MONTANA ADMINISTRATIVE REGISTER

1977 ISSUE NO. 10

PAGES 608-843

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

TABLE OF CONTENTS

NOTICE SECTION

RULE SECTION

INTERPRETATION SECTION

BEFORE THE DEPARTMENT OF ADMINISTRATION
BUILDING CODES DIVISION
OF THE
STATE OF MONTANA

In the matter of the adoption of Rule ARM 2-2.11(1)-S11040 concerning the Incorporation by Reference of the Model Code For Energy Conservation In New Building Construction.	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE State Energy Code

1. On December 5, 1977, at 9:30 a.m., a public hearing will be held in the Auditorium of the Montana State Highway Building, Helena, Montana to consider the adoption of Rule ARM 2-2.11(1)-S11040 Incorporation by Reference of the Model Code For Energy Conservation In New Building Construction.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rule provides in summary as follows:

(a) The code sets forth minimum requirements for the design of new buildings and structures and additions to existing buildings, regulating their exterior envelopes and selection of their heating, ventilating, air conditioning, service water heating, electrical distribution and illuminating systems and equipment for effective use of energy.

(b) The code provides for the use of new innovations concerning materials, methods of construction, and air handling systems.

(c) The code requires equipment to be supplied with maintenance information to assure efficient operation. Regular maintenance information must be clearly stated on a readily accessible label.

(d) The code provides the Division with the authority to require plans and specifications to be submitted for review and also with the authority to require such plans to be prepared by a licensed architect or engineer.

(e) The code requires that all construction, falling under its provisions, is subject to inspection by the Division. In addition, the code requires that no work is to be covered without the approval of the Division and that the Division has the right of reinspection.

(f) The code provides three approaches for satisfying its requirements.

(i) "Building Design By Systems Analysis And Design Of Buildings Utilizing Non-Depletable Energy Sources." This approach establishes design criteria in terms of total energy use by a building including all of its systems. This approach also requires a licensed architect or engineer to prepare the design.

(ii) "Building Design By Component Performance Approach." This approach requires that all buildings that are heated or mechanically cooled must be constructed so as to provide required thermal performance of the various components.

(iii)"Building Design By Acceptable Practice." This approach can be used only on buildings less than 5,000 square feet in area and three stories or less in height. The approach makes use of conventional construction practices.

(g) A copy of the entire proposed rule can be obtained by contacting: Building Codes Division, State of Montana, Capitol Station, Helena, Montana, 59601, Phone (406) 449-3933.

4. The Division is proposing these rules as per Chapter 173, Session Laws of Montana 1977, requiring the enactment of energy conservation standards for new construction.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing.

6. J. Michael Young, Administrator, Insurance and Legal Division, State of Montana, Capitol Station, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the agency to make the proposed rule is based on Section 69-2111, R.C.M. 1947 and Chapter 173, Session Laws of Montana 1977.

Jack C. Crosser
Director
Department of Administration

Certified to the Secretary of State October 12, 1977.

BEFORE THE DEPARTMENT OF AGRICULTURE

OF THE STATE OF MONTANA

In the Matter of the Department of Agriculture Amending Rules in Chapter 2 of the Department rules for compliance with the Montana Administrative Procedures Act.	NOTICE OF PROPOSED AMENDMENT of Rules in Chapter 2, Procedural Rules. NO PUBLIC HEARING CONTEMPLATED.

TO: All Interested Persons

1. On November 26, 1977, the Department of Agriculture proposes to amend rules for Chapter 2, Procedural Rules as a general clean-up process. Some of the Sections of law cited have been repealed or transferred and therefore the applicable rules need to be amended.

2. The first proposed amendment is for rules 4-2.2(1)-P200 where the Attorney Generals proposed repeal of 1-1.6(2)-P6250 through 1-1.6(2)-P6320 would make changes with respect to the current rule. The second proposed amendment is for rule 4-2.2(1)-P210 where various sections of State law have been repealed. The third proposed amendment is for rule 4-2.2(1)-P240 where Section 3-1726(6) has been repealed and the authority transferred to Section 3-1725.1. The fourth and last proposed amendment is for rule 4-2.2(1)-P250 where certain sections do not apply to the rule and are presently being cited, therefore removal is necessary.

3. The reason for the amendment of the above rules is to follow the administrative requirements for annual review and clean-up of each chapter of the Administrative Rules of Montana. This being most necessary in this particular chapter because of repealed or transferred Sections of the State Law.

4. Interested persons may submit their data, views, or arguments concerning the proposed amendment to Mr. W. Gordon McOmber, Director, Montana Department of Agriculture, 1300 Cedar Street, Airport Way - Building West, Helena, Montana 59601.

5. If a person directly affected wishes to express their data, views or arguments orally or in writing at a public hearing they must make written request for a public hearing and submit their request along with any written comments to Mr. W. Gordon McOmber before November 22, 1977.

6. If the department receives requests for a public hearing on the proposed amendments from more than ten percent (10%) or twenty-five (25) or more persons directly affected, a public hearing will be held at a later date. You will be notified of a public hearing.

Notice No. 4-2-45

7. The authority of the Department to amend these rules is based on 82-4203, R.C.M. 1947.

W. Gordon McOmber
W. GORDON McOMBER, Director

Certified to the Secretary of State October 13, 1977.

BEFORE THE
STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of rules of procedure before the State Library Commission and public participation guidelines	))))	ADOPTION AND AMENDMENT OF PROCEDURAL RULES (ARM 10-3.10(2)-P1010 NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 9, 1977, the State Library Commission proposes to amend its ARM rule 10-3.10(2)-P1010, which adopts the model rules of administrative practice, to adopt an alternative procedure for contested case hearings, and to adopt a rule providing guidelines for public participation in Commission decision-making.

2. The rule which would be amended is found on page 10-20 of the Administrative Rules of Montana.

3. The amendment would read as follows: "10-3.10(2)-P1010 INCORPORATION OF MODEL RULES (1) The ~~State librarian, acting as statutory executive officer of the~~ State Library Commission, ~~and in the absence from the state of a majority of the Commission members,~~ has adopted the Attorney General's Model Rules of Administrative Procedure, ~~as referred to in the Attorney General's memorandum of December 26, 1972 on December 29, 1972, which have been revised and are stated in MAC 1.6(2)-P640 through 1.6(2)-P6320,~~ as set forth in ARM Title I, Chapter 6, with the proviso that a hearing on denial of an application for a grant of Library Services and Construction Act funds may be conducted under the Commission's rule 10-3.10(2)-P1011 or, in the alternative, under the model rules for contested case hearings."

4. The first new rule would read as follows: 10-3.10(2)-P1011 HEARINGS ON GRANT APPLICATION DENIALS (1) If the Commission denies or rejects an application for a grant under the Library Services and Construction Act, the applicant shall be informed of the action and of his right to a hearing thereon in substantially the following form:

"To: _____ (applicant)
On ___ (date) ___, the State Library Commission made a preliminary decision to deny your application for a grant of $ _____ to _____ (purpose for which grant requested). The Commission action was taken on the grounds that _____ (reasons for denial). You are entitled to a hearing before the Commission when it next meets on _____ (date) if you wish to contest this action.

If you desire a formal hearing, you must request it in writing.

to the State Librarian, within 20 days after the date of this notice. Unless you specifically request that the hearing be conducted under the Attorney General's model rules for contested cases, the hearing will be conducted under the Commission's rule for hearings on grant application denials."

(2) An applicant's written request for a hearing shall include or be accompanied by the applicant's response to the reasons given for the Commission action or a statement of those facts which the applicant contends would contradict the reasons given for the Commission action.

(3) Upon receipt of a request for a hearing, the State Librarian shall issue formal notice of the hearing, setting forth the matters required by 82-4209(2), R.C.M. 1947.

(4) The chairman of the Commission, or a member designated by the chairman, will preside over and conduct the hearing, recognizing persons who wish to speak and ruling on motions. The chair may impose reasonable time limits on any speaker.

(5) Rather than calling witnesses, the Commission will direct the State Library staff to prepare a position paper in support of the Commission action; the Commission will then take official notice of this position paper. The applicant may question the author(s) of the position paper as to any statement made therein.

(6) The applicant may testify on his own behalf and may call other persons to testify. Staff of the State Library may question the applicant or any of his witnesses as to any statement so made.

(7) Witnesses need not be sworn. If they are not, the chair shall remind all present, at the outset of the hearing, of the provision of the Montana Criminal Code regarding unsworn falsification to public authorities (94-7-204, R.C.M. 1947).

(8) The minutes of a Commission meeting while a hearing is conducted under this rule shall reflect the essence or summary of all statements made, but need not be a verbatim transcription of those statements.

(9) The record for decision shall include (a) the statement of reasons for the Commission action given in the notice that the application was denied, (b) the applicant's response, (c) the position paper of the State Library staff, and (d) the minutes of the hearing.

5. The second new rule would read as follows: 10.3.10(2)-P1014 GUIDELINES FOR PUBLIC PARTICIPATION (1) Meetings and agendas: The Commission holds regular meetings on the Friday preceding the second Monday in April, July, September, and

December. Agendas for each meeting are prepared in advance and are available from the office of the State Librarian.

(2) Information: The State Library publishes a newsletter containing news about libraries in Montana and activities of the Commission and State Library. This publication, the Montana Newsletter, will be mailed without charge to any interested person requesting the same.

6. The rationale for the proposed rules and amendments is as follows:

A. Under Title II of the Library Services and Construction Act (20 U.S. Code sec. 355c), Congress has required that opportunity for a hearing must be afforded any person or entity whose application for a grant is denied by the state administering agency. Such a hearing appears to be a contested case as defined in the Montana Administrative Procedure Act; however, the State Library Commission believes that neither it nor the applicant libraries would need the full formalities of a contested case hearing in order to secure a just and fair resolution of most disputes over grant applications. Thus, the first proposed new rule would provide an alternative, more informal procedure for these hearings.

B. Under the public participation statute enacted in 1975, all agencies are required to adopt guidelines to encourage public participation. The second new rule would comply with this requirement.

7. Interested persons may address written comments on these proposed rules to Alma Jacobs, State Librarian, 930 East Lyndale, Helena, Montana 59601. Comments must be received not later than December 1, 1977, in order to be considered by the Commission at its December 9 meeting.

8. The authority of the Commission to amend and adopt these rules is based upon sections 44-131, 82-4203, and 82-422, R.C.M. 1947.

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: Alma S. Jacobs
Alma S. Jacobs
State Librarian

Certified to the Secretary of State October 13, 1977.

BEFORE THE
STATE LIBRARY COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption, amendment, and repeal of policies and rules for public libraries and state library programs (ARM Title 10, Chapter 10)	)))))	NOTICE OF PUBLIC HEARING ON ADOPTION, AMENDMENT, AND REPEAL OF POLICIES AND RULES FOR PUBLIC LIBRARIES AND STATE LIBRARY PROGRAMS

TO: All Interested Persons

1. On December 9, 1977, at 11 A.M. a public hearing will be held at the Montana State Library, 930 East Lyndale, Helena, Montana, to consider the adoption, amendment, or repeal of the substantive rules on public library standards, library service and construction grants, library federations, and services and programs of the State Library, as promulgated by the State Library Commission.

2. The existing rules to be amended are found at pages 10-21 through 10-27 of the Administrative Rules of Montana.

3. The rules and amendments would read or provide in substance as follows (deleted matter interlined, new matter in existing rules underlined, new rules so denoted by headings):

A. Adopt a NEW RULE reading as follows: 10-3.10(3)-S1015 STATEMENT OF PHILOSOPHY AND OBJECTIVES (1) (a) The Montana State Library Commission believes that an enlightened citizenry constitutes the foundation of democracy, and that every resident in Montana should have the opportunity to foster his own development in pursuit of education throughout his life;

That all libraries are intrinsic to education and that the library is a vital and integral part of the community's total educational resources;

That the primary function of the library is to serve as an essential cultural, informational and educational resource for all people regardless of age, race, creed, sex or occupation.

(b) All Montanans should have legal and reasonably convenient access to a public library, and through it, to the library resources in their area, the state and the nation. Only through the establishment of public library systems known as federations of libraries can local communities approach this goal in Montana. It is the objective of the Montana State Library Commission to foster the development of strong library federations in accord with statutory public policy.

(c) The State Library Commission affirms its belief in the

basic policies which govern the services of all libraries stated in the Library Bill of Rights, Freedom to Read Statement, Intellectual Freedom Statement, Resolution on Challenged Materials and Statement on Labeling of the American Library Association. The Library Commission supports the principle that freedom to read is the right of every citizen.

(2) To serve the people of Montana, the Commission maintains a State Library which provides materials and services:

(a) To supplement the resources of local libraries through services to federation headquarters libraries and through them to other public libraries, school libraries, academic and special libraries.

(b) To provide lending reference and readers' advisory services directly to:

(i) State government officers and employees and federal or other governmental agencies to support the research needs of the agencies.

(ii) Residents of state institutions.

(iii) Those residents of the state who have no city or county public library but whose local governments contract for library services from a federation headquarters library.

(iv) Persons who because of a physical or visual handicap are unable to use conventional printed materials.

B. The rule (ARM 10-3.10(6)-S1020) which incorporates by reference the Montana Public Library Standards, published in booklet form by the Commission, would be amended by setting forth the text of those standards. No change would be made in the wording of any standard; they would simply be published as five rules (S1020 through S1024) in the Administrative Rules of Montana.

C. Rule ARM 10-3.10(6)-S1030, STATE FINANCIAL ASSISTANCE, would be repealed.

D. Adopt a NEW RULE reading as follows: 10.3.10(6)-S1031 USE OF FEDERAL AND STATE FUNDS TO SUPPORT LIBRARY FEDERATIONS (1) (a) The Library Services and Construction Act, Title I, Library Services - Grants to States for Library Services - provides:

Sec. 101. The Commissioner shall carry out a program of making grants from sums appropriated pursuant to section 4(a) (1) to States which have had approved basic State plans under section 6 and have submitted annual programs under section 103 for the extension of public library services to areas without such services and the improvement of such services in areas which such

services are inadequate, for making library services more accessible to persons who, by reason of distance, residence, or physical handicap, or other disadvantage, are unable to receive the benefits of public library services regularly made available to the public, for adapting public library services to meet particular needs of persons within the State, and for improving and strengthening library administrative agencies.

(b) Policy: To further the development of library federations, the State Library Commission may make grants of federal funds of the following types:

Basic grants - as defined in § 44-306, R.C.M. 1947.

Special project grants - as defined in § 44-306, R.C.M. 1947.

Formula for distribution of basic grants - as set forth in § 44-308, R.C.M. 1947.

(2) To further the development of library federations, the State Library Commission may make grants of state funds as provided by R.C.M. 1947, Title 44, Chapter 3.

E. Adopt a NEW RULE reading as follows: 10-3.10(6)-S1032 DESCRIPTION OF FEDERATION AREAS AND HEADQUARTERS (1) (a) The Pathfinder Library Federation consists of participating libraries in that area of the state covered by Blaine, Cascade, Chouteau, Hill, Liberty, Pondera, Teton and Toole Counties.

(b) The headquarters library of this federation is the Great Falls Public Library, Great Falls, Montana.

(2) (a) The Golden Plains Library Federation consists of participating libraries in that area of the state covered by Daniels, Phillips, Roosevelt, Sheridan and Valley Counties.

(b) The headquarters library of this federation is the Glasgow City-County Library, Glasgow, Montana.

(3) (a) The Sagebrush Library Federation consists of participating libraries in that area of the state covered by Carter, Custer, Dawson, Fallon, Garfield, McCone, Powder River, Prairie, Richland, Rosebud, Treasure and Wibaux Counties.

(b) The headquarters library of this federation is the Miles City Public Library, Miles City, Montana.

(4) (a) The South Central Library Federation consists of participating libraries in that area of the state covered by Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Sweet Grass, Wheatland and Yellowstone Counties.

(b) The headquarters library of this federation is the Parmly Billings Library, Billings, Montana.

(5) (a) The Broad Valleys Library Federation consists of participating libraries in that area of the state covered by Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis and Clark, Madison, Meagher, Park, Powell and Silver Bow Counties.

(b) The headquarters library of this federation is the Bozeman Public Library, Bozeman, Montana.

(6) (a) The Tamarack Library Federation consists of par-

ticipating libraries in that area of the state covered by Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders Counties.

(b) The headquarters library of this federation is the City-County Library of Missoula, Missoula, Montana, and satellite services are provided by the Lincoln County Free Library, Libby, Montana.

(7) A list of counties and cities participating in federations is available without charge from the Montana State Library.

F. Rule No. 10-3.10(6)-S1040, USE OF FEDERAL FUNDS TO SUPPORT PUBLIC LIBRARY FEDERATIONS AND FEDERATION DEMONSTRATIONS, would be repealed.

G. Adopt a NEW RULE reading as follows: 10-3.10(6)-S1041 PRIORITIES FOR GRANTS: POPULATIONS OF LOW INCOME OR LIMITED ENGLISH-SPEAKING ABILITY (1) Montana Public Library Standards, rules 10-3.10(6)-S1020 through S1024, will be used to determine the adequacy of public library services to geographical areas, and for groups of persons within the state.

(2) Library development funds available to the State Library Commission under the Library Services and Construction Act have historically been used as "seed money" to assist those areas of the state with no public library service, or with inadequate service, to achieve better service through participation in multi-county federations of libraries. Funds have been used to establish or improve service through federations, building upon the strength of larger libraries, only where there is a potential for local support, since public libraries in Montana must depend solely upon local property taxes for continuing support in the absence of a state aid program.

(3) The State Library Commission will continue in this way to develop public library federations as described in Montana Public Library Standards. Special emphasis will be given to activities which will result in better library service to (a) areas with high concentrations of persons with limited English-speaking ability, and (b) areas with high concentrations of low-income families. The State Library Commission will also initiate and encourage projects to enable the local libraries, working through federations, to provide library service to areas whose residents have no legal access to city or county library service and to areas with inadequate library services.

(4) Priority will be given to applications which will result in better public library services to areas which include the following:

(a) Areas identified as having concentrations of persons with limited English-speaking ability will be based on:

(i) Data furnished in U.S. Census of Population: 1970, General Social and Economic Characteristics.

(ii) Office of Education, U.S. Department of Health,

Education, and Welfare, school population data.

(iii) Bi-lingual data furnished by the Montana Department of Superintendent of Public Instruction and other educational agencies.

(iv) Bi-lingual data furnished by state and local service agencies.

(v) County profiles, compiled by Research & Information Systems Division, Department of Community Affairs, State of Montana.

(vi) Other sources of data concerning persons with limited English-speaking ability which may be available at a later date.

(b) Areas designated as "redevelopment areas" pursuant to section 401 of the Public Works and Economic Development Act of 1965.

(c) Other areas of the state with high concentrations of low-income families as shown by the U.S. Census of Population: 1970, General Social and Economic Characteristics.

(d) County profiles and other data available from the Division of Research and Information Systems, Montana Department of Community Affairs.

(5) Evaluation of projects will be by the State Library Commission and other state and local library personnel and based on:

Did it achieve the desired objectives?

Did it benefit those it was planned to benefit?

Will it be continued with local funding where this is necessary?

Has it furthered and strengthened the state Long Range Plan?

H. Adopt a NEW RULE reading as follows: 10-3.10(6)-S1045 ADVISORY SERVICES (1) In order to strengthen local public libraries and to assist in the development of leadership on the part of librarians, trustees, and local officials, the State Library provides consultant service on library management, resources, and services. Consultant visits are made only on invitation; Library staff members advise, but the final decision on carrying out recommendations remains the responsibility of the local library board.

(2) While the State Library Commission does not have a legal responsibility for development of school library or academic library services, State Library staff will make available appropriate advice and assistance, upon request, for the effective coordination of multi-type library cooperation in the state.

I. Amend ARM 10-3.10(6)-S1050 to read as follows: 10-3.10(6)-S1050 APPLICATIONS FOR GRANTS (1) Applications for grants from state, federal or private funds available to the State Library Commission shall be made in writing to the State Librarian, giving such detail as may be necessary to satisfy the requirements of the funding source. Applications from libraries or library federations must indicate the extent to which the grant

may be expected to help the library or library federation achieve levels of service or strength as prescribed in the Montana Public Library Standards. Prior approval of federation grant applications must be obtained from the federation advisory board.

(2) All applications for major public library projects require approval by the State Library Commission. Such applications must be submitted to the State Librarian at least three weeks before regularly scheduled meetings of the Commission (The Fridays before the second Mondays of April, July, September and December), for distribution to members of the Commission in advance of these meetings. Applicants are encouraged to attend these meetings; brief oral presentations in support of their proposals are invited, and questions may be asked by the Commission. The Commission reserves the right to place reasonable limits on the length of discussion on grant applications.

(3) Pursuant to the Library Services and Construction Act, as amended, any library applying for funds under Title II of the Library Services and Construction Act, when available, and not receiving such funds may ask for and receive a public hearing by the Commission on its application. Such request for hearing must be made in writing to the State Librarian not later than thirty days following original action on the application.

(4) Applications for grants of less than $5,000 may be approved by the State Librarian or referred to the State Library Commission at ~~his~~ the discretion of the State Librarian.

J. Adopt a NEW RULE reading as follows: 10-3.10(10)-S1055 LOAN SERVICES (1) Materials owned by the State Library will be lent: directly to persons employed by the State of Montana, and - through federation headquarters libraries - to those residents of the state who have no tax-supported city or county public library but whose city or counties have federation affiliation; to city or county public libraries - who are members of federations - for circulation to individuals and schools within their area; to state institutions for the use of residents and staff; and to academic and special libraries for use by their patrons.

(2) Recognizing the interdependence of government offices, the State Library will also lend its materials to federal or other government agencies to support the research needs of the staff of these agencies.

(3) Individuals, organizations and schools in areas served by public libraries belonging to federations, and persons employed by organizations which maintain special libraries are asked to make their requests through the federation headquarters library in order that the federation coordinator will be cognizant of all the library needs of the community for the purpose of developing the local library collection to meet the greatest portion possible of those needs.

(4) The State Library subscribes to the Interlibrary Loan Code for Montana adopted by the Montana Library Association in May, 1971. In accordance with that Code, the State Library will attempt to obtain for its patrons and the libraries which borrow from it materials held by other libraries when the State Library collection does not include those materials.

(5) As an incorporator in the Pacific Northwest Bibliographic Center, the State Library encourages the sharing of library resources in the Northwest and the strengthening of those resources to meet the needs of the region.

K. Amend ARM 10-3.10(10)-S1060 to read as follows: 10-3.10(10)-S1060 ACCESS TO CIRCULATION RECORDS (1) With the passage of the Library Services Act in 1957, and in the succeeding years, state libraries have been given an increasing role in the development of library services in the individual states. The confidence placed in state libraries through the allocation of funds to foster library development in the states, carries with it a responsibility for the state libraries to assume major leadership roles. All libraries within a state need to be able to look to their state library for guidance, assurance, endorsement, and help in carrying out their jobs at the local levels. This help must go beyond the provision of services and take in the more intangible aspects of leadership. This is especially true in the area of intellectual freedom - a concept which is fundamental to all library service.

The library profession, through its national association, and many individual libraries, have endorsed two intellectual freedom documents - the Freedom to Read Statement and the Library Bill of Rights. Both are thoughtful and straightforward affirmations of the profession's belief in the right of every citizen to have access to a variety of materials, and, they seek to protect borrowers from individuals and groups who would decide for others what may or may not be available to them in libraries.

Another aspect of the public's intellectual freedom is the borrower's right to privacy in the matter of what materials he shall borrow from the library. In a number of U.S. cities, representatives of federal government agencies have, without benefit of any process, order, or subpoena, requested the names of library users who have borrowed books in certain subject areas.

The freedom to read is automatically diminished, even if a full range of materials has been made available, if the library user is confronted with the prospect of any individual or agency examining the record of his transactions with the library. Individuals with no malicious intent may hesitate to borrow materials on certain topics if in doing so they may be subjected to the possibility of harassment or put under a veil of suspicion. Their freedom to read has been substantially curtailed and suppressed.

Because this is a relatively new variety of attack on intellectual freedom, many libraries are unknowledgeable about the course to take when confronted with these requests.

In light of the above:

(2) The Montana State Library Commission establishes as policy for the Montana State Library, and recommends similar action by each Montana library:

(a) That its circulation records be treated as confidential regardless of the source of inquiry.

(b) That such records not be made available to any party, governmental or private, unless pursuant to an order, or subpoena or other legal process.

(3) The legal process requiring the production of circulation records will ordinarily be in the form of a subpoena duces tecum, requiring the librarian to attend court or the taking of his or her deposition and may require him to bring along certain designated circulation records. At this stage in legal proceedings the individual librarian may choose any of the following alternatives:

(a) obey the requirements of the subpoena in full;

(b) retain an attorney who will attend the court hearing or deposition with the librarian and attempt to obtain a protective order from the court quashing the subpoena because the record search required is unduly burdensome and onerous, or because the material sought is not relevant to the issues of the case;

(c) attend the court hearing or deposition, but refuse to divulge the records, in which event the individual involved will undoubtedly be charged with contempt of court and fined or jailed.

L. Adopt a NEW RULE reading as follows: 10-3.10(10)-S1065 ACQUISITION AND SELECTION OF MATERIALS (1) Materials will be selected, retained and discarded with due consideration for library objectives as listed in the State Library's statement of philosophy and objectives.

(2) Materials are selected for the Montana State Library collection according to the following guidelines:

(a) The State Library will acquire a comprehensive collection of general and specialized reference sources as well as non-fiction materials to answer informational inquiries and to supply research information.

(b) Special consideration will be given to requests from state agencies, with Montana State Library retaining the decision as to whether or not to purchase.

(c) As a depository for state and federal publications, the State Library will follow applicable regulations governing depository libraries as it selects appropriate materials for its collection.

(d) Materials related to Montana and by Montana authors are considered for purchase, except old and rare materials. Only items which can be circulated will be purchased.

(e) Montana State Library will acquire a collection of materials by and about Native Americans.

(f) The State Library will acquire a specialized collection of materials in librarianship for the use of its staff and for the use of librarians, trustees and local groups interested in developing library services. All American Library Association titles are purchased.

(g) Textbooks required for school use generally are not purchased. Textbooks are added to the collection when they represent the most appropriate material available in the field.

(h) Materials needed only rarely will be borrowed through interlibrary loan networks, rather than purchased.

(i) Paperbacks are not purchased for the general collection, except for non-fiction titles not available in hard cover. Paperbacks are purchased for use at some of the institutions.

(j) Genealogy selections are limited to basic reference titles.

(k) Large print titles are purchased for the Division for the Blind and Physically Handicapped for use as back-up collections to public libraries serving patrons with limited vision.

(l) Materials for libraries at institutions will be selected to provide a public library collection.

(3) Responsibility for materials rests with the State Librarian. Provision is made to insure maximum participation of professional staff members in the reviewing process.

(4) In general, the Library's policy is to purchase the materials which meet the following criteria:

(a) Permanent, historical or timely value.

(b) Accurate information.

(c) Authoritativeness.

(5) Insofar as it is possible, an effort shall be made to

maintain a collection which reflects balance in ideas and points of view. Accordingly, in some instances, materials which do not meet the major criteria for selection may be acquired because of their current interest or significance.

(6) The collection will be continually reviewed to insure that it reflects the expressed and potential needs and interests of the state, and meets the basic and current objectives of the Library. Materials which are obsolete shall be withdrawn from the collection; materials in poor physical condition will be rebound or replaced as necessary. The physical format of the materials (binding, typography, paper, etc.) shall be considered when library materials are evaluated for purchase, with particular attention given to the usability of materials purchased for service with handicapped patrons.

(7) The Library will accept gift materials for its collection with the understanding that it will apply the same criteria to them that it does for materials selected for purchase. Gifts are accepted only with the full understanding that they may be passed on to other libraries or discarded, if, in the judgment of the State Librarian, they are not appropriate to the collection of the State Library or of other libraries. Gift materials will be used in the same manner as other library materials - circulated if appropriate and kept in the Library for reference use if their nature warrants. Such materials will not be housed as special collections subject to restricted use.

