

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

June 27, 1986

The fourth meeting of the Senate Judiciary Committee for the 49th Legislature, Third Special Session, was called to order at 6:36 P.M. on June 27, 1986, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 46: Representative Winslow, House District 89, presented this bill to the committee as chief sponsor. He said very simply this bill is important to the legislative process because of the need to have access to information that is in the Department of Revenue. We started having problems in that the Department of Revenue had some concerns that the Fiscal Analyst's Office should not get information. He said he has spent a great deal of time trying to find out how to get the necessary information, making sure all form of confidentiality was kept in place. We are not interested in names and ID numbers but that the Analyst's Office be able to analyze information from the Department of Revenue. The House committee installed language in the bill to make sure that the Analyst's Office was as liable as the Department of Revenue to make sure that the information is held confidential. His understanding is that the Department of Revenue still has some problems with the language in the bill.

PROPONENTS: Senator Haffey, Senate District 33, gave testimony in support of this bill. He said it might be helpful to compare what we are trying to put into place for the legislature in terms of having the ability to think about and then having an analysis done on the revenue matters as you think of bills and so forth, compare that to what you want for analysis on expenditure matters. The Fiscal Analyst is your agency to do that for you. We have tried to do this informally and have worked with Mr. LaFaver all the way along, that if we couldn't do it informally then to get something in place formally to make sure that we would not abuse the opportunity to use revenue information.

Steve Brown, representing the Office of Fiscal Analyst, gave testimony in support of this bill. He said he was retained by the Office of Fiscal Analyst to advise them on this dispute concerning access to confidential records by the Department of Revenue. In the hearing in

the House we thought we had addressed the concerns of the Department of Revenue by putting in place the same penalty for the Office of Fiscal Analyst as applies to the Department of Revenue staff. He said the Fiscal Analyst, as part of the Legislative Branch of Government, is essential to the legislature's independent ability to predict revenue and know what existing revenues are. A situation arose where the Department of Revenue was reluctant to give access to the Fiscal Analyst's Office in certain situations and negotiations were undertaken to attempt to work out a written agreement between the Fiscal Analyst's Office and the Department of Revenue. Those things were proceeding when the Department of Revenue sent a letter to the Fiscal Analyst's Office saying that access to their confidential records would not be allowed. Subsequently, on June 6th, the Department did revise its position wherein the Department of Revenue basically said that it would permit the Fiscal Analyst's Office to have access to confidential information in their office and they could view everything on their tapes and computers. We agreed we would not take copies of individual tax returns or not discuss any tax matters, and that all confidential information would be lumped into an aggregate of three returns. A copy of the June 6th letter from the Department of Revenue is attached as Exhibit 1. We have had further discussion, at one point the Fiscal Analyst's Office only had the authority to examine and that did not include the right to obtain copies of records and that is why language has been proposed here. The next issue was whether or not the Fiscal Analyst's Office had in place adequate procedures to prevent unauthorized disclosure of any confidential information. Ms. Rippingale has now adopted, in my opinion, more extensive security procedures than exist in the Department of Revenue for making sure the confidential information is not released. The big issue now is the computer run. We are not interested in tax ID numbers or names or anything that would disclose the individual's identity. We have asked the Department to make available a separate computer run of the tax information, absent the identification characteristics. The bill has been amended to address the concerns of the Department of Revenue to allow that the Fiscal Analyst's Office will be as liable as the Department of Revenue to make sure that the information is held confidential. The Department of Revenue has said that a staff member from the Fiscal Analyst's Office may write down information that they want from the Department of Revenue but they may not have access to the computer tape minus any form of identification.

OPPONENTS: Kim Wilsen, testifying as a member of the ACLU and because this bill does affect individual's rights, gave testimony in opposition to this bill. He said what is at issue here is a constitutional issue of privacy. These are very private records. Under the current law just the Department of Revenue has access to the returns and the dissemination of that information is very limited. The Department of Revenue has an obvious need for that information, the Legislative Fiscal Analyst has a less well defined need for that information. He is concerned with the process. This session was supposed to be directed to budgetary issues and he does not feel there was appropriate notice that there would be as many issues as there have been this special session that are going beyond the budgetary issue.

