCA, violates these standards.

It is unclear whether the 1977 legislature, in enacting its broad definition of "meeting" to include discussions as well as actions (section 2-3-202, MCA), intended to amend the criminal statute under which these commissioners were charged (section 45-7-401(1)(e), MCA), to encompass the expanded scope of the open meeting law. There is no express legislative intent to do so.

Men of common intelligence could differ in their opinion as to whether the broad "meeting" definition enacted in 1977 was incorporated in the 1975 amendment to the criminal statute. The fact that a lawsuit has arisen over the interpretation of this statute underscores this difference of opinion. Accordingly, any attempt at resolution of this difference of opinion would necessarily involve guesswork and speculation, a fatal defect in any criminal statute. It is simply not clear what constitutes the prohibited conduct.

The State argues that section 1-2-108(2), MCA, disposes of the problem. That statute provides:

"(2) A specific or presumed reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it."

The above statute was enacted in 1979 and immediately precedes section 1-2-109, MCA, which states that no Montana law is retroactive unless expressly declared so.

The difficulty with the State's argument becomes obvious in light of section 1-2-109, MCA. To apply a 1979 enactment to a law passed in 1977 (the "meeting" definition) would clearly be retroactive. Every reasonable doubt is resolved against retroactive operation of a statute. Penrod v. Hoskinson (1976), 170 Mont. 277, 552 P.2d 325.

For the above reasons we hold that section 45-7-401(1)(e), MCA, is void for vagueness and affirm the District Court's denial of the

State of Montana, Plaintiff and Appellant, v.
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State's motion for leave to file an information.

. . . . .

Mr. Justice Daly concurring:

I concur in the result.

# MONTANA LEGISLATURE





ROOM 138
STATE CAPITOL
HELENA 59620
(406) 449-3064

## ADMINISTRATIVE CODE COMMITTEE

Exhibit B
HB 47

September 30, 1981

Mr. Gary Wicks, Director
Department of Highways
2701 Prospect Avenue
Helena, Montana 59620

Attention: Mr. Jim Beck

Dear Mr. Wicks:

At its meeting on September 24, 1981, the Administrative Code Committee reviewed the proposed regulations of the Highway Department governing overweight single-trip permits, contained in MAR Notice No. 18-36, and printed at page 798 of 1981 MAR Issue No. 15. It was the unanimous opinion of the Committee that Section 61-10-121 certainly contains no express rulemaking authority and probably is lacking in implied rulemaking authority as well.

The Committee is aware that the same statutory section has also been cited in the past as rulemaking authority for proposed regulations of the Highway Department governing triple trailer combinations, contained originally in MAR Notice No. 18-33 and printed at page 1258 of 1980 MAR Issue No. 10. While the Committee is generally aware that on that occasion the Committee voted not to object to a lack of rulemaking authority because the Department agreed to print certain conditions upon the face of the triple trailer permit, the Committee at its September 24 meeting also voted to advise the Department that the Department will most likely in a better legal position if it stands upon the language of the statute claimed as authority and does not try to apply the proposed rule amendments as having the force and effect of law.

The Committee is also aware that HB 320, introduced in the 1981 legislative session, would have granted the Department general rulemaking authority for all of Title 61, Chapter 10 ("Size -- Weight -- Load"), but that the bill was reported out of the Senate Highway Committee

ATTACHMENT #1, p 1

adversely and that the report was adopted. Because of the Department's good faith attempt to introduce legislation granting rulemaking authority to cover Section 61-10-121, several members of the Committee, Representative Harper and Senator Stimatz, indicated a willingness to sponsor legislation granting rulemaking authority applicable only to Section 61-10-121 in the 1983 legislative session.

Sincerely,

David Wiss
Counsel to the Committee

DN:ee
cc: Administrative Code Committee

**61-10-110. Federal law.** Sections 61-10-101 through 61-10-109 do not authorize, without a permit issued as provided by law, the operation of a combination of vehicles having a gross weight, axle load, or size in excess of that authorized in those sections, or the operation of a combination of vehicles on the national system of interstate and defense highways having a gross weight or size in excess of that permitted by law in this state before July 1, 1956, or by federal law or regulation in excess thereof, which is adopted. If federal law allows establishment of size and weight limits in excess of those permitted in those sections, without penalty or denial of federal funds for highway purposes, the department of highways may, by permit designating highway routing, authorize the movement on highways under its jurisdiction of vehicles or combinations of vehicles of a size or weight in excess of the limits provided for in those sections, but within the limits necessary to qualify for federal aid highway funds.

