

MINUTES OF THE MEETING  
TAXATION COMMITTEE  
MONTANA STATE SENATE

March 23, 1987

The forty-seventh meeting of the Senate Taxation Committee was called to order at 8:00 A.M. on March 23, 1987 by Chairman George McCallum in Room 413/415 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senators Hager and Crippen.

CONSIDERATION OF HB 794: Representative Williams, House District 85, presented this bill to the committee. This bill was introduced at the request of the House Committee on Taxation. A bill was introduced in the House to exempt the outpatient surgical centers from taxation even though they were not nonprofit. The committee killed that bill and in the process discovered some clarification was necessary. The intent of the committee was to clarify that all licensed, nonprofit hospitals would be exempt. They felt that if they were operating for the private enterprise system for profit they should be on the tax rolls. The bill was amended in the House to identify all segments of the health care facilities under the definition of statutory law as defined in 50-5-101.

PROPONENTS: Bill Leary, representing the Montana Hospital Association, gave testimony in support of this bill. This piece of legislation has long been needed in the state for clarification of nonprofit, licensed health care facilities, hospitals, nursing homes and others that fall under that category.

OPPONENTS: Van Kirke Nelson, M.D., physician from Kalispell representing the two nonprofit hospitals in Montana, for profit hospitals in Montana and profit surgical centers, gave testimony in opposition to this bill. A copy of his written statement is attached as Exhibit 1.

QUESTIONS FROM THE COMMITTEE: Senator Eck asked Dr. Nelson if the hospitals and facilities he was representing have been paying property taxes up until now.

Van Kirke Nelson said the hospital in Plains has been paying taxes under protest and he believes has an action presently pending. The Flathead outpatient

surgical has only had one tax bill, which was paid under protest and appealed to the State Tax Appeals Board. The State Tax Appeals Board found the out-patient surgical centers should be included as a not for profit entity as relates to taxation. The Department of Revenue is appealing and it was to go to the District Court to be heard and then this bill was introduced.

Senator Eck asked Greg Groepper what is done in the area of profit educational facilities.

Greg Groepper said the way the law is written now the status does not make a difference. It could be used for educational purposes, profit or nonprofit, and it would still qualify for exemption. To get property tax exemption you have to apply.

Senator McCallum commented on Dr. Nelson's testimony in which he stated there are only two profit hospitals that are paying taxes in Montana and they are going broke.

Van Kirke Nelson said they have been paying taxes for many years. If these hospitals want to be nonprofit under the terms of this law, they would simply have to reorganize, develop new bylaws and then file as a nonprofit health care facility under the state of Montana. All of the other hospitals in the state of Montana, in addition to nonprofit hospitals, are required to declare a certain amount of their operations for charity.

Senator Lybeck asked Dr. Nelson how he felt about the charity provision.

Dr. Nelson said we have in our charter a charity clause and we will operate on any patient for free in our facility if the physician states he has no problem and the physician himself is willing to provide the services free. That is written in our bylaws.

Senator Eck asked if he knew whether the nonprofit facilities have a similar clause.

Dr. Nelson said he could speak for the surgical centers, and they have a charity clause and do procedures for free.

Representative Williams closed by stating he thought, as far as charitable clauses is concerned, all hospitals

have the same provision in the bylaws. If these people are exempt and the other clinics around the state are not exempt, he believes that would be unfair competition.

CONSIDERATION OF HB 457: Representative J. Brown, House District 46, presented this bill to the committee. This bill was requested by the County Treasurer's Association, through the Lewis and Clark County Treasurer. It is proposed to try to get some system of uniformity in handling delinquent taxes on boats, snowmobiles and motor vehicles. There is inconsistency between the counties. All this bill does is to say they will be treated the same. You will collect the current fee and one year delinquency.

PROPONENTS: Marvin Barber, representing the Montana Assessors' Assn., gave testimony in support of this bill. It just makes everything equitable.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Mazurek asked Marvin Barber why only one year, why not two. He does not understand why the assessors would only be going back one year.

Marvin Barber said the assessors opposed the one year back for motor vehicles two years ago. If we are going to do the one year back for motor vehicles, then do it for all vehicles. Property tax is property tax and all should pay their fair share.

FURTHER PROPONENT: Cort Harrington, Montana County Treasurers' Association, gave testimony in support of this bill. It was at their request that Representative Brown introduced this bill. Basically, the problem is that there are certain types of property the County Treasurers perceive as the same types of property and they feel all those kinds of property should be treated the same. That includes snowmobiles. Treasurers do not really care how you decide to treat back taxes as long as you treat it consistently. There is a problem with different County Treasurers treating different kinds of property differently. This bill will bring everything in conformity.

FURTHER QUESTIONS FROM THE COMMITTEE: Senator Eck asked if it would be better to go back two years on boats.

Cort Harrington said the Treasurers are concerned with consistency with similar property and they perceive these types of property to be the same.

Representative J. Brown closed.

CONSIDERATION OF HB 606: Representative Glaser, House District 98, presented this bill to the committee. This bill exempts land from taxation when it is owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land. Everything else is exempt except for the land. The problem is not the money lost in taxes on the land, it is that they can't sell tax exempt bonds unless the land is exempt from taxation.