John LaFaver, representing the Department of Revenue, gave testimony in opposition to this bill. I have always been of the view that this bill was not necessary. He is a proponent for the need for a professional independent legislative fiscal analyst. He does not understand why one cannot do an analysis of tax bills, tax proposals, any alternative that any legislator wants, without having access to individual returns that are the most private basis of information that the state contains on anyone. You heard from Mr. Brown that they were not interested in names and so forth, so then why does the bill say to obtain copies of individual tax returns. If, in fact, that section were taken out where it did not refer to obtaining copies it would basically provide the Fiscal Analyst the authority that I think they have now and I would certainly have no objection to the passage of the bill. I think the Department of Revenue has to have the prime authority to control and restrict access and we require very, very strict control in the Department of Revenue, only on a need to know basis.

QUESTIONS FROM THE COMMITTEE: Senator Crippen asked John LaFaver why the tax records were confidential.

Mr. LaFaver said the primary purpose is that these records are the most sensitive records that the state demands of its citizens.

Senator Crippen asked if he was talking about the records and what is in them or are you talking about the individual taxpayer with whom that record may be related? Are they both the reason for confidentiality or one or the other?

Mr. LaFaver said I think that it is possible to provide a comprehensive file that is sanitized in such a way that no one can trace the numbers back to individuals.

Senator Crippen said the reason for the confidentiality is the name of the taxpayer, not the information within the report but the name.

Mr. LaFaver said that is essentially right but along with that is the inability to trace numbers back to the name.

Senator Crippen said to Mr. Brown that the Fiscal Analyst's office now can go over and get information by hand and get the name and ID numbers of taxpayers.

Mr. Brown said that is in the Department's June 6th offer, that that information will be made available so long as you do it by hand. That is not what we are interested in. What we have offered in the agreement is (1) we would never take copies of individual returns and (2) in any analysis we would aggregate the data, not the names, in groups of three.

Senator Crippen asked where the computer came in?

Mr. Brown said the computer is the basis of the executive branch's revenue estimates and projections. We are asking to have the ability to have the same computer run so that the Legislative Fiscal Analyst can do an independent analysis on the computer run. We do not have access to the computer run now. The tape can be run without the identifying numbers on the computer tape.

Senator Crippen asked Mr. LaFaver to respond to the statement which was made that the Fiscal Analyst can get the information by hand on an individual tax return.

Mr. LaFaver said because of abuse in a particular situation they cannot now, and have not for sometime, been able to look at a particular return. In terms of being able to do a fiscal analysis on a comprehensive record, that is sanitized so that no one can trace numbers back to taxpayers for something that we have offered but apparently that is not sufficient.

Senator Towe said that really isn't enough is it. If someone wants to make an analysis of how many taxpayers earn over \$10 million in the state of Montana, I suspect we could probably trace most of those from a computer list, but that information may be valuable. How will you sanitize that?

Mr. LaFaver said from the file that I am suggesting you could pull that information up but you would not be able to trace that data to names. We would be able to provide that information in a comprehensive way and come up with accurate fiscal notes as to any change in tax law.

Senator Towe suggested amending the bill on page 1, at the end of line 25, to add the following new language: "provided copies obtained of confidential records should not be personally identifiable. For this purpose personally identifiable means any information, name or number that identifies a particular person. Mere tracing of numbers of tax or income to names of taxpayers does not make the record personally identifiable."

Mr. LaFaver said the last part he would have to object to. If you provide numbers that are traceable to an individual you have violated confidentiality.

Mr. Brown said with the addition of the last language there wouldn't be any objection.

Senator Towe asked for Mr. Brown's interpretation of the confidentiality rules if the Legislative Fiscal Analyst has the authority to see confidential information, can she share this information with another legislator?

Mr. Brown said under the terms of the agreement proposed, she would share that information in aggregates of three returns. You may want to address the issue of a legislator being liable if the information is disclosed.