M. Amend ARM 10-3.10(10)-S1080 CHARGES FOR LOST OR DAMAGED BOOKS, to read as follows: (1) Books and other library materials borrowed from the State Library and due on or after January 1, ~~1972~~ 1977, will be subject to a charge if lost or damaged beyond further reasonable use.

(a) Libraries or individuals reporting books lost or returning damaged books should be informed that a bill for the charge will be mailed to them. No attempt should be made to quote charges over the telephone or to collect payment while the patron waits.

(b) Charges will be made according to the following schedule:

(i) For each item, a service charge of ~~$1~~ $2.00 to cover cost of ordering, cataloging and/or processing of replacement, maintenance of records, etc.; plus

(ii) For materials still in print, the current list price will be charged. ~~or for out~~ Out-of-print materials which ~~will not~~ cannot be replaced, will be charged at the list price at the time it was acquired ~~by the library, or~~.

(iii) For out-of-print materials which will be replaced by another copy of the same title, if it can be obtained, the

actual cost of the replacement.

~~(e)~~ (2) Reports of lost books will be given to the State Librarian or a staff member designated by ~~him~~ her for action.

~~(d)~~ (3) Any deviation from this policy must be approved by the State Librarian or the staff member designated by her, in advance of action.

N. Adopt a NEW RULE reading as follows: 10-3.10(10)-S1085 PHOTOCOPY SERVICE (1) Photocopies of library materials may be obtained at the State Library by libraries, agencies and persons entitled to direct loan service at the State Library. Others should request copies through their federation libraries.

The State Library will subscribe to the "fair use" policy in making single copies of copyrighted material for the personal use of the individual making the request.

(2) The State Library will absorb the cost of copies which it requests from other libraries for individuals entitled to direct loan service at the State Library. Copies made by PNBC staff from materials held at the University of Washington Libraries are furnished at no cost to the borrower regardless of category. The State Library will absorb the cost of photocopying done at the University of Montana Library and Montana State University Library when the request is sent from the State Library, a federation headquarters library or a participant in the Health Sciences Network.

(3) The copier at the State Library will be operated by State Library staff only.

Only State Library materials, or materials borrowed by the State Library for the purpose of copying, or materials used in the conduct of State Library business, will be copied.

Library patrons wishing to make copies of non-library items should be referred to one of the coin-operated copiers available at various locations in the city, or to a commercial copying service.

O. Amend ARM 10-3.10(14)-S1090 to read as follows: 10-3.10(14)-S1090 GRADUATE SCHOLARSHIP PROGRAM (1) The Montana State Library Commission may, ~~from time to time,~~ as funds are available, offer scholarships for graduate study in library science; the number and value of such scholarships shall be determined by the Commission.

(2) through (9) - - no change.

P. Adopt a NEW RULE reading as follows: 10-3.10(18)-S10010 POLICIES AND GUIDELINES FOR DEPOSITORY LIBRARIES (1) Depository libraries shall keep all state documents received from the State

Publications Library Distribution Center of the Montana State Library for a minimum of two (2) years.

(2) Publications that depository libraries do not wish to keep may be discarded only by the following procedure:

(a) Make a list annually of all documents that are to be discarded. The Center will accept the list only once during the year.

(b) Submit such lists to the State Publications Library Distribution Center.

(c) The "Center" will select publications for the needs of the Montana State Library.

(d) The lists will then be reproduced by the "Center" and circulated to other depository libraries and other interested libraries in Montana which may want to acquire a copy or which may want additional or replacement copies.

The above outlined procedure will begin January 1, 1978. Depository libraries will submit their list annually no later than January 15th. Documents may be discarded after March 31 if they have not been requested by a library.

(3) Do not mail discarded documents to the Montana State Library unless requested to do so.

(4) State publications received by a depository library other than as part of the depository program need not be listed on the list of state documents to be discarded.

(5) Documents to be discarded may be stored. However, they must be stored in such manner as to be retrievable and accessible.

(6) The Documents Librarian or other State Library personnel will make an inspection of each depository library once yearly. The depository status of each library will be reviewed at that time.

(7) For the purpose of preparing to implement the procedures of handling the list, it is recommended that each depository library stamp each state document with date of receipt.

(8) Depository libraries shall open depository shipments upon receipt so as to become aware of contents of such shipments, even though they cannot be processed immediately.

(9) Depository libraries desiring publications which are listed on the "Weekly Shipping List", where insufficient copies were received by the "Center" to make full distribution, may notify the "Center" of their needs, and every effort will be made

to obtain a copy for the requesting library. The depository library is not to contact the issuing agency directly.

4. Interested persons may present their data, views or arguments, either orally or in writing at the hearing. Written comments may also be mailed to the State Library Commission, 930 East Lyndale, Helena, Montana 59601, and will be considered by the Commission if received on or before December 7, 1977.

5. William P. Conklin, Chairman of the Commission, or his designee, will preside over and conduct the hearing.

6. Rationale. The reasons for these rule-making actions are: to publish the Public Library Standards in the administrative code since MAPA no longer permits incorporation by reference to such materials; to eliminate detailed grant-in-aid criteria now spelled out by the statute; to use rule-making procedures for Commission policies with respect to federation designations; to publish Commission policies in certain areas of operation of the State Library; and to adopt new guidelines for depository libraries for state documents.

7. The authority of the Commission to adopt, amend, or repeal the foregoing rules is based upon 44-131, R.C.M. 1947 (as to those portions of the notice designated "A" through "O") and 44-133, R.C.M. 1947 (as to that portion designated "P").

STATE LIBRARY COMMISSION
WILLIAM P. CONKLIN, CHAIRMAN

By: Alma S. Jacobs
Alma S. Jacobs
State Librarian

Certified to the Secretary of State October 13, 1977.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the Proposed Adoption of Rules for the Reimbursement Bureau.	)))))	NOTICE OF PROPOSED ADOPTION OF RULES NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after November 14, 1977, the Department of Institutions proposes rules for the Reimbursement Bureau.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rules read as follows:

Rule I. ANNUAL PER DIEM RATE Pursuant to the authority vested in the Department of Institutions, the Reimbursement Bureau is charged with the function of establishing the annual per diem for the level of care each resident or person in an institution for which he will be liable. Upon admission or commitment to the institution a representative of the Reimbursement Bureau will have an intake conference with the person. If the person is not competent or able to give adequate information the Reimbursement Bureau will contact his next of kin or financially responsible person for the information. Everyone who is affected by these rules must complete a confidential financial statement. This statement will be on a form approved by the Department of Intitutions.

Rule II. ABILITY TO PAY. Once the level of care has been established and a financial assessment has been made by the Reimbursement Bureau, the ability to pay of the person or financially responsible person will be established by the Department. That ability to pay an amount will be submitted on a monthly bill to the patient or financially responsible persons. If the patient or financially responsible person is dissatisfied with the determination of the Reimbursement Bureau, they may appeal the assessment pursuant to Rule S530.

Rule III. PROCEDURE TO OBTAIN FINANCIAL INFORMATION If the Reimbursement Bureau finds that an individual or financially responsible person is failing to give adequate financial information, the bureau may use the following procedure to obtain this information: (1) a personal representative of the Reimbursement Bureau will contact the patient or his financially responsible person for an interview at which time it will be explained to the individual what information is needed and why it is necessary.

(2) If that initial interview does not accomplish the results intended by the Reimbursement Bureau, a formal letter from the Reimbursement Office in Helena will be sent to the patient or financially responsible persons requesting needed information. It will be stated that this information must be submitted to the Reimbursement Bureau

within 10 working days.

(3) If after 10 working days, the above information is not received by the Reimbursement Bureau, a demand letter will be made on the patient or financially responsible person by the legal counsel of the Department of Institutions requesting the information and explaining that if the information is not forthcoming a subpoena issued by the Department will be requested. The information is to be returned with any necessary documents to the legal counsel of the Department of Institutions within 15 working days after receipt of the request.

(4) If after 15 working days, the legal counsel has not received the information necessary, he will submit the report together with justification to the Director of the Department, explaining the problem and requesting that the Director issue a subpoena. If it appears to the satisfaction of the director that there is reasonable cause for the subpoena issued, he shall issue the subpoena under his signature and with the seal of the Department to the individual from whom the Sheriff of the County where the patient or financially responsible persons resides at the time the subpoena is issued. The subpoena shall direct the individual who is named on it to appear at a designated place and time which will be listed on the subpoena together with what necessary documents, papers, records, etc. that are stated on the subpoena.

The Director of the Department shall appoint a person to act as a hearings officer to appear at the time set for appearance on the subpoena. This hearings officer shall be empowered to administer an oath, swear in the necessary party or financially responsible person, take testimony, which shall be transcribed, ask questions, examine documents and request copies of any document.

If the patient or financially responsible person refuses to appear pursuant to the subpoena, or refuses at the hearing to cooperate with the hearings officer, the hearings officer shall submit a written report to the Director of the Department.

Within five working days after receipt of the report, the Director of the Department may petition the District Court where the patient or financially responsible person is residing to order a hearing to show cause why the subpoena was not obeyed.

Rule IV. APPEALS PROCEDURE. If the patient or financially responsible person disagrees with the determination of the Reimbursement Bureau as to the ability to pay, that person has an option of deciding a formal or informal appeal. If the person elects the formal appeal to the Board of Institutions, pursuant to Rule III. If the person elects the informal appeal process, within 10 working days after receipt of the determination of the ability to pay, he may make a request in writing of the Reimbursement Bureau in Helena for a conference. The aggrieved party and the Reimbursement Bureau will set a time and place for this conference and the aggrieved party will submit any new evidence, matters or things that he feels is necessary to justify a redetermination. At the conclusion of that conference, the Reimbursement Bureau will submit a written redetermination to the aggrieved party within five working days after the conference. If the aggrieved party is still dissatisfied with the redetermination, they may

elect the formal appeals process and appeal to the Board of Institutions within 30 days.

Rule V. FORMAL APPEALS. (1) The appeal must be in writing to the Board of Institutions, addressed to Chairman, Board of Institutions 1539 11th Avenue, Helena, Montana 59601. This appeal must be filed within 30 days after the aggrieved party has received the written decision of the Director of the Department. At the time the appeal is filed, the aggrieved party must state in writing he reasons for the appeal and the intended relief that they wish to receive. At any time during these procedures, the aggrieved party may be represented by counsel at his own expense.

(2) Upon receipt of the notice of appeal, the chairman of the Board of Institutions will ask the Director of the Department of the aggrieved party if they wish to have any discovery process. If either party requests discovery, the chairman of the Board of Institutions will designate a period of time in which discovery is to take place and be completed. By discovery it is meant the use of written interrogatories and/or depositions, production of documents etc. All means of discovery pursuant to the Montana Rules of Civil Procedure concerning discovery. At the conclusion of discovery, the matter will be deemed at issue and the chairman of the Board of Institutions will confer with the board to decide whether or not the full board will hear the hearing, or whether a Hearings Examiner will be appointed. When it is decided by the board whether to hear the matter itself or appoint a Hearings Examiner, the board will then set a date for the hearing and if need be, name a Hearings Examiner. At the time set for the hearing, the Board or the Hearings Examiner will conduct the hearing in accordance with the Montana Rules of Evidence. At the conclusion of the hearing, the Board of Institutions or the Hearings Examiner may request Proposed Findings of Fact and Conclusions of Law and supporting memorandum from the parties. The time for submission from these proposed Findings of Fact and Conclusions of Law and supporting memorandums will be set by the Chairman of the Board of Institutions or the Hearings Examiner. When all matters have been submitted to the Hearings Examiner, he will write his Proposed Findings of Fact and Conclusions of Law and submit them to the Board for adoption, or the Board may proceed to hear and decide the matter on its own merits.

Rule VI. RETROACTIVE BILLING (1) If in the process of annually reviewing a residents or financially responsible person's ability to pay, it is determined that material misrepresentation of financial information was disclosed on a previous financial statement which if honestly represented would have resulted in a higher ability to pay determination, a retroactive billing based on the adjusted increased ability to pay would result.

(2) If a new determination results in a retroactive reduction of a prior ability to pay determination, and a refund or reduction of the liability exists, a refund request will be initiated, complete with a corrected statement sent to the appropriate party.

(3) If a billing error occurs, resulting in receipts which exceed the cost of care, or if combined payments from more than one payor are

initiated with the appropriate party or intermediary listed as designated recipient.

Rule VII. PROCEDURE FOR FAILURE TO PAY. If any patient or financially responsible person fails to pay the assessment made by the Reimbursement Bureau, the Bureau will institute the bad debt collection proceedings pursuant to the rules of the Department of Revenue for the collection of bad debts for state agencies.

RATIONALE STATEMENT

4. The reasons and rationale for these rules is based upon the new statutory requirement that the Department write rules on behalf of the Reimbursement Bureau. These rules are designed to give the public awareness of the requirements of the Reimbursement Law, the procedures that will need to be followed concerning the submission of financial information, the imposition of the financial responsibility and the means for collection of the accounts. Any disagreements or disputes with the Reimbursement Bureau may be appealed by the procedures outlined herein.

5. Interested persons may present their data, view or arguments in writing. Written statements may be submitted to the Department prior to November 14, 1977. Any written statement or questions can be made to Nancy Schwend, Reimbursement Bureau, Department of Institutions, 1539 11th Avenue, Helena, Montana 59601, phone 449-3990.

6. The authority of the Department to make the proposed adoption of rules is based on Sections 80-1601 through 80-1607, R.C.M., 1947.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State 13, October 1977.

BEFORE THE DEPARTMENT OF INSTITUTIONS
OF THE STATE OF MONTANA

In the matter of the Proposed Adoption of Rules for the Admission of Persons to Continuing Care Facilities of the Department of Institutions	)))))	NOTICE OF PROPOSED ADOPTION OF RULES NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after November 14, 1977, the Department of Institutions proposes rules for the admission of persons to continuing care facilities of the Department of Institutions.

2. The proposed rules do not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rules read as follows:

Rule I. DEFINITION OF TERMS

(1) "Department" shall mean the Department of Institutions of the the State of Montana.

(2) "Continuing Care Patient" shall mean a person who does not require the intensity of care provided by a psychiatrict hospital, but who has been determined to be incapable of living independently.

(3) "Continuing Care Facility" shall be the Montana Center for the Aged, Galen State Hospital, and any other facility operated or constructed by the Department of Institutions and designated for such care.

(4) "Applicant" shall mean a person seeking admission to a continuing care facility.

(5) "Mental Health Patient" shall mean any current patient in a mental health facility during the 24 months prior to the date of applying for admission to a continuing care facility.

(6) "Mental Health Professional" shall be a licensed psychiatrist or psychologist.

Rule II. ELIGIBILITY FOR ADMISSION TO A CONTINUING CARE FACILITY

To be considered for admission to a Continuing Care Facility, an applicant shall be a mental health patient and meet the following criteria:

(1) Must be in need of continuing care services not available in the community.

(2) Must be referred by either a mental health facility or by a licensed mental health professional.

Rule III. APPLICATION FOR ADMISSION Application for admission to a continuing care facility will be submitted by the Mental Health facility or licensed mental professional to the continuing care facility staff for evaluation as to the appropriateness of referral. Notification of acceptance or rejection will be provided applicants via the referring facility or professional within two weeks of receipt of application.

RATIONALE STATEMENT

4. It has been the policy of the State Department of Institutions to provide facilities for persons requiring long term custodial care. Long term care has been provided by the Department of Institutions which was primarily custodial in nature. In the past, admission to state institutions for purpose of custodial care has taken place through the commitment process for the mentally ill. In the past continuing custodial care has been provided at the following institutions: Warm Springs State Hospital, Galen State Hospital, and the Montana Center for the Aged. Changes in the laws governing the commitment of the mentally ill persons to institutions (Chapters 12 and 13 of Title 38, R.C.M. 1947) make inappropriate the use of the commitment law to admit persons to long term care institutions. The Department of Institutions has facilities and has been appropriated funds to provide long term care services. Title 80, Chapter 24, R.C.M. 1947, directs the Department of Institutions to construct "nursing homes," for persons requiring continuing care and to adopt rules governing the admission of persons to these facilities.

5. Interested persons may present their data, view or arguments in writing. Written statements may be submitted to the Department prior to November 14,1977. Any written statement or questions can be made to Ron Phelps, Director's Office Staff, 1539 Eleventh Avenue, Helena, Montana 59601, phone 449-3930.

6. The authority of the Department to make the proposed adoption of rules is based on Sections 80-2413 and 80-2414, R.C.M., 1947.

LAWRENCE M. ZANTO, Director
Department of Institutions

Certified to the Secretary of State 13, October 1977.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 24-3.8(14)-S8090 SPECIFYING THE PERIOD IN WHICH A DECERTIFICATION PETITION MAY BE FILED	NOTICE OF PROPOSED AMENDMENT OF RULE 24-3.8(14)-S8090 (Petition for Decertification) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 23, 1977, the Board of Personnel Appeals proposes to amend Rule 24-3.8(14)-S8090, which now allows for the decertification of a bargaining unit comprised of school employees to be filed not more than ninety (90) days before, and not less than sixty (60) days before April 1 of the year the employees are seeking decertification.

2. The amended rule would clarify that this board intended the traditional contract bar to apply to teacher decertification as well as other decertifications. The rule as amended would read as follows (New matter is underlined):

"Rule 24-3.8(14)-S8090. Petition for Decertification
(1) Filing. (a) A petition for decertification of an exclusive representative shall be filed by an employee, a group of employees, or a labor organization, provided that twelve (12) months have elapsed since the last election.
(b) The petition must be filed not more than ninety (90) days before, and not less than sixty (60) days before the termination date of the previous collective bargaining agreement, or upon the terminal date thereof.
(c) A petition seeking decertification of a bargaining unit comprised of school employees, may only be filed not more than ninety (90) days before and not less than sixty (60) days before April 1 of the year the current collective bargaining agreement is scheduled to terminate or upon the terminal date of the current collective bargaining agreement.
(d) The original petition shall be signed by the petitioner(s) or their authorized representative.
(e) The original petition and five (5) copies of the petition shall be filed with the Board.
(f) The petition shall contain:
(i) The name and address of petitioner(s).
(ii) A statement that the labor organization that has been certified or is currently being recognized

by the employer as bargaining representative no longer represents the interests of the majority of the employees in the unit.

(iii) The name of the labor organization, if any, which claims to be the majority representative.

(iv) A description of the bargaining unit involved and the approximate number of employees.

(v) Any other relevant facts.

(g) The petition shall be accompanied by proof, consisting of authorization cards, or copies thereof, which have been individually signed and dated within six (6) months prior to the filing of the petition that thirty percent (30%) of the employees in the unit do not desire to be represented by the existing exclusive representative.

(h) The Board shall serve a copy of the petition upon the labor organization(s) concerned, and upon the public employer.

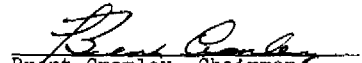
3. The Board of Personnel Appeals proposes the change because the existing language of the rule does not make it clear that the contract bar rule applies to teacher decertifications.

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, MT 59601. Written comments in order to be considered must be received by not later than November 21, 1977.

5. If a person directly affected desires to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Painter on or before November 21, 1977.

6. If the Board receives request for a public hearing on a proposed rule amendment from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the Board to make the proposed rule is based on section 59-1613 (4), R.C.M. 1947.



Brent Cromley, Chairman
Board of Personnel Appeals

Certified to the Secretary of State October 13, 1977.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 24-3.8B(10)-S8710 SPECIFYING THE FORMAL APPEALS PROCEDURE FOR CLASSIFICATION APPEALS	) NOTICE OF PROPOSED AMENDMENT) OF RULE 24-3.8B(10)-S8710) (Formal Appeals Procedure) for Classification Appeals)) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 23, 1977, the Board of Personnel Appeals proposes to amend Rule 24-3.8B(10)-S8710, which now provides that a preliminary investigation will be conducted by this board in all classification appeals filed with this board.

2. The amended rule would make the preliminary investigation to be conducted at the discretion of the board. The rule as amended would read as follows (new matter underlined):

24-3.8B(10)-S8710 FORMAL APPEALS PROCEDURE.

(1) Step One. Any employee, group of employees, or appropriately designated representatives, may utilize the formal appeals procedure. The individual employee must obtain a State Employees Classification and Wage Appeal Form BPA-C(1) and follow the accompanying instructions. In the case of a group appeal, a group of employees must comply with the rules governing group appeals (sub-chapter 6, 24-3.8B(6)-S8650). Forms may be obtained from the Board of Personnel Appeals, P.O. Box 202, Capitol Station, Helena, Montana, or from the personnel offices of all departments within the executive branch.

(a) The appropriate form when completed shall be submitted to the immediate supervisor.

(b) The immediate supervisor shall have three (3) working days to examine the appeal, record his or her findings, and return the form to the employee.

(c) The employee shall have two (2) working days to forward the evaluation and findings of the immediate supervisor to step 2.

(2) Step Two.

(a) If the employee chooses to continue the appeal, the employee shall submit the form with all appropriate sections completed to the department head for review.

(b) The department head shall have five (5) working days to review the appeal, record findings in the appropriate sections of the form, and return it to the employee.

(c) The employee shall have three (3) working days to forward the evaluation and findings of the department head to step 3.

(3) Step Three.

(a) If the employee chooses to continue the appeal, the employee, shall submit the form, all appropriate sections completed to the personnel division for review.

(b) The personnel division shall have thirty (30) working days to review the matter, record its findings in the appropriate section of the form, and to issue its recommended adjustment and return it to the employee or the proper representative.

(c) If the employee accepts the personnel division's findings and recommendation, the formal appeals procedure is concluded upon the implementation of the personnel division's findings and recommendations.

(d) The employee shall have five (5) working days to forward the appeal to the board for resolution.

(4) Step Four.

(a) If the employee rejects the personnel division's findings and recommendation, the employee shall submit the form, BPA-C(1), with all appropriate sections completed, to the board.

(b) If in the board's discretion it decides to conduct a preliminary investigation in the appeal, it shall have 20 days to do so. The Board may carry out any investigations deemed necessary for resolution of the appeal or complaint. The employee or group of employees and the personnel division shall have 10 days to accept or reject the preliminary decision. If the employee or group of employees and the personnel division accept the preliminary decision, it shall be final and binding. The board shall then implement the preliminary decision by instructing the personnel division to remedy the situation.

(c) If the employee, group of employees, or the personnel division reject the preliminary decision or the board in its discretion decides not to conduct a preliminary investigation, the board or an agent appointed by the board shall conduct a hearing in accordance with title 82, chapter 42, R.C.M. 1947.

3. The Board of Personnel Appeals proposes the change because in the opinion of this board the preliminary investigation no longer serves a useful function in most situations. That is, the appeals that are now being filed with this board are generally not those which resulted in initial misclassification, but involve more complicated fact situations which can be dealt with sufficiently only in a formal hearing. For that reason this board desires to make the preliminary investigation discretionary with this board allowing this board to determine when to conduct a preliminary investigation. All parties still maintain their right to a formal hearing as was the case prior to this proposed amendment.

4. Interested parties may submit their data, views, or

4. Interested parties may submit their data, views, or arguments concerning the proposed amendment in writing to Jerry L. Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, Montana 59601. Written comments, in order to be considered, must be received by not later than November 21, 1977.

5. If a person directly affected desires to express his data, views, or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Painter on or before November 21, 1977.

6. If the board receives requests for a public hearing on a proposed rule amendment from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the board to make the proposed rule is based on section 82A-1014, R.C.M. 1947.

Brent Cromley, Chairman
Board of Personnel Appeals

Certified to the Secretary of State October 13, 1977.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

IN THE MATTER OF THE ADOPTION OF NEW RULES SPECIFYING THE PROCEDURE TO FILE A DEPARTMENT OF FISH AND GAME PERSONNEL GRIEVANCE	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES (Fish and Game Grievances)

TO: All Interested Persons

1. On November 22, 1977, at 10:00 a.m., a public hearing will be held in the highway auditorium, Scott Hart Building, Sixth and Roberts, Helena, Montana, to consider the adoption of rules establishing a grievance procedure for department of fish and game employees.

2. The proposed rule does not replace or modify any section currently found in the Administrative Rules of Montana.

3. The proposed rules are as follows:

Chapter I
Organization

(1) ORGANIZATION OF BOARD OF PERSONNEL APPEALS. (1) The Board of Personnel Appeals of the Department of Labor and Industry herein adopts and incorporates the organizational structure of the Board of Personnel Appeals as it has been set out and explained in Chapter 1 of Title 24, Administrative Rules of Montana.

(2) BOARD MEETINGS, QUORUM. (1) The Board of Personnel Appeals shall meet upon the call of the Chairman or at the written request of three members at a time and place designated by the chairman or members calling the meeting.

(2) A majority of the membership constitutes a quorum to do business. A contested case may be heard only by the entire board, a nonmember agent designated by the board, or by three members of the board, with at least one member representing management, and one member representing employees or employee organizations.

(3) The board shall select a member or an agent to act as administrator of the board.

Chapter II
Adoption of Attorney General Rules

(3) ADOPTION OF ATTORNEY GENERAL MODEL RULES: Pursuant to the authority vested in the Board of Personnel Appeals of the Department of Labor and Industry, this board adopts the model rules proposed by the attorney general as adopted by the Department of Labor and Industry.

Chapter III
Uniform Procedural Rules

(4) BOARD ADDRESS. All requests, petitions, and other correspondence to the board should be addressed to the Board of Personnel Appeals, Box 202,Capitol Station, Helena, MT 59601.

(5) SERVICE OF PROCESS. All service and computation of time in proceedings before this board shall be bound by the Montana Rules of Civil Procedure.

(6) INTERVENTION. Any state employee, group of state employees, employee representative, or public employer may be permitted to intervene by serving a motion to intervene upon the parties and the board. The motion shall be accompanied by affidavit(s) establishing a basis for intervention. The board shall determine the validity of the basis for intervention.

(7) AMENDING PETITIONS. Any petition may be amended, in whole or in part, by the petitioner or the board, or withdrawn by the petitioner at any time prior to the casting of the first ballot in an election, or prior to the closing of a case, upon such conditions as the board considers proper and just.

(8) CONTESTED CASES, DEFAULT ORDER WHEN PARTY FAILS TO APPEAR AT HEARING. When a notice of a hearing has been given, but a party fails to appear at the time specified for that hearing, the Board of Personnel Appeals shall enter an order at that time, stating the evidence before it supporting the board's action. If the defaulting party is able to show good cause for his absence, the order will be vacated and a new hearing date set.

(9) MOTIONS. All motions other than those made during a hearing shall be made in writing and submitted to the board. They shall briefly state the relief sought, and shall be accompanied

by affidavits setting forth the grounds upon which they are based. The moving party shall serve a copy of all motions on all other parties and shall file with the board the original with proof of service. Answering affidavits, if any, must be served on all parties and the original thereof, together with proof of service, shall be filed with the board within five days after service of the moving papers, unless the board directs otherwise. The board may decide to hear oral argument or testimony thereon.

(10) HEARINGS. (1) The board shall conduct its hearings in accordance with the appropriate provisions of the Administrative Procedure Act. (2) If a member of the board or an examiner appointed by the board presides over the hearing, the member, or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding findings of fact, conclusions of law and recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board. (3) If the board presides over the hearing, the board shall cause to be served on the parties to the proceeding a final order.

(11) SEVERABILITY. (1) If any one of these rules is held to be invalid it shall not invalidate any other rule.

(12) SUSPENSION. (1) At the discretion of the board, these rules may be waived or suspended at any time in any proceeding unless such action results in depriving a party of substantial rights.

(13) EXTENSION OR WAIVER OF TIME LIMITS. (1) Time limits provided for in these rules may be waived or extended as follows:

(a) by written agreement between the parties, subject to final approval of the board; or

(b) by motion to the board, subject to the granting of the motion by the board.