PROPOSERS: Keith Hill, a member of Lockwood Water Users Association, gave testimony in support of this bill. There are over 100 water user associations in the state. In 1979, in order to bring their #6 well into operation, they had to lay 10' of water main and needed approximately \$50,000 to finance the project. We had arranged private financing at 7% interest but when they found out we were not tax exempt they had to withdraw the offer. The other problem, at the present time Farmers Home doesn't work with the association on loan programs due to the fact that we can levy taxes on real property. The Lockwood Water Users Assn. had some major water self-improvements that cost \$30,000, that is financed through the County Industrial Revenue Bonds for 11.129%. Needless to say, everything has to go back to the members of the association on the user charge.

Bruce Restad, General Engineer, County Water District, Billings Heights, gave testimony in support of this bill. He is in concurrence with Mr. Hill on this problem.

OPPOSERS: None.

Greg Groepper, Administrator, Property Assessment Division, gave technical comments concerning this bill. In terms of administration, they would suggest the bill be amended on page 3, to designate the land as that being "owned by the water users association" to give them some direction on what conditions have to be met. Anybody could say they plan to use this land for anything and would meet that test. He would like some clarification as to what test you would expect them to use for qualification.

QUESTIONS FROM THE COMMITTEE: Senator Neuman asked Mr. Hill what the water charge is for Lockwood water users.

Senate Taxation  
March 23, 1987  
Page Five

Keith Hill said an average resident water charge is \$39.50.

Senator Neuman asked how that ranked with other water districts of his size in the state.

Keith Hill said he is not sure although he believes they are on the top end of the scale now.

Senator Mazurek asked Greg Groepper if it was his intention that this would apply to the land owned by a cooperative association or nonprofit corporation.

Greg Groepper said his intention was that it would only be these organizations and that the land would be with the buildings and equipment. Not a piece of land that will be used at some time in the future.

Senator Eck asked Representative Glaser if all of these cooperative associations were nonprofit cooperative associations.

Representative Glaser said to his knowledge, all of them are nonprofit cooperative associations. The community organizes it to provide water.

Senator McCallum asked if the amendments proposed by Greg Groepper were presented in the House.

Representative Glaser said those amendments were not proposed in the House. The amendments on line 21-23, were amendments put on at the request of the Department by the Taxation Committee in the House.

Senator Mazurek asked Mr. Hill if he would have any objection to clarifying the intent to land owned by the cooperative.

Keith Hill said at the present time he would have to say sort of.

Senator Mazurek asked if he would have opposition if we said land owned and planned to be used by the cooperative.

There was no verbal response.

Representative Glaser closed.

CONSIDERATION OF HB 47: Representative Harrington, House District 68, presented this bill to the committee.

This bill is a simple bill requested by the Department of Revenue. Under current law individuals who are moving mobile homes without a moving declaration can be fined up to \$500. There is a problem in keeping in contact with mobile home owners once they are moved into another county, it is very hard to get their owing tax money. This bill allows the county to keep up to 20% of that tax money or \$50, whichever is greater, so they can keep control of this and delinquent taxes can be collected.

PROPOSERS: Greg Groepper, Administrator, Property Assessment Division, gave testimony in support of this bill. They requested this bill to try to end problems treasurers, assessors and appraisers have now on all mobile homes that move and don't pay taxes. This bill allows the treasurer in the county that the mobile home moves to, to collect the taxes and provide assessment if necessary. Now, the only way counties can collect their taxes is to get the county treasurer to do something and get the county attorney involved. This allows the county treasurer to pick-up back taxes and ship them back to the county the mobile home moved from.

Cort Harrington, representing the Montana County Treasurers Assn., gave testimony in support of this bill. The county treasurers have had a problem with mobile homes moving and he believes this is a step in addressing the problem. Not all the members of the County Treasurers Assn. support this bill. The County Treasurer in Yellowstone County thinks it is a bad bill, but the rest of the association supports it.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: Senator Lybeck asked Greg Groepper what the procedure is now under the current law if he moves a trailer from one county to the next.

Greg Groepper said if you got a mobile home mover, who is registered with the PSC, then everything would be done according to the law. The mover would obtain a moving declaration and insure that the taxes are paid and move the mobile home to another county. If you didn't want to pay the taxes, you would borrow some outfit and move the mobile home and the taxes would be picked up the next year. You would still pay taxes where the mobile home ends up but you would avoid the back taxes owing on it by moving it on the weekend. The presumption is that a lot of that is going on.

Senator Eck asked if a mobile home lot is closing and forces people to move out, do they have to pay a whole year of taxes rather than a half year of taxes.

Greg Groepper said the way they work that now, if you don't own the land, you have to pay your taxes in two installments. The installments are due around the first of September and the first of May. If you moved prior to the first of September, you could avoid your second half installment by moving your trailer.

Senator Eck said they would have to pay the whole year before they could move their trailer within the county.

Greg Groepper said it depends on when you move your trailer and who moves it. Most treasurers would say your second installment needs to be paid before you move your home. If you moved within the county, filled out a moving declaration, he thinks the statute still requires that your taxes be paid prior to giving the mobile home declaration.

Senator Eck asked Cort Harrington why the County Treasurer in Yellowstone County objected to this.

Cort Harrington said she perceives this as imposing some obligation on her to collect taxes from other counties.

Representative Harrington closed.