Senator Towe asked if the language in the bill, as it is drafted, if it would allow the transfer of any information received to a legislator.

Mr. Brown said in his opinion no, unless you are willing to include where it says Office of Fiscal Analyst, legislature.

Senator Mazurek said we are focusing specifically on tax returns and we are talking about agreements, our present agreement, our present policy, and one of the difficulties he has with this is it is very general and very broad. We may limit the language somewhere along the lines Senator Towe has suggested but he thinks when we start talking about doing this we should know what the rules are, and what rules you will put into place. If we are going to consider passing this we should have some of the information before us.

Mr. Brown furnished the committee with a copy of an Attorney General Opinion dated October 3, 1979, for the Legislative Auditor, in relation to the official policy on confidentiality of tax records and it is virtually identical to this act except that the Auditor act has an additional prohibition against publication of confidential information. (This Opinion is attached as Exhibit 2) You, as a legislative body, have to decide how much responsibility you want to take on. You have established the Fiscal Analyst, which is charged by law with the responsibility of analyzing not only present revenues but predicting future revenue. All we are saying is that we don't think you can do that job unless you have access to the same information that the Department of Revenue uses as a basis for their analysis. He does not believe that confidentiality is the issue. He furnished the committee with a copy of the procedures that the Fiscal Analyst has proposed to put into place for confidentiality of tax records and information obtained from the Department of Revenue. (memorandum from the Legislative Fiscal Analyst is attached as Exhibit 3)

Senator Crippen said Mr. Brown commented that confidentiality is not the issue. He asked Mr. Brown what the issue is then?

Mr. Brown said for whatever reason the Department of Revenue does not want to give the Legislative Fiscal Analyst access to that computer tape. I have worked on this for two weeks and at every hearing the objection to the bill or the objection changes. I have tried to address those objections, but every time it is a different issue.

Mr. LaFaver said he does not understand the basis that Mr. Brown is using to assert that the Department does not have a comprehensive policy on restricting access to information and confidentiality. We have provided copies of those policies to Mr. Brown that consist substantially of more than a sheet that somebody signs. We, historically and up to this point, have gone through an extensive measure to insure that not only the process is confidential of tax records but that the automated records have limited access.

Senator Crippen said you say they can't get into the computer but if they walked over and wanted to get the information on a particular taxpayer, could they get the information by hand?

Mr. LaFaver said, as I indicated once, we had a problem with access and we stopped all access to confidential information until we had it in writing from the Fiscal Analyst that any information obtained would be held in the strictest confidence. That agreement is not in place so that access is not available at the moment.

Senator Crippen asked who else could have access.

Mr. LaFaver said under the statute the Legislative Auditor could.

Senator Crippen asked if anybody in the Department could, the Liquor Division for instance, obtain information.

Mr. LaFaver said no, it is on a name by name basis that I have to approve and anyone that has access has it on a need to know basis.

Senator Blaylock said in addition to the Legislative Fiscal Analyst, we also have the Office of Budget and Program Planning. Do you give them any different treatment or do they have a different set of standards applied to them than does the Legislative Fiscal Analyst when they want the same kind of information.

Mr. LaFaver said the Office of Budget and Program Planning, to my knowledge, has never asked to go into a tax return. In terms of the data file we have proposed to make available to the Fiscal Analyst, that is exactly the same file that we would provide to the Budget Office and to the staff of the Legislative Council in doing work for the Revenue Oversight Committee. It would not be a file that we would have concern about from a confidentiality standpoint.

Senator Mazurek asked if the computer was accessible.

Mr. LaFaver said it is accessible if we make it accessible. We have very tight controls over who gets access to that file.

Senator Mazurek asked if the Budget Office had access to the sanitized information.

Mr. LaFaver said they would have access in the same manner we would provide that tape to the Fiscal Analyst and to the Legislative Council staff.