History: En. 32-1123.11 by Sec. 22, Ch. 316, L. 1974; R.C.M. 1947, 32-1123.11.

~~61-10-111 through 61-10-120 reserved.~~

**61-10-121. Permits for excess size and weight.** (1) The department of highways and local authorities in their respective jurisdictions may in their discretion, upon application in writing and with good cause shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle, combination of vehicles, load, object, or other thing of a size or weight exceeding the maximum specified in 61-10-101 through 61-10-110 upon a highway under the jurisdiction of and for the maintenance of which the body granting the permit is responsible. However, only the department has the discretion to issue permits for movement of a vehicle or combination of vehicles carrying built-up or reducible loads in excess of 9 feet in width or exceeding the length, height, or weight specified in 61-10-101 through 61-10-110. This permit shall be issued in the public interest. A carrier receiving this permit must have public liability and property damage insurance for the protection of the traveling public as a whole. A permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit. The department may issue oversize permits to dealers in implements of husbandry and self-propelled machinery, which may be transferred from unit to unit by the dealer, for the fee set forth in 61-10-124. These oversize permits may not restrict dealers in implements of husbandry and self-propelled machinery from traveling on a Saturday or Sunday. These oversize permits expire on December 31 of each year, with no grace period. For the purposes of this section, a dealer in implements of husbandry or self-propelled machinery must be a resident of the state. A post-office box number is not a permanent address under this section.

(2) The applicant for a special permit shall specifically describe the powered vehicle or towing vehicle and generally describe the type of vehicle, combination of vehicles, load, object, or other thing to be operated or moved and the particular state highways over which the vehicle, combination of

vehicles, load, object, or other thing is to be moved and whether the permit is required for a single trip or for continuous operation.

History: En. 32-1127.1 by Sec. 27, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.1; amd. Sec. 76, Ch. 421, L. 1979; amd. Sec. 1, Ch. 595, L. 1979.

**61-10-122. Discretion of issuer — conditions.** The department or local authority may issue or withhold a special permit at its discretion or, if the permit is issued, limit the number of trips or establish seasonal or other time limitations within which the vehicle, combination of vehicles, load, object, or other thing described may be operated on the public highways indicated, or otherwise limit or prescribe conditions of operation of the vehicle, combination of vehicles, load, object, or other thing when necessary to assure against damage to the road foundation, surfaces, or structures or safety of traffic, and may require an undertaking or other security considered necessary to compensate for injury to a roadway or road structure. During harvest no permit may be denied to oversize harvest or harvest-related agricultural machinery solely on the grounds that the travel takes place on a Saturday or Sunday. No permit may be denied to dealers in implements of husbandry and self-propelled machinery solely on the grounds that the travel may take place on a Saturday or Sunday.

History: En. 32-1127.2 by Sec. 28, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.2; amd. Sec. 2, Ch. 595, L. 1979.

**61-10-123. Haystack movers.** A self-propelled vehicle used only for the purpose of moving haystacks on a commercial basis is subject to 61-10-121 through 61-10-127, except as follows:

(1) The vehicle, loaded or unloaded, may not exceed 55 feet in length or 20 feet in width.

(2) A single load may not be moved on the vehicle a distance greater than 75 miles from the point of origin on public roads.

(3) When the vehicle is hauling a load, it shall be accompanied by two pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "wide load" written on it. One car shall precede the vehicle by not less than 100 yards or more than one-fourth mile, and one shall follow the vehicle at a distance not less than 100 yards or more than one-fourth mile. The following pilot car shall be in radio contact with the vehicle at all times.

(4) The speed of the vehicle shall be reasonable and proper but not in excess of 35 miles per hour.

(5) The vehicle shall be operated only between the hours of sunrise and sunset.

(6) The vehicle may not be operated on an interstate or controlled-access highway.

(7) A term or blanket permit may be issued for the vehicle.

History: En. 32-1127.4 by Sec. 30, Ch. 316, L. 1974; R.C.M. 1947, 32-1127.4.

**61-10-124. Special permits — fee.** (1) Except as provided in subsection (2)(b), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through

in Montana to a point out of the State.

(3) The sticker is not required on new trailers in-transit. The sticker is not required on non-resident vehicles used for recreational purposes.

(4) The Department of Revenue has approved the following documents as proof of tax payment in lieu of "Property Tax Paid Sticker":

(a) A Tax Receipt from the County Treasurer.