ADJOURNMENT: The meeting adjourned at 9:05 A.M.

  
SENATOR GEORGE McCALLUM, Chairman

ah

ROLL CALL

TAXATION

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 3-23-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN			✓
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER			✓
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.



DATE March 23, 1987

COMMITTEE ON

## Senate Taxation

## VISITORS' REGISTER

HB's 47457606, 794

[illegible]

(Please leave prepared statement with Secretary)

NAME: Keith H. Hill DATE: 3/23/87

ADDRESS: 1644 Old Hardw Rd, Rm #5 Billings, MT 59101

PHONE: 259-4120

REPRESENTING WHOM? LOCKWOOD WATER USERS ASSOCIATION

APPEARING ON WHICH PROPOSAL: # 606

DO YOU: SUPPORT? X AMEND?        OPPOSE?       

COMMENTS: Critical when attempting to <sup>FINANCE</sup> ~~FINANCING~~ water  
system improvements

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MA

# Kalispell Ob-Gyn Associates, P.C.

OBSTETRICS GYNECOLOGY INFERTILITY  
SENATE TAXATION

EXHIBIT NO. 1

DATE 3-23-87

BILL NO. HB 794

March 20, 1987  
Friday

VAN KIRKE NELSON, M.D.  
JOHN L. HEINE, M.D.  
ELLIS M. SOWELL, M.D.

DIPLOMATS OF THE AMERICAN  
COLLEGE OF OBSTETRICS AND  
GYNECOLOGY

Dear Member of the Senate Committee on Taxation:

I am here representing the Flathead Outpatient Surgical Center to speak in opposition to House Bill 794.

Three years ago, every physician practicing in a surgical specialty in Kalispell banded together to build a free-standing outpatient surgical center, a facility to provide single day surgical services at a cost to be considerably less than that charged for the same service at Kalispell Regional Hospital. Through the Certificate of Need process, it was deemed by the State Department of Health and Environmental Sciences, that a facility was indeed needed in Kalispell, a Certificate of Need granted, and the facility financed through "Build Montana" program and the Montana Economic Development Board.

We have just finished our first year of operation--have operated 1400 patients with only two of those patients necessitating admission to Kalispell Regional Hospital for an additional day's hospitalization.

The competition through our presence has caused Kalispell Regional Hospital to lower their costs for outpatient surgical services, and in some cases, half of what they were charging prior to our existence. Even with their reduction through competition, we continue to provide a service for approximately 20% less than does the hospital.

I believe the attached bulletin from the State Department of Health and Environmental Sciences will substantiate the fact that costs for services in Montana are less than the national average, and the cost for physician services are less than half of the national average.

You have asked us through House Joint Resolution #37, a copy of which is attached, that Montana physicians continue to do everything within their power to maintain low cost care and maintain cost containment. Yet through House Bill #794, you seek to raise the cost of providing care.

There are three "for profit" outpatient surgical centers in Montana and two "for profit" hospitals--Plains and Missoula General. I cannot speak for the "profit" that is realized by the other facilities. I do know that each of the 22 owners of our facility contributed \$25,000 three years ago, and to date we have received \$1,000 in return--hardly what you would consider a profit making operation.

210 Sunny View Lane - Kalispell, Montana 59901

Telephone 406-755-5252

(over please)

March 20, 1987

Page 2

We realize very well the difficult decisions that you will make as you try to balance the state's budget, and we do share with you that concern. If you should, through this amended bill, make us a taxable entity, we have no choice but to pass that charge on to you, the consumer, often a consumer that can ill afford the increased cost for the service.

The amount of revenue that would be realized from the existing "for profit" surgical centers and the two hospitals is negligible. The increase in costs passed on to the consumer necessitating the medical service may not seem so minor.

Medicine has its obligations to provide care to those in all walks of life--the Medicaid recipient, the Medicare recipient, and those in between with and without ability to pay. Help us to provide that care at an affordable price and we request House Bill #794 do not pass. To fail to do so will only hurt those who truly do need to benefit by cost containment.

Thank you.

Sincerely,

A handwritten signature in dark ink, reading "Van Kirke Nelson, M.D." in a cursive style.

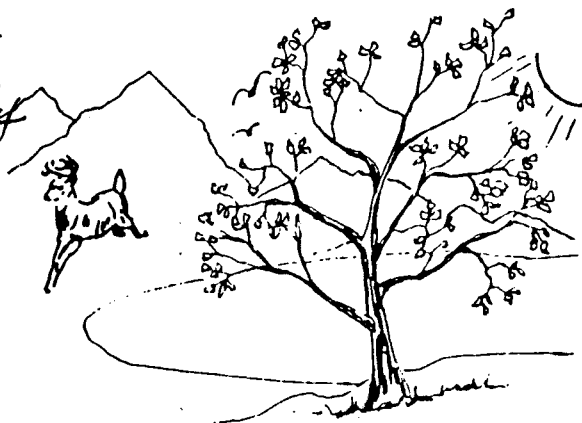
Van Kirke Nelson, M.D.

VKN:le  
Enclosures

## TREASURE STATE



## HEALTH



VOL. 34 NO. 3 SUMMER, 1985

✓ MONTANA DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

# Latest Available Figures on Health Care Costs Show Montanans Fare Better Than Rest of U.S.

The latest available health care figures present an interesting economic profile for Montanans and others in the United States.