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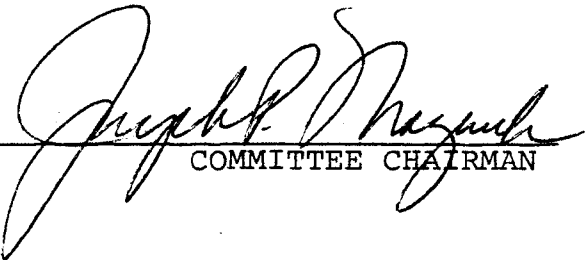
Senator Towe asked if we were going to have this whole policy problem all over again with the Revenue Oversight Committee.

Mr. LaFaver said if we can create the file that I have been speaking about that is a file that we would have no concerns for confidentiality.

CLOSING STATEMENT: Representative Winslow said the question here is the legislature's ability to obtain, on a timely basis, data. This data is extremely important for the legislature to analyze and decide policy decisions for this state. He again stated we are not interested in names or ID numbers.

Hearing closed on HB 46.

There being no further business to come before the committee, the meeting was adjourned at 7:30 P.M.

  
COMMITTEE CHAIRMAN

ah



ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th THIRD SPECIAL LEGISLATIVE SESSION - 1986

Date 6/27/86

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	✓		
Senator Bob Brown	✓		
Senator Bruce D. Crippen	✓		
Senator Jack Galt	✓		
Senator R. J. "Dick" Pinsoneault	✓		
Senator James Shaw	✓		
Senator Thomas E. Towe	✓		
Senator William P. Yellowtail, Jr.	✓		
Vice Chairman Senator M. K. "Kermit" Daniels	✓		
Chairman Senator Joe Mazurek	✓		

Each day attach to minutes.

RECEIVED

## DEPARTMENT OF REVENUE

JUN 6 1986



TED SCHWINDEN, GOVERNOR

LEGISLATIVE  
FISCAL ANALYST  
MITCHELL BUILDING

## STATE OF MONTANA

HELENA, MONTANA 59620

June 6, 1986

Ms. Judy Rippingale  
Legislative Fiscal Analyst  
State Capitol  
Helena, Montana 59620

RE: Request for Copies of Confidential Information

Dear Judy:

I would like to suggest the following as a general approach to resolving our differences over your office obtaining copies of confidential tax returns.

1. Your office will have complete access to review all confidential tax return information. It is understood that no copies would be retained but notes could be made and retained by your staff. The confidentiality of the notes and any statistical information obtained would be assured by a written agreement.
2. The Department will provide your office with a line by line average from tax returns by \$1,000 income brackets up to \$50,000 and \$5,000 income brackets above \$50,000. The very largest income levels may require larger brackets to avoid containing less than three returns.
3. Your office would have complete access to review Department procedures in completing revenue estimates and fiscal notes. It may suggest other methods which the Department will attempt to utilize. Any request from a legislator for a particular procedure or methodology would be accommodated.
4. The Department will negotiate in good faith to resolve the differences in our separate drafts of a written agreement. However, you have to understand that the Department does have a legitimate interest in being assured that procedures are adequate in your office to ensure confidentiality of any notes, statistics, or other confidential material.

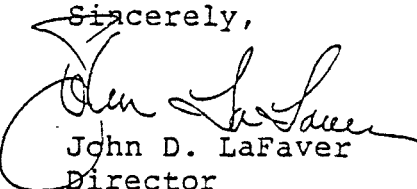
SENATE JUDICIARY

EXHIBIT NO. 1DATE 6-27-86BILL NO. HB-46 publications 6 copies

Judy Rippingale  
June 6, 1986  
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I believe that the above is a reasonable approach which allows both of us to carry out our statutory duties.

Sincerely,



John D. LaFaver  
Director

cc: Steve Brown

SENATE JUDICIARY

EXHIBIT NO. 1

DATE 6-27-86

BILL NO. HB-46

STATE  
OF  
MONTANA  
ATTORNEY GENERAL  
MIKE GREELY

3 October 1979

MONTANA LEGISLATIVE AUDITOR

Mr. Morris L. Brusett  
Legislative Auditor  
State Capitol Building  
Helena, Montana 59601

Dear Mr. Brusett:

You have requested my opinion on the following question:

Does the Legislative Auditor have access to those records at Warm Springs State Hospital of students enrolled in the special education program as may be necessary to conduct program audits as mandated by House Joint Resolution 105 of the 1977 Montana Legislature?