Chapter IV
Fish and Game Grievance Procedure

(14) PURPOSE. The purpose of these rules is to provide all employees of the Montana department of fish and game with a procedure to file and process personnel grievances.

(15) DEFINITIONS: (1) "Employee" means any person employed in the Montana department of fish and game.
(2) "Employee grievance" means an employee's dissatisfaction concerning a serious matter of his employment based upon working conditions, supervision, or the result of administrative action except those arising from the operation of title 59, chapter 9, statewide classification and pay plan.
(3) "Board" means the Board of Personnel Appeals or its designated agent.
(4) "Department head" means the director of the department of fish and game.
(5) "Department" means the Montana department of fish and game.

(16) GRIEVANCE PROCEDURE. (1) If after exhausting the internal grievance procedure as provided by the personnel policies of the department an employee does not believe that his grievance based upon work conditions, supervision, or the result of an administrative action has been resolved to his satisfaction, the employee may file a formal grievance with this board.
(2) To file a grievance with this board the employee shall file with this board a letter with the following information:

(a) the employee's name,
(b) the employee's position classification,
(c) which division and bureau the employee works for,
(d) a statement of what the nature of the grievance is, and
(e) a statement of how the internal grievance procedure has been followed.

(3) Upon receipt of the letter from the employee, this board shall serve a copy of the letter on the department and a summons directing the department to submit to this board a position paper on the grievance within 10 days after the service of the letter, accompanied by certificate of

service certifying that a copy of the position paper has been served on the grievant.
(4) After the 10 days have elapsed from the date of service of the letter, the board may set the matter for hearing.

(17) FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION. (1) If the department directly or indirectly interferes, restrains, coerces, or retaliates against an employee because the employee has filed or attempted to file a grievance with the board, the employee shall be entitled to file a complaint with the board.
(2) The complaint shall be in writing and shall contain a clear and concise statement of facts constituting the alleged interference, restraint, coercion, or retaliation.
(3) The board shall serve the complaint upon the department and the department shall have 10 days from the date of service of the complaint upon it to respond to the complaint. The response shall be filed with this board accompanied by a certificate certifying that the complainant has been served with a copy of the response.
(4) After the 10 days have elapsed from the date of service of the complaint, the board may set the matter for hearing.

4. Section 26-109.1 gives the department of administration the duty to appoint an appeals board to hear grievances of an employee of the department of fish and game aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, after he has exhausted all administrative remedies within the department. The department of administration has appointed this board. This board is mandated by that appointment to prescribe a grievance procedure. These rules are in compliance with that directive. Rules 1 through 13 are the uniform rules of this board which this board is attempting to adopt for all of its programs which it administers. Rules 14 through 17 are those rules which specifically apply to fish and game department grievances. Since section 26-109.1 requires that an employee exhaust all of the administrative remedies available to him within the department, and since the administrative regulations of the department requires that an employee go from his immediate supervisor through the department director in attempting to remedy his grievance, this board's proposed grievance procedure calls for setting the matter for hearing without

any further preliminaries. Any procedural step before the actual hearing would seem a repetition of what the employee was already required to do.

The board's proposed rule 17 provides a procedure for filing a complaint with this board based on direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department against an aggrieved employee because the employee has filed or attempted to file a grievance with this board, as is required by section 26-109.1 (2).

5. Interested persons may present their data, views, or arguments, whether orally or in writing, at the hearing. Presentation of written material to the board in advance of the hearing would be appreciated. Written material may be presented to the board for consideration up to and including November 22, 1977.

6. Jerry Painter, staff attorney for the board, has been designated by the board chairman to preside over and conduct the hearing.

7. The authority of the board to promulgate the rule is based on section 26-109.1, R.C.M. 1947.

Brent Cromley, Chairman
Board of Personnel Appeals

Certified to the Secretary of State on October 13, 1977.

BEFORE THE DEPARTMENT OF LABOR
AND INDUSTRY, BOARD OF PERSONNEL APPEALS
OF THE STATE OF MONTANA

IN THE MATTER OF THE REPEAL OF ARM 24-3.8(10)-S8083 (9), ARM 24-3.8(10)-S8086 (10), ARM 24-3.8(10)-S8089 (11)	))))	NOTICE OF REPEAL OF RULES ARM 24-3.8(10)-S8083 (9), ARM 24-3.8(10)-S8086 (10), ARM 24-3.8 (10)-S8089 (11), NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or about December 2, 1977, The Board of Personnel Appeals proposes to repeal Rules ARM 24-3.8(10)-S8083 (9), ARM 24-3.8(10)-S8086 (10), and ARM 24-3.8(10)-S8089 (11), the rules which presently set out the procedural steps for filing a petition for unit clarification or modification with this Board.

2. The rules for consideration for repeal are found on pages 24-28.16 through 24-28.17 of the Administrative Rules of Montana.

3. This Board proposes to substitute the rule proposed in ARM Notice No. 24-3-8-22 for the existing rules. The rationale for this substitution is set out in the above referenced ARM Notice.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal in writing to Jerry Painter, Staff Attorney, Board of Personnel Appeals, Box 202, Capitol Station, Helena, MT 59601. Written comments in order to be considered must be received by not later than November 25, 1977.

5. If a person directly affected wishes to express his data, views, and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Painter on or before November 25, 1977.

6. If the Board receives requests for a public hearing on the proposed rules repeal from twenty-five or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the Board to repeal the rules is based on section 59-1613(4), R.C.M. 1947.

Brent Cromley, Chairman
Board of Personnel Appeals

Certified to the Secretary of State October 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding disqualification upon separation.	)))))	NOTICE OF PROPOSED ADOPTION OF RULE (Disqualification Upon Separation) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule 24-3.10(10)-S10100 which provides as follows:

MAC 24-3.10(10)-S10100 DISQUALIFICATION UPON SEPARATION

(1) Any claimant who has terminated any employment within three weeks of the date of his claim of eligibility under conditions which would impose disqualification under Section 87-106 shall be subject to such disqualification even though he has performed services in other employment within said three-week period.

(a) If more than one separation within the three-week period would be disqualifying, no more than one disqualification will be applied.

2. Although this rule was repealed because the charge-back provision was no longer in use, this rule would be in order in cases where a claimant was separated under disqualifying circumstances and obtained very short-term employment before filing his claim.

3. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than November 25, 1977.

4. If a person directly affected wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before November 25, 1977.

5. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

6. The authority of the division to amend the proposed rule is based on Section 87-121, R.C.M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State October 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of a rule regarding the definition of an independent contractor.	))))	NOTICE OF PROPOSED ADOPTION OF RULE (Independent Contractor) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1977, the Employment Security Division, Department of Labor and Industry, proposes to adopt Rule 24-3.10(26)-S10465 which provides as follows:

MAC 24-3.10(26)-S10465 DEFINITION OF INDEPENDENT CONTRACTOR

(1) In conjunction with Section 87-148(j)(5) of the Unemployment Compensation Law, work which will not be considered employment is further defined as:

(a) An individual holds himself out as a contractor, and when necessary, employs one or more individuals to assist in the actual performance of services, and;

(i) The individual customarily is engaged in an independently-established business of the same nature as that involved in the contract of service; and

(ii) The individual customarily has two or more effective contracts; and

(iii) The individual as a normal business practice, utilizes separate telephone service, business cards, and engages in such commercial advertising as is customary in operating similar businesses; and

(iv) The individual furnishes substantially all of the equipment, tools, and supplies necessary in carrying out his contractual obligations to his clients.

2. The reason for the proposed rule is to more clearly define an independent contractor.

3. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than November 25, 1977.

4. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before November 25, 1977.

5. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

6. The authority of the division to adopt the proposed rule is based on Section 87-121, R. C. M. 1947.

Fred Barrett

Fred Barrett, Administrator

Certified to the Secretary of State October 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the repeal of Rule 24-3.10(30)-S10470 pertaining to Board and Room	))))	NOTICE OF PROPOSED REPEAL OF RULE (Board and Room) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1977, the Employment Security Division, Department of Labor and Industry, proposes to repeal Rule 24-3.10(30)-S10470 pertaining to Board and Room.

2. This rule for consideration for repeal is found on page 24-55 of the Montana Administrative Code.

3. The reason for the repealing of this rule is that the matter is sufficiently covered in the law so that this rule is no longer necessary.

4. Interested parties may submit their data, views or arguments concerning the proposed repealing of this rule in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than November 25, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Mr. Brickett on or before November 25, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R.C.M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State October 13, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(34)-S10570 pertaining to copies of statutes and regulations.	))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Statutes and Regulations) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On November 28, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend Rule 24-3.10(34)-S10570 as follows (new matter is underlined):

MAC 24-3.10(34)-S10570 COPIES OF STATUTES AND REGULATIONS

Any member of the public may obtain a copy of the statutes and regulations governing the operation of the Employment Security Division at cost by writing to the Administrator, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Copies of such statutes and regulations will be made available for public examination at the local offices of the Division located at the following cities and towns in Montana: Anaconda, Billings, Bozeman, Butte, Cut Bank, Dillon, Glasgow, Glendive, Great Falls, Hamilton, Havre, Helena, Kalispell, Lewistown, Libby, Livingston, Miles City, Missoula, Polson, Shelby, Sidney, Thompson Falls, and Wolf Point.

2. The proposed amendment modifies Rule 24-3.10(34)-S10570 found on page 24-56.2 of the Montana Administrative Code.

3. The reason for this amendment is to include the Dillon local office which was inadvertently omitted when the rule was adopted effective January 2, 1977.

4. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to Moody Brickett, Attorney, Employment Security Division, P. O. Box 1728, Helena, Montana, 59601. Written comments in order to be considered must be received no later than November 25, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public

hearing and submit this request along with any written comments he has to Mr. Brickett on or before November 25, 1977.

6. If the division receives requests for a public hearing on the proposed rule from ten percent (10%) or more persons directly affected, a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the division to amend the proposed rule is based on Section 87-121, R.C.M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State October 13, 1977.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of ARM Rules 32-2.6C(1)-S600 and 32-2.6C(1)-S610 relating to fee charges at the department's animal diagnostic laboratory.	NOTICE OF PROPOSED AMENDMENT OF RULES 32-2.6C(1)-S600 and 32-2.6C(1)-S610 (Laboratory Fee Charges) NO PUBLIC HEARING CONTEMPLATED

TO: ALL INTERESTED PERSONS

1. On or after November 23, 1977 the Board of Livestock proposes to amend Administrative Rules of Montana 32-2.6C(1)-S600 and 32-2.6C(1)-S610 relating to feescharged at the diagnostic laboratory.

2. The proposed amendments (a) eliminate the current $4.00 Accession Fee charged for each submission of specimans for analysis, (b) add water quality testing, toxicological and chemistry analysis to the procedures for which a fee will be charged if no active livestock disease problem is under investigation, and (c) clarify that for procedures able to be performed by the veterinarian in his own office a charge will be made. No changes in existing feesare made except those relating to toxilogical procedures on animals other than livestock. As proposed to be amended the rules read as follows (matter to be stricken is interlined, new matter underlined):

32-2.6C(1)-S600 DEFINITIONS In this sub-chapter (1) "Livestock" means cattle, horses, sheep, swine, goats, mules, or poultry, regardless of age, sex, or breed;

(2) "Out-of-state livestock" means livestock not subject to the special levies funding the Department of Livestock because of not being domiciled in the state on tax assessment dates;

(3) "Laboratory" means the diagnostic laboratory facility operated by the Department of Livestock at Bozeman;

(4) "Specimen" means any portion, or all, of an animal or any of its waste products or by-products submitted to the laboratory for test or other procedures.

~~(5) "Accession charge" means a charge imposed on the submission of specimens to defray handling costs, whether the submission contains one or more specimens.~~

32-2.6C(1)-S610 PROCEDURES FOR WHICH FEES WILL BE CHARGED (1) Procedures on livestock which are requested in order to qualify the livestock for show, sale, shipment across state or international lines, ~~or~~ artifical insemination ~~practices~~ purposes, or procedures which are within the capability of the submitting veterinarian to perform at his own facilities will be charged at the following rates.

	In-state Livestock	Out-of-state Livestock
~~(a) Accession Fee~~	$ ~~4.00~~	$ ~~4.00~~
~~(b)~~ (a) Serological Procedures		
(i) Brucellosis-plate	.50	.50
(ii) Anaplasmosis CF	.75	1.50
(iii) Bluetongue CF	.75	1.50
(iv) Leptospirosis MA	2.00	4.00
(v) Bovine Virus Diarrhea (BVD) SN	3.00	6.00
(vi) Infectious Bovine Rhinotracheitis (IBR) SN	2.00	4.00
(vii) Para-influenza (PI_3) SN	3.00	3.00
(viii) Pseudorabies SN	3.00	6.00
(ix) Coggins Test (EIA) AGID	6.00	12.00
~~(c)~~ (b) Culture Procedures		
(i) Trichomoniasis	5.00	10.00
(ii) Vibrio	7.50	15.00
(iii) Leptospriosis	5.00	10.00
~~(d)~~ (c) Hemotology		
(i) Bendixen EBC	5.00	10.00
~~(e)~~ (d) Histological		
(i) Vas defern (Gomer vasectomized bulls)	5.00	10.00
(e) Parasitology		
(i) Fecal flotation	3.00	6.00
(ii) Blood smear	2.50	5.00
~~(f) There is no accession fee on the following procedures.~~		
~~(i) Coggins Test (EIA)~~	~~6.00~~	~~12.00~~

(2) Procedures on all animals other than livestock will be charged at the following rates:

~~(a) Assession Fee~~	$ ~~5.00~~

~~This is a minimum charge. The first five dollars worth of procedures will be performed at no cost additional to the accession fee.~~

~~(b)~~ (a) Necropsy	
(i) Dogs, Cats	$ 5.00
(ii) Birds, Small Mamals	3.00
~~(c)~~ (b)	
(i) Culture only	5.00
(ii) Sensitivity additional	2.50
~~(d)~~ (c) Virology	
(i) Isolation	5.00
~~(e)~~ (d) Mycology	
(i) Culture	4.00
~~(f)~~ (e) Serology	
(i) Leptospirosis, Brucellosis, etc.	4.00

~~(g)~~ (f) Parasitology
(i) Fecal Flotation $ 3.00
(ii) Blood Smears 2.50
~~(h)~~ (g) Clinical Pathology
(i) CBC 6.00

~~(i)~~ (h) Histopathology
(i) Per Tissue or Tumor 5.00
(ii) Additional staining or Section 5.00 per slide
(iii) Serial or Multiple Sections up to 25.00

~~(j)~~ (i) Toxological procedures will be changed according to the schedules shown in subsection (5) of this rule.
~~(i) Chemicals-Heavy-Metals,-etc.~~ ~~5.00~~

(j) Blood Chemistry
(i) Serum Calcium 7.00
(ii) Serum Phosphorus 6.00
(iii) Serum Magnesium 7.00
(iv) Serum Sodium 7.00
(v) Serum Potassium 7.00
(vi) Total Serum Protein 7.00
(vii) Urea Nitrogen in Serum (BUN) 6.00
(viii) Bromsulphalein Retention 7.00

There will be no charge imposed for any rabies test.

(3) Tests or procedures involving food quality, herd quality, or performance testing, not mentioned in subsections (1) or (2) of this rule, which are not required by any provision of Title 32 of this code may be subject to fee charges at the discretion or the Board of Livestock. Such fees shall not exceed $10.00 ~~$5.00~~ per speciman ~~in addition to the accession charge~~.

(4) Water sample analysis
(a) Total dissolved solids (TDS) and nitrates $10.00

This charge will not be imposed if the analysis is required in the investigation of an existing livestock disease problem.

(b) Further analysis of water samples will involve additional charges as follows:
(i) Sulphates (SO_4) 16.00
(ii) Magnessium (Mg) 7.00
(iii) Sodium (Na) 7.00
(iv) Calcium (Ca) 7.00
(v) Copper 7.00
(vi) Iron 7.00
(vii) Zinc 7.00
(viii) Arsenic 16.00
(ix) Lead 14.00
(x) Mercury 15.00

(xi)	Selenium	$ 16.00
(xii)	Fluorine (dissolved)	15.00

In the event that TDS and nitrate analysis does not reveal useful information in a disease investigation the laboratory may at its option pursue further analysis and may waive charges for such further analysis.

(5) Toxicological procedures will be charged at the following rates, unless the procedure involves an active disease investigation on livestock.

(a)	Plant and feed-related toxicants	
(i)	Arsanilic acid	$ 30.00
(ii)	Crude protein from non-protein nitrogen (NPN)	7.00
(iii)	Salt	8.00
(iv)	Fluorine	15.00
(v)	Cyanide	10.00
(vi)	Nitrate	3.00
(vii)	Ergot	3.00
(b)	Metals	
(i)	Arsenic	16.00
(ii)	Cobalt	15.00
(iii)	Cadmium	22.00
(iv)	Copper	7.00
(v)	Lead	14.00
(vi)	Mercury	13.00
(vii)	Molybdenum	7.00
(viii)	Iron	7.00
(ix)	Zinc	7.00
(c)	Other toxicants	
(i)	Chlorinated insecticide	48.00
(ii)	Strychnine	15.00

(6) An incineration charge not to exceed $10.00 per animal may be imposed by the chief of the diagnostic laboratory bureau to defray costs of animal disposal."

(3) These amendments are proposed because (a) certain of these procedures are newly within the capability of the laboratory, and (b) the remaining procedures have frequently been performed in a context unrelated to active livestock disease control functions, and thus under legislative guidelines should be charged. The accession fee is being dropped because experience has shown that the costs covered by that fee are relatively insignificant.

(4) Interested parties may submit their data, views or arguments concerning the proposed amendments in writing to James W. Glosser, D.V.M., Administrator & State Veterinarian, Animal Health Division, Department of Livestock, Capitol Station, Helena, MT. 59601. Written comments must be received by November 23, 1977.

5. If a person directly affected wishes to express his data, views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to Dr. Glosser on or before November 23, 1977.

6. If the department receives requests for a public hearing from more than twenty five persons directly affected a public hearing will be held at a later date. Notification of parties will be made by publication in the Administrative Register.

7. The authority of the department to make the proposed rules is based on section 46-208, R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS, Chairman
Board of Livestock

Certified to the Secretary of State October 13, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF OSTEOPATHIC PHYSICIANS

IN THE MATTER of the Proposed Adoption of Rules Providing for Public Participation.	NOTICE OF PROPOSED Adoption of Rules Providing for Public Participation. No Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On November 23, 1977 the Board of Osteopathic Physicians proposes to adopt new rules providing for public participation.

2. The rules proposed for adoption have heretofore been adopted by the Department of Professional and Occupational Licensing and published in Title 40, Chapter 2, Sub-chapter 14 of the Montana Administrative Code. (See rule 40-2.2(14)-P 2400.

The Board by this Notice proposes to adopt a rule which incorporates the above mentioned rule of the department by reference, into the rules of the Board of Osteopathic Physicians.

3. Interested parties may submit their data, views or arguments concerning the proposed adoption in writing to the Board of Osteopathic Physicians, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than November 21, 1977.

4. If any person directly affected wishes to express his views and arguments orally or in writing at a public hearing, he must make written request for a public hearing and submit this request along with any written comments he has to the Board of Osteopathic Physicians, LaLonde Building, Helena, Montana, on or before November 21, 1977.

5. If the Board of Osteopathic Physicians receives requests for a public hearing on the proposed adoption from more than twenty-five (25) persons directly affected, a public hearing will be held at a later date. Notification of such will be made by publication in the Administrative Register.

6. The authority for the Board of Osteopathic Physicians to make the proposed adoption is based on Section 82-4228 R.C.M. 1947.

DATED THIS 13th DAY OF October, 1977.

BOARD OF OSTEOPATHIC PHYSICIANS
LESTER F. HOWARD, D.O.
CHAIRMAN

BY: Ed Carney
Ed Carney, Director, Dept. POL

Certified to Secretary of State 10-13, 1977.

NOTICE NO. 40-3-74-2

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of the general provisions and format instructions for rulemaking under the Montana Administrative Procedure Act	)))))	NOTICE OF PROPOSED AMENDMENT OF RULES 1-1.2(2)-S200 THROUGH 1-1.2(2)-S2050 (GENERAL PROVISIONS) AND ADOPTION OF NEW RULES NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 1, 1977, the Secretary of State proposes to amend each and every rule in Title 1, Chapter 2 of the Administrative Rules of Montana, as hereinafter set forth, and to adopt new rules in that chapter.

2. The proposed amendments would replace Rules 1-1.2(2)-S200 through 1-1.2(2)-S2050, currently found on pages 1-5 through 1-22 of the Administrative Rules of Montana, and would also replace the document entitled "THE MONTANA ADMINISTRATIVE CODE FORMAT AND INSTRUCTIONS FOR COMPLIANCE THEREWITH -- THIRD EDITION", currently incorporated by reference on p. 1-19 of the Administrative Rules of Montana.

3. The rationale for the proposed revision of the format and general provisions is that the changes are necessary to (a) incorporate amendments to MAPA enacted by Chapter 285, Laws of 1977 (House Bill 77), (b) reflect changes in the Attorney General's Model Rules currently under consideration, (c) implement the legislature's intent that the Administrative Rules of Montana be published in a simpler, more readable, and more easily maintained manner, and (d) set forth policies to facilitate the publication of a revised edition of the entire administrative code following recodification of the statutory law of Montana anticipated in 1979.

4. Since the format and general provisions are not substantive rules, a public hearing thereon is not required under 82-4204. However, the office of the Secretary of State will utilize the informal conference authorized by 82-4204(4) and will hold such a meeting to discuss the proposed changes on November 17, 1977, at 9:00 A.M., in Room 405 of the Capitol Building. In addition, interested persons may, until November 21, 1977, comment in writing on the proposed changes, addressing their comments to Leonard Larson, Room 202, Capitol Building, Helena, Montana 59601.

5. The authority of the Secretary of State to prescribe revisions in the format and general provisions for style and arrangement of rules is found in 82-4205(2), R.C.M. 1947.

6. The proposed revision would read as follows (matter to be stricken is interlined; new matter is underlined), or would revise rules in this chapter by renumbering them as "P" rules and by shortening their histories as proposed in the amendment to ARM 1-1.2(2)-P250.

1-1.2(1)-P200 PREFACE (1) Title 1 contains statements and rules which introduce and explain the code as a whole.

Chapter 1, the foreword, ~~is comprised of one rule which~~ states the authority for and general intent of the code, and the customary credits.

Chapter 2, General Provisions, gives instructions for use of the code as a reference source, format rules for drafters and typists, and for the procedures involved in keeping the code current.

Chapter 6 contains model rules of organization and procedure as drafted by the attorney general of the state of Montana. These rules have been suggested to the agencies as a guide for fulfilling the requirements of the act with regard to the statement of rules of organization and procedure. The agencies have had the option of adopting the model rules in whole or in part. To avoid unnecessary repetition of the model rules they have been stated in full in title 1 to which the agencies may refer at the appropriate place in their portion of the code for incorporating the model rules by reference.

Chapter 10 is the final chapter under title 1. It contains a verbatim restatement of the Montana Administrative Procedure Act as enacted and signed into law on April 1, 1971 and subsequently amended. ~~Cross-references to the corresponding Revised Code of Montana sections are given in the history notes following each section of the act.~~

(2) An explanation of the organizational structure and composition of the remaining titles of the code along with other general explanations are contained in the following subchapters to chapter 2 of title 1.

1-1.2(2)-P210 BREAKDOWN OF THE CODE (1) Only changes are (The primary breakdown of the ~~Montana Administrative Code~~ administrative rules of Montana is into titles) and ~~MAC~~ ARM)

(2) Remains the same.

(2) (a) (Only change is ~~Montana administrative code~~ administrative rules of Montana.)

(2) (b) Remains the same.

(2) (c) Remains the same.

(3) The third breakdown is from sub-titles into chapters and sub-chapters. The first chapter in title 1 is the foreword to the code. Then beginning with titles 2, the first chapter under every title states the department's organizational rule. The second chapter under every title states overall ~~departmental~~ procedural rules, ~~or those rules of general application and administration for the department as a whole~~.

The Executive Reorganization Act has provided a six unit structural hierarchy within each agency and has created agency units in terms of the various functions of the agency. The breakdown of the units is diagrammed as follows:

department.....autonomous agency assigned for administrative purposes

division (of the department)

bureau (of the division)

section (under the bureau)

unit (under the section)

Included among the functions of the various units is the responsibility for administering the various groups of rules and regulations adopted by the agency and assigned to the appropriate functional units.

In view of this organizational scheme, and for purposes of listing the rules in the code in such places as they most logically would be looked for, the code format follows the executive reorganization scheme. That is to say, all rules are listed under chapters and sub-chapters and the agencies have devised their chapters and sub-chapters by using their organizational and structural units. Thus for purposes of the code, where the agency has a particular division which has the responsibility for administering certain rules and regulations, then for purposes of the code that division has been assigned a chapter number and a chapter name, and such name corresponds with the name given to the division by executive reorganization. All divisions have not been assigned chapters, but rather only those which have rule administering responsibility. These divisions are assigned chapter numbers beginning with 6 and in their alphabetical order and by skipping by fours. Thus, the second division would be numbered chapter 10, and the third, chapter 14 and so forth.

Note also that those agencies assigned to a department for administrative purposes only also have assigned chapter names and numbers. They are listed under sub-title 3 and their chapter numbers begin following the last number of the last chapter assigned to a departmental unit. Where there are more than one such agency within a particular department, they are listed in alphabetical order under sub-title 3 with an alphabetization separate from the departmental alphabetical chapter order. Every such autonomous agency assigned to a department for administrative purposes only is assigned a chapter and has at least two sub-chapters and at least two rules. This is because the Administrative Procedure Act requires that they adopt an organizational rule, and rules of practice. The organizational rule is stated under sub-chapter 1, and the rule(s) of practice are stated under sub-chapter 2, and any substantive rules are listed in subsequent sub-chapters beginning with 6, 10, and so forth skipping by fours.

In some isolated instances, a particular department may have a need to assign a chapter to a subject matter area of

rules which may not be identifiable to a particular division or unit of the department. In such case, the department has assigned a chapter to such subject matter area. However, such chapter(s) are alphabetized with the chapters assigned to departmental units.

In many instances, a particular division which has rule administering responsibilities, may have assigned such responsibilities to various units (bureaus, sections, units) within the division. For purposes of the code, these rules are listed in one of several ways:

~~(i)~~(4) Where the rules listed under the various units are particularly voluminous, then the respective units have been listed as chapters themselves. Thus, if a centralized services division has a number of rules which for purposes of the code it has been decided to list entirely under the various units of the division, then a chapter number has been assigned to the division, and under which there is only one sub-chapter and one rule. This rule explains where the rules of the division are listed in the code. Then chapter numbers are assigned to the various units of the division under which the rules of the division are listed. Where chapters are assigned to bureaus under the division, then the bureaus are alphabetized and assigned chapter numbers which ~~contain~~ follow the Arabic number of the division ~~first, followed by upper case alphabetical letters beginning with "A", "B", and so forth skipping letters by fours~~. Where a particular bureau has rules which are administered by particular sections under the bureau, and where it has been decided that the rules of the bureau for purposes of the code should be listed under a particular section of that bureau, then there is a chapter assigned to that bureau and such chapter has one sub-chapter and one rule which explains under which chapter(s), section(s) the rules administered by the bureau are listed. Then a chapter is assigned to the appropriate section(s). The chapter number contains the Arabic number for the ~~division~~ bureau, ~~the alphabetical letter for the bureau and an upper case Roman numeral beginning with "I", "II", "III", and so forth skipping by fours for all the sections which have been assigned chapter numbers,~~ followed by upper case alphabetical letters, "A", "B", "C", etc.