First of all, the good news is that the rate of increase in costs has decreased for the nation and markedly for Montanans. The bad news is the costs of staying healthy continue to accelerate by the millions in the state and billions in the nation, running far ahead of inflation.

But, for Montanans, at least the per capita cost per year is far cheaper than for the average U.S. citizen — \$350 less, in fact.

Additionally, individuals in this state, on the average pay 29.1% less for hospital costs in a year; physician costs for Montanans is an even better deal and we spend less than half as much in this category as our national counterparts; and, our annual dental bill is 32.6% cheaper for each of us than the country's average.

Also, we get by with far less cost individually for drugs and drug sundries at \$58 per year compared to \$97 national average.

When it comes to eyeglasses and appliances though, the costs even out for Montanans and the rest of the nation with identical average annual costs per capita of \$25.

The only major division of health care which costs Montanans more than residents of the rest of the country is nursing home and home health care, where we pay 111% of the national average.

Now, here's a look at all the figures in detail:

Montanans spent \$906.3 million for health care in 1983, the most recent year for which figures are available. That was 9.7 percent more than the \$825.9 million total for 1982; however, the rate of in-

crease from 1981 to 1982 had been 20.3 percent.

The national rate of increase was 10.3 percent with total U.S. expenditures of \$355.4 billion in 1983 compared to \$322.3 a year earlier. Once again, however, the rate of increase was slowed from the 12.3 percent of the previous year.

For the individual Montanan, health care costs totaled \$1,109 in 1983 while the national per capita figure was \$1,459, so this state's citizens paid 24 percent less for their health care than the country's average individual cost.

Nevertheless, Montana's per capita expenditure was up 7.7 percent and the national figure was 6 percent higher.

Differing methods of accumulating and presenting the figures make it impossible to determine if the wide variance in state versus national per capita expenditures means Montanans are that much healthier and require less care, get more care for their health dollars, or if their total costs are determined differently.

The Montana figures are provided in a report compiled by Albert Niccolucci of the health planning and resource development bureau of the Montana Department of Health and Environmental Sciences.

The continuing acceleration of Montana and national health care expenditures — both nearly three times the 1983 inflation rate of 3.8 percent — add emphasis to efforts by state and national governments to control such costs.

• Hospital costs again topped both state and national lists, accounting for 38.5% of Montanans' total costs and 41.4% of the \$355.4 billion total national health care expenditures. Montanans' \$349.3 million expenditure in this category represents \$428 per person

and the national expenditure of \$147.2 billion for hospital care equals \$604 per person.

• Physicians' services, still the second most costly item both state and nationally, accounted for \$112.6 million in Montana, or 12.4% of the total costs; and \$69 billion nationally, 19.4% of that total. Per capita it was \$283 nationally and slightly less than half of that at \$138 for Montana.

• The third highest category of health care expenditures — state and national — cost Montanans \$106.7 million, or 11.8% of the total, for nursing home and home health care. Nationally, the figure was \$28.8 billion, only 8.1% of the total. It is the only one of the major areas more costly per capita for Montanans at \$131 each than the national per person expenditure of \$118.

• Dental services, at \$21.8 billion nationally and \$49.4 million in Montana, accounted for 6.1% of the national expenditures and 5.5% in Montana. Again the per capita cost was much higher on a national basis at \$89 than the state's \$60.

The remainder of Montana's health care expenditures for 1983, by type, amount, and percentage of the total, are:

Research and construction of medical facilities, \$57.2 million, 6.3%; expenses for prepayment and administration, \$52.4 million, 5.8%; drugs and drug sundries, \$47.4 million, 5.2%; other professional services, \$44.3 million, 4.9%; government public health, \$37.6 million, 4.2%; other health services, \$28.6 million, 3.2%; and eyeglasses and appliances, \$20.8 million, 2.3%.

When it comes to the source of the funds to pay these health care expenditures, Montanans paid

(Continued on Page 2)

1 *House* JOINT RESOLUTION NO. *37*  
 2 INTRODUCED BY *Robert R. McInnis*  
 3 BY REQUEST OF THE HOUSE COMMITTEE ON BUSINESS AND LABOR  
 4 *Steve Gossard, Billie Thomas, K. L. Brown, J. B.*  
 5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

6 REPRESENTATIVES OF THE STATE OF MONTANA URGING PHYSICIANS TO  
 7 ENROLL IN THE PARTICIPATING PHYSICIAN PROGRAM AND ASKING THE  
 8 CONGRESS OF THE UNITED STATES TO EXAMINE THE APPROPRIATENESS  
 9 OF MEDICAL RATES.

10  
 11 WHEREAS, the Medicare program was created as an  
 12 insurance program that would protect the older person from  
 13 high out-of-pocket health care expenses; and

14 WHEREAS, older Montanans pay an average of \$1,036 a  
 15 year out-of-pocket for medical costs above what Medicare and  
 16 supplemental insurance cover; and

17 WHEREAS, the cost of health care is escalating at a  
 18 rate of 7 1/2 a year or seven times the rate of inflation; and  
 19 WHEREAS, the charges by physicians have increased at  
 20 three times the rate of inflation; and

21 WHEREAS, a significant portion of Montana's population  
 22 foregoes medical care because of its high costs; and

23 WHEREAS, the federal government has created the  
 24 Participating Physician Program that provides incentives for  
 25 physicians to charge no more than Medicare's approved rates;

1 and

2 WHEREAS, less than 14% of Montana physicians currently  
 3 are enrolled in the Participating Physician Program.

4  
 5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE  
 6 OF REPRESENTATIVES OF THE STATE OF MONTANA:

7 That the physicians of Montana be urged to consider  
 8 enrolling in the Participating Physician Program during the  
 9 1987 enrollment period as a means of demonstrating their  
 10 concern and commitment to affordable and accessible health  
 11 care.