Your question involves specific statutory authority of the Legislative Auditor to conduct "program audits." That authority arises under the Montana Legislative Audit Act (now Title 5, chapter 13, MCA), specifically section 5-13-304, MCA, which provides in relevant part:

The legislative auditor shall:

\* \* \*

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the State to determine that the grants are administered in accordance with the grant terms and conditions...

In past legislative sessions, the Montana Legislature has expressly directed the Legislative Auditor to audit specifically selected programs. In 1977, the Forty-fifth Legislature mandated, through HJR 105, Laws of Montana 1977, that the Legislative Auditor conduct special education program audits. That resolution provided:

That the Legislative Auditor is directed to perform an annual audit of selected special education programs in school districts throughout Montana; and that each annual audit of such programs be conducted according to all standards, objectives,

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EXHIBIT NO. 2

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and procedures established under the Montana Legislative Audit Act, Title 79, chapter 23, R.C.M. 1947.

Pursuant to that legislative mandate you have conducted audits of pre-selected special education programs to determine whether the programs are conducted in compliance with state and federal law. To conduct the audit it was necessary to review various aspects of each program. Initially it had to be determined whether students were properly enrolled in the program. Under federal guidelines, before a student may be enrolled in a special education program there must be a determination of his eligibility. Also to be determined was whether students were properly enrolled in an individualized program developed according to federal guidelines. To ascertain all this information, it was necessary to review individual student files to ascertain whether bona fide eligibility determinations were made pursuant to federal guidelines and to determine whether individual programs comported with federal requirements.

Among the programs selected for audit was the special education program conducted at Warm Springs State Hospital. Many of the students enrolled in the special education program at Warm Springs are patients at the hospital pursuant to the provisions of either the Youth Court Act (Title 41, ch. 5, MCA) or the act providing for treatment of the seriously mentally ill (Title 53, ch. 21, MCA). In conducting the audit, questions arose as to the right of the Legislative Auditor and his employees to review individual records of patients committed to the institution under either of those acts. These questions arose because of specific statutory provisions in both acts providing for the confidentiality of individuals' records. The Youth Court Act provides in section 41-5-603, MCA, that:

(1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following: ...

Section 53-21-166, MCA, of the act providing for treatment of the mentally ill, provides in relevant part:

All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter. Such information and records may be disclosed only: ...

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Both statutes continue on to specifically enumerate those persons to whom disclosure of information and records may be made. Neither statute specifically mentions the Legislative Auditor as among those persons authorized to review such confidential records, and authorities at Warm Springs were therefore reluctant to allow employees of the Legislative Auditor access to such records for purposes of the audit.

As a result, the audit was completed without reviewing individual patient records at Warm Springs. Completion of the audit would appear to render your question moot; however, you have correctly pointed out that the question will undoubtedly reoccur with respect to future program audits mandated by the legislature, although future audits may involve different programs, or different statutory provisions governing confidentiality. Your question is therefore an appropriate subject for an Attorney General's opinion.

Admittedly there is no mention of the Legislative Auditor in the specific confidentiality sections under either the Youth Court Act or the act providing for treatment of mentally ill. However, those sections cannot be isolated and read apart from other statutory provisions which relate to the same subject matter. Statutes which relate to the same subject matter must be harmonized where possible, State ex rel. Dick Irvin, Inc. v. Anderson, 164, Mont. 513, 524, 525 P.2d 564 (1974), and if the statutes are not inconsistent they are "in pari materia" and must be construed together to give effect to both, State ex rel. Pile v. District Court, 103 Mont. 576, 583, 64 P.2d 115 (1937). In the present context, there is a specific statute governing the access of the Legislative Auditor to otherwise confidential records and information. Section 5-13-309, MCA, provides, in relevant part:

(1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records. (2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. This shall not be construed as authorizing the publication of information which the law prohibits publishing.