(b) An Affadavit from the County Assessor stating the house trailer is part of a dealer's stock or replacement. (History: Sec. 15-24-202 through 15-24-208 MCA; IMP, Sec. 15-24-202 through 15-24-208 MCA; Eff. 12/31/72.)

18.8.428 FERTILIZER VEHICLES (1) License fertilizer vehicles the same as S. M. (Special Mobile Equipment) or trailers or trucks, depending on usage. (History: Sec. 60-2-201 and 60-3-101 MCA; IMP, Sec. 61-10-206, 61-3-431, 61-10-201 and 61-10-202 MCA; Eff. 12/31/72; AMD, 1980 MAR p. 1078, Eff. 3/28/80.)

## Sub-Chapter 5

## Overdimensional Permit Requirements

18.8.501 SPECIAL PERMIT (Dimensions - Exceeding statutory limits.) (1) Special Permit (hereafter referred to as "permit") may be issued for either width, height, or length in excess of the statutory limits, or a combination of any of the three dimensions. A permit shall be issued for an irreducible load only, except when otherwise expressly set forth in the rules and regulations. The duration of a permit may be either a Single Trip or a Term Permit. (History: Sec. 61-10-121 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.502 SINGLE TRIP (1) A Single Trip Permit shall be issued under the following conditions:

(a) The load, vehicle, combination of vehicles, or other thing exceeds any one of these dimensions: Width, 15 feet; Length, 85 feet; or Height, 14 1/2 feet.

(b) Montana license for a powered vehicle is a Montana Temporary Trip Permit.

(c) Applicant is engaged in a single movement or does not specify otherwise.

(d) Permit is transmitted by telegram, telecopier, telex, or communication service, except mail.

(e) Truck, truck tractor, trailer, or semi trailer is unladen and of a width exceeding 120 inches (10 feet).



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(History: IMPLIED, Sec. 61-10-121, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.503 TERM PERMIT (1) A Term Permit may be issued under the following conditions:

(a) Load, vehicle, combination of vehicles, or other thing is 15 feet or less in width, 85 feet or less in length, or 14 1/2 feet or less in height. (History: IMPLIED, Sec. 61-10-121, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.504 DURATION OF PERMIT (1) The duration of a Single Trip Permit is the length of time for the specified move shown on the permit. The duration of a Term Permit is for the period of the license of the vehicle and/or the G.V.W. fees. (History: IMPLIED, Sec. 61-10-121, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.505 FEE FOR PERMITS (1) The fees for permits for dimensions exceeding statutory limits are:

(a) Single Trip Permit, $10.00.

(b) Term Permit, $75.00.

(c) G.V.W. Form 71, No Fee - Issued to U. S. Government, all state, city, county, and political subdivisions of same and other governments. (History: IMPLIED, Sec. 61-10-124, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79; AMD, 1982 MAR p. 699, Eff. 4/16/82.)

18.8.506 ISSUANCE OF PERMIT (1) The permit shall be issued to the powered vehicle (truck, truck tractor, special mobile equipment, or other powered vehicle).

(2) No verbal permit shall be issued by telephone or otherwise. A written permit is required.

(3) The permit shall be carried in the vehicle to which the permit is issued when the vehicle is travelling on the highway.

(4) Alteration of any word or figure on the face of a permit will void the permit immediately and will subject the permit to confiscation by the inspecting officer. (History: IMPLIED, Sec. 61-10-121, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.507 INSURANCE (1) The insurance statement on the face of the permits must comply with the insurance regulations under ARM 18.8.801. (History: IMPLIED, Sec. 61-10-121 and



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61-10-122 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.508 SELF-ISSUING PERMIT (1) Trip or Term Self-Issuing Permits may be obtained from the Helena G.V.W. Office for excess width, height, and length. (History: Sec. 61-10-121 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.509 RESTRICTIONS (1) A permit may not be issued under the following conditions:

(a) For travel on Sundays, holidays, after 12 noon on Saturdays, or at night unless special permission is obtained from the Helena G.V.W. Office and specifically noted on the face of the permit, except that either a Trip Height Permit or a Term Height Permit may be issued for travel at any time if the load is not in excess of 14 1/2 feet in height.

(b) The holidays are New Years Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, and Friday preceeding any above-named holiday when the holiday is on Saturday, and Monday following any above-named holiday, when holiday is on Sunday.

(c) Alteration of any word or figure on the face of a permit will void the permit immediately and will be subject to confiscation by the inspecting officer.