12 BE IT FURTHER RESOLVED, that the State of Montana urge  
 13 the Congress of the United States to direct the Health Care  
 14 Financing Administration of the federal Department of Health  
 15 and Human Services, which administers Medicare, to examine  
 16 the appropriateness of Medicare rates, especially the  
 17 differential between generalists and specialists.

18 BE IT FURTHER RESOLVED, that the Congress of the United  
 19 States be urged to establish a system of affordable and  
 20 accessible health care for older citizens.

21 BE IT FURTHER RESOLVED, that the Secretary of State  
 22 send copies of this resolution to the Montana Medical  
 23 Association for circulation to its members, the Speaker of  
 24 the United States House of Representatives, the Majority  
 25 Leader of the United States Senate, the President of the

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-23-87

**MONTANA DEACONESS HOSPITAL, a non-profit corporation, and Picker Corporation, a New York Corporation, Plaintiffs and Respondents,**

**v.**

**CASCADE COUNTY, a body politic of the State of Montana et al., Defendants and Appellants.**

**No. 12599.**

**Supreme Court of Montana.**

**Submitted March 20, 1974.**

**Decided April 17, 1974.**

Action to recover taxes paid to county on certain personal property used exclusively for hospital purposes under a lease agreement between plaintiffs. The Eighth Judicial District Court, Cascade County, R. J. Nelson, J., granted motion of plaintiffs for summary judgment, and county appealed. The Supreme Court, Haswell, J., held that personal property in form of X-ray equipment leased by nonprofit hospital and used exclusively for hospital purposes was exempt from taxation even though lessor, a private profit corporation, received a profit from lease.

Affirmed.

### 1. Statutes ⇐ 188, 202, 203

Function of court with respect to statutory construction is to interpret intention of legislature, if at all possible, from the plain meaning of words used, and if meaning of statute can be determined from language used, court is not at liberty to add or detract language from statute. R.C.M. 1947, §§ 84-202, 93-401-15, 93-401-16.

### 2. Taxation ⇐ 241.2

Fact that tax exemption statute creates several classes of exemptions, based in one case on "ownership" and in other case upon "use," reveals a clear legislative intent to exclude "ownership" of property as a criterion in determining applicability of exemption to property "used exclusively for hospitals." R.C.M. 1947, § 84-202;

Const. 1889, art. 12, § 2; Const. 1972, art. 8, § 5.

### 3. Taxation ⇐ 1241

Personal property in form of X-ray equipment leased by nonprofit hospital and used exclusively for hospital purposes was exempt from taxation even though lessor, a private profit corporation, received a profit from lease. R.C.M. 1947, § 84-202; Const. 1889, art. 12, § 2; Const. 1972, art. 8, § 5.

J. Fred Bourdeau, County Atty., Michael T. Greely, Deputy County Atty. argued, Great Falls, for appellants.

Church, Harris, Johnson & Williams, Earl J. Hanson argued, and Robert P. Goff argued, Great Falls, for respondents.

Cure & Borer, Great Falls, for amicus curiae.

HASWELL, Justice.

This is an action to recover taxes paid to the defendant Cascade County on certain personal property used exclusively for hospital purposes under a lease agreement between the plaintiffs. The Hon. R. J. Nelson, district judge, granted plaintiffs' motion for summary judgment. From this judgment, the County appeals.

Plaintiff, Montana Deaconess Hospital, is a nonprofit hospital in Great Falls, Montana. The hospital leased certain X-ray equipment from the coplaintiff, Picker Corporation, under an agreement for a stipulated monthly rental. In addition the hospital was required to reimburse the Picker Corporation for any taxes assessed on the equipment. This X-ray equipment was used exclusively for hospital purposes.

On March 29, 1972, the Cascade County treasurer issued a personal property tax statement for the year 1972 to Picker Corporation in the amount of \$10,839.96. Included in the statement was an amount of \$8,004.62 assessed upon said equipment leased by Picker Corporation to the hospital. Picker Corporation, be

SENATE TAXATION

EXHIBIT NO. 1

DATE 3-23-87

BILL NO. H.B. 794

taxes to be due, paid the full amount to Cascade County. Subsequently they requested reimbursement from the hospital pursuant to the terms of the lease.

On July 12, 1972, both the hospital and Picker Corporation petitioned the Cascade County commissioners for a refund of the tax on the grounds that the hospital was a nonprofit corporation and the property was exempt from taxation under section 84-202, R.C.M.1947. The petition was filed in accord with section 84-4176, R.C.M.1947.

The Board of County Commissioners denied the petition, and subsequently plaintiffs filed this complaint for refund in district court on October 4, 1972. Plaintiffs' motion for summary judgment was granted on August 2, 1973. From this judgment the County has filed this appeal.