Should a particular section have rules which for purpose of the code it has been decided to list under a unit under the section, ~~then again, a chapter is assigned to that section which has only one rule and one sub-chapter to indicate that the rules of the section are listed under the chapter(s) assigned to its units. When chapters are assigned to the unit(s), they are arranged according to the alphabetical sequence of the units and the chapter numbers contain the Arabic number of the division, alphabetical letter for the bureau, upper case Roman numerals for the section and lower case Roman numerals beginning with "i", "ii", "vi", and so forth skipping by fours until all the units included have assigned chapter numbers,~~ the rules must be enumerated in a bloc of numbers within the section's rules. No element below section level will be treated separately in the ARM.

The above scheme for chapter number assignments to units of a department is diagrammed as follows:

departmental unit	chapter number
division	6
bureau	~~6A~~ 7,8,9,9.1,9.2,etc
section	~~6A1~~ 7A,7B,8A, etc
~~unit~~	~~6A1i~~

~~(2)~~ (5) Remains the same.
~~(3)~~ (6) Remains the same.
~~(4)~~ (7) Remains the same.
~~(5)~~ (8) The final breakdown is sections/rules into subsections and paragraphs. The breakdown in this fashion is done pursuant to traditional outlining methods and according to natural subject matter groupings within one rule.

The primary subsections under a rule are indicated by Arabic numerals in parenthesis beginning with the number 1. Such subsections when broken down further are indicated by lower case alphabetical letters, then lower case Roman numerals, and finally upper case alphabetical letters, all in parenthesis, and in that order.

1-1.2(2)-P220 RULE TYPES, AND THEIR LOCATION (1) Remains the same.

(1) (a) Remains the same.

(b) Procedural rules are of ~~three~~ various types. ~~The first prescribes how the departments and boards thereunder shall go about adopting, amending, and repealing their rules. The second type prescribes what procedures will be used in contested cases. Contested cases provide an opportunity for a person to obtain a hearing before an agency to contest the agency's intended action against him or action which directly affects him. The third type prescribes the procedure for having the department determine the scope of applicability of a particular rule via an action for a declaratory ruling.~~ There are the procedures covered in the attorney general's model rules (rule-making, contested cases, declaratory rulings). There are guidelines for public participation. There are procedures for the formulation of environmental impact statements.

These rules are always stated under chapter 2 of each title. Such rules are controlling for all units of a department, except agencies assigned for administrative purposes. Because of the autonomy of these agencies, they may state their procedural rules in their second sub-chapter. Where the board has elected to follow the departmental procedural rules, such

is indicated by reference to the rules as stated in chapter 2 of the title.

(1) (c) Remains the same.

(2) Only change is as follows: (An emergency rule is designated as such in the ~~history note~~ register.)

1-1.2(2)-P230 CODE NUMBERING OF RULES (1) Only change is as follows: (The first position symbol indicates that rule is part of the ~~Montana Administrative Code~~. administrative rules of Montana.)

(2) The first digit will always be the number which corresponds with the number of the chapter under which the rule falls, and the first rule under that chapter will begin in a hundreds series. For example, the section number for the rule in Chapter 1 would be 100 and the first rule in Chapter 2 would have 200 as its section number and so forth. Then in each chapter the rules shall progress by tens. That is, the second rule under Chapter 2 would have the section number of 210, and the third 220 and so forth. Should there be ten or more rules in one chapter, then the section number will move into four digits and in Chapter 2, for example, the 10th and 11th rules would be 2000 and 2010. Likewise, the 21st and 22nd section numbers would be 2100 and 2110. The reason for skipping by tens is to facilitate the assignment of section numbers when sections are added later.

It may be noticed that the first section of Chapter 20 will have the same section number as the 10th section of Chapter 2 and this repetition will recur. However, the repetition of section numbers should cause no confusion because the chapter numbers will always be different.

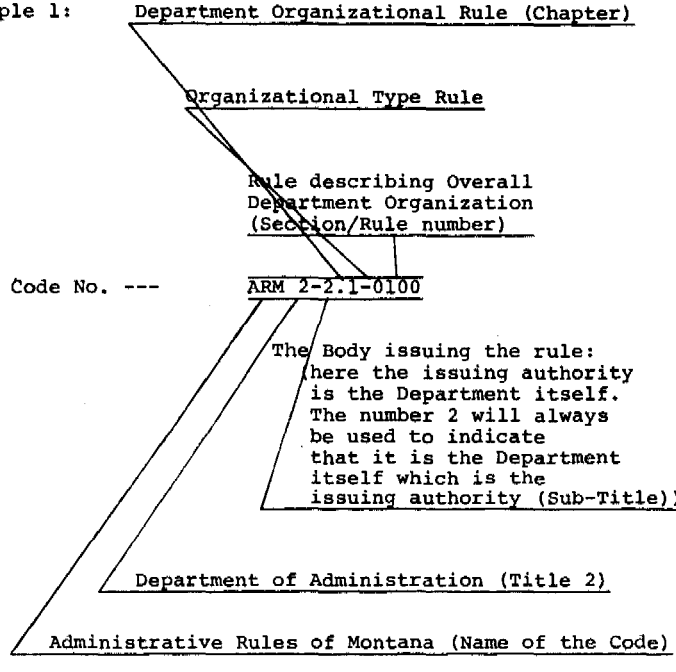
Note also that the section numbers under any one chapter and its sub-chapter shall continue to progress by tens until the last section under that chapter is stated. This is, in Chapter 2 for example the 6th rule which happens to fall under Sub-chapter 2 would have a section number of 250. Then if after this rule another sub-chapter begins, the first rule there-under would take the next section number after the last, which would be 260. The first section number under a new sub-chapter would not go back to 200.

~~(2)~~ (3) The appropriate symbols for each of the above positions have been assigned pursuant to the methods discussed in MAC ARM 1-1.2(2)-P210 BREAKDOWN OF THE CODE.

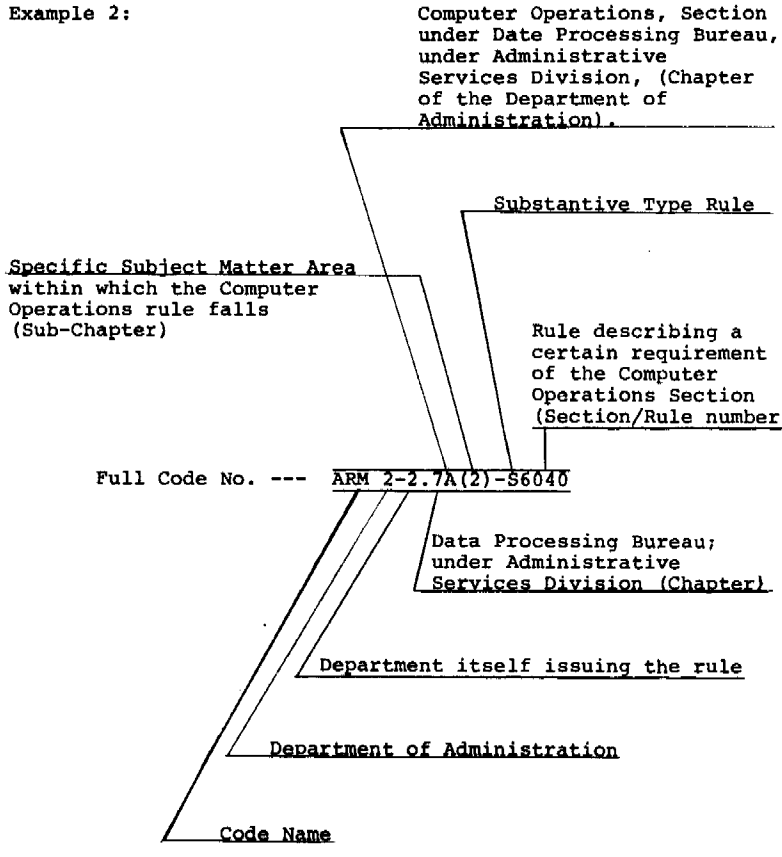
The code number symbol representation scheme is diagrammed on the following pages.

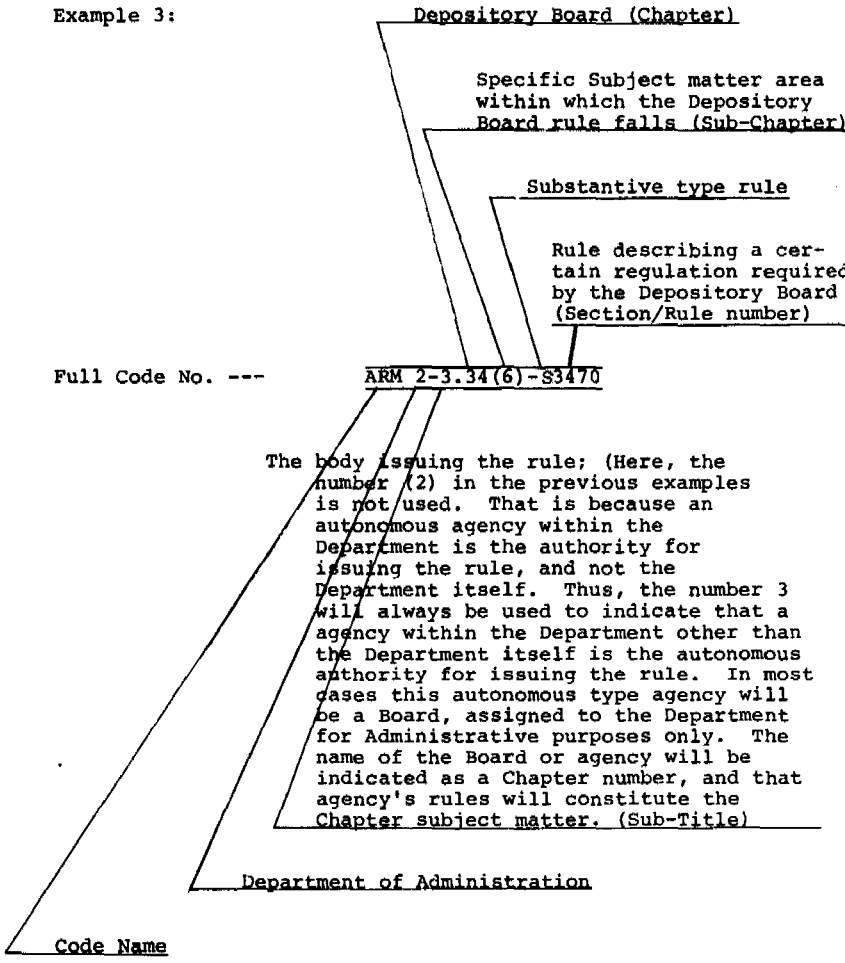
CODE NUMBER
Symbol Meanings
(note; all examples will use the Department of Administration in hypothetical format)

Example 1:



Example 2:


Computer Operations, Section under Date Processing Bureau, under Administrative Services Division, (Chapter of the Department of Administration).
Substantive Type Rule
Specific Subject Matter Area within which the Computer Operations rule falls (Sub-Chapter)
Rule describing a certain requirement of the Computer Operations Section (Section/Rule number)
Full Code No. --- ARM 2-2.7A(2)-S6040
Data Processing Bureau; under Administrative Services Division (Chapter)
Department itself issuing the rule
Department of Administration
Code Name


Example 3:
Depository Board (Chapter)
Specific Subject matter area within which the Depository Board rule falls (Sub-Chapter)
Substantive type rule
Rule describing a certain regulation required by the Depository Board (Section/Rule number)
Full Code No. ---
ARM 2-3.34(6)-S3470
The body issuing the rule; (Here, the number (2) in the previous examples is not used. That is because an autonomous agency within the Department is the authority for issuing the rule, and not the Department itself. Thus, the number 3 will always be used to indicate that a agency within the Department other than the Department itself is the autonomous authority for issuing the rule. In most cases this autonomous type agency will be a Board, assigned to the Department for Administrative purposes only. The name of the Board or agency will be indicated as a Chapter number, and that agency's rules will constitute the Chapter subject matter. (Sub-Title)
Department of Administration
Code Name

~~(3)~~ (4) Only change is ~~MAC~~ to ARM.
~~(4)~~ (5) Remains the same.
~~(5)~~ (6) Only change is ~~MAC~~ to ARM.
~~(6)~~ (7) This numbering system has been widely criticized as cumbersome and excessive. After the statutes are recodified in 1979, the Administrative Rules will be recodified, too, and rules will then have shorter, simpler numbers. Probably, a three-part identifier will be used (title, chapter, section), so that rule 2-2.6BI(2)-S6040 would become rule 2.8.6040, for example. However, for the sake of consistency, it will be necessary to follow the old system until recodification of the rules is authorized.

1-1.2(2)-P240 MODEL RULES: LOCATION AND INCORPORATION BY REFERENCE (1) Remains the same.

(2) If the department chooses to adopt the Attorney General's Rules verbatim then such rules need not be stated verbatim. Rather, this type of adoption may be noted simply by stating in the first section/rule under Chapter 2, that "The Department of _____ has herein adopted and incorporated the Attorney General's Model Procedural Rules _____ through _____ by reference to such rules as stated in ARM Title 1, Chapter 6 of this code."

However, it is contemplated that a particular law may require a variation from the procedural rule set down by the model rules. If such is the case, then such variation should be noted and explained in the form of a subsection to the model procedural rule from which it varies.

And as mentioned above, if the department adopts the Attorney General's Procedural Rules, but with slight variations, then this can be noted by stating, in a rule under Chapter 2, sub-chapter 1, that; "The Department of _____ has herein adopted and incorporated the Attorney General's Model Procedural Rules----with the following exceptions thereto: (1) (sub-section) The Attorney General's Model Rule _____, is modified in that.....". In this regard be sure and clearly state which model rule is being modified and be sure and state the law (statute) which requires the modification.

1-1.2(2)-P250 SECTION HISTORY NOTES (1) Following the text of each section there is a notation which indicates the legislative history ~~rule~~ of that section. For the initial rules, such notation contains the following four items:

(a) a citation ~~for~~ to the authority under which the section was adopted;

(b) the administrative order under which the rule was promulgated and certified to the secretary of state, which is indicated by an order number;

(c) the date that the rule was adopted by the department, which is indicated by the appropriate Arabic numerals, with reference to day, month and year in that order~~.~~; and

(d) the date the rule became effective, again, indicated by the appropriate Arabic numerals.

(2) The order number and adoptive date have been determined to be unnecessary information and should not be retyped when an initial rule is amended after January 1, 1978. It is not necessary that the notice of amendment indicate the deletion of these items. They are simply omitted when the replacement page containing the amended rule is prepared, as indicated in example (b) in subsection (3) of this rule.

Rules amended, or newly adopted, in the 1973-1977 period contain even greater quantities of unnecessary information in their histories. If these rules should be amended in substance before the administrative rules of Montana are recodified, this surplus information should be dropped from the prior history section of the history note. If no occasion for substantive amendment should arise, a history note will be simplified as part of recodification of the rules.

The history notes for all transferred, amendatory and repealing rules filed after ~~12/31/72~~ 12/31/77 will contain the following items:

(a) the ~~complete~~ simplified history of the initial rule, consisting of the statutory authority citation and the effective date.

(b) ~~the notice number of the public notice issued by the department and certified to the secretary of state for publication in the register which is preceded with~~ an abbreviation that denotes the nature of the rule change which the department ~~intends to make~~ made:

(i) an amendatory rule by the abbreviation AMD;

(ii) a repealing rule by the abbreviation REP;

(iii) a transferred rule by the abbreviation TRANS;

(iv) a newly adopted rule by the word NEW.

(c) ~~the administrative order under which the rule change was promulgated and certified to the secretary of state, which is indicated by an order number~~ for any action taken after 7/1/77, the page number of the register where the statement of reasons for the action begins.

(d) ~~the date that the rule was adopted by the department;~~

~~(e)~~ the date the rule became effective, preceded by the abbreviation Eff.

(3) ~~The history notes for all rules filed after 12/31/72 will contain all the items of an initial rule plus the notice number with the abbreviation NEW following the citation of authority under which the section was adopted.~~ Examples: the following illustrate the various forms of section history notes: (all new material)

(a) An original rule or a rule adopted between 1973 and 1977 which has never been subsequently amended: (History: Sec. 46-208, R.C.M. 1947; Order MAC No. 32-2-1; Adp. 12/31/72; Eff. 12/31/72)

or

(History: Sec. 46-208, R.C.M. 1947; NEW MAC Not. No. 32-2-13; Order MAC No. 32-2-20; Adp. 2/25/76; Eff. 3/6/76)

(b) An amendment to either of the above rules after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; Eff. 12/31/72 (or 3/6/76); AMD, 1978 MAR p. 124, Eff. 1/26/78)

(c) A rule which was both adopted and amended before December 1977: (History: Sec. 46-208, R.C.M. 1947; NEW MAC Not. No. 32-2-13; Order MAC No. 32-2-20; Adp. 2/25/76; Eff. 3/6/76; AMD, MAC Not. No. 32-2-16, Order MAC No. 32-2-24; Adp. 12/26/76; Eff. 1/5/77)

(d) An amendment to the above rule after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; NEW Eff. 3/6/76; AMD Eff. 1/5/77; AMD, 1978 MAR p. 131, Eff. 2/26/78)

(e) Repealing the rule in (c) after 1/1/78: (History: Sec. 46-208, R.C.M. 1947, NEW Eff. 3/6/76; AMD Eff. 1/5/77, REP, 1978 MAR p. 207, Eff. 3/26/78)

(f) A new rule adopted after 1/1/78: (History: Sec. 46-208, R.C.M. 1947; NEW, 1978 MAR p. 423, Eff. 5/26/78)

(4) Transferred rules are ~~either~~ rules which have either been transferred, ~~for administrative purposes,~~ as part of a change in statutory authority, from one agency to another, or been moved from one location in the agency's portion of the code to another. In either case, the ~~transferred rule is transferred for purposes of administering the rule or for purposes of locating the rule in a more logical place in the code.~~ action does not require notice or opportunity for hearing, as long as there ~~There~~ is no substantive change in the text of a transferred rule. The effective date of a transfer is the date the replacement page reflecting the transfer is published. The only other item shown in a transfer note is the legislative action directing an inter-agency transfer. Examples: TRANS; c. 285, L. 1977; Eff. 7/26/77, or TRANS; Eff. 3/26/78. The latter is an intra-agency transfer.

(5) (delete this subsection in its entirety. PRIOR page references no longer required.)

(6) Remains the same.

1-1.2(2)-P260 CATCHPHRASES (1) Only change is: (Refer to ARM 1-1.2(6)-P2000 for typing instructions.)

1-1.2(2)-P270 PAGE NUMBERING SYSTEM (1) Every page of the code has a page number. For each title of the code, the pages containing the initial rules are numbered seriatim and each number is preceded by the title number under which the page falls. Such page number is located in the bottom right and left hand corners of the pages. With the beginning of a new title, the page numbering starts over, with the new title number preceding the page number. Refer to ARM 1-1.2(6)-P2000 for typing instructions.

(2) Deleted.

(3) Deleted.

1-1.2(2)-P280 LOCATION OF RULE CHANGES (1) Remains the same.

(1) (a) Remains the same.

(1) (b) Remains the same.

(1) (c) Remains the same.

(1) (d) Remains the same.

(2) Where an existing code page has been redone to accommodate a rule change, and such has been done on one page, then the page number for that page is the same as that which appeared on the superseded page.

Where the nature of the change requires more than one replacement page, then the additional pages are indicated as such by the page number of the superseded page followed by a decimal and an Arabic numeral beginning with 1, and continuing seriatim for each additional page.

In addition, all changed or new pages have a publication date for the day that the ~~rule was officially published in the Montana Administrative Register and an issue number for the issue of the register in which the page was first published.~~ replacement page was distributed. When an agency is preparing a replacement page, they should check with the secretary of state's office for the date of the next issue of replacement pages for this item. This date ~~and issue number~~ appear(s) at the bottom of each replacement page between the code name and the page number. The publication date may be used as an identification of the contents of a page at such time as reference need be made to that page after it has been superseded. Thus, reference to a repealed rule or to a prior form of an amended rule would be made by reference to the page number and issue number date of publication of the page which has been superseded.

~~Where an amendatory rule or a repealing rule is adopted, such rules contain in the history note, a citation to the prior text of the rule by reference to the page number and issue number and the publication date of the page which contained the prior text.~~

Where a repealing rule has eliminated a page or pages, the following pages have not been re-numbered. Rather, the page numbers of the eliminated pages are also eliminated.

(3) Remains the same.

1-1.2(2)-P290 POSITIONING OF CODE ITEMS (1) Remains the same.

(1)(a) The titles followed by sub-title headings and indexes to all the chapters under the title and each sub-title. Each department's portion of the code shall begin with a title page and chapter index which begins with the heading "title" followed by the assigned title number. Beneath that will be the name of the department. Beneath that will be the heading "Sub-Title 2". Beneath that will begin the chapter index containing a listing of all chapters under that sub-title preceded by the chapter number assigned by the department. Following each chapter listing will be the page number on which that chapter begins.

Following the last chapter listing under "Sub-Title 2", will be the heading "Sub-Title 3". Then again, all the chapters under "Sub-Title 3" will be listed followed by the page number on which it begins. Note that the first chapter under "Sub-Title 3" will take the next number following the last chapter number under "Sub-Title 2".

(1)(b) The chapter headings followed by sub-chapter headings and indexes to all the sections falling under the appropriate sub-chapters. Then following the chapter index will be a new page for the beginning of Chapter 1, with the heading Sub-Title 2, Chapter 1. Note that Chapter 1 under every department is reserved for a statement of the department's organizational rule. Since this rule will always be the only rule under Chapter 1, there will be no need for section indexes and sub-chapters. Thus, Chapter 1 will be followed by the chapter name (organizational rule) followed directly by the code number and text of the rule.

(1)(c) The sub-chapter headings followed by the texts of the rules falling under the sub-chapter. Then beginning with Chapter 2, there will be sub-chapters and section indexes even though there may be only one sub-chapter (one rule). Thus, beginning with Chapter 2, will be the heading Chapter 2 followed by the name of the chapter. Beneath the chapter name will be the heading Sub-Chapter 1. Beneath that will be the name assigned to that sub-chapter. Beneath that will be the section index to that sub-chapter. Such index will contain the word "Section" at the left hand typing margin, followed by the code number for the first section/rule, followed by the catchphrase which explains the contents of that section. Following that will be listed any other sub-chapters, listed in ascending order, their names and an index to the rules falling under each sub-chapter.

At the end of the last sub-chapter listing and section index thereunder, will be a repeat of the first sub-chapter and its name, followed by the beginning of the text of the first rule under the first sub-chapter with the code number and catchphrase.

Then the text of the rule will run to the left hand typing margin except for five space indentations for paragraphs and sub-sections thereunder.

Following the last word of the text of each section, there will be a single space, followed by a statement in parentheses of the history of the rule.

(1)(d) Only change is ~~MAC~~ to ARM

(1)(e) Remains the same.

1-1.2(6)-P2000 CODE FORMAT---PREPARATION INSTRUCTIONS. THE FOLLOWING NEW TEXT WOULD BE ADDED TO PROPOSED AMENDMENT TO THIS RULE. (1) All material submitted for publication in the Montana administrative register and administrative rules of Montana will be as follows: (Specific instructions pertaining to notices, material submitted for insertion into the rule section of the register, administrative orders, replacement pages to update the code, cross reference tables, topical indexes and emergency rules will be found in the subsections that follow.)

(a) All material to be published will be submitted to the secretary of state's office, 202 capitol building, in original and two copies, on white bond 20 substance, 8½ x 11 inch paper, typed on one side of the sheet only.

(b) Material shall be typed on pica spacing typewriter, 10 letters per inch, using a standard or courier style and the ink shall be black.

(c) The left margin on every page is to be 1½ inches in width and the right hand margin is to be 3/4 inch in width. These margins are for uniformity in all material submitted and also to assure that the printer will be able to pick up all information on the page.

(d) In the case of notices and material for the rule section, the department name will begin on the fifth line down from the top of the page with the text beginning two lines underneath the "STATE OF MONTANA" line. On replacement pages for the code the department name will begin on the fifth line down with the text beginning on the eighth line.

(e) Paragraphs should be indented five spaces, typed single space with either no spacing or a single space between paragraphs on notice and rule section material. On replacement pages there will be no spacing between paragraphs but double spacing between rules.

(f) The text of the material submitted should end at least a single space up from the notice form number or above the title of the code. There shall be one inch measured from the top of the notice form number or from the top of the name of the code letters to the bottom of the page.

(g) If there is more than one page required for a notice or material submitted for the rule section of the register, the pages will be numbered on the fifth line down at the top right hand margin beginning with (2), (3), etc. This will assure that the pages will be kept in proper order until they are assembled for the printer. This will not be necessary for replacement pages as they will contain a code page number.

(2) NOTICES

(a) The forms for the notices will be as set down in the attorney general's model rules. However, a single notice may combine adoption, amendment, and repeal of a group of rules covering related subject matter.

(b) If there is more than one notice being published, space five spaces down, and continue on the same page with

another notice rather than starting a new page for each notice. In this case, only one signature is necessary at the end of the noticed material.

(c) The notice form number is to be placed at the lower right hand typing margin on odd numbered pages of the notice and on the left hand margin on even numbered pages. There shall be one inch measured from the top of the form number to the bottom of the page. The prefix to the notice number is MAR.

(3) MATERIAL FOR RULE SECTION OF THE REGISTER

(a) The forms for adopted rules will be as set out in the attorney general's model rules.

(b) All material submitted for publication in the rule section of the register must be accompaned by an administrative order.

(c) If there is more than one rule submitted for publication, space down five spaces and continue other adopted rule information on the same page.

(4) ADMINISTRATIVE ORDERS

(a) The form for administrative orders is set out in ARM 1-1.2(6)-P2004.

(b) They shall be indented five spaces with double spacing between sentences.

(c) This form will no longer contain an order number after December 1, 1977. Citation to this form will be accomplished by use of the date of issuance.

(5) REPLACEMENT PAGES TO UPDATE THE CODE

(a) All paragraphs and subsections on material submitted for insertion into the code shall be indented five spaces, typed single spaced with no spacing between paragraphs. There shall be a double space between rules.

(b) When it is apparent that a rule would be easier and more readily referred to if it were broken down into several parts for an orderly presentation then the symbols or combination of symbols should be used as well as the following indentations and typing margins. The beginning of the section with the code number shall be indented five spaces from the left hand typing margin, and shall continue by running to the left hand typing margin. Then every subsection and paragraph under a particular section shall begin five spaces from the left hand typing margin, at the same place as the section began with the code number and the text of the subsection and paragraph shall run to the left hand typing margin.

Example:

2-1.2(1)-P200 (The beginning of the section) indented five spaces from the left hand margin.

(1) (Subsection 1 to the above section and the first position thereunder is indented to the same spot as the section.)

(a) (Subsection (a) to subsection (1) is the second position and shall be indented to the same spot as the above two.)

(i) (An item included under subsection (a) to subsection (1), indented to the same spot as before and is the third position.

(A) (This would be the first item under subsection (i).

(c) Each rule number will be followed by a "catchphrase" and shall be typed in capital letters and underlined. This will be a short phrase devised by the department, describing the subject matter of the rule. If the catchphrase does not use up the whole line, then skip two spaces and begin the text of the section. If the catchphrase uses substantially the whole line, then begin the text of the rule on the next line (one space beneath) at the same place/indentation as the commencement of the section with the section number above.

(d) Every page of the code will have a page number. Each department will be responsible for numbering the pages for its section of the code. The first page under a particular department will be numbered using first the title number for the department followed by a dash followed by the number "1". Subsequent page numbering shall proceed seriatim, but the first position for each page for that department will be the same, i.e., the title number for the department. Thus, the first page for the department of agriculture would be numbered 2-1, the second page 2-2, the fifty-fifth page 2-55, etc. The department of labor and industry, for example, has a title number assignment of 24. Therefore, it will number its pages 24-1, 24-2, etc.