(d) A permit which requires alteration must be replaced by purchase of another permit.

(e) A permit is not transferable from one person to another, nor is it transferable with the change of ownership of a vehicle. (History: Sec. 61-10-122 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.510 FLAGMAN REQUIREMENTS (EXCEPT HOUSE TRAILERS AND MOBILE HOMES.) (1) For house trailers and mobile homes, see requirements in ARM 18.8.1003 and 18.8.1007.

(2) Vehicles or loads with a total outside width up to and including 144 inches are not required to utilize flagman escorts.

(3) Vehicles or loads with a total outside width in excess of 144 inches shall be preceded by a flagman escort on all two lane highways for the purpose of warning other highway users.

(4) On completed four lane highways, no flagman escort is required on vehicles or loads up to and including 168 inches (14 feet) in width.

(5) Vehicles or loads exceeding 168 inches (14 feet) on completed four lane highways are required to be followed



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by a flagman escort.

(6) The vehicle or load shall properly display lights which meet the standard requirements in Section 61-9-219, MCA.

(7) If the vehicle or load passes through a hazardous area, or load being transported continuously infringes upon the adjacent lane of traffic, a flagman must be placed front and rear.

(8) The flagman requirement does not apply to dual wheel tractors under 15 feet in overall width, unless the vehicle is travelling through a hazardous area. (History: Sec. 61-10-121 and 61-10-122 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.511 REGULATIONS FOR FLAGMAN ESCORTS (1) A flagman preceding or following the property being transported shall be within 1,000 feet of said movement.

(2) Flags shall be displayed on the driver's side of a flagman's pilot car.

(3) Each flag shall be mounted on a staff and clearly visible for the full height of the flag. Flags shall be not less than 12" x 12" and shall be red without printing or advertising.

(4) A sign with the words "WIDE LOAD" shall be displayed on the front of the vehicle and rear of the vehicle when the movement exceeds 12 feet in width. Letters shall not be less than 8 inches in height. Words similar to "WIDE LOAD" are acceptable. (History: Sec. 61-10-121 and 61-10-122 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.512 HEIGHT (1) Each permit is automatically restricted to clearance of any bridge or underpass or other overhead obstruction on the route travelled.

(2) The permittee will be responsible for checking the route or routes to be travelled to determine clearance of bridges and/or other structures. The permit does not guarantee such clearances for maximum height as specified in the list of bridges and structures prepared by the Department of Highways. The list may be secured from the G.V.W. Division as G.V.W. Form 30-A.

(3) The permittee shall be responsible for obtaining overheight clearances, including payment of all expenses incident to removal of any thing obstructing clearances.

(4) Utility Lines - See Sections 69-4-601 through 69-4-604, MCA, and Sections 69-4-202 and 69-4-203, MCA.

(5) Clearance Signing - Effective immediately, clearance signs will not be erected for any structure with more



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than 14'6" clearance.

(6) The signs on the structures will have "down" arrows. All structures with 14'6" clearance or less will also have the W 12-2 sign and supplemental panel in advance.

(7) Railroad companies do not desire clearance signs which refer to specified height mounted on their structures. Clearance signs will be ground mounted directly in front of the column or abutment of the structure. The sign mounted at the structure shall be the W 12-2 without the supplemental panel. The advanced warning sign will be the W 12-2 and the supplemental panel.

(8) All signs will have black lettering and borders on reflectorized yellow backgrounds.

(9) A Single Trip Permit only shall be issued for height in excess of 14 1/2 feet.

(10) A Term Permit for height in excess of statutory limits to and including 14 1/2 feet may be issued for a built-up load. (History: Sec. 61-10-121 and 61-10-122 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.513 WIDTH (1) A Term Permit, to and including 9 feet, may be issued for a truck, truck tractor, trailer, or semi trailer and the following built up loads:

(a) Baled or loose hay - farm, ranch, or commercial.

(b) Forest products in natural state: logs, cants, ties, studs, pulp wood hauled crosswise.

(c) Culverts lengthwise.

(d) Tanks lengthwise.

(e) Beams.

(f) Logging equipment.

(g) Contractors equipment.

(h) Oilfield equipment.

(i) Christmas trees.

(2) Permits for the above may be issued for travel night, Saturdays, Sundays, and holidays, provided load displays lights the full width.

(3) A Term Width Permit may be issued for equipment (S.M.) not exceeding 15 feet. The permit shall be for exact dimensions.