In addition to the parties to this appeal, the Sisters of Charity of Providence of Montana, owners and operators of the Columbus Hospital in Great Falls, appeared as amicus curiae by way of brief and oral argument.

The sole issue presented for review is whether personal property leased by a nonprofit hospital and used exclusively for hospital purposes is exempt from taxation even though the lessor, a private profit corporation, received a profit from said lease.

The pertinent statute involved in this action is section 84-202, R.C.M.1947, which was enacted by the legislature pursuant to authority of Article XII, section 2 of the 1889 Montana Constitution, now Art. VIII, section 5 of the 1972 Constitution. Section 84-202 grants tax exemptions for certain classes of property. That section states in part:

"The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, *such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit* \* \* \*

are exempt from taxation \* \* \*." (Emphasis added.)

The hospital and Picker Corporation's argument is that the statute exempts, among others, two classes of property from taxation: property *owned* by certain specified entities and property *used* for certain specific purposes. In the first class of exemptions all property *owned* by governmental entities is exempt from taxation, regardless of the manner of its use. The second class of property exempted by the statute is property used exclusively for specific purposes, including use for hospital purposes by nonprofit hospitals. They argue that the statutory exemption is not dependent upon ownership but exempts all property used exclusively for hospital purposes by a nonprofit hospital.

It is the County's contention that every claim for exemption from taxation should be denied unless the exemption is granted so clearly as to leave no room for any fair doubt. *Cruse v. Fischl*, 55 Mont. 258, 175 P. 878. The County argues that the language of section 84-202, R.C.M.1947 is not clear and could be subject to several interpretations. The County contends that while the nonprofit hospitals themselves are clearly exempt from taxation, nothing contained in section 84-202 exempts all property used exclusively for hospital purposes regardless of the commercial profit that may be derived from such property. The County argues that in the instant case Picker Corporation owns the property in question and derives a significant profit from the property. The County further contends that section 84-202 contains a strong legislative intent to prohibit exemptions where corporate or private profit is realized; thus, said X-ray equipment under lease to the hospital is a taxable interest in personal property. *Allen v. Multnomah County*, 179 Or. 548, 173 P.2d 475; *Ross v. City of Long Beach*, 24 Cal.2d 258, 148 P. 2d 649.

This same question was under consideration in *N.W. Imp. Co. v. Rosebud Co.*, 129 Mont. 412, 288 P.2d 657. There this Court



discussed the various views on the subject matter and demonstrated the split of authority throughout the country. That case, however, may be distinguished. In *N.W. Imp. Co.*, unlike the instant case, the Court found that the private company that was leasing property to the exempt school district was not deriving any economic advantage from the lease of the building. The rental on the lease agreement was so adjusted that at the end of its estimated life the private company would have returned to it only the actual cost of construction without any interest.

Although *N.W. Imp. Co.* is thus distinguishable, the reasoning used in that case may be extended to exempt from taxation the property in question here. This we believe to be in accord with the legislative intent of section 84-202, R.C.M.1947.

[1] It is a well accepted principle of statutory construction that the function of the Court is to interpret the intention of the legislature, if at all possible, from the plain meaning of the words used, and if the meaning of the statute can be determined from the language used, the Court is not at liberty to add or detract language from the statute in question. Sections 93-401-15, 93-401-16, R.C.M.1947; *Nice v. State Board of Equalization*, 161 Mont. 448, 507 P.2d 527, 30 St.Rep. 284.

[2,3] The fact that the statute creates several classes of exemptions, based in one case on "ownership" and in the other case upon "use", reveals a clear legislative in-

tent to exclude "ownership" of property as a criterion in determining the applicability of the exemption to property "used exclusively for hospitals". To require that hospitals own the property, in addition to the requirement that they use the property only for hospital purposes, would necessitate inserting the words "owned by" or words of similar import, so that the relevant clause would read "property owned by and used exclusively for \* \* \* hospital purposes." To insert these suggested words into this statute would give to it an added meaning not to be found in the plain and unambiguous language of the statute. See *Ross v. City of Long Beach*, 24 Cal.2d 258, 148 P.2d 649; *Scott v. Society of Russian Israelites*, 59 Neb. 571, 81 N.W. 624.

The legislative purpose in creating the tax exemption appears to be lower costs of hospital care, which in turn means lesser expenses for patients. To deny the exemption here would add an additional expense to the rental price already paid for the equipment. If the equipment here is taxable to Picker Corporation it is reimbursable to them by the hospital whose patients would bear the taxes in the form of increased hospital charges. This would be directly contrary to the purpose of the exemption.

For these reasons the judgment of the district court is affirmed.

JAMES T. HARRISON, C. J., and DALY, CASTLES and JOHN C. HARRISON, JJ., concur.