(Emphasis added.) The language of this section is consistent with the case law regarding access to confidential records for legislative audit purposes. In Stivahtis v. Juras, 511 P.2d 421, 426 (C.A. Ore. 1973), the Court stated:

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[A] person or agency seeking disclosure for purposes directly connected with the administration of public assistance is not barred by the statutes from receiving the information.

The court in Application of Hecht, 90 Misc.2d 308, 394 P.2d 368, 370 (1977), held that statutes and administrative rules:

... providing for the sealing and keeping secure of case records cannot thwart a bona fide legislative investigation. Indeed, the very policy of the confidentiality of such records was created by the legislature, and may be scrutinized by it to determine if that policy should be retained or modified.

(Emphasis added.) Section 5-13-309, MCA, was first adopted by the legislature in 1967. The section has not been expressly repealed, nor is it mentioned in the provision under the Youth Court Act or that under the act for treatment of the mentally ill, both of which were subsequently adopted. Repeal by implication is disfavored and will not be found unless the intent to repeal is clearly manifested or there is unavoidable and irreconcilable conflict between the new law and the older law. Holly v. Preuss, \_\_\_\_ Mont. \_\_\_\_, 564 P.2d 1303, 1306 (1977).

The provision specifically granting the Legislative Auditor access to confidential records must be reconciled with the sections generally denying access to certain confidential records to all persons not specifically authorized to review such records. The provisions are reconcilable and not in conflict.

The provision granting the Legislative Auditor access to otherwise confidential records is a specific statute and controls over the more general confidentiality provisions to the extent of any repugnancy. State ex rel. Brownman v. Wood, 168 Mont. 341, 346, 543 P.2d 184, 187 (1975). Moreover, when the legislature adopted the confidentiality provisions of the Youth Court Act and the act for treatment of mental illness, there was no need to mention the Legislative Auditor in the list of exceptions to the general rule of confidentiality because the auditor's access was already specifically mentioned and guaranteed by section 5-13-309; thus its failure to mention the auditor in either acts is not evidence of an intention to deny access to the protected records. Finally, the nature of program audits and the legislature's continued, express direction that such audits be conducted, is further evidence that the legislature did not intend the repeal of section 5-13-309.

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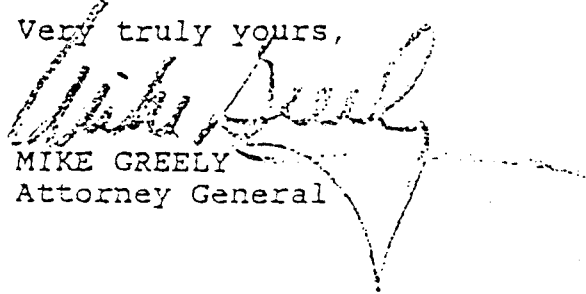
Mr. Morris L. Brusett  
3 October 1979  
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My opinion that the Legislative Auditor is authorized to review individual patient records pursuant to a legitimate program audit does not undercut the purposes of the confidentiality provisions for such records. The auditor can no more disseminate or disclose specific information from individual records than can Warm Springs State Hospital or the Department of Institutions. Section 5-13-309, MCA, expressly forbids "publication of information which the law prohibits publishing." The apparent purpose of this provision is to make it clear that while the auditor can derive generalizations from confidential records, such as statistics relating to program compliance, he may not disclose or publish specific information relating to specific individuals. His authority to review confidential records is strictly limited to performance of legitimate audits and any disclosure of information of records of individual patients would be beyond the scope of limited access privilege granted under section 5-13-304.

THEREFORE, IT IS MY OPINION:

The Legislative Auditor has access to those records, confidential or otherwise, at Warm Springs State Hospital as may be necessary to conduct program audits such as that mandated by HJR 105.