(4) A Term Permit may be issued for a truck, truck tractor, trailer, or semi trailer up to and including 120 inches (10 feet) in width. Each vehicle qualifying for a term permit is to be issued a separate permit for the exact dimensions.

(5) Vehicles exceeding 120 inches (10 feet) in width are limited to single trip permits and may be issued by permission from the Helena G.V.W. Office.



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(6) Vehicles 108 inches (9 feet) in width or wider may not carry reducible type loads.

(7) A permit for width is required when load travelling on the interstate exceeds 96 inches.

(8) A "Wide Load" or similiar sign shall be displayed on all loads exceeding 10 feet in width. (History: IMPLIED Sec. 61-10-121 and 61-10-122, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.514 LENGTH (1) A Term Length Permit may be issued up to and including 85 feet in length.

(2) A Term Length Permit shall not be issued to a single powered vehicle including load, in excess of 50 feet in length.

(3) A Trip or Term Length Permit may be issued for travel on Saturdays, Sundays, holidays and at night, to and including 70 feet in length, provided the load shall have lights full width at the extreme rear of the load and the vehicle and load do not exceed 9 feet in width and 14.5 feet in height.

(4) Trip or Term Length Permits may be issued for travel on Saturdays, Sundays, holidays and at night for car carriers consisting of truck and semi trailer with vehicle length up to 70 feet and load length up to 75 feet.

(5) Violations of the permit will be recorded on the permit. Three violations and the permit will be confiscated and cannot be reissued, except by the Helena G.V.W. Office. (History: IMPLIED, Sec. 61-10-121 and 61-10-122, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79; AMD, 1982 MAR p. 1541, Eff. 8/13/82.)



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18.8.515 REGULATIONS FOR MOVEMENT OF A LONG LOAD

(1) A load exceeding the statutory length, but not exceeding the statutory width, shall be moved with the following regulations:

(2) A load with a combined length, including towing vehicle, of 100 feet or less - No flagmen are required, provided the truck has power to maintain a minimum speed of 25 miles per hour and a "Long Load" sign is displayed on the rear.

(3) A load with a combined length, including towing vehicle, over 100 feet requires a flagman in front and rear of the unit (or convoy).

(4) When the combination is part of a convoy not to exceed 10 vehicles, the combinations in the convoy shall travel 1,000 feet apart.

(5) Each load shall be equipped with flashing amber lights and red fluorescent flag on the rear.

(6) The flagman requirements may be increased during the tourist season or in areas of heavy tourist travel. (History: Sec. 61-10-121 and 61-10-122 MCA; IMP, Sec. 61-10-101 through 61-10-148 MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

18.8.516 HAYSTACK MOVERS - COMMERCIAL SELF-PROPELLED.

(1) The following are requirements for operation of commercial self-propelled haystack movers:

(2) Commercial self-propelled haystack movers must be licensed as a truck and 100% G.V.W. Fees paid for the maximum gross loaded weight.

(3) The self-propelled haystack mover shall not exceed 55 feet in length or 20 feet in width, loaded or unloaded.

(4) No single load shall be moved on such vehicle a distance greater than 75 miles from the point of origin on the public roads. (A new permit is required for each point of origin outside the 75 mile limit.)

(5) When the vehicle is hauling a load, it shall be accompanied by two pilot cars. Each car shall be equipped with a flashing warning light, a red flag, and a sign with the words "Wide Load". One car shall precede the vehicle by not less than one hundred yards nor more than one-quarter mile and one shal. follow the vehicle at a distance not less than one hundred yards nor more than one-quarter mile. The following pilot car shall be in radio contact with the vehicle at all times.

(6) The speed of the vehicles shall be reasonable and proper, but not in excess of thirty-five miles per hour.

(7) The vehicle shall be operated only between the hours of sunrise and sunset.

(8) The vehicle may not be operated on an interstate or controlled-access highway.



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(9) A Term Permit may be issued for the vehicle.
(10) All permits must be approved by the G.V.W. Division, Helena, before being issued.
(11) The above does not apply to trailers. (History: Sec. 61-10-102, 61-10-121, 61-10-122, 61-10-123, MCA; IMP, Sec. 61-10-101 through 61-10-148, MCA; Eff. 12/31/72; AMD, Eff. 9/5/74; AMD, Eff. 11/4/74; AMD, 1979 MAR p. 322, Eff. 4/2/79.)