SENATE TAXATION  
EXHIBIT NO. 1  
DATE 3-23-87  
BILL NO. H.B. 394

FLATHEAD COUNTY TAX APPEAL BOARD

\* \* \* \* \*

IN THE MATTER OF THE	)	MEMORANDUM OF PETITIONER
APPLICATION FOR PROPERTY TAX	)	NEW HORIZONS PARTNERSHIP/
EXEMPTION BY NEW HORIZONS	)	FLATHEAD OUTPATIENT
PARTNERSHIP/FLATHEAD OUT-	)	SURGICAL CENTER
PATIENT SURGICAL CENTER	)	
	)	Appeal No. FC-86-295
	)	
	)	

**I. INTRODUCTION**

The New Horizons Partnership/Flathead Outpatient Surgical Center ("Surgery Center") is a hospital and should be exempt from property taxation under MCA § 15-6-201(1)(c). The operations performed by the Surgery Center are those done in traditional hospital settings, and the medical equipment, which is the subject of the taxation, is used exclusively for hospital purposes. The Center provides quality care in a relaxed environment at a lower cost than more expensive full-service hospitals. The Legislature intended to lower medical costs for Montana citizens by exempting hospital property from taxation. By granting the Surgery Center the tax exemption to which it is entitled, the Board can fulfill that intent.

**II. DISCUSSION**

**A. The New Horizons Partnership/Flathead Outpatient Surgical Center Is A Hospital Within The Meaning Of MCA § 15-6-201(1)(c).**

Montana exempts from property taxation:

"property used exclusively for agriculture and horticultural societies, for educational purposes, and for hospitals;"

MCA § 15-6-201(1)(c). The Surgery Center is a hospital and the medical equipment therein is used exclusively for hospital purposes. In Montana Deaconness Hospital v. Cascade County, 521 P.2d 203, 205 (Mont. 1974), the Court held that property leased, but not owned, by the hospital was tax exempt.<sup>1</sup> The key to its decision was that the property was used exclusively for hospital purposes. 521 P.2d at 205. Other courts have likewise focused on the use of the property at issue to determine whether it was tax exempt. See Sisters of St. Mary v. City of Madison, 278 N.W. 2d 814, 818-19 (Wis. 1979) (residence of hospital chaplain held to be exempt from taxation where it was used exclusively for hospital purposes and was reasonably necessary to the efficient functioning of the hospital). Abbott-Northwestern Hospital, Inc. v. County of Hennepin, 389 N.W. 2d 916 (Minn. 1986) (lodging facility for hospital patient relatives held to be exempt from taxation because it was devoted to and reasonably necessary for the accomplishment of hospital purposes). The cases underscore the broad interpretation that is to be given to the term "hospital" under tax exemption statutes.

The Surgery Center performs a variety of major and minor surgeries and performs non-surgical procedures, such as

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<sup>1</sup> As will be demonstrated, the statute interpreted in the Montana Deaconness Hospital case is the same as MCA § 15-6-201(1)(c), except that the present statute does not require that the hospital be a charitable organization. Thus, although the charitable purpose requirement has been eliminated from the present statute, the Court's analysis is helpful to the extent that it interprets language which is a part of the present statute.

chemotherapy, biopsies, transfusions and dialysis, which are traditionally performed only in hospitals. It is licensed by the Board of Health and Environmental Sciences, the same agency which licenses all hospitals. The physical facilities of the Surgery Center are identical to those which would be found in any outpatient surgery area in a hospital. The operating rooms, recovery areas, nursing station, back-up generator and air exchange system, which insures a sterile environment, are typical of those found in any hospital. The medical equipment (which is the subject of the property taxation) includes sophisticated anesthesia equipment, oxygen and carbon dioxide equipment, a "crash-cart" available to resuscitate patients suffering heart failure, cardiac monitors, suction machines, a laser for eye surgery, and a variety of sophisticated surgical instruments. Dr. Van Kirke Nelson testified that this equipment is typical of that found in surgical areas of hospitals and would not be found in a typical doctor's office. The Surgery Center has 26 doctors and 23 additional employees on its staff. It has immediate and convenient access to x-ray, laboratory, ambulance, pharmacy, and pathology services which are available in any hospital.

The Surgery Center recognizes that it is not a traditional hospital in that it does not own a large building which contains an exhaustive array of services or provide for overnight stays by patients. Yet, as Dr. Nelson testified, there have always been special purpose hospitals providing limited services. Further, with recent advances in medical technology, services previously available at a traditional hospital facility are now routinely

performed at out-patient facilities such as the Surgery Center. The Center is no less a hospital simply because it does not perform every conceivable hospital task.<sup>2</sup>

The Center can provide high quality care at a significantly lower cost to the patient. In Montana Deaconness Hospital v. Cascade County, the Court recognized that:

"The legislative purpose in creating the taxation exemption [MCA § 15-6-201(1)(c)] appears to be lower costs of hospital care, which, in turn, means lesser expenses for the patients."

521 P.2d at 205. The court noted that to tax the property leased by Montana Deaconness Hospital would directly contradict the legislative intent of providing lower cost medical care. Id. Similarly, the doctors who formed the Surgery Center as a special purpose hospital did so with the intention of providing lower cost care, and they have indeed provided surgical care previously available only at Kalispell Regional Hospital at a lower cost.

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<sup>2</sup> Courts have recognized the changing nature of medical care and the need to extend tax exemptions to organizations performing hospital functions which are not organized as traditional hospitals. In Harvard Community Health Plan v. Board of Assessors, 427 N.E. 2d 1159 (Mass. 1981), the court considered whether the Harvard Community Health Plan, a health maintenance organization, was entitled to a property tax exemption. The court noted the changing nature of medical services and the Health Plan's ability to provide quality services at a lower cost. 427 N.E. 2d at 1161-62. It held that the change in the delivery of medical services required a change in the "definitional predicates" used to determine whether an organization met the requirements for property tax exemption. 427 N.E. 2d at 1163. In that case, the relevant statute required that the organization have a charitable purpose, and the court enlarged the definition of "charitable" to encompass this new, broader concept of health care. 427 N.E. 2d at 1163-64.