Very truly yours,

  
MIKE GREELY  
Attorney General

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 6-27-86

BILL NO. HB-46



June 18, 1986

TO: Staff of the Office of the Legislative Fiscal Analyst

FROM: Judy Rippingale  
Legislative Fiscal Analyst

SUBJECT: Confidentiality of Tax Records and Information Obtained from  
the Department of Revenue

This memorandum constitutes the official policy of the Office of Legislative Fiscal Analyst ("LFA") for preventing the unauthorized public disclosure of confidential tax records and information obtained from the Montana Department of Revenue ("Department"). Attached to this memorandum is an agreement with the Department concerning the release of confidential tax records and information to LFA. Each LFA staff member assigned to review and prepare reports based on confidential tax records and information obtained from the Department must review this memorandum and agree to abide by the security measures set forth in this memorandum. Violations of this policy or unauthorized release of confidential tax records and information obtained from the Department will be grounds for disciplinary action or dismissal. In addition, unauthorized disclosure of confidential tax records and information may subject you to the penalties provided by law under Sections 15-7-308, 15-30-303, 15-31-507, and 15-35-205, MCA, (copies of these sections of law are attached to this memorandum).

The following specific procedures must be followed in order to prevent the unauthorized public disclosure of confidential tax records and information obtained from the Department:

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(1) Paragraphs D, E, and F of the agreement with the Department must be followed to insure that individual taxpayers can not be identified.

(2) Confidential tax records and information obtained from the Department shall be placed in file folders with jackets clearly specifying the information contained in the folders is confidential. In addition, each file folder shall contain a copy of this policy statement.

(3) All confidential file folders shall be maintained in a locked storage cabinet in the office of the Supervisor designated under paragraph A of the agreement with the Department. A log will be maintained and any staff member removing a confidential file must sign the log indicating the date and time the file was removed and returned. All confidential files must be returned at the end of each working day.

(4) Only persons designated by me or the Supervisor will be permitted access to the confidential files described in this memorandum.

(5) Pages B-1-1, B-2-1, and B-7-1 of the LFA Policy Manual also apply to confidential tax records and information obtained from the Department (copies of these pages are attached to this memorandum.)

If you have any questions about the policies contained in this memorandum, please contact me or the Supervisor designated under paragraph A of the agreement with the Department. As of June 17, 1986, Mr. Curt Nichols is the LFA Supervisor under paragraph A of the agreement with the Department.

JR1:bn:ctri

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 6-27-86

BILL NO. HB-46

## REALTY TRANSFER CERTIFICATES

15-7-308. Disclosure of information restricted. The certificate required by this part and the information therein shall not be a public record and shall be held confidential by the county clerk and recorder, county assessor, and department of revenue. This is because the legislature finds that the demands of individual privacy outweigh the merits of public disclosure. The foregoing provisions shall not apply to compilations from such certificates or to summaries, analyses, and evaluations based upon such compilations.

History: En. 84-7308 by Sec. 8, Ch. 528, L. 1975; R.C.M. 1947, 84-7308.

## INDIVIDUAL INCOME TAX RETURNS

15-30-308. Confidentiality of tax records. (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding \$1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return

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or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105; and

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given.

History: En. Sec. 30, Ch. 181, L. 1933; re-en. Sec. 2295.30, R.C.M. 1935; amd. Sec. 1, Ch. 110, L. 1951; amd. Sec. 1, Ch. 253, L. 1967; amd. Sec. 180, Ch. 516, L. 1973; amd. Sec. 1, Ch. 346, L. 1977; R.C.M. 1947, 84-4931; amd. Sec. 1, Ch. 131, L. 1985.

15-30-304. Furnishing copy of federal return, copies of federal corrections, and filing amended return required. Every taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year which he has filed or may file with the federal government showing his net income and how obtained and the several sources from which derived. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall report such change or correction to the department within 90 days after receiving notice thereof. If a taxpayer files an amended federal income tax return changing or correcting his federal taxable income for any taxable year, he shall also file an amended return with the department within 90 days thereafter. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all such forms to the taxpayer after they have been examined by the department.