Sub-Chapter 6

Overweight Permit Requirements

18.8.601 OVERWEIGHT SINGLE TRIP PERMITS

(1) The Department of Highways hereby adopts and incorporates by reference the WEIGHT ANALYSIS MANUAL, which sets forth the weights and conditions for movements of various equipment. A copy of the WEIGHT ANALYSIS MANUAL published by the Bridge Bureau of the Department of Highways may be obtained from the Gross Vehicle Weight Division, Box 4639, Helena, Montana 59604.

(2) Overweight Permits may be issued for single trips only pursuant to Section 61-10-125, MCA.

(3) The permittee must first obtain a special permit, G.V.W Form 32, pursuant to Section 61-10-124, MCA. The permit shall be valid for the period of the license or G.V.W. Fee, whichever is the lesser period of time. Example: A permit issued to a unit licensed with a Trip Permit would expire in 72 hours. Term permits expire December 31 and are extended to the grace period of the license or gross weight fees, whichever is the lesser.

(4) All miles to be travelled shall be included in computing the fee. The total miles shall include all public roads (county roads), streets (city streets). and highways (interstate, primary, and secondary).

(5) The maximum axle loads and the minimum axle spacing for which overweight permits may be issued for non-built-up loads shall conform to the requirements of the WEIGHT ANALYSIS MANUAL which manual is hereby adopted by reference and is on file and of record with the Office of the Secretary of State. Refer to paragraph (1) of this Rule.

(6) An overweight load shall be considered to be a non-built-up load when it consists of a single item that cannot be readily dismantled, divided, or otherwise reduced. Loads of heavy equipment (i.e. bull dozers with blades and rippers attached and cranes with counterweights and booms attached) loaded in configurations closely approximating operational configurations, shall generally not be considered reducible or divisible. Such heavy equipment that meet these



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criteria may, with the approval of the issuing authority, be partially dismantled and rearranged to achieve safer highway configurations.

(7) Subject to the exercise of discretion of the Administrator, G.V.W. Division, permits may be issued for overweight loads of more than one item or for greater weights than those provided in the Weight Analysis Manual where written application is made showing good cause for such exception. Refer to paragraph (1) of this Rule.

(8) Overweight permits for vehicles with maximum dimensions of 70 feet in length, 9 feet in width and 14.5 feet in height, or such other dimensional restrictions as may be imposed, shall be allowed to travel during the hours of darkness, Saturdays, Sundays and holidays unless special speed restrictions are imposed. Overweight vehicles in excess of these dimensions shall be limited as provided for in such permit.

(9) Overweight Permits are not transferable from one person to another, nor are they transferable with the change of ownership of a vehicle.

(10) Permits may be issued for travel on any state highway provided that seasonal load limits are not in effect restricting weights below normal limits.

(11) Alteration of any word or figure on the face of a permit will void the permit immediately and subject the permit to confiscation by the inspecting officer.

(12) No verbal permit shall be issued by telephone or otherwise. A written permit is required by Montana law. (History: Sec. 61-10-121, MCA; IMP, 61-10-101 through 61-10-148, MCA; Eff. 12/31/72, AMD, 1981 MAR p. 1194, Eff. 10/16/81.)

Sub-Chapter 7

Restricted Route-Load Permits

18.8.701 RESTRICTED ROUTE-LOAD PERMITS (1) Restricted Route-Load Permits (G.V.W. Form 30) are issued to owners or operators of trucks, truck-tractors, busses, or powered vehicles. The permit is issued to the powered vehicle and is valid for any lawful combination.

(2) Restricted Route-Load Permits shall expire on the expiration of the license or G.V.W. fee, whichever is the lesser period of time. Example: A permit issued to a unit licensed with a trip permit would expire in 72 hours. Term permits expire December 31 and are extended to the grace period of the license or gross weight fees, whichever is the lesser.

(3) All vehicles must have required Montana licenses.

(4) Highway routings shall be specified by the Depart-



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VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

TITLE House Bill 15 Date January 5, 1983

SPONSOR Rep. Ramirez

| NAME | RESIDENCE | REPRESENTING | SUPPORT | OPPOSE |
|---|---|---|---|---|
| Bert Harrington | | Leg. Council | ✓ | |
| Ramon Sabaly | Dist 48 | | ✓ | |
| Tom Stokes | Dist 23 | | ✓ | |

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House Bill 47 Date January 5, 1983

SPONSOR Rep. Schultz

| NAME | RESIDENCE | REPRESENTING | SUPPORT | OPPOSE |
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| [illegible] | Helena | ACC | | |
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IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.