To tax the Surgery Center's equipment, while allowing Kalispell Regional Hospital to go tax free, would contradict the clear legislative intent to reduce medical costs. The Surgery Center's only source of income is its billings to patients. If tax exemption is denied, the management of the Surgery Center has no choice but to increase those charges. By granting the tax exemption, the Board can fulfill the legislative intent to provide lower cost hospital care to Montana citizens.

**B. The Surgery Center Does Not Have To Be Formed As A Non-Profit Organization To Be Tax Exempt.**

The Surgery Center does not have to be formed for charitable purposes in order to receive the benefit of MCA § 15-6-201(1)(c). The statute interpreted in Montana Deaconness Hospital v. Cascade County, 521 P.2d at 204, granted tax exemptions for:

. . . such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit . . .

(emphasis added). This statute, 84-202, R.C.M. 1947, was the predecessor of MCA § 15-6-201. It was amended between 1974 and the present to delete the requirement that tax exempt property be used for non-profit purposes. The present statute reads:

(1) The following categories of property are exempt from taxation: . . . (c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for hospitals . . .

MCA § 15-6-201(1)(c). The charitable purpose requirement has been deleted. Where the legislature amends a statute, it is presumed to intend a change. Crist v. Segna, 622 P.2d 1028, 1029 (Mont. 1981). Thus, there is no requirement that the Center be a

non-profit organization, and the language in Montana Deaconness Hospital v. Cascade County discussing the charitable purpose requirement should not affect the Board's decision.

**C. The Definition of "Hospital" In MCA § 50-5-101(23) Does Not Control Whether The Surgery Center Is A Hospital For Tax Exemption Purposes.**

The definition of "hospital" in 50-5-101(23) does not apply to MCA § 15-6-201(1)(c) to determine whether the Surgical Center is tax exempt. Section 50-5-101 is applicable only to the licensing and Certificate of Need requirements for health facilities. It does not even mention Montana's taxation statutes.

MCA § 1-2-107 states:

"Whenever the meaning of a word or phrase is defined in any part of the code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears."

(emphasis added). Clearly, a definition does not apply to other portions of the Code where the Legislature expressly limits the use of the defined term. This is precisely what it did in adopting the definition of "hospital" in MCA § 50-5-101:

"As used in parts 1-4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply . . . (23) "hospital" means a facility . . ."

MCA § 50-5-101(23) (emphasis added). The legislature unequivocally expressed its intent that the definitions in MCA § 50-5-101 are applicable only to parts 1-4 of chapter 5. Title 50 contains 48 chapters. By expressly limiting the definitions in 50-5-101 to chapter 5, the Legislature did not even intend for those definitions to apply to all of Title 50, much less the

entire Montana Code. The limitation on the definition of hospital "plainly appears" and expansive use of that definition based upon MCA § 1-2-107 is unwarranted.

Moreover, even if MCA § 1-2-107 applied, it is but one among many statutes and maxims of statutory construction which must be applied to determine the meaning of "hospital" in MCA § 15-6-201(1)(c). All statutory construction by a court or an administrative board is an attempt to search out the will of the Legislature. Johnson v. Maris River Elec. Co-op., Inc., 687 P.2d 668, 671 (Mont. 1984). In construing any statute, the "intention of the legislature is to be pursued if possible." MCA § 1-2-102; Mydlarz v. Palmer/Duncan Construction Co., 682 P.2d 695, 701 (Mont. 1984). A statute must not be interpreted to defeat its purpose and, indeed, the purpose sought to be achieved by the Legislature is of prime consideration in interpreting that statute. Dover Ranch v. Yellowstone County, 609 P.2d 711, 715 (Mont. 1980).

Applying these principles to the instant action requires the Board to grant the Center's requested exemption. The legislative intent, as expressed by the Montana Supreme Court in Bozeman Deaconness Hospital v. Cascade County, is "to lower costs of hospital care, which, in turn, means lesser expenses for patients." 521 P.2d at 205. Granting the exemption will lower patient costs.

This Board cannot ignore legislative intent and draft a definition (which, by its very terms, limits its application) onto Montana's property taxation statutes which directly



- conflicts with a clearly stated legislative purpose. Any other argument is not merely unsupported by Montana law, it directly contravenes other applicable Montana statutes and case law.

### III. CONCLUSION

The Surgery Center looks like a hospital, has equipment like a hospital, has a professional hospital staff, and performs traditional hospital functions. In every meaningful sense, the Surgery Center is a hospital and should be treated as a hospital for tax exemption. For the reasons set forth above, the New Horizons Partnership/Flathead Outpatient Surgical Center respectfully requests that the Flathead County Tax Appeal Board grant its request for property tax exemption pursuant to MCA § 15-6-201(1)(c).

DATED this \_\_\_\_\_ day of November, 1986.

MURRAY, KAUFMAN, VIDAL & GORDON, P.C.

By: \_\_\_\_\_

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