(i) Odd numbered pages: The page numbers will be placed in the lower right hand corner at the right hand typing margin measuring one inch from the top of the number to the bottom of the page. The name of the code ADMINISTRATIVE RULES OF MONTANA will be typed in capital letters in the lower left hand margin measuring one inch from the top of the letters to the bottom of the page. The full code number without the ARM prefix will be placed on the top right hand margin on the fifth line down from the top of the page. That code number will be the same as the number for the last beginning rule on that odd numbered page. The chapter name under which the rules thereon fall will be centered between the two typing margins falling on the fifth line down in capital letters.

(ii) Even numbered pages: The page number will be typed at the lower left hand margin on each page and the name of the code ADMINISTRATIVE RULES OF MONTANA will be typed in capital letters at the lower right margin, with one inch from the top of the letters to the bottom of the page. In the top left corner beginning at the left hand typing margin on the fifth line down from the top of the page, will be the full code number (without the ARM prefix) of the first full rule beginning on that page. If that page contains in entirety a continuation of a section begun on the prior page, then this left hand corner position will contain the code number for the section begun on the preceding page. This means that the preceding and the following pages will have the same code number page designation.

In addition, every even numbered page will have the name of the department under which the rules fall on the page. The name of the department will be typed in full in capital letters, centered between the two typing margins on the fifth line down.

(iii) Every chapter under each department's title will begin on a new odd numbered page. This is to allow for a department to have its various departmental units prepare their respective rules in the code format. If under a particular chapter the section index takes up a whole page such that no section under the chapter will begin on that page, there will be no code number page designation for that page. Note that for the first page of the department's code section, the page which has the title name and the chapter index, need not have code section page number designation, nor the title or chapter name designations at the top.

(e) Cross reference tables: These pages will begin on a new odd numbered page with the heading CROSS REFERENCE TABLE in capital letters placed on the fifth line down. Every subsequent even numbered page of the tables shall have the name of the department as its heading and again placed on the fifth line down. The text will begin on the eighth line down and end at least a single space up from the code page number. Refer to form in ARM 1-1.2(6)-P2003.

(f) Topical Index: All major topics shall be alphabetized and should begin at the left hand typing margin. Only the first letter of the first word of the topic should be in upper case. Where one of these major topics is broken into sub-topics, you should indent five spaces from the left margin to begin typing the sub-topics(s). Such sub-topics shall also have their own alphabetization. And again only the first letter of the first word in the sub-topic should be in capital letters. If a sub-topic need be broken into sub-topics, you would begin typing them by indenting five spaces from where the sub-topic under which it falls commenced, and all letters should be in lower case.

Where any topic needs more than one line, you should return where the topic began and indent two spaces to complete the topic. Where a topic uses most of one line, such that you cannot type in the full code number following the topic, you should not break the code number and finish it on the following line. Rather, you should finish the topic and then go to the next line, indent two spaces (for a continuation) and type in the full code number.

The index should begin on a new odd numbered page taking the next page number following the number of the last page of the cross reference table. The index should begin with the title "INDEX" on the fifth line down on the first page and the even pages of the index should have the name of the department in capital letters on the fifth line. Refer to ARM 1-1.2(6)-P2003.

(g) Charts, Illustrations and forms

(i) All charts, illustrations and forms must be originals or clear reproductions capable of producing a satisfactory photographic copy and must be within the typing margins as set previously.

(h) Title pages:

(i) Title pages shall begin on the fifth line down from the top of the page with the heading "TITLE" in capital letters followed by the assigned title number. This should be centered between typing margins. The name of the department will appear three spaces beneath in capital letters and centered. The chapter index will begin two spaces beneath and there will be a double space between each chapter index item. Following the last chapter in Sub-title 2, will begin Sub-title 3 centered.

(i) Chapter pages:

(i) Following the chapter index will be a new page for the beginning of the Chapter 1, with the heading "Sub-Title 2" on the fifth line down and "CHAPTER 1" will be in capital letters and centered, three lines beneath. Note that Chapter 1 under every department is reserved for a statement of the department's organizational rule. Since this rule will always be the only rule under Chapter 1, there will be no need for section indexes and subchapters.

Then beginning with Chapter 2, there will be sub-chapters and section indexes. The chapter name will appear on the fifth line down with the chapter number appearing two lines beneath. Two spaces beneath the chapter name will be the heading "Sub-Chapter 1", with the name assigned to the sub-chapter two lines beneath. The section index to that sub-chapter will appear two lines below. The index will contain the word "Section" at the left hand typing margin with double spacing between the section numbers. After the last section number of the index, double space and repeat the first sub-chapter and its name, followed two spaces below by the first rule.

(6) EMERGENCY RULES:

(a) Emergency rules shall be typed according to the typing format with the same margins that are required for permanent rules and contain the subject matter, rule numbers, history and the page number of the code where it would appear in the code if it were a permanent rule with the exception that the page number shall always appear on the left hand margin whether it is an even page or an odd numbered page.

(b) The name of the department, board or bureau having the authority to make rules will be centered and typed in capital letters on the fifth line down. The rule number assigned to the emergency rule will also appear on the fifth line down at the left hand margin.

(c) Centered and typed in capital letters, three lines down from the department name, will be the name of the particular chapter where the emergency rule would appear in the code if it were a permanent rule. If the rule is to be an emergency rule to amend the following heading should start three lines down from the chapter on the 11th line, typed in capital letters and centered; EMERGENCY RULE TO AMEND. Or in case it is a new rule the words NEW EMERGENCY RULE should be centered and type in capital letters on the 11th line down.

(d) The number and the text of the emergency rule should start on the 13th line down.

(e) Where more than one page is required for an emergency rule the following pages will have the rule number on the left hand margin on the fifth line down, the name of the department centered and in capital letters on the same line. The pages of the emergency rule will be numbered beginning with (2), (3), etc., on the fifth line at the right hand margin.

1-1.2(6)-P2001 PROCEDURES FOR FILING OF THE INITIAL RULES, NEW RULES AND RULES AMENDING OR REPEALING PRIOR RULES. (1) Sec. 82-4204 of the Montana Administrative Procedure Act sets down certain required procedures for adopting the initial rules and for making changes thereto. And since the secretary of state is charged with the responsibility of recording these changes, the purpose of this rule is to explain the format which the Secretary of State requires the departments to follow in their preparing and filing of the initial, new and amended rules and in the repeal of prior rules. Again, the purpose is to facilitate the insertion of the initial rules and subsequent changes thereto, into the Administrative Rules of Montana.

(2) It is important to note that the procedures for adopting and filing the initial rules are different from the procedures for making rule changes after December 31, 1972. That is to say, Sec. 82-4204,R.C.M. 1947, regarding notice and hearing requirements for adopting and amending rules, applies only to those rules adopted or amended subsequent to the effective date of the Act...12/31/72. In other words, the time before December 31, 1972, was in effect a grace period wherein all rules adopted were exempt from the notice of adoption and hearing requirements. All of the rules adopted therein make up the initial code, and such rules became effective on December 31, 1972.

If at some future date a grace period may be provided for a newly included agency under the MAPA within which to file their initial rules without going through the notice procedure and assuming that a new deadline will be set for filing initial rules, the newly created agency shall use the same procedures, following the same instructions, for such initial filing as were used by the initially included agencies. Such a grace period was given to the departments of administration and institutions, and the Superintendent of Public Instruction in 1977.

(3) The following procedures shall be adhered to for all those rules which will be adopted by the departments after December 31, 1972:

(a) As has been explained in the Montana Administrative Procedures Act and in the attorney general's model rules, the departments and agencies assigned thereto for administrative purposes must give public notice of their intention to adopt, amend or repeal any rule after the deadline for submitting initial rules. The contents of the notices are as prescribed by the MAPA and the attorney general's model rules. The forms for the notices will be as set down in the attorney general's model rules. All notices will be signed in the position designated by the model notice forms. Each form will be signed by the head of the department (or by the chairman of the governing board). In the case of a notice issued by an agency assigned for administrative purposes, the head of that agency (or chairman of the governing board) will sign.

Since the secretary of state is required to publish the register once a month, possibly twice a month, the notices will be published once a month. Therefore a department must submit its notices on or before the 15th day of each month according to the schedule set by the secretary of state. The notice will be published in that month's register. If a notice is submitted after the submission deadline it will not be published until the following month. It should be noted that the MAPA requires that agency action may not be taken until at least 30 days after the notice is published in the register.

(4) The form numbers for notices of action regarding rule changes subsequent to December 31, 1972, will be stated as MAR Notice No. _-_-_. The first blank is to be filled with the title number for the department. The second blank is to be filled with the sub-title 2 if the notice was issued by the department, or with a sub-title 3 and the chapter number if the notice was issued by an autonomous agency within the department. The third blank is to be filled with the appropriate number of the notice. Example: The first notice for the plumbers board within the department of professional and occupational licensing would appear as MAR Notice No. 40-3-82-1.

(5) There will be no separate numbering sequence according to the type of notice issued. All notices issued by the department will be arranged in the register according to the date of issuance. And the autonomous agencies within a department will have a notice number sequence separate from that of the department. But all such agency notices will be numbered according to their date of issuance, again without regard to the type of notice.

(6) When the notice procedure results in the adoption, amendment or repeal of a rule, then such action must be certified and transmitted to the secretary of state for filing and publication. This will be accomplished by an administrative order. There will be a separate order for every set of adoptions, amendments or repeals.

1-1.2(6)-P2002 PREPARATION OF RULE CHANGES FOR INSERTION IN CODE (1) The Code has been set up as a loose leaf service to provide a method of updating the code. As such, rule changes may be made and placed in the appropriate place within the text of the code. Thus, each administrative order for rule changes shall be followed within months by the actual text of the rules which the administrative order is certifying to the Secretary of State. These rules must be prepared in the same form as were the initial rules so that they in turn may be photocopied and inserted in the code with uniform results. To accomplish this, the following procedures will be used:

(a) Refer to the existing code page to which the new, amending, repealing or transfer rule(s) will be added. (The determination as to the proper page is made by interpolating the code number of the rule with the existing rules. The

assignment of the code numbers to additional rules has been discussed in rule ARM 1-1.2(2)-P210.

(b) Supplemental pages: If the additional rule is a new rule or rule(s) transferred to the agency from another agency, then the page upon which that rule will be typed will be re-typed down through the existing code rule which immediately precedes the rule to be added. Then immediately following, type in the new rule exactly in the form that the intitial rules were done (i.e. code number, catchphrase, text and history note). Then following the new rule, begin typing the rule which had been next on the old code page before the addition of the new rule, and continue typing until you have completed what had been on the old code page. The new page will take the same page number as the old page. In most cases, the addition of a rule would extend the old page such that the text of the old page would not all fit on the new page. In this case, another sheet(s) of paper will be used but only so far as to finish what had been on the old code page before it had been added to. This second page will take the same page number as the prior page, only such page number will be followed by a decimal point and the number 1. When supplemental pages are needed then the supplemental pages will take the same page number with the addition of a decimal point and the number 1, 2, 3, etc. such as: (Example: 46-74.1, 46-74.2, 46-74.3 and so on).

When there is need for additional pages between 46-74.1 and 46-74.2 then the pages should be numbered as: (Example: 46-74.1, 46-74.1A, 46-74.1B and so on).

When additional pages are needed between pages 46-74.1A and 46-74.1B they should be numbered as: (Example: 46-74.1Aa, 46-74.1Ab, 46-74.1Ac and so on).

When additional pages are needed between pages 46-74.1Aa and 46-74.1Ab they should be numbered as: (Example: 46-74.1Aaa, 46-74.1Aab, 46-74.1Aac and so on).

(c) Decimal point pages should be eliminated in the annual review of rules and the following pages renumbered accordingly.

(d) The placement of the page numbers and code section numbers will always fall on the outside of the page. Department names and chapter names will be determined by checking the previous existing page in the code.

(2) When the remainder of the old page to which the new rule has been added has been completed in this fashion, then the typing should stop on that supplemental page even though the entire page may not have been used. Even though the typing may end in the middle of a rule, or middle of a sentence, the continuation will be found on the next page which originally followed the old code page on which the change was inserted.

(3) The same page extension procedure should be followed when a rule is amended. In the case of an amendment, only the amended form of the rule will be typed. This should be placed in the same location as was the rule before it was amended. Note that the code number will remain the same. If the amend-

ment necessitates a new catchphrase, then such catchphrase shall replace the old.

(4) Examples for retyping pages: Assume that you are going to make a change on existing page 59. And assume that such page contains a continuation of rule -S600 from the preceding page and also contains the beginning of the next rule which was -S610. Then assume that you are going to add a new rule, which has been assigned the number -S609. This would mean that -S609 would have to be typed in between the end of -S600 and the beginning of -S610. To accomplish this you would take a new sheet of paper and retype what was on page 59, i.e., the continuation of -S600. Then at the end of -S600 on the new sheet you would double space and begin typing new -S609 with the code number, catchphrase and text and continue typing until you have completed the rule. At that point then you would double space and retype as much of -S610 (the rule which had followed -S600 on the old page 59) as appeared on old page 59. This new sheet will also be page numbered 59. You will note that where you cannot type in -S609 and the part of -S610 which had appeared on old page 59 on the first new sheet, then you will have to go to another sheet or sheets. These supplemental sheets will be page numbered 59.1, 59.2 etc.

When you have completed typing the part of -S610 as far as it went on old page 59, then you should stop, even though you may end in the middle of a sentence. The continuation of -S610 will appear on page 60 which is already in the code.

The page name designations and the code name on the newly prepared pages will be the same as on old page 59 and will be placed in the same position as they were on page 59 before it was changed. The code number page designation will be typed at the top using the same method as used for preparing the initial pages of the code.

(5) The above example applies also where you are amending a part of a rule on any given page. However, if for example -S610 begins on page 59 and finishes on page 60, and -S620 begins immediately thereafter on page 60, and if there is an amendment to -S610, then you will retype 59 down through -S610 and continue typing to the point where the amendment begins and use any supplemental page 59's as necessary. If the amendment removes any part of -S610 on old page 60, then you will have to prepare a new page 60. To do this, you will simply omit that part of -S610 on the top of new page 60 and retype as much of -S620 as had been on page 60 beginning at the eighth line from the top of the new page 60. This will mean that even though you will not reach the bottom of the new page 60, you should stop typing, because the continuation of -S620 will appear on existing page 61 which need not be changed.

(6) The above procedures should be used to prepare a rule which repeals an existing rule in entirety. For example, assume that existing page 59 contains the beginning of -S610, and that -S610 is to be repealed entirely. You would retype old page 59 down to the place where -S610 had begun, then type in the full code number for -S610 and the catchphrase, following

with the phrase in upper case and underlined (IS HEREBY REPEALED) and the history. You will then stop typing on the new page even though you have not used the full new page. Then, assuming that -S610 before its repeal had finished on for example old page 60 and -S620 had begun on old page 60, then you will have to retype page 60, omitting on the new sheet that portion of -S610 which had appeared on old page 60. To do this, you will prepare the new page 60 by moving that part of -S620 which had appeared on old page 60, to the top of the new page 60 and type down as much as had appeared on old page 60. At that point you should stop even though you have not used up the whole page. Then the continuation of -S620 will appear on existing page 61.

(7) Where a particular agency has adopted rules, but subsequent legislative enactment has transferred such rules to another agency, for administrative purposes, then the transferring agency will so indicate in the appropriate place in their section of the code (i.e. the page on which the transferred rule(s) began). Here, the same page preparation process will be used as was used for preparing a repealing rule. You should type in the code numbers, catchphrase and history of the first rule transferred, followed by the word "through" and the code number, catchphrase and history of the last rule transferred, followed by the phrase "are hereby transferred to the (Name of transferree agency)". The above transferring procedure should also be used where an agency wishes to transfer rules from one location to another all within one title.

1-1.2(6)-P2003 INDEXING, CROSS-REFERENCE TABLE (1) Where a new rule has been adopted or an existing rule has been repealed by agency action, the agency must submit a new section index page(s) which reflect the change in the index. These are submitted along with the new rule or repealing rule for publication.

Where the rule change is an amendment there will be no need for changing the index page unless the nature of the amendment requires a change in the wording of the catchphrase, in which case it will be necessary to submit a new index page to reflect the change in the catchphrase.

The Secretary of State will insist that the new index pages accompany the rule changes, rather than submitting the changed index at a later time, as the index is usually consulted first before the user checks in the body of the rules.

(2) Every department shall prepare cross reference tables which will give a quick indication of where the code sections from the Revised Codes of Montana may be found, (interpreted, summarized or implemented), in the administrative code portion for each department. In the left hand column of the table will be the citation to the Revised Codes of Montana and directly across from it in the right hand column will be the section or sections in the administrative code which interpret and implement the code section. The citation to the Revised Codes of Montana need include only the title and section number.

This table will include both R.C.M.sections which are authority for a corresponding ARM rule, and R.C.M. sections which have a corresponding ARM rule which interprets or implements the R.C.M. section.

The citation to the administrative rules of Montana should be the full code number (without the ARM prefix).

The Revised Code of Montana section numbers shall be stated in ascending order. The first section listed will be that one which has the lowest title and section number, and thereafter shall be listed seriatim until all of the Revised Code sections and their corresponding administrative rules sections have been listed. Where one R.C.M. section has more than one corresponding ARM number, then such ARM numbers shall also be stated in ascending order beginning with the lowest sub-title, chapter sub-chapter and section numbers. Refer to ARM 1-1.1(6)-P2000.

(3) Following the last page of the cross reference table will be a topical index which each department is responsible for preparing. This index is to be an alphabetical arrangement of all significant subject matter topics which are covered by the rules under the department's title. It should be stressed that this index should be very thorough and precise because it will be the primary means by which a person unfamiliar with the rules will be able to find the rule which deals with the subject matter in which he is interested.

The departments shall have the discretion of determining the contents of the index as to the extent of coverage and specificity of the subject matter areas listed. However, it is suggested that a good point to start in compiling the index and selecting the alphabetical topics would be to refer to chapter, sub-chapter names and the catchphrases for the rules as guides to topics for the index. The arrangements of the words in the topics should be done with an eye to which word in a topic the average user would look for first in an alphabetical index when he is trying to locate a rule which deals with that topic.

The topical phrases in the index will be tied into the rule which deals with that topic, by stating immediately following the topic, the full code number of the appropriate rule. Note,however, that all topics need not have a rule number. That is to say you may divide a topic which is of a very general nature and covers a number of different rules. In that case you would put in that topic in its alphabetical sequence without any rule number. Then under that topic you may list topics which specifically break down the general topic, and these more specific topics would then be followed by the appropriate rule number. Refer to ARM 1-1.1(6)-P2000.

1-1.2(6)-P2004 ADMINISTRATIVE ORDER (1) When the notice procedure results in the adoption, amendment or repeal of a rule, then such action must be certified and transmitted to the secretary of state for filing and publication. This will be accomplished also by an administrative order. There will be a separate order for every set of adoptions, amendments, or repeals. Replacement pages will not need an administrative order. Orders will not be numbered after December 1, 1977, but may be cited, if necessary, by date. The following forms are used for administrative orders. They should be double spaced.

STATE OF MONTANA
DEPARTMENT OF _____

(1) I, (Capitalize Name), director of the department of _____, chairman of the board of _____ for the department _____ (use the latter title where order is being issued by a department which is headed by a multi-member board) of the state of Montana by virtue of and pursuant to the authority vested in me do promulgate and adopt those rules as listed in chapters one (1) through _____, annexed hereto.

(2) This order after first being recorded in the order register of this department shall be forwarded to the secretary of state for filing.

APPROVED AND ADOPTED _____, 19__
CERTIFIED TO THE
SECRETARY OF STATE _____, 19__
BY: _____
Name

_____
Title

STATE OF MONTANA
DEPARTMENT OF _____

(1) I, (Capitalize Name), director of the department of _____ or chairman of the board of _____ where the department is governed by a board or where the order is promulgated by a board assigned to a department for administrative purposes of the state of Montana, by virtue of and pursuant to the authority vested in me by (R.C.M. Section cited for authority) do promulgate and adopt the annexed rules and regulations to wit:

	(code number)	(catchphrase)
NEW:		
AMD:		
REP:		
TRANS:		

as permanent _____ emergency _____ rules of this department (or board).

(2) This order after first being recorded in the order register of this department (agency) shall be forwarded to the secretary of state for filing.

APPROVED AND ADOPTED _____, 19__

CERTIFIED TO THE
SECRETARY OF STATE _____, 19__
By: _____ (Name) _____
_____ (Title) _____

(2) With regard to the question of who will sign the administrative orders, the signature will be that of the head of the department where the department has an elected official or an executive appointment by the Governor, or by the chairman of the board where the department is headed by a multi-member board. In the case of rules submitted by an agency assigned to a department for administrative purposes only, then such rules will be submitted in an administrative order separate from the departmental administrative orders and such order will be signed by the chairman of that agency or its governing board.

(3) Emergency and permanent rules may not be intermingled on the same order.

1-1.2(6)-P2010 UPDATING THE CODE--PROCEDURES (1) (Only changes are: MAC ARM, ~~Montana administrative code~~ administrative rules of Montana)

(a) On or about the 25th day of each month, the secretary of state shall mail to ~~code~~ register subscribers the issue of the register for that month. Included in each month's register are notice pages, emergency rules, rule section containing rule changes which were certified to the secretary of state on or about the 15th of that month, and an interpretation section containing opinions from the attorney general, and declaratory rulings.

~~(b)~~ Delete

(b) Accompanying the replacement pages which are distributed to the subscribers to the code will be instructions which indicate where the pages are to be inserted and which pages of the existing code have been superseded and should be removed.

1-1.2(6)-P2011 ANNUAL REVIEW OF RULES BY AGENCY (1) As provided in Section 82-4204(6), R.C.M. 1947, each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rules should be modified or repealed. During the annual review agencies are requested to eliminate decimal point pages where possible, shorten histories as provided in ARM 1-1.2(2)-P250 and submit updated section indexes and topical index pages if necessary.

1-1.2(6)-P2020 MONTANA ADMINISTRATIVE REGISTER (1) The ~~Montana administrative code~~ administrative rules of Montana are kept current by a publication known as the Montana administrative register.

(2) The Montana administrative register is comprised of ~~two~~ three sections. The first is the notice section wherein the department or agency has given notice of intended administrative rulemaking action. The second section contains the results of the action wherein a rule has been adopted, amended or repealed. This is known as the rule section of the register. ~~and the pages appearing therein are in identical format with the code page so that they may at a later date be inserted into the code in lieu of the page it supersedes.~~ The third is the interpretation section containing attorney general opinions and agency declaratory rulings.

(3) Remains the same.

1-1.2(6)-P2021 AGENCY FILING FEES (1) Beginning January 1, 1978 all agencies will be required to pay a 50¢ per page filing fee for all pages submitted which are applicable to the notice and rules section of the Montana Administrative Register. The Secretary of State will bill annually for all fees incurred by the agency for the fiscal year.

1-1.2(6)-P2030 SUBSCRIPTIONS TO THE CODE--COST (1) (Only change is: ~~MAC 1.1.10 61000~~-)

(2) Remains the same.

1-1.1(6)-P2040 TITLE NUMBER ASSIGNMENTS (1) (Only changes are: ~~intergovernmental Relations, department of~~ community affairs, department of 22; superintendent of public instruction, board of public education 48)

1-1.2(6)-P2050 HOW TO CITE THE ~~MONTANA ADMINISTRATIVE CODE~~ ADMINISTRATIVE RULES OF MONTANA (1) When referring to a rule from the ~~Montana administrative code~~ administrative rules of Montana, such rule shall be properly referred to by its full code number. For example this rule on how to cite a code section, would be referred to as ~~MAC~~ ARM 1-1.2(6)-P2050.

Dated this 13th day of October, 1977.

Frank Murray

FRANK MURRAY
Secretary of State

BEFORE THE COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES OF THE STATE OF MONTANA

In the matter of the repeal of rules MAC 44-3.10(6)-S1050, MAC 44-3.10(10)-S10320, and MAC 44-3.10(10) S10370	NOTICED OF PROPOSED REPEAL OF RULES MAC 44-3.10(6)-S1050, prescribing special campaign reporting provisions of 1976; MAC 44-3.10 (10)-S10320, providing a method of determining (for reporting purposes) the date when a contribution is received; and MAC 44-3.10(10) -S10370, prescribing a method (for campaign reporting purposes) of determining the date when an expenditure is made. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign Finances and Practices proposes to repeal rules MAC 44-3.10 (6)-S1050, "SPECIAL PROVISIONS FOR 1976;" MAC 44-3.10(10)-S10320, prescribing (for reporting purposes) a method of determining the date when a contribution is made; and MAC 44-3.10(10)-S10370, providing (for campaign reporting purposes) a method of determining the date when an expenditure is made.

2. The rules proposed to be repealed may be found on pages 44-11.1, 44-25, and 44-26.1, respectively, of the Montana Administrative Code.

3. MAC 44-3.10(6)-S1050 is proposed to be repealed because it is obsolete, dealing with the special situation prevailing immediately after the passage of the Campaign Practices Act of 1975, §§23-4776 et seq., R.C.M. 1947. The special situation no longer obtains. MAC 44-3.10(10)-S10320 is proposed to be repealed because its substantive provision is proposed to be incorporated in a pending amendment of MAC 44-3.10(10)-S10250, "CONTRIBUTIONS, REPORTING" (see MAC Notice No. 44-3-10-7, page 7). It is thus unnecessary and surplusage. MAC 44-3.10(10)-S10370 is proposed to be repealed because its substantive provision is proposed to be incorporated into a pending amendment of MAC 44-3.10(10)-S10340, "EXPENDITURES, REPORTING" (see MAC Notice No. 44-3-10-6, page 7). The repeals are proposed as a result of the Commissioner's annual review of rules, mandated by §82-4204(6), R.C.M. 1947, and work no substantive change in the Commissioner's present policy.

4. Interested persons may present their data, views, or arguments concerning the proposed repeals in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed repeals is based on §§23-4786(14) and 82-4204(6), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10(6)-S1070	NOTICE OF PROPOSED AMENDMENT OF RULE MAC 44-3.10(6)-S1070, defining "aggregate contribution" for purposes of §23-4795, R.C.M. 1947. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign Finances and Practices proposes to amend rule MAC 44-3.10(6)-S1070, which defines the term "aggregate contribution" for the purposes of §23-4795, R.C.M. 1947.

2. The proposed amendment affects only subsection (1) of the existing rule, which appears on page 44-13 of the Montana Administrative Code. The subsection as proposed to be amended provides as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(6)-S1070 AGGREGATE CONTRIBUTION-DEFINITION.

Amend subsection (1):

(1) For the purposes of section 23-4795, the term "aggregate contribution" means a total of ~~all~~ the following ~~enumerated~~ contributions for all elections in a campaign made by an individual~~,~~ or independent committee~~, or candidate and his or her immediate family~~ to a candidate and political committees which are organized on behalf of a candidate or controlled, either directly or indirectly, by a candidate or candidate's committee~~, and which act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions~~:

3. The rule, as proposed to be amended, eliminates the language "candidate and his or her immediate family," pursuant to 1977 amendments of §23-4795, R.C.M. 1947. Under the rule and statute as amended, a candidate will not be limited in what he can contribute or expend from his personal funds; but members of his family will be treated as "individuals" and subject to the contribution limitations contained in §23-4795(1), R.C.M. 1947. Other minor changes are made for style, grammar, and clarity.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(14) and 82-4204(6), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10130	NOTICE OF PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10130, describing the statement of organization filed by political committees and prescribing a time for its filing. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign Finances and Practices proposes to amend rule MAC 44-3.10 (10)-S10130, which describes the statement of candidate filed by candidates for public office and the statement of organization filed by political committees.

2. The proposed amendment affects only subsections (2) and (2)(a) of the existing rule, which appears on page 44-17 of the Montana Administrative Code. The subsections, as proposed to be amended, provide as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(10)-S10130 STATEMENT OF CANDIDATE, STATEMENT OF POLITICAL COMMITTEE.

Amend subsection (2) and subsection (2)(a):

(2) A political committee shall file a Statement of Organization requesting classification and certifying the full name and complete address of its officers, campaign treasurer, primary depository, deputy campaign treasurer and secondary depository (if any), and the other information specified in MAC 44-3.10(10)-S10140 with the appropriate filing officers as specified in MAC 44-3.10(10)-S10120, subsection (2). The organizational statement must be filed ~~before~~ within five (5) days after a political committee ~~receives a contribution or~~ makes an expenditure~~, except as provided in subsection (2)(a) of this rule~~.

~~(2)(a) A political committee which is in existence as of the effective date of this rule shall file a Statement of Organization within thirty (30) days after the effective date of this rule.~~

3. Subsection (2) of the rule is proposed to be amended because of certain definitional problems between the rule as presently written and the statute (§23-4781 [1], R.C.M. 1947). The rule, as now written, and §23-4781(1)

require a political committee to file a statement of organization prior to receiving a contribution or making an expenditure; yet by statutory definition, a group does not become a "political committee" unless and until it does make an expenditure. This creates a logical contradiction. Furthermore, as the rule is currently written, it cannot practically be applied to incidental political committees, which do not receive "contributions" in the normal sense or which continually receive dues or subscriptions in the normal course of their business. It is expected that the proposed amendment, requiring a statement within five days (analogous to the statement of a candidate) will prove more administratively feasible.

Subsection (2)(a) is proposed to be amended because it is no longer applicable. The subsection was an implementing rule which was promulgated to effect the provisions of the Campaign Finances and Practices Act of 1975.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed amendment is based on §23-4786(14), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10170	NOTICE OF PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10170; prescribing the requirements for the filing of periodic reports of campaign contributions and expenditures by incidental political committees. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign Finances and Practices proposes to amend rule MAC 44-3.10 (10)-S10170, prescribing the requirements for the filing of periodic reports of campaign contributions and expenditures by incidental political committees.

2. The proposed amendment affects only subsection (1) of the existing rule, which appears on page 44-19 of the Montana Administrative Code. The subsection as proposed to be amended provides as follows (stricken material is interlined):

MAC 44-3.10(10)-S10170 INCIDENTAL POLITICAL COMMITTEE, FILING SCHEDULE, REPORTING.

Amend subsection (1):

(1) An incidental political committee shall file reports only for the reporting periods in which it ~~receives contributions or~~ makes expenditures to or on behalf of a candidate, issue, or political committee or for the purpose of directly or indirectly influencing the result of an election.

3. The proposed amendment specifies that incidental political committees shall file periodic reports only for those periods in which they make an expenditure. The present version of the rule, which includes the word "contributions," does not apply well to incidental committees, which are typically ongoing organizations such as labor organizations, corporations, or unincorporated associations which only occasionally expend funds to influence an election, and which do not receive "contributions" in the normal sense or which continually receive dues, etc. in the normal course of their business. The proposed amendment works no substantive change in the policy of the Commissioner, but is undertaken pursuant to the annual review of the rules mandated by §82-4204(6), R.C.M. 1947.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(14), 23-4780(3), and 82-4204(6), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10180	NOTICE OF PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10180, prescribing a procedure for the filing of an initial report of campaign contributions and expenditures by candidates and political committees. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign Finances and Practices proposes to amend rule MAC 44-3.10 (10)-S10180, prescribing a procedure for the filing of an initial report of campaign contributions and expenditures by candidates and political committees.

2. The proposed amendment affects only subsection (2) of the existing rule, which appears on page 44-20 of the Montana Administrative Code. The subsection as proposed to be amended provides as follows (stricken material is interlined):

MAC 44-3.10(10)-S10180 INITIAL REPORT.

Amend subsection (2).

~~(2)--If a candidate or political committee required to report by section 23-4778 received contributions or made expenditures before April 21, 1975, the effective date of the act, the candidate or political committee need only disclose, in the initial report, the amount of cash on hand and indebtedness as of April 20, 1975, for purposes of this act.~~

3. The stricken material applied to the special situation prevailing after the passage of the Campaign Finances and Practices Act of 1975, §§23-4776 et seq., R.C.M. 1947, and provided directions for the filing of an initial report under the Act. The special situation which gave rise to subsection (2) of the rule no longer obtains. Thus the stricken material is proposed to be deleted as obsolete. The amendment is undertaken pursuant to the Commissioner's annual review of its rules mandated by §82-4204(6), R.C.M. 1947, and works no substantial change in our present policy, nor in the present reports required of candidates and political committees.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(14), 23-4778, and 82-4204(6), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10260	NOTICE OF PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10260, describing procedures for the reporting by candidates and political committees of in-kind contributions as campaign contributions. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign

Finances and Practices proposes to amend rule MAC 44-3.10 (10)-S10260, which describes the procedure for the reporting of in-kind contributions as campaign contributions by candidates for public office and political committees.

2. The proposed amendment affects only subsection (1)(a)(i) of the existing rule, which appears on page 44-22.1 of the Montana Administrative Code. The subsection as proposed to be amended provides as follows (stricken material is interlined):

MAC 44-3.10(10)-S10260 IN-KIND CONTRIBUTION, REPORTING.

Amend subsection (1)(a)(i).

(1)(a)(i) ~~Each such in-kind contribution shall be declared as an expenditure at the same value and reported on the appropriate expenditure reporting schedule and identified as an in-kind contribution.~~ The total value of the services, property, or rights contributed in-kind shall be deemed to have been consumed in the reporting period in which received.

3. The rule, as proposed to be amended, merely omits language which is essentially redundant. The existing rule provided, in substance, that in-kind contributions should be considered as in-kind expenditures and reported as expenditures. This procedure proved impractical and has not been required in practice; thus, the proposed amendment works no substantive change in the Commissioner's policy. In-kind contributions will continue to be considered as expended during the relevant period.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed amendment is based on §§23-4779(16) and 23-4786(14), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10340	NOTICE OF PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10340, prescribing a uniform method for the reporting of campaign expenditures by candidates for public office and political committees. NO PUBLIC HEARING CONTEMPLATED

TO: All interested persons

1. On December 15, 1977, the Commissioner of Campaign Finances and Practices proposes to amend rule MAC 44-3.10 (10)-S10340, which prescribes a uniform method for the reporting of campaign expenditures by candidates for public office and political committees.

2. The rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(10)-S10340 EXPENDITURES, REPORTING. (1) ~~Each report required by section 23-4778 and MAC 44-3.10(10)-S10170 shall disclose all expenditures in the manner required by sections 23-4778 through 23-4779 and these rules.~~

~~(2) The reporting periods specified in section 23-4778 (3) through (5), and the provisions of MAC 44-3.10(10)-S10160 shall be used in determining the reporting schedule.~~

~~(3) The definitions of "initial report" and "reporting period", as specified in MAC 44-3.10(10)-S10180 and 44-3.10 (10)-S10200, shall apply to the reporting of expenditures.~~ An expenditure is made on the date payment is made; or in the case of an in-kind expenditure, on the date the consideration is given.

~~(4)~~ (2) An expenditure shall be reported on the date and for the reporting period during which it is made~~, as specified in MAC 44-3.10(10)-S10370~~.

~~(5)~~ (3) Expenditures made from the petty cash fund need not be reported, except that an accounting shall be maintained pursuant to MAC 44-3.10(10)-S10210, subsection (3)(a).

3. The proposed amendment is undertaken for reasons of style, grammar, and clarity, and is not intended to effect any substantive change in the present policy of the Commissioner. It merely eliminates redundant language and incorporates the substantive provision of MAC 44-3.10(10)-S10370, which is proposed to be repealed (see MAC Notice No. 44-3-10-6, page 1). The amendment is undertaken as a part of the Commissioner's annual review of rules, pursuant to §82-4204(6), R.C.M. 1947.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

5. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(5), (14), and 82-4204(6), R.C.M. 1947.

John N. Hanson

JOHN N. HANSON, Commissioner of Campaign Finances and Practices

Certified to the Secretary of State October 13, 1977.

BEFORE THE COMMISSIONER OF CAMPAIGN
FINANCES AND PRACTICES OF
THE STATE OF MONTANA

In the matter of the amendment of rule MAC 44-3.10(6)-S1080, MAC 44-3.10(6)-S1090, and MAC 44-3.10(10)-S10300	NOTICE OF PUBLIC HEARING FOR THE PROPOSED AMENDMENT OF RULE MAC 44-3.10(6)-S1080, MAC 44-3.10(6)-S1090, and MAC 44-3.10(10)-S10300; defining "expenditure," "political committee," and "earmarked contribution," respectively, as those terms are used in the Campaign Practices Act and the Commissioner's rules.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the amendment of rule MAC 44-3.10(6)-S1080, MAC 44-3.10(6)-S1090, and MAC 44-3.10(10)-S10300.

2. For the sake of clarity, the proposed amendments eliminate surplus language. In substance, they provide that expenses involved in supporting of opposing ballot issues before they are certified (as, for instance, the circulation of petitions) are not within the definitions of "expenditure" or "earmarked contribution," and that such expenses will not transform a group supporting or opposing an issue before its certification into a "political committee."

3. The rules, as proposed to be amended, may be found on pages 44-13, 44-14, and 44-24 of the Montana Administrative Code, and only the affected subsections are reproduced here. The proposed amendments provide as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(6)-S1080 EXPENDITURE-DEFINITION.

Amend subsection (1)(c).

(1)(c) Expenses incurred in support of or opposition to the drafting, printing, distribution and collection of signatures for any petition for nomination ~~to office or petition for referendum or initiative~~.

MAC 44-3.10(6)-S1090 POLITICAL COMMITTEE-DEFINITION.

Amend subsection (1)(b) and subsection (1)(c).

(1)(b) To support or oppose a ballot issue or a petition for nomination~~, initiative, or referendum~~; or

(1)(c) To a committee organized to support or oppose a ballot issue or a petition for nomination~~, initiative, or referendum~~; or

MAC 44-3.10(10)-S10300 EARMARKED CONTRIBUTION, REPORTING.

Amend subsection (1) and subsection (2)(c)(iii).

(1) For the purposes of section 23-4737 and these rules, an "earmarked contribution" is a contribution made ~~by a person to a candidate or political committee~~ with the ~~understanding~~ direction, express or implied, that all or part of ~~the contribution will~~ it be transferred to ~~another specified candidate or political committee~~ or expended ~~by the recipient to support or oppose~~ on behalf of a specified candidate, ballot issue, or petition for nomination~~, initiative, or referendum~~.

(a) A contribution is not earmarked when the initial recipient is:

(i) The candidate for the benefit of whom it is to be expended;

(ii) A political committee which supports a single candidate for the benefit of whom it is to be expended;

(iii) A political committee which supports or opposes a single ballot issue or petition for nomination~~, initiative, or referendum~~ for the benefit of which it is to be expended; or

(iv) A political committee which supports or opposes more than one candidate and/or issue or petition for nomination~~, initiative, or referendum~~ and there is no ~~understanding~~ direction, express or implied, that all or part of the contribution will be expended for the benefit of a specified candidate and/or issue or petition for nomination~~, initiative, or referendum~~.

(2)(c)(iii) Report the full name and mailing address ~~(occupation and principal place of business, if any)~~ of the intermediary candidate or political committee.

4. The proposed amendments are largely made for style, grammar, and clarity in accordance with the Commissioner's annual review of rules. They also provide that expenses incurred in supporting or opposing an issue before it is certified are not "expenditures," as defined; that money received for such purposes is not "earmarked contributions;" and that a group involved in the circulation of petitions or similar activity before an issue is certified will not become a "political committee" by reason of such disbursements. These latter changes are intended to amend the affected rules to agree with proposed new rule "G" (see MAC Notice No. 44-3-10-7, page 9), which provides that an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification has been completed.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed amendment is based on §23-4786(14), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10120	NOTICE OF PUBLIC HEARING FOR THE PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10120, describing, in general, the manner of filing periodic reports pursuant to the Campaign Finances and Practices Act of 1975, as amended.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the amendment of rule MAC 44-3.10(10)-S10120.

2. The proposed amendment replaces subsection (3) of the present rule, found on page 44-16 of the Montana Administrative Code. The proposed amendment specifies that multicandidate political committees filing reports of contributions and expenditures with the Federal Election Commission shall file copies of those reports with the Montana Commissioner of Campaign Finances and Practices, in lieu of filing reports on Montana forms supplied by the Commissioner. The amendment, as proposed, would apply to state political party central committees, multi-candidate committees affiliated with a corporation or a labor organization, and similar organizations.

3. The subsection of the rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(10)-S10120 REPORTS AND STATEMENTS, FILING.

Amend subsection (3).

(3) ~~For the purposes of section 23-4778(2), a recognized statewide political party is not required to file the reports specified in section 23-4778 if it files reports pursuant to federal law which fully disclose the source and disposition of funds used in supporting or opposing a candidate and/or political committee and/or issue in local and/or~~

~~state district and/or statewide election. In such instances, a statewide political party shall file a copy of the reports filed pursuant to the requirements of federal law. A copy of the reports shall be filed with the Commissioner pursuant to the filing dates required by federal law.~~ As used herein, "federally-filing committee" means a state party central committee, a qualified multi-candidate committee under 2 U.S.C. §441(a)(4), or any other committee which files reports with the Federal Election Commission on a monthly or quarterly basis pursuant to the Federal Election Campaign Act of 1971, as amended.

(a) If a federally-filing committee's reports filed with the Federal Election Commission fully disclose the source and disposition of all funds used to influence elections in Montana, the Commissioner shall accept copies of such reports in lieu of the periodic reports prescribed by the Campaign Finances and Practices Act. Such reports need be filed with the Commissioner only for periods in which a federally-filing committee receives contributions from Montana sources or expends funds to influence an election in Montana. A copy of a statement of organization (FEC Form 1) shall accompany the first such report, and copies of any amendments thereto shall be filed with the Commissioner.

(b) This regulation does not affect the duty of any such committee under 2 U.S.C. §439 to file copies of reports with the Montana Secretary of State.

4. The Commissioner is proposing this amendment under the authority of §23-4778(7), which directs that the Commissioner shall adopt rules which shall permit committees which support or oppose more than one candidate, including political party committees, to file copies of one comprehensive report. State political party committees have reported in this manner under the present version of the rule, and the Commissioner's policy of allowing multi-candidate committees (qualified under 2 U.S.C. §441(a)(4)) to do the same has been in operation for more than a year with good results. The amendment, thus, does not effect a substantial change in policy, but merely codifies existing policy, and enables the Commissioner to give a quick and firm answer to the many questions received in this area.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(14) and 23-4778(7), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10160	NOTICE OF PUBLIC HEARING FOR THE PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10160, prescribing the schedule for the filing of reports of campaign contributions and expenditures by political committees influencing elections on more than one level.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the amendment of rule MAC 44-3.10(10)-S10160.

2. The proposed amendment provides that political committees (excluding those organized to support or oppose a statewide candidate or ballot issue) which expend funds to influence elections on more than one level shall file reports of contributions and expenditures on the "state-district" schedule set forth in §23-4778(4), R.C.M. 1947.

3. The rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(10)-S10160 POLITICAL COMMITTEE INFLUENCING ELECTIONS ON MORE THAN ONE LEVEL, FILING SCHEDULE.

(1) ~~For the purpose of determining under which schedule to report, as provided in section 23-4778(3) through (5), a political committee supporting or opposing a candidate and/or political committee and/or issue in a local and state district and/or statewide election, or any combination thereof, shall file reports on the dates specified under the schedule provided for the highest level of election, regardless of the total amount of contributions received or total amount of funds expended for an election.~~ Except as provided in subsection (2), political committees supporting or opposing candidates or issues on more than one level of election, as provided in section 23-4778, shall file reports on the dates specified in section 23-4778(4).

(2) Committees organized to support or oppose candidates or issues on the statewide level shall report according to the schedule provided in section 23-4778(3).

4. The Commissioner is proposing this amendment because of the confusion and hardship which has resulted under our present policy. Currently, any political committee which expends funds to support or oppose a statewide candidate or ballot issue is required to report on the "statewide" schedule of §23-4778(3), R.C.M. 1947. This requires at least two extra reports in a year, and makes aggregation of total contributions and expenditures by such committees difficult because their books cannot be closed unless they show a zero

balance. This is inconvenient in the case of committees having a continuing existence. The proposed amendment would eliminate both inconveniences.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(14) and 23-4778(7), R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10190	NOTICE OF PUBLIC HEARING FOR THE PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10190, prescribing the closing date of books for the filing of reports of campaign contributions and expenditures by candidates for public office and political committees.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the amendment of rule MAC 44-3.10(10)-S10190.

2. The proposed amendment deals with the closing date of books for candidates and political committees filing reports of campaign contributions and expenditures. It provides that the closing date of books for all reports shall be five (instead of ten) days prior to the due date of the report. Some language is omitted as surplusage.

3. The rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(10)-S10190 CLOSING DATE OF BOOKS.

(1) ~~For the purposes of Title 23, chapter 47, and these rules, the "closing date of books" is the date on which the election report for any reporting period is to be complete as specified in subsection (2) of this rule.~~

~~(2)~~ The closing date of books for any pre-election or ~~and~~ post-election reports required by section 23-4778 shall be ~~complete as of ten (10) days before the filing date of a report, except that the report due five (5) days~~

~~before an election from statewide candidates and political committees and the report due ten (10) days before an election from state district candidates and political committees and local candidates and political committees shall be complete as of~~ five (5) days before the filing date.

4. The agency proposes this amendment because of the confusion which has resulted from the closing dates not being uniform for each required report and, in addition, so that many, if not most, candidates will be able to clear up all outstanding debts and obligations by the closing date for their post-election report. It is hoped that this amendment, in conjunction with proposed new rule "K" (see MAC Notice No. 44-3-10-7, page 14), will enable most candidates and committees to file their closing report on the same date that they are required to file their post-election report; thus, eliminating the need for later reports.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed amendment is based on §§23-4786(14) and 23-4778, R.C.M. 1947.

In the matter of the amendment of rule MAC 44-3.10 (10)-S10250	NOTICE OF PUBLIC HEARING FOR THE PROPOSED AMENDMENT OF RULE MAC 44-3.10(10)-S10250, prescribing a uniform method for the reporting of contributions by candidates for public office and political committees.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the amendment of rule MAC 44-3.10(10)-S10250.

2. The proposed amendment eliminates a considerable amount of surplus language, provides that a contribution is to be considered as "made" on the date when it is received, and provides that in the case of property held jointly by a candidate and another, a contribution therefrom will be considered to be a contribution of the candidate's personal property, so long as the property was owned jointly prior to the time that the candidate became a "candidate," as defined.

3. The rule, as proposed to be amended, provides as follows (stricken material is interlined, new material is underlined):

MAC 44-3.10(10)-S10250 CONTRIBUTIONS, REPORTING.

~~(1) Each report required by section 23-4778 and MAC 44-3.10(10)-S10170 shall disclose all contributions in the manner required by sections 23-4778 through 23-4779 and these rules.~~

~~(2) The reporting periods specified in section 23-4778(3) through (5) and provisions of MAC 44-3.10(10)-S10160 shall be used in determining the reporting schedule.~~

~~(3) The definitions of "initial report" and "reporting period", as specified in MAC 44-3.10(10)-S10180 and 44-3.10(10)-S10200, shall apply to the reporting of contributions.~~ A contribution is made on the date when it is received; or, in the case of an in-kind contribution, on the date the consideration is received by the candidate or political committee.

~~(4)~~ (2) For the purposes of section 23-4778(3)(a) and (4)(a), the term "after the last pre-election report" means the period beginning with the day after the closing date of books for the last report before an election and ending with and including the day before the election.

~~(5)~~ (3) For the purposes of section 23-4778(3)(a), (4)(a), and (5), the report required to be filed within twenty-four (24) hours at any time after the last pre-election report shall be filed as follows:

(a) It shall be delivered within twenty-four (24) hours after the receipt thereof, Sundays and holidays excepted, to the Commissioner's office and the appropriate county clerk and recorder; or

(b) It shall be deposited within twenty-four (24) hours after the receipt thereof, Sundays and holidays excepted, as certified mail in an established U. S. Post Office, postage pre-paid; and

(c) It shall be reported in the next required report.

~~(6)~~ (4) A joint contribution shall be deemed and reported as a contribution from each of the contributors in an amount proportional to the total number of contributors, unless otherwise specified by the contributors at the time of the contribution.

(5) In the case of property held jointly by a candidate and another, a contribution therefrom will be presumed to be a contribution of the candidate's personal property so long as the property was owned jointly prior to the time that the candidate became a candidate as defined in section 23-4777 and applicable regulations.

~~(7)~~ (6) A contribution shall be reported on the date and for the reporting period during which it is made ~~as specified in MAC 44-3.10(10)-S10320~~.

4. The Commissioner proposed this amendment to eliminate surplus language in the rule as now written; to incorporate the substantive language of present rule MAC 44-3.10 (10)-S10320, which has been proposed for repeal (see MAC Notice No. 44-3-10-6, page 1); and to deal with the problems of property owned jointly by a candidate and another. A candidate is not currently limited in what he may contribute to his own campaign, but others (e.g., his spouse) are so limited under §23-4795(1). The Commissioner feels that it is not practical to attempt to limit what either the spouse or candidate may contribute in this situation (assuming, for instance, a joint bank account), but feels that it is in accord with the intent of the legislature to require that such property must have been owned jointly prior to the time that the candidate filed for office.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed amendment is based on §23-4786(14), R.C.M. 1947.

In the matter of the adoption of a proposed rule "G"	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE defining "ballot issue" for purposes of the Campaign Finances and Practices Act of 1975 and the rules adopted pursuant thereto, and providing a method for political committees supporting or opposing such issues to report the source of cash on hand as of the date of certification.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the adoption of a rule which specifies that a "ballot issue," as the term is used in the Campaign Finances and Practices Act of 1975 (§§23-4776 et seq., R.C.M. 1947) becomes a ballot issue when and if certification occurs by the proper official that it is qualified for the ballot. It further provides that groups supporting or opposing such issues with cash which they have on hand as of the date of certification shall report the source of such funds as if the most recent contributions made up the balance.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

RULE G BALLOT ISSUE, DEFINITION-PERSONS SUPPORTING OR OPPOSING (1) An issue as defined in section 23-4777(3), R.C.M. 1947, becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed.

(2) Committees which have cash on hand at the time of certification (which they wish to use in an election) shall disclose on their first report the source(s) of those funds, including the information required by section 23-4779 and these rules. The cash balances are assumed to be composed of those contributions most recently received by the committee.

4. The Campaign Finances and Practices Act specifies that expenditures made to support or oppose a ballot issue are expenditures to influence the result of an election and that committees supporting or opposing them are "political committees." It does not, however, specify when or by what means an issue becomes a "ballot issue," nor at what point funds used to influence it become reportable. The proposed rule answers both questions and picks the most reasonable and certain method of determination. Under the rule, as proposed, pre-certification expenses of printing and circulating petitions (for instance) will not be "expenditures." Groups utilizing funds on hand as of the date of certification to support or oppose a ballot issue after its certification must account for them by source, with the most recently received contributions being presumed to make up the balance.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed rule is based on §23-4786(14), R.C.M. 1947.

In the matter of the adoption of a proposed rule "H"

NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE defining "candidate" for purposes of the Campaign Finances and Practices Act of 1975, and the rules adopted pursuant thereto; and requiring the filing of periodic reports by write-in candidates for public office who receive contributions or make expenditures in their campaigns.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the adoption of a rule which defines "candidate" for purposes of the Campaign Finances and Practices Act of 1975 and the rules adopted pursuant to it.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

RULE H CANDIDATE, DEFINITION (1) For purposes of section 23-4777(1) and these rules, the term "candidate" includes an individual who did not legally qualify to appear on the ballot, but who has received contributions or made expenditures or has given authorization to another person to receive contributions or make expenditures, for the purpose of supporting his election to office.

4. The Commissioner is proposing this rule because of the unfairness which occasionally results from the current definition of "candidate," which does not include write-in candidates. While most such candidates do not actively campaign (and they would not be required to report under the proposed rule), some do and they receive contributions and make expenditures to influence the result of an election; yet they are not, as are declared candidates, required to file reports. The public, therefore, has no information concerning the candidate's finances or the magnitude of his campaign. The proposed rule, thus, furthers the Act's goal of disclosing the source and disposition of funds used to influence elections in Montana.

5. Interested persons may present their data, views, or arguments, either orally or in wirting, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed rule is based on §23-4786(14), R.C.M. 1947.

In the matter of the adoption of a proposed rule "I"	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A PROPOSED INTERPRETIVE RULE defining terms as used in §23-47-133, R.C.M. 1947, which requires statements of attribution or responsibility, commonly known as "disclaimers," on election campaign materials.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the adoption of a rule which defines and clarifies certain terms used in §23-47-133, R.C.M. 1947. The statute requires that the name and address of the printer and publisher appear on materials which are circulated to the general public and used to influence the outcome of an election.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

RULE I CAMPAIGN MATERIALS-IDENTIFICATION - INTERPRETIVE RULE (1) As used in section 23-47-133 the following definitions apply:

(a) "Person" means the individual who pays for or is financially responsible for the materials or, in the case of a political committee, the treasurer or other official purchasing the materials.

(b) "Circulate" means to distribute to the public at large or a reasonably significant proportion thereof within a given area. It does not mean distribution such as a private letter or any other communication not intended to reach the public at large.

(c) "Relating to" means to mention by name or other unambiguous reference a candidate, issue, or political party or committee in a manner that encourages its success or defeat or encourages contributions.

(d) "Printer" means the individual or firm doing the mechanical work of reproduction, if it is done as a commercial transaction. A "union bug" does not satisfy the requirement that the printer's name appear.

(e) "Placard, poster or other document" includes ordinary bumper stickers.

4. Section 23-47-133, R.C.M. 1947, provides in very general terms that any poster, pamphlet or other document relating to any candidate or issue at an election must bear on its face the name and address of its printer and publisher, if it is circulated to the general public. The terms, however, are not defined, and are subject to varying interpretation. They have in the past led to a great deal of confusion, question, and expense both to candidates and to the Agency. The proposed rule is "interpretive" in the

sense that it attempts merely to explain what the statute requires. It is not necessarily intended to be exclusive or binding upon candidates or other law enforcement officials.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed rule is based on §23-4786(14), R.C.M. 1947.

In the matter of the adoption of a proposed rule "J"	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A PROPOSED INTERPRETIVE RULE defining "electioneering" for purposes of §23-47-119, R.C.M. 1947.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the adoption of a rule which defines and clarifies the term "electioneering" as used in §23-47-119, R.C.M. 1947.

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

RULE J ELECTIONEERING - INTERPRETIVE RULE (1) As used in section 23-47-119, "electioneering" means the solicitation of support or opposition to a candidate or issue to be voted upon at the election or polling place in question, by means of:

(a) Personal persuasion, electronic amplification of the human voice, or the display or distribution of campaign materials.

(b) Offering or distribution of food, drink, or any other material benefit in a manner calculated to encourage recognition, support, or opposition to a candidate or issue.

(c) "Electioneering" does not include the display of ordinary bumper stickers on automobiles.

4. Section 23-47-119, R.C.M. 1947, prohibits electioneering within two hundred feet of a polling place, but does not define the term electioneering. Experience has shown that there is a wide range of conduct to which the term might or might not apply. No clarification is provided either in other statutes or in the case law of Montana.

The consequent confusion has resulted in much uncertainty for campaigners and law enforcement officials, as well as in election contests. The proposed rule attempts to clarify the term, and is "interpretive" only in the sense that it is not necessarily intended to be exclusive nor binding on other law enforcement agencies.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed rule is based on §23-4786(14), R.C.M. 1947.

In the matter of the adoption of a proposed rule "K"	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE describing the closing report for the reporting of campaign contributions and expenditures required of candidates and political committees under the Campaign Finances and Practices Act of 1975; prescribing the conditions for its filing.

1. On November 14, 1977, at 10:00 o'clock a.m., a public hearing will be held in room 413 of the State Capitol Building, Helena, Montana, to consider the adoption of a rule which specifies the time and conditions for the filing of a closing report of campaign contributions and expenditures by candidates and political committees, under the Campaign Finances and Practices Act of 1975 (§§23-4776 et seq., R.C.M. 1947).

2. The proposed rule does not replace or modify any section currently found in the Montana Administrative Code.

3. The proposed rule provides as follows:

RULE K CLOSING REPORT (1) A closing report shall be filed by candidates and committees reporting on the state district schedule when all debts and obligations are extinguished and no further contributions will be received or expenditures made which relate to the campaign.

(2) For the purpose of aggregating contributions and expenditures, such candidates and committees which wish to retain an unexpended balance shall use the closing report as the date marking the beginning of the next reporting period.

(3) Candidates for statewide office and committees reporting on the statewide schedule shall continue to file periodic reports so long as an unexpended balance remains and/or debts and obligations remain outstanding.

4. Section 23-4778, R.C.M. 1947, states that candidates and committees shall file a report of contributions and expenditures whenever the books are closed, but does not explain it further. The agency earlier specified, by advisory opinion, that a closing report could be filed when debts and obligations were extinguished and there was a zero balance in the campaign depository. This has proved undesirable in practice, particularly in the case of political committees which maintain an ongoing existence. The proposed rule provides that most candidates and committees may maintain a balance in their accounts. The date of the closing report may coincide with the regular post-election report, thus saving paperwork; it also provides that, for committees which wish to retain a balance and remain in existence, the date of the closing report will be the beginning of a new reporting period for purposes of the aggregation of contributions and expenditures. This policy should alleviate many of the accounting problems encountered by (for instance) local party committees. Due to the express language of §23-4778, candidates for statewide office (governor, etc) and committees organized to support a statewide candidate or issue must continue to report until a zero balance obtains.

5. Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing, or may address comments in writing to JOHN N. HANSON, Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, no later than November 21, 1977.

6. Jack J. Lowe, % Commissioner of Campaign Finances and Practices, Capitol Station, Helena, Montana 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Commissioner to make the proposed rule is based on §23-4786(14), R.C.M. 1947.

John N. Hanson

JOHN N. HANSON, Commissioner of Campaign Finances and Practices

Certified to the Secretary of State October 13, 1977.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule MAC 46-2.10(18)-S11440, pertaining to medical assistance.	)))))	NOTICE OF PUBLIC HEARING FOR AMENDMENT TO RULE PERTAINING TO MEDICAL ASSISTANCE, SERVICES PROVIDED, AMOUNT, DURATION.

TO: All Interested Persons

1. On November 21, 1977, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule MAC 46-2.10(18)-S11440, pertaining to Medical Assistance, Services Provided, Amount, Duration, to be enacted no sooner than December 1, 1977, and to be effective on December 24, 1977. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to Richard Weber, P.O. Box 4210, Helena, Montana, 59601, any time before November 18, 1977.

2. The Department intends to amend rule MAC 46-2.10(18)-S11440(1)(1)(viii)(aa) and (viii)(ab) as follows:

"(viii) ~~Dental services not provided:~~

~~(aa) Orthodontal services.~~

~~(ab) Periodontal services.~~ Orthodontal and periodontal services may be covered by the Medical Assistance Program if it is demonstrated that the physical and psycho-social well-being of the recipient is severely affected in a detrimental manner as a result of such a condition or ailment. These services must be previously authorized by the Medical Assistance Bureau. The request for authorization shall include statements from the provider of the service and the social worker involved with the case and must clearly document the necessity for the service and assurance that the plan will be followed to completion."

3. The Department intends to further amend rule MAC 46-2.10(18)-S11440 by inserting a new (2) and (3), and renumbering the current (2) to (4), as follows:

"(2) Medical services for conditions or ailments that are generally considered cosmetic in nature are not a benefit of the Medical Assistance Program except in such cases where it can be demonstrated that the physical and psycho-social well-being of the recipient is severely affected in a detrimental manner. Such services must be previously authorized by the Medical Assistance Bureau. A cosmetic prosthesis may be covered by the Program if

previously authorized, when it is shown that, in its absence, the psycho-social well-being of the recipient will be severely affected in a detrimental manner. The request for authorization shall include all relevant information to justify the need for the service. This information shall include statements from a physician qualified in the area of concern, a potential provider, and a social worker involved with the case. The information must clearly document the necessity for the service and assurance that the plan will be followed to completion.

(3) Experimental procedures are not a benefit of the program.

~~(2)~~ (4) Claims which appear questionable by the Medical Assistance Bureau because of over-utilization or seem inappropriate in view of the diagnosis and treatment goals, will be reviewed by the State Medical Consultant. The physical therapist and/or attending physician may be requested to provide additional information. Questions not resolved, or questions of improper participation in the medical assistance program by a licensed physical therapist will be referred to the Ethics Committee of the Montana Chapter of the American Physical Therapy Association. * * *"

4. The rationale for this request for amendment is to clarify the scope and nature of services provided by the Department in the Medicaid program.

5. Richard Weber, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

6. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 71-1511, R.C.M. 1947.

Patricia E. Malley
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 13, 1977.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of rule MAC 46-2.10(18)-S11465, pertaining to temporary prohibition of certain provider fee increases related to medical assistance.	NOTICE OF PUBLIC HEARING ON ADOPTION OF RULE PERTAINING TO MEDICAL ASSISTANCE.

TO: All Interested Persons

1. On November 22, 1977, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to receive comments on the adoption of rule MAC 46-2.10(18)-S11465, pertaining to medical assistance, temporary prohibition of certain provider fee increases, which was adopted by emergency rule on October 13, 1977, effective on that same date. Interested persons may submit their data, views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to Joan Uda, P.O. Box 4210, Helena, Montana, 59601, any time before November 21, 1977.

2. The rule, which was adopted October 13, 1977, has been amended in part. The following is the rule, as amended:

46-2.10(18)-S11465 MEDICAL ASSISTANCE, TEMPORARY PROHIBITION OF CERTAIN PROVIDER FEE INCREASES

(1) From the effective date of this rule until ~~its expiration~~ July 1, 1978, no fee increases to Medicaid providers are allowed, except as provided in subsection (2) of this section.

(2) This prohibition does not apply to any fee increase required by federal Medicaid law or regulations, including but not limited to federally required fee increases for nursing home care providers and hospital providers.

(3) This rule, for its effective duration, takes precedence over any other rules in this Title which are in conflict, including but not limited to 46-2.10(18)-S11460. (History: Sections 71-1511, 71-1517, R.C.M. 1947; EMERG, Order MAC 46-2-67; Adp. 10/13/77; Eff. 10/13/77; AMD, MAC Notice No. 46-2-125; Adp. 10/25/77; Eff. 10/25/77.)

3. The rationale for adopting the rule is that Montana's Medicaid program is facing an impending financial crisis which, if not averted, will seriously affect the health and safety of Montana's Medicaid recipients. If the Medicaid program does not reduce its anticipated expenditures, a severe cutback of both eligibility maximums and benefits under the Medicaid program will have to be imposed.

been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

5. The authority of the Department of Social and Rehabilitation Services to adopt this rule is based on Sections 71-1511 and 71-1517, R.C.M. 1947.

Director, Social and Rehabilitation Services

Certified to the Secretary of State October 13, 1977.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule MAC 46-2.10(18)-S11450, pertaining to nursing home care provider reimbursement.	))))	NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULE PERTAINING TO MEDICAL ASSISTANCE.

TO: All Interested Persons

1. On November 17, 1977, at 10:00 a.m. a public hearing will be held in the Auditorium of the State Department of Social and Rehabilitation Services, 111 Sanders Street, Helena, Montana, to consider the amendment of rule MAC 46-2.10(18)-S11450, Medical Assistance, Nursing Home Care Provider Reimbursement, to be enacted no sooner than December 31, 1977, and to be effective on January 1, 1978. Interested persons may submit their views or arguments, orally or in writing, at this hearing. Written data, views or arguments may be submitted to Joan Uda, P.O. Box 4210, Helena, Montana, 59601, any time before November 16, 1977.

2. The Department intends to amend rule MAC 46-2.10(18)-S11450, section (1), as follows. Section (2) will remain as previously published.

46-2.10(18)-S11450 MEDICAL ASSISTANCE, NURSING HOME CARE PROVIDER REIMBURSEMENT (1) Reimbursement of nursing home care shall be made in accordance with the Manual of Reimbursement for Nursing Home Care, December, 1977 edition, not printed herein due to its length, a copy of which is available from the ~~Budget and Management~~ Medical Assistance Bureau, Department of Social and Rehabilitation Services, P.O. Box ~~1723~~ 4210, Helena, Montana, 59601. However, for cost reporting periods beginning after December 31, 1977, the nursing home reimbursement rate shall be limited to the lesser of the costs as determined above, the rate charged to private pay patients or the 60th percentile of nursing home rates established by using the Manual of Reimbursement for Nursing Home Care. The 60th percentile of nursing home rates will be established by using the rates in effect on January 1 for the current calendar year.

3. RATIONALE: In response to Section 249 of Public Law 92-603 and the regulations implementing that section, together with the need to control costs which are not necessary to good quality nursing home patient care, the rule is proposed for implementation January 1, 1978.

4. Joan Uda, P.O. Box 4210, Helena, Montana, 59601, has been designated by the Director of the Department of Social and Rehabilitation Services to preside over and conduct the hearing.

SOCIAL AND
REHABILITATION SERVICES

5. The authority of the Department of Social and Rehabilitation Services to amend this rule is based on Section 71-1511, R.C.M. 1947.

Director, Department of Social and Rehabilitation Services.

Certified to the Secretary of State October 13, 1977.

Notice No. 46-2-126

DEPARTMENT OF ADMINISTRATION

The Department of Administration, through the Personnel Division, published Notice No. 2-2-11 proposing adoption of a new rule in the ARM 2-2.14(2)-S1430 to 2-2.14(2)-S14000 on the administration of Military Leave for State employees on August 25, 1977, at pages 184-187, Montana Administrative Register; 1977 issue Number 8.

On September 7, 1977, representatives of the Department of Administration conducted a public hearing under the authority of the Montana Administrative Procedure Act, Title 82, Chapter 42, R.C.M. 1947, to receive testimony concerning this rule.

The proposed rule has been revised slightly as a result of oral testimony received at the hearing and written testimony received before and after the hearing.

This rule has been adopted with the changes shown below and becomes effective October 25, 1977.

A written comment suggested that Rule I include the word "military" to alleviate the possibility of interpreting this to include all training courses both military and non-military. Therefore, this section will read as follows:

As defined by statute (Section 77-2104, R.C.M. 1947), a State employee shall be given fifteen (15) working days in a calendar year for attending regular encampments, training cruises and similar training programs OF THE ORGANIZED MILITIA OF THIS STATE OR OF THE MILITARY FORCES OF THE UNITED STATES.

During the testimony a suggestion was received to broaden the definition of Rule II(a) to include naval and air force reserves. Since the definition may have been somewhat vague, accordingly the definition will now read as follows:

(a) Military Leave means ATTENDING ANNUAL ENCAMPMENTS FOR ACTIVE DUTY TRAINING FOR ANY RESERVE COMPONENT OF ANY OF THE ARMED FORCES WHICH MAY TAKE PLACE ANY TIME DURING THE YEAR.

A written comment was received that suggested that weekend National Guard training and inactive duty training can not be exempted from the definition since Section 77-2104, R.C.M. 1947, mentions "similar training programs" as being eligible for leave of absence with pay. However, the Department of Military Affairs identifies "similar training programs" as a special training program in which the employee would usually receive military orders to attend the program. Also, the Department of Military Affairs interprets Section 77-2104, R.C.M. 1947, to only apply to active duty training, or "regular encampment," which requires military orders and this does not include weekend training or inactive duty training. Therefore, the definition will remain as rewritten above.

Two comments were received objecting to Rule IV, RATE OF COMPENSATION in which the Rule states that an employee on Military Leave receives his/her normal gross salary, thus

allowing the employee to keep the paycheck from the military service. The objection arises because an employee on jury duty leave or witness leave must return to the employer any court fees received or else take annual vacation leave in order to retain the fees. This did not appear fair to those commenting; however, these provisions are clearly set forth in the Revised Codes of Montana (Sections 77-2104 and 59-1010), and until such time as the statutes are revised, these rates of compensation must apply. Therefore, no change is being made to Rule IV.

A written comment was received pertaining to Rule V, SEASONAL AND PERMANENT PART-TIME EMPLOYEES. The objection was that a temporary employee should not be allowed to take military leave during the following years he/she is employed, if he/she worked the qualifying six months in one season or year. However, the Personnel Division's interpretation of the statutes is that once an employee has worked his/her qualifying, continuous, six months of service, that employee is eligible to use military leave if the employee returns year after year or season after season and as long as he/she does not have a break in service. Therefore, Rule V will remain the same.

A comment was also received regarding Rule VII ABSENCES in which the second sentence states that military leave may not be charged against an employee's annual vacation time. The suggestion was that the words "for the full fifteen working days" be added at the end of the sentence. The clarification would provide that if the military leave lasted longer than fifteen days, it could be charged to the employee's vacation time or compensatory time, with management approval. The section will read as follows:

Authorized military leave may not be charged against the employee's annual vacation leave FOR THE FULL FIFTEEN WORKING DAYS. AFTER THE FIFTEEN DAYS HAVE BEEN USED AND THE MILITARY LEAVE IS STILL IN EFFECT, THE EMPLOYEE MAY CHARGE THE TIME OFF TO VACATION LEAVE, LEAVE WITHOUT PAY, OR COMPENSATORY TIME, WITH MANAGEMENT APPROVAL.

A written comment was received that applied to Rule IX, the second sentence, which suggested that the words "to the extent applicable" be deleted from the sentence. However, the Personnel Division feels that these words are essential since only those areas in conflict between the rule and the labor contract would be superseded by the contract. Therefore, Rule IX will remain the same.

The Department of Administration, through the Personnel Division, published Notice No. 2-2-14 proposing adoption of a new rule in the ARM 2-2.14(6)-S14010 to 2-2.14(6)-S14070 on the administration of Jury Duty Leave and Witness Leave for State employees on August 25, 1977, at pages 195-199, Montana Administrative Register; 1977 issue Number 8.

On September 7, 1977, representatives of the Department of Administration conducted a public hearing under the authority of the Montana Administrative Procedures Act, Title 82, Chapter 42, R.C.M. 1947, to receive testimony concerning this rule.

The proposed rule has been revised slightly as a result of oral testimony received at the hearing and written testimony received before and after the hearing.

This rule has been adopted with the changes shown below and becomes effective October 25, 1977.

Written testimony was received suggesting that the definition of witness leave Rule II, (c), be amended to include "administrative proceeding." Because there are administrative proceedings in which a person must be subpoenaed to serve as a witness, administrative proceeding will be added to the definition. The suggestion was also made that the word "served" be substituted for the word "subpoenaed" in the same definition. However, since Section 59-1010, R.C.M. 1947, states specifically "subpoenaed to serve as a witness," the word "subpoenaed" will remain in the definition. Therefore, Rule II (c) will read as follows:

(c) Witness Leave - means a leave of absence with pay for an employee who has been properly subpoenaed to serve as a witness in a court, judicial proceeding or ADMINISTRATIVE PROCEEDING.

Several comments were received objecting to Rule III, RATE OF COMPENSATION in which the rule requires that employees on jury duty leave or witness leave must return to the employer any court fees received, whereas, an employee on military leave keeps both his/her State paycheck and the paycheck from the military service. However, these provisions are clearly set forth in the Revised Codes of Montana (Sections 77-2104 and 59-1010), and until such time as the statutes are revised, these rates of compensation must apply. Therefore, no change is being made to Rule III.

During the testimony a suggestion was made that since compensatory time off was not specifically addressed in the statutes permitting an employee to use compensatory time in order to retain court fees, that this Rule V (a) be reconsidered and/or justified.

Since compensatory time is considered to be available to the employee similar to vacation leave; i.e., used at a time mutually agreeable to employee and employer, we see no

reason why an employee could not choose to charge jury duty or witness leave against available compensatory time. Therefore, no change is made to Rule V(a). However, using this same rationale, Rule III(a). the third sentence should also contain the words: "or compensatory time," also, the words "or witness fees" were inadvertently omitted from the Notice. Therefore, Rule III(a) will read as follows: If the employee chooses to charge his/her juror or witness time off against his/her annual leave OR COMPENSATORY TIME, he/she shall also keep all juror or WITNESS fees paid by the court.

A minor editorial change in Rule VI would help to clarify the word "codes." In order not to confuse the reader, the words "Revised Codes of Montana, 1947" will be substituted for the word "codes." The section will read as follows:

Agency heads or their designee may request the court to excuse their employees from jury duty. In view of this provision, all requests to excuse an employee from jury duty for this reason should cite Section 59-1010 of the REVISED CODES OF MONTANA, 1947, and must be signed by the employee's department director or agency head.

A written comment was received that applied to Rule VII. which suggested that the words "to the extent applicable" be deleted from the sentence. However, the Personnel Division feels that these words are essential since only those areas in conflict between the Rule and the contract would be superseded by the contract. Therefore, Rule VII will remain the same.

BEFORE THE DEPARTMENT OF ADMINISTRATION
AND THE MERIT SYSTEM COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 2-3.34(50)-S34410 relating to certification of eligibles and promotional examinations	NOTICE OF THE AMENDMENT OF RULE 2-3.34(50)-S34410

TO: All Interested Persons:

1. On August 25, 1977, the Merit System Council published notice of a proposed amendment to Rule 2-3.34(50)-S34410 concerning certification of eligibles and promotional examinations at page 200 of the Montana Administrative Register, issue number 8.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule to allow for certification of all individuals who are ranked in the top three whole scores and to eliminate the use of promotional examinations for permanent employees who apply and meet the minimum qualifications for promotional vacancies.

Clifford T. McGillvray, Administrator
Merit System Council

Certified to the Secretary of State September 29, 1977

STATE TAX APPEAL BOARD
DEPARTMENT OF ADMINISTRATION

By notice numbers 2-3-36-8 through 2-3-36-13, published in the Montana Administrative Register for July, 1977 at pages 1 through 8, the Board proposed to amend and adopt various rules governing tax appeals. No comments or adverse testimony of any sort was received. Therefore, the Board has adopted each rule as proposed in the notices.

The reasons for these changes were to comply with various statutory amendments enacted by the 1977 legislature.

Amendment of Rule 4-2.6(6)-S660, EQUIPMENT STANDARDS

1. Department of Agriculture published Notice 4-2-43 of a proposed Amendment to ARM 4-2.6(6)-S660, Equipment Standards on September 26, 1977 at page 206, Montana Administrative Register; 1977 issue Number 8.

2. Statement of reasons in support of the amendment of ARM 4-2.6(6)-S660. The above rule was amended to better clarify the language and set specific language for the Custom Cereal Seed Processing Plants.

No testimony or comments were received.

3. This rule has been adopted with the changes shown below and becomes effective on October 25, 1977.

(1)(b) an air screen cleaner with no less than three ~~(3)~~ screens or equivalent equipment (one screen must be grading screen);

~~(e)~~(D) all seed handling equipment such as augers, elevator legs, bins, ~~and, sprouts~~ SPOUTS, AND floors accessible and capable of being cleaned and inspected to prevent crop or variety mixtures between lots;

~~(f)~~(E) equipment and procedures ~~to uniformly~~ that acceptably blend a lot or lots of seed when seed is to be blended;

~~(d)~~(2) SEED PROCESSING PLANTS LICENSED AS: FIRST CLASS SEED PROCESSING PLANTS MAY HAVE:

A treater that will apply a uniform application of chemical to seed if seed is to be treated;

~~(2)~~(3)

~~(e)~~(b)

~~(d)~~(c) equipment and procedures ~~to uniformily~~ that acceptably blend a lot or lots of seed when seed is to be blended;

~~(2)(b)~~(4) A COMMERCIAL SEED PROCESSING PLANT MAY HAVE: A treater that will apply a uniform coating application of chemical to seed if seed is to be treated~~,~~, the seed treater must be located outside of the facility;

~~(3)~~(5) A Custom Cereal Seed Processing Plant shall: ~~have;~~

(a) ~~be restricted to the cleaning of producer cereal crop seed;~~ have an air screen cleaner with no less than two screens or a dimensional separator in combination with an air attachment;

(b) ~~operate the existing cleaning and processing equipment in the most efficient manner consistent with the equipment design and proper management for each kind of crop;~~ operate all seed processing equipment in the most efficient manner to prevent contamination of cleaned seed with other crop or weed seed.

~~(e)~~(6) A CUSTOM CEREAL SEED PROCESSING PLANT MAY HAVE: A treater that will apply a uniform application of chemical to seed if seed is to be treated; the seed treater must be located outside of the facility.

~~(d) comply with the requirements of the Seed Dealers, Processers, and Warehousemen Act when cereal crop seed is sold, bartered or offered for sale.~~

~~(4)~~(7)(a) ~~between July 1, 1976 and July 1, 1977, establish~~ enforce specific minimum equipment and/or purity standards for custom cereal processing plants. These plants shall comply with these standards by January 1, 1979. ~~Provided that,~~ tThe Department may issue a license variance not to exceed two years upon petition by the plant. The petition shall set forth that there are:

(i) significant economic problems ~~of the~~ for the plant in meeting the ~~standards~~ custom cereal processing plant standards;

(ii) contributing factors relative to the location of the plant ~~or,~~ within a geographic area;

(iii) economic benefits provided by the plant custom cereal processing plants to ~~the area producers.~~ cereal crop producers within a geographic area.

(5)(g)(a) provide appropriate storage space and storage conditions so that when agricultural seed is properly conditioned and placed in storage, it will not be contaminated nor deteriorated ~~beyond~~ under ~~that~~ normal~~ly expected during~~ storage~~,~~ time;

~~(e)~~(9) Custom Cereal Processing Plants shall comply with Section 3-803.2 when merchandising prelabeled and prebagged crop seed.

~~(d)~~(8)(c) apply methods and procedures for seed treating that shall meet Environmental Protection Agency Standards; Montana Department of Agriculture, Pesticide Standards for seed treating.

Adoption of Rule 4-2.6(6)-S661 HANDLING PROCEDURES

1. Department of Agriculture published Notice 4-2-43 of a proposed Amendment to ARM 4-2.6(6)-S661, Handling Procedures on September 26, 1977 at page 207, Montana Administrative Register; 1977 issue Number 8.

2. Statement of reasons in support of the amendment of ARM 4-2.6(6)-S661. The above rule was amended to better clarify the language and set specific language for the Custom Cereal Seed Processing Plants.

No testimony or comments were received.

3. The amendment to this rule has been adopted as proposed with no language changes and becomes effective on October 25, 1977.

Adoption of Rule 4-2.6(2)-S650 REPORTS

1. Department of Agriculture published Notice 4-2-41 of a proposed NEW rule to ARM 4-2.6(2)-S650, Reports on September 26, 1977 at page 203, Montana Administrative Register; 1977 issue Number 8.

2. Statement of reasons in support of the adoption of ARM 4-2.6(2)-S650. The above rule was adopted because of an

amendment to Section 3-227, R.C.M. 1947 during the 45th Legislative Session. Without this rule the department would not be able to require the grain, wheat and barley industries to submit forms necessary for enforcement of other laws of the State of Montana.

No testimony or comments were received.

3. The adoption of this NEW rule has been done as proposed with no language changes and becomes effective on October 25, 1977.

DEPARTMENT OF BUSINESS REGULATION

Adoption of Rules 8-2.6(14)-P6100, APPLICATION FOR SATELLITE TERMINAL AUTHORIZATION and 8-2.6(14)-S6110, CRITERIA FOR AUTHORIZATION

1. The Department of Business Regulation published Notice No. 8-2-29 of proposed adoption of ARM 8-2.6(14)-P6100 - Application for Satellite Terminal Authorization, and ARM 8-2.6(14)-S6110 - Criteria for Authorization, on August 25, 1977, at page 209 of the Montana Administrative Register; 1977 issue Number 8.

2. These rules were proposed to implement Chapter No. 503, Laws of Montana 1977, as enacted by the 45th Legislature. The new law requires approval by the Department of Business Regulation for the installation, maintenance and operation of satellite terminals. The proposed rules were developed to supply the necessary application procedure and to provide the criteria upon which Departmental rulings on applications would be based.

At the public hearing, comments were received from the following individuals, with the Department's subsequent actions noted:

Mr. Ross W. Cannon, representing the Montana Savings and Loan League, suggested an additional phrase in proposed Rule 8-2.6(14)-S6100(1)(h) to eliminate ambiguity when considering branches of financial institutions. That suggestion has been accepted, and the proposed language appears in the final rule.

Mr. Robert M. Murdo, representing the Montana Credit Unions League, suggested several amendments designed to insure prompt sharing of satellite terminals by financial institutions. While the Department is fully aware of the sharing mandates of the Montana Electronic Funds Transfer Act (MEFTA), it believes those imperatives can be adequately enforced under the law without additional elaboration in the Department's rules.

Mr. Roger Tippy, appearing in his own behalf, called attention to the Statement of Intent issued by the House Committee when it considered the bill which ultimately resulted in MEFTA. That statement, and Mr. Tippy's comments, suggest a number of additional areas in which rules might be adopted. The Department is actively considering action in several of these areas, but is not prepared to adopt rules in those areas without further study.

Mr. Russ Livergood, representing the Montana Retail Association, made a number of suggestions for changes in the proposed rules as they relate to point of sale terminals (POST). The final Rule 8-2.6(14)-P6100, in subsections 2(c) and 2(l), contains changes designed to allay his concern about departmental intrusions into areas of terminal function other than electronic funds transfer. Mr. Livergood's other suggestions were not followed because, in the

Department's view, they were inconsistent with the responsibilities placed upon it by MEFTA.

3. These rules have been adopted with the changes shown below.

8-2.6(14)-P6100 APPLICATION FOR SATELLITE TERMINAL AUTHORIATION

(1)(b) The proposed location of the ~~automated teller~~ machine.

(1)(d) The types of transactions which will be performed BY THE MACHINE.

(1)(e) The manner of operation, in detail, including whether the ~~device~~ MACHINE is on-line or off-line.

(1)(f) ~~Whether~~ WITH WHOM THE USE OF THE MACHINE will be presently shared and the terms and conditions under which other financial institutions are participating or may participate in its use.

(1)(h) The distance from the proposed location to the principal place of business, OR BRANCHES THEREOF, of each participating financial institution.

(2)(c) The manner of operation in detail, AS IT RELATES TO ELECTRONIC FUNDS TRANSFERS, including whether the terminal is on-line or off-line.

(2)(e) ~~Whether it~~ WITH WHOM THE TERMINAL will be presently shared and the terms and conditions under which ~~other~~ financial institutions are participating or may participate in its use.

(2)(h) Safeguard against the possibility of error or fraud in the operation of the ~~machine~~ TERMINAL.

(2)(j) Insurance and security provisions protecting the ~~machine~~ TERMINAL and its users.

(2)(l) Completed specimen copies of all forms to be used in connection with the ELECTRONIC FUNDS TRANSFER operation of the ~~machine~~ TERMINAL (e.g. drafts and receipts).

(3) Changes in the information required by this Section which occur ~~subsequent to~~ AFTER the receipt of authorization to maintain a satellite terminal shall be reported TO THE DEPARTMENT before or at the time they occur~~, to the Department~~.

Remainder of the text unchanged.

8-2.6(14)-S6110 CRITERIA FOR AUTHORIZATION

This rule has been adopted as proposed.

BEFORE THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of adoption of ARM 16-2.14(2) -S14101, relating to a statewide solid waste management program.	))))	NOTICE OF THE ADOPTION OF RULE 16-2.14(2)-S14101

To: All Interested Persons:

1. On August 25, 1977, the Board of Health and Environmental Sciences published notice of a proposed adoption of rule 16-2.14(2)-S14101, concerning grants to local governments for solid waste management programs, at page 216 of the 1977 Montana Administrative Register, issue number 8.

2. The agency has adopted the rule with the following changes:

ARM 16-2.14(2)-S14101, Solid Waste Management Program - Grants and Loans to Local Governments.

(1) Definitions.

(a) "Grants" means front-end planning funds as defined in Section 69-4013-~~(3)~~, R.C.M. 1947.

(b) "Loans" means front-end organizational funds as defined in Section 69-4013-~~(4)~~, R.C.M. 1947.

(2) Same as proposed rule.

(3) Application for loans and grants - general requirements.

(a) No application form will be provided. However, to facilitate uniformity, the application shall:

(i) same as proposed rule

~~(ii) provide a one inch margin on all typed or offset pages;~~

~~(iii)~~ (ii) same as proposed rule.

~~(iv)~~ (iii) same as proposed rule.

~~(v)~~ (iv) same as proposed rule.

(b) The department will review the application to determine whether it is in compliance with the Act and rules. If the department determines that the application is not in compliance with the Act and rules, the department will ~~reject~~ return the application and notify the applicant in writing, listing the deficiencies. The application may be resubmitted after corrections are made.

(c) - (h) same as proposed rule.

(4) same as proposed rule.

(5) same as proposed rule.

(6) Eligibility for loan -- general eligibility requirements.

(a) same as proposed rule.

(b) If studies indicate a type of resource recovery is more feasible than ~~a landfill program~~, other types of solid waste management systems, a local government may choose not to implement the resource recovery alternative and still be eligible for a loan pursuant to the Act provided the local government has held a public meeting to discuss its decision.

(c) same as proposed rule.

(7) - (10) same as proposed rule.

(3). Comments and testimony were received for and against parts of the proposed rule. The Solid Waste Committee of the League of Women Voters (League) and the Montana Association of Counties (MACo) generally supported the proposed rule but argued for some changes.

MACo argued that section (3)(v) of the proposed rule should not require the applicant under the plan to maintain financial records in accordance with the department's accounting procedures. It was submitted that the Department of Community Affairs is authorized by statute to determine what kind of accounting systems counties and cities are to use and that the Department of Health and Environmental Sciences might require an inconsistent approach.

MACo also argued that section (5)(a)(ii) of the proposed rule might lead to the department's giving preference to area-wide plans over individual local government plans and that there was no basis for this in the law.

The League and MACo also argued that proposed section (6)(b) should be changed to permit an applicant to receive a loan where the study indicated that a resource recovery system was more feasible than solid waste systems other than landfills and the applicant chose a non-resource recovery alternative.

Proposed section (3)(v) was not changed because the department indicated that its intention was to work with the Department of Community Affairs as closely as possible in establishing what types of accounting systems would be required. The department did not think that proposed section (5)(a)(ii) would lead to alleged discrimination by the department in favor of area-wide plans at the expense of local plan approval. This section was therefore not changed.

The department and the board did find merit in the arguments of the League and MACo which advocated a change in proposed section (6)(b). It was determined that the law's intentions would best be carried out by permitting the greatest participation in the loan program. Due to the high cost of some resource recovery systems, the proposed rule was modified to allow local governments to be eligible for loans if a resource recovery alternative was more feasible than any other solid waste management system but the local government chose not to implement the former.

John W Bartlett
Board Chairman

Certified to the Secretary of State October 13 ,1977

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment to rule ARM 16-2.14(10)-S14340 relating to subdivision review procedure) NOTICE OF THE AMENDMENT OF RULE ARM 16-2.14(10)-S14340

TO: All Interested Persons:

1. On August 25, 1977, the Department published notice of a proposed amendment to rule ARM 16-2.14(10)-S14340 concerning subdivision review procedure at page 214 of the 1977 Montana Administrative Register, issue number 8.

2. The agency has amended the rule with the following changes:

ARM 16-2.14(10)-S14340 SUBDIVISIONS

(1) Definitions.

(a) "Adequate water supply" means a water supply which meets the following criteria:

Quality - public systems shall meet or exceed the minimum primary and secondary EPA drinking water standards as may be adopted by the department, unless an exemption or variance has been granted by the department.

Individual systems shall meet recommended standards for chemical tests listed in subsection (7)(b)(ii).

Quantity - provides 8 gal/min. for a minimum of two (2) hours for an individual homesite and provides the quantities accepted in "Design of Small Water Systems" by Joseph Salvate, Jr. for ~~multi-~~ multiple family or public systems.

Dependability - The necessary quantity and quality of water will be available at all times.

(b) "Certificate of Survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(c) "Individual water system" means any domestic water system which is not a public or multiple family system.

(d) "Individual sewerage system" means any sewerage system which is not a public or multiple family system.

(e) "Lot" is synonymous with "parcel" for purpose of this rule.

(f) "Multiple family sewerage system" means a sanitary sewerage system which serves or is intended to serve between two through nine families, the total people served shall not exceed 24.

(g) "Multiple family water supply system" means any installation or structure designed to provide domestic or potable water to serve between two through nine families. The total people served shall not exceed 24.

(h) "Municipal" relating to a city or town as described in Title 11, Chapter 1, R.C.M. 1947.

(i) "Parcel" means a part of land which is created by a division of land or a space in an area used for recreational camping vehicles and mobile homes.

(j) "Plat", for the purposes of this rule and section

69-5003, R.C.M. 1947, means a graphical representation of a subdivision showing the division into lots, blocks, streets, alleys, and other divisions and dedications, and any document which graphically describes a division of land, including a certificate of survey.

(k) "Public sewage disposal system" means a sewage disposal system that serves ten or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

(l) "Public water supply system" means any installation or structure to provide domestic or potable water to ten or more families or a total of 25 or more persons for a period of at least 60 days out of the calendar year.

~~(m)--Private sewage or water systems constitutes of either an individual or multiple family sewage or water systems.~~

(m) "Well" means an artificial excavation that derives water from the interstices of rocks or soil which it penetrates.

(n) "Spring" is an opening in the earth's surface from which water issues or seeps.

(o) "Septic tank" means a storage settling tank in which settled sludge is in immediate contact with the sewage flowing through the tank while the organic solids are decomposed by anaerobic bacterial action.

(p) "Subsurface sewage treatment system" means the process of sewage treatment in which the effluent is applied to the soil or subsoil by distribution through horizontal open-jointed or perforated pipes.

(q) "Usable area" means that portion of a lot that can be used for the placement of water supply and sewage treatment systems. Unusable areas shall include but not be limited to roadways, watercourses, utility easements and rock outcroppings.

(2) Information required by the department. The following information shall be submitted to the department:

~~(a)--A copy of the plat(s) prepared pursuant to sections 11-3859 through 11-3876, R.C.M. 1947, and the Department of Community Affairs rules, suitable for filing with the county clerk and recorder, must be submitted to the department along with a completed application form and such information as will provide adequate evidence that the proposed method of providing water, sewage disposal, solid waste disposal, and storm drainage will comply with the rules and criteria as set forth herein.~~

~~(i)--Application form E.S. 91 is to be used for major subdivisions (more than five (5) lots).~~

~~(ii)--Application form E.S. 91A is to be used for minor subdivisions (five (5) or less lots).~~

~~(iii)--Application form E.S. 91B is to be used for lots that have existing structures using water and sewerage systems.~~

(a) A copy of a preliminary plat or final plat if the subdivision is subject to local review, or if exempt from local review, a certificate of survey suitable for filing with the county clerk and recorder. (See subsection (3) for details.)

~~(b)--In addition to a plat(s) suitable for filing, plat(s) or plan(s) must be submitted to the department showing the following:~~

~~(i)--location by number of any soil test or percolation test holes;~~

~~(ii)--location of any existing domestic water supply source or sewage disposal system within 100 feet of any lot line;~~

~~(iii)--Where individual sewage treatment systems are proposed, the area suitable for location of subsurface disposal system on each lot. (This information may be shown on plat to be filed with the county clerk and recorder.)~~

~~(iv)--Where individual wells are proposed, the probable location of each well on the lot(s) and the minimum distance from the septic tank, sewage treatment system, and any proposed or existing sewer lines. (This information may be shown on plat to be filed with the county clerk and recorder.)~~

~~(v)--Location of public water or sewer lines for the development (if applicable.)~~

~~(vi)--Location of any streams, lakes, ponds, or irrigation ditches in or near the development.~~

(b) A completed joint subdivision application form for subdivisions requiring local review and approval or the appropriate E.S. 91A or E.S. 91B form for subdivisions exempt from local review. (See subsection (3) for details.)

[(c) as proposed in the original notice is now designated subsection (11)(a) of this rule.]

[(c)(i) as proposed in the original notice is now designated subsection (9)(e) of this rule.]

(c) Two copies of maps or plat(s) showing existing water supply or sewage treatment systems in the vicinity of the subdivision, surface water bodies in area, lot layouts specifying locations of proposed water systems and sewage treatment systems, percolation tests and soil tests locations. (See subsection (9) for details.)

[(d) as proposed in the original notice is now designated subsection (9)(f) of this rule.]

(d) A contour map showing lots, drainages and drainage structures. (See subsection (11) for details.)

~~(e)--Two copies of the plat(s) showing the items listed in (2)(b) and (2)(c) must be submitted to the department. At the time the Certificate of Subdivision Plat Approval is issued the department will return one approved plat to the developer or engineer.~~

(e) Where public water or sewerage systems are proposed, two copies of plans and specifications prepared by an engineer. (See subsection (6) for details.)

~~(5)--The department must receive a report or plan which include detailed information on:~~

~~(i)--Water supply system as set forth in sections (6), (7) and (8) of this rule;~~

~~(ii)--Sewage disposal system as set forth in sections (6), (8) and (9) of this rule;~~

~~(iii)--A means of solid waste disposal as set forth in section (10) of this rule;~~

[(f)(iv) as proposed in the original notice is now designated subsection (2)(j) of this rule.]

(f) Multiple family systems shall be designed in accordance with the standards set forth for public systems if a lot size reduction is requested. (See subsection (8) for details.)

(g) Where individual water systems are proposed, evidence that the source is adequate in terms of quality, quantity and dependability. (See subsection (7) for details.)

(h) Where individual sewage treatment systems are proposed, detailed soils information, percolation tests in the subsurface sewage treatment area, groundwater information, and slope across treatment area. (See subsection (9) for details.)

(i) Solid waste disposal plans:

(i) If the proposed subdivision is not within a department approved solid waste district, a solid waste approval form must be submitted.

(ii) If on-site disposal is proposed, a plan detailing soils, hydrology and method of handling. (See subsection (10) for details.)

(j) Storm drainage plans for removal of storm water runoff. (See subsection (11) for details.)

(k) Subdivision review fee in the amount specified in ARM 16-2.14(10)-S14341.

(l) A copy of the environmental assessment when required by the local governing body under the provisions of section 11-3863, R.C.M. 1947.

(m) A subdivision approval statement from the local health officer or his designated representative.

(3) Department review procedures.

(a) The department considers a complete application to include the appropriate application form, subdivision review fee as set forth in ARM 16-2.14(10)-S14341 and information required by this rule. A copy of the plat suitable for filing need not be submitted before review commences. However, the suitable plat must be submitted before the department can take favorable final action on the submittal.

(b) One copy of the appropriate application form must be submitted to the department:

(i) The Joint Subdivision Application Form is to be used for proposed subdivisions requiring local government review as well as department review.

(ii) Application Form E.S. 91A is to be used for parcels created by certificates of survey exempt from local government

review and removal of sanitary restrictions from undeveloped lots within existing subdivisions.

(iii) Application Form E.S. 9IB is to be used for parcels that have existing structures using water or sewerage systems. These parcels may be in the process of being created by certificate of survey or may be existing lots in a subdivision from which sanitary restrictions are being removed.

(c) Upon receipt of a subdivision application, the department will have 60 days for final action. If an environmental impact statement is required, final action must be taken within 120 days.

(i) If the application is incomplete, the department or local review agent will deny the application, explain the deficiencies to the developer or engineer and invite them to resubmit when additional information is available.

(ii) When an application for a subdivision is resubmitted and there are substantial changes in the resubmittal which affect the adequacy of the water or sewerage systems, the department may request an additional review fee.

(d) A Certificate of Plat Approval will be issued when the department is satisfied that the following conditions have been fulfilled:

(i) Sewage treatment system will not pollute water or endanger public health;

(ii) The water supply is adequate, solid waste disposal is in accordance with applicable state laws and rules, and the requirements of the Montana Environmental Policy Act have been met.

(e) When individual water or sewerage systems are proposed the department must review two copies of map(s) or plat(s) showing the proposed location of water supply or sewage treatment systems and details regarding the suitability of their placement as listed in subsections (7)(a) and (9)(h). The department will return one copy of the approved plat(s) or map(s) to the developer or engineer if applicable.

(f) Where public water or sewerage is proposed, department review will proceed in two steps: The initial step will be the review of the preliminary plat and preliminary plans and specifications for the water and sewerage systems. The department will comment on the adequacy of the preliminary information. Preliminary plans and specifications consist of:

[subsections (i) through (ix) were previously designated subsection (6)(f) of this rule.)

(i) Size and material of sewer and water lines.

(ii) Slope and plan view of both systems superimposed on the plat.

(iii) Manhole and lamphole locations.

(iv) Description of water and sewer line crossings.

(v) Hydrant and blowoff locations.

(vi) Special details in water and sewer systems; i.e., water booster pumps, lift pump stations, pressure reducers, etc.

(vii) Statement from governing body accepting responsibility

for providing water and sewer service to the subdivision.

(viii) Statement from city assuring the present water and sewerage system can handle the anticipated load.

(ix) Approval of preliminary plans by public works director or city engineer.

Final review will commence when a copy of the plat to be signed by the local governing body has been submitted to the department along with two copies of the final plans and specifications for the water and sewerage systems.

(g) The department shall enter into a written review agreement with local governments that have qualified personnel as determined by the department to review water supply, sewage and solid waste disposal facilities for subdivisions involving five or fewer parcels.

(i) When the department and local governments have entered into a review agreement, the developer shall submit the subdivision application to the designated personnel of the local government.

(ii) Local governments shall have 50 days from the date of receipt of a subdivision application to forward to the department the complete application and the local government's recommended action on the application.

(iii) The local government shall agree to review water supply, sewage and solid waste disposal facilities according to the provisions of this rule.

(h) The local government shall notify the department of its recommendations for approval by typing a Certificate of Plat Approval, signing it, and mailing it to the department along with the completed application. The department shall have ten (10) days to take final action upon receipt of the Certificate of Plat Approval.

(i) The department shall reimburse local government for services rendered in accordance with ARM 16-2.14(10)-S14341.

(i) All subdivisions submitted to the department after the effective date of this rule shall be reviewed under conditions set forth in this rule. Subdivisions submitted before the effective date of this rule shall be reviewed under conditions set forth in the rule in effect during that time.

(4) Mobile home and trailer courts. The water supply, sewage disposal and solid waste disposal will be reviewed under the requirements of this rule. Tourist campgrounds and/or trailer courts are required to be licensed under the provisions of section 69-5601 through 69-5607, R.C.M. 1947. According to ARM 16-2.14(2)-S14160, a trailer court license will not be issued until the provisions of this rule are met.

(5) Lot sizes.

(a) Where individual water and sewage treatment systems are to be utilized, the minimum lot size shall generally be one acre of usable area.

(i) Smaller lot sizes will only be considered if the ~~subdivider~~ developer provides information from engineers,

soils scientists, or hydrologists indicating no sanitary problems will occur. Each lot will be considered separately. In no case shall smaller lot sizes be considered where there is a possibility of the water table being within twenty feet of the surface of the ground.

(b) Where either an individual water supply system or an individual sewerage system is provided and the other service is to be provided by a public water or sewerage system, the minimum lot size shall generally be 20,000 square feet of usable area, unless a smaller lot size can be justified ~~in accordance with criteria set forth in this section~~.

(c) Larger lot sizes may be required where individual sewage treatment systems are proposed and the concentration of living units may cause pollution or contamination of groundwater or if an adequate water supply cannot be developed for the proposed number of dwelling units.

(d) Mobile homes, trailer courts, campgrounds, ~~multi~~ multiple family dwellings, cluster-type development, commercial or industrial development, must have suitable land area to provide an adequate system or systems of water supply and sewage treatment. Special review shall be necessary when said type development is to be considered for any subdivision.

(6) Public water supply or public sewerage system.

(a) Where a major subdivision is contiguous to or within 500 feet of a department approved public water or sewerage system (and that system can handle the additional load) or is located within an Environmental Protection Agency facility plan service area, the subdivision shall be connected to the public system, unless the local government body refuses permission in writing to connect to this system.

(b) Where a public water or sewerage system is to be utilized, plans and specifications shall be prepared by an engineer. ~~Plans and specifications shall be in sufficient detail to be let for bids.~~ Plans and specifications shall be prepared in accordance with the following:

(i) Section 69-4905, R.C.M. 1947, and ARM 16-2.14(10)-S14321.

(ii) "Recommended Standards for Water Works" and "Recommended Standards for Sewage Works" as prepared by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers (Ten State Standards).

(iii) "Design of Small Water Systems" by Joseph A. Salvato, Jr.

(iv) Where subsurface ~~drainfields~~ sewage treatment systems are utilized, publications such as "Manual of Septic Tank Practice" by U.S. Department of Health, Education and Welfare, "Treatment and Disposal of Waste Water from Homes by Soil Infiltration and Evapotranspiration" by Alfred P. Bernhart, or "Waste Water Treatment Systems for Rural Communities" by Goldstein and Moberg may be used as a guide for sizing drainfields.

(v) ARM 16-2.14(10)-S14480, Montana's water quality standards.

(vi) ARM 16-2.14(10)-S14381, Public Water Supplies.
~~(vi) Public Law 93-523 Safe Drinking Water Act.~~

(c) Two copies of the plans and specifications shall be provided the department. After the department has completed review and found the plans and specifications to be satisfactory, one copy will be returned to the developer or his representative if applicable.

(d) When a subdivision is to be served by municipal water or sewer, a representative of the local governing body (i.e., public works director, city engineer)must notify the department that the plans and specifications are acceptable and that the municipality will provide the required service.

(e) Upon completion of construction of the water or sewer system, the project engineer must certify, in writing, that the system was installed in accordance with the approved plans and specifications.

(f) When a subdivision will connect to the existing municipal water or sewer system of a class 1 or class 2 city (as defined by section 11-201, R.C.M. 1947) ~~the application may be reviewed upon submittal of items listed below~~ final review of an application may be conducted upon submittal of preliminary plans and specifications as specified in subsection (3)(f). Final plans and specifications for the public extensions or new system(s) must be submitted to the department before commencing construction of the facilities.

[subsections (i) through (ix) are now positioned under subsection (3)(f) of this rule.]

(g) Complete plans and specifications for new public sewerage or water supply systems or extensions to existing systems must be reviewed by the department as required by section 69-4905, R.C.M. 1947, prior to construction of the system. No construction can begin on dwellings or structures that will utilize the systems until the subdivision is clear of sanitary restrictions.

(h) In order for the department to approve a subdivision that will connect to an existing public water or sewer system, the following conditions must be satisfied:

(i) The existing public system, or if the additional hookups will create a public system, must be approved by the department under the provisions of section 69-490., et seq., R.C.M. 1947.

(ii) The water or sewer district or managing entity of the supplier must inform the department that the hookups are authorized.

(i) When a public water or sewer system is created by a proposed subdivision, the means of providing adequate maintenance and operation shall be reported to the department. Federal Housing Administration pamphlet FHA No. 1300, "Ownership and Organization of Central Water and Sewerage Systems" should be followed in establishing provisions for providing maintenance, operation and perpetuation of the water or sewerage facilities.

(i) The person assigned to operate the system shall be certified in accordance with sections 69-5901 through 69-5912, R.C.M. 1947.

(7) Individual water supply systems.

(a) The proposed location of the individual water supply sources shall be ~~indicated~~ shown on a copy of the plat or map with minimum distances referenced to any proposed sewage treatment devices including existing systems in the area.

(b) A report shall be submitted giving the following information:

(i) Chemical quality of water, which shall include the concentration of calcium, magnesium, sodium, bicarbonate, chloride, sulfate, nitrate, hardness, and iron. This information should be obtained from a test well in the proposed subdivision except as allowed under subsection (7)(b)(ii). ~~The U.S. Environmental Protection Agency primary standards for drinking water under Public Law 93-523, will be utilized in judging the suitability of the supply for domestic usage;~~

(ii) Chemical quality of water need not be obtained from test wells in the proposed subdivision if the department receives confirmation that the water quality meets existing standards. Confirmation shall include hydrologist reports concerning chemical quality in existing wells in the area and the reasons why the quality should be considered typical of well water to be developed on the land under review.

(iii) Where individual sewage systems are utilized in addition to an individual water supply, the department may require a report discussing the possible effect of the sewage disposal system on water quality. References utilized for the prediction and discussion shall be provided.

(c) When wells are utilized for individual water supply systems, the construction of the systems shall be in accordance with the latest edition of department Circular No. 12.

(d) A minimum well depth of 25 feet shall be required. A greater depth may be required if water of better chemical quality or better sanitary quality can be obtained with a deeper well.

(e) An individual water system shall provide a sustained yield of at least 8 gallons per minute over a 2-hour period.

(f) Acceptable tests shall be conducted to determine yield and maximum drawdown of the well. If acceptable tests cannot be conducted a hydrogeological report prepared by a hydrogeologist or engineer with a hydrology background, which substantiates that there is adequate quantity and quality of water for the type of subdivision proposed shall be conducted. A description of the soils penetrated shall be provided as part of the report.

(g) A waiver of requirements of subsections (7)(b)(i) and (7)(f) may be requested for subdivisions containing five lots or less, where the information required by these subsections is available from existing wells. Well logs of existing

wells located immediately adjacent to the subdivision and other substantiated geological information shall be provided if this waiver is requested.

(h) The minimum safe distances shown in Table I [subsection (9)(k)] shall be maintained.

(i) An alternate water source may be developed where it is shown to be economically unfeasible to develop a well or where well water is unacceptable in terms of quantity or quality. Evidence that the alternate water supply is adequate will be provided to the department.

(j) Springs when developed as an alternate water system shall be constructed in accordance with the latest department Circular No. 11. Disinfection shall be provided for all spring water.

(ii) Surface water when developed as an alternate water system shall receive a minimum treatment of filtration and disinfection.

(iii) Cisterns may be utilized where an acceptable source of groundwater is not available if:

(aa) ~~An acceptable~~ A potable water source is available for hauling within a reasonable distance.

(ab) A sanitary means of hauling is available.

(ac) All hauled water is disinfected in accordance with department Circular No. 17.

(ad) The cistern is constructed and installed in accordance with department Circular No. 17.

(8) Multiple family water supply systems or multiple family sewerage systems.

(a) Multiple family water systems should be designed in accordance with "The Design of Small Water Systems" by Joseph A. Salvato, Jr. and "The Recommended Standards for Water Works" by the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers.

(b) Multiple family ~~sewage~~ subsurface sewage treatment systems shall be designed in accordance with subsection (6)(b)(iv).

(c). When it is evident from available data that a multiple family water or sewerage system will become part of a municipal or other community system within a 10-year period, the water or sewage of the multiple family system must conform with the standards of the municipality or community.

(d) Multiple family systems must meet the standards ~~of a~~ established for public systems in subsection (6) before any reduction in lot size will be allowed.

(e) When more than one multiple family water system is provided within a subdivision, they should be tied together when the department deems it necessary to provide greater system reliability.

(9) Individual sewage treatment systems.

(a) A groundwater depth at any time of six feet or less from the natural ground surface shall preclude the use of

individual subsurface sewage treatment systems. A groundwater depth of more than six feet from the natural ground surface may be required when necessary to avoid subsurface water contamination. There shall be a minimum separation of at least four feet between the bottom of the subsurface sewerage treatment system and the maximum high groundwater elevation.

(b) The depth to groundwater shall be determined by excavating or boring a hole at least 7 feet in depth and waiting a minimum of one hour to establish equilibrium conditions before measuring the depth from ground surface to the water level.

(c) Natural slopes greater than 15 percent shall preclude the use of subsurface sewerage treatment systems unless evidence is submitted substantiating that soil and groundwater conditions are such that there will be no visible outflow of liquid downslope from the installation of the subsurface sewerage treatment system. The department will not consider use of subsurface sewage treatment systems on natural slopes that exceed 25 percent.

(d) The subsurface sewage treatment area must include area for 100% replacement of the system.

(e) The department may require detailed lot layouts to be shown on the contour map if there is a question about suitability of the lot(s). A detailed lot layout includes water and sewerage systems, building locations, driveways, watercourses or other items that may influence the suitability of the lot for development.

(f) The department may require the developer to physically identify drainfield location on the site by staking or other acceptable means of identification.

(g) Where septic tanks and subsurface sewage treatment systems are proposed, they shall be designed and installed in accordance with the latest edition of Bulletin 332 as published by the department and the Cooperative Extension Service, Montana State University.

(h) The following information shall be provided on a copy of the plat or map:

(i) Location and dimension of an area including 100% replacement, for the subsurface sewage treatment system on each lot.

(ii) When individual wells are proposed, the location of each well on the lot and its minimum distance from the septic tank area, subsurface sewage treatment system area, and any proposed or existing sewer line or sewerage treatment system in the subdivision or in the vicinity of the subdivision.

(iii) Percolation tests in accordance with Bulletin 332 shall be performed on each lot in the area of the proposed subsurface sewage treatment system by a soils scientist, geologist, engineer, registered sanitarian or other persons with soils science qualifications acceptable to the department. Percolation tests shall be keyed by a number on the plat to

the results in the report form.

(iv) If groundwater is within 6 feet of the surface or if there is reason to believe groundwater will be within 6 feet of the surface at any time of year, groundwater monitoring holes shall be provided to a depth of at least 10 feet to determine high groundwater during its period of occurrence.

(v) When detailed soil descriptions for the area are not available, soil descriptions for the subdivision shall be obtained from test holes at least 7 feet in depth. The number of test holes will depend upon the variability of the soils. The descriptions shall be determined by someone knowledgeable in the field of soils science, such as a soils scientist, geologist, or an engineer. The U. S. Department of Agriculture's "Soils Classification System" or "Unified Soil Classification System" shall be used in said descriptions in order to determine soil texture. Information on the internal and surface drainage characteristics should be included. Additional information, such as exchange capacity or other chemical or physical characteristics, may be requested where deemed pertinent.

(vi) If there is reason to believe that bedrock or other impervious material is within 6 feet of the ground surface at the site of subsurface sewage ~~disposal~~ treatment systems, test holes or the results of hammer siesmic tests shall be provided. The nature of the formation should be described in detail by a scientist knowledgeable in geology. At least a four-foot separation must be maintained between the bottom of a subsurface sewage disposal system and the bedrock. A greater separation may be required when warranted by soil conditions.

(vii) Each soil boring shall be keyed by a number on a copy of the plat or map with the information provided in the report.

(viii) Location of streams, lakes, ponds or irrigation ditches on or near the proposed subdivision.

(i) Other individual sewage treatment systems may be approved if they are designed in accordance with the guidelines provided by the department.

(j) No individual sewage treatment system shall be located within 100 feet horizontal distance from the maximum high water level of a 100-year flood of any river, lake, stream, pond or water course and from any swamp or seep. More than 100 feet from the maximum high water level may be required when soil conditions indicate a need for the greater distance.

(k) Other minimum safe distances shown in Table I shall be maintained.

TABLE I

From	Septic Tank	Sewage Treatment Field/Bed
Well	50 feet	100 feet
Property line	10 feet	10 feet
Foundation wall	5 feet	5 feet
Water line	10 feet	10 feet

(10) Solid wastes.

(a) Solid wastes shall be disposed of in accordance with sections 69-4001 through 69-4010, R.C.M. 1947, and ARM 16-2.14 (2)-S14100.

(b) Developers shall use an existing approved solid waste disposal site in their district or county. Completion of the Solid Waste Approval Form by an approved refuse hauler and agent for the solid waste disposal site shall be submitted to the department except when the subdivision is within