History: En. 84-4938 by Sec. 11, Ch. 260, L. 1955; amd. Sec. 2, Ch. 61, L. 1967; amd. Sec. 182, Ch. 516, L. 1973; R.C.M. 1947, 84-4938.

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## CORPORATE LICENSE TAX

**15-31-507. Returns confidential.** When the assessment shall be made as provided in this chapter, the returns, together with any corrections thereof which may have been made by the department of revenue, shall be filed in the office of said department and shall constitute public records and be open to inspection as such only upon the order of the governor and under rules to be prescribed by the department.

History: En. Sec. 7, Ch. 79, L. 1917; re-en. Sec. 2302, R.C.M. 1921; amd. Sec. 3, Ch. 146, L. 1923; re-en. Sec. 2302, R.C.M. 1935; amd. Sec. 59, Ch. 516, L. 1973; R.C.M. 1947, 84-1507.

### Cross-References

Lists of corporations not prohibited,  
15-31-607.

Applicable to information furnished to the  
Department under resource indemnity tax.  
15-38-109.

**15-31-508. Reciprocity with other tax authorities.** Notwithstanding the provisions of 15-31-507 as to secrecy, the department of revenue, under such rules as it may prescribe, may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on or according to income to inspect the returns of any taxpayer making returns under this chapter or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement, or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such

officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

History: En. Sec. 14, Ch. 166, L. 1933; re-en. Sec. 2303.10, R.C.M. 1935; amd. Sec. 68, Ch. 516, L. 1973; R.C.M. 1947, 84-1518.

## CERTAIN COAL SALES INFORMATION

**15-35-204. Reporting requirements for credit — duty of department.** (1) Every Montana coal mine operator must provide to the department:

(a) on or before April 30, 1985, a list showing the amount of coal produced and sold in calendar years 1983 and 1984 to every purchaser, including purchasers who obtained coal from the coal mine operator through a broker; and

(b) with the quarterly statement required by 15-35-104, a list of the number of tons produced and sold to every purchaser during the quarter and the severance tax calculated prior to the application of the credit on these tons.

(2) To be eligible for the tax credit provided for in 15-35-202, a coal mine operator must furnish to the department:

(a) on or before April 30, 1985, copies of all existing coal sales agreements;

(b) with the quarterly statement required by 15-35-104, a copy of any new coal sales agreements or extensions of existing agreements executed during the quarter;

(c) on or before January 31 of each year:

(i) a list of incremental production for all qualified purchasers during the previous calendar year;

(ii) a written statement from each qualified purchaser verifying the volume of coal purchased in that year from all Montana coal mine operators; and

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(iii) the necessary information on incremental production purchased through a broker to verify that such incremental production did not cause a reduction in the base consumption level of any other purchaser of Montana coal; and

(d) any other data, reports, evidence, or production data that may be necessary for the department to determine whether a purchaser is a qualified purchaser and the base consumption level for each purchaser.

(3) By July 1, 1985, the department shall prepare and publish for informational purposes only an unaudited compilation of the base production level for each coal mine operator and a compilation of the base consumption level for each purchaser.

(4) Any coal mine operator or purchaser may, for the purpose of determining the eligibility of coal production for the new production incentive tax credit, file with the department a petition for a declaratory ruling as provided in 2-4-501. The department shall issue a ruling on the petition within 90 days of the date the petition was filed with the department.

History: En. Sec. 5, Ch. 636, L. 1985.

**15-35-205. Returns and taxpayer information open to public inspection — certain exceptions.** (1) All information filed with the department in accordance with 15-35-204 is public record and open to public inspection, except the information required under 15-35-204(1)(b) and the coal sales agreements specified in 15-35-204(2)(a) and (2)(b).

(2) Except during proceedings before the state tax appeal board pursuant to 15-2-201, the information required under 15-35-204(1)(b) and the coal sales agreements specified in 15-35-204(2)(a) and (2)(b) are open to inspection only upon the order of the governor, under rules to be prescribed by the department, or upon order of a court of competent jurisdiction.

History: En. Sec. 6, Ch. 636, L. 1985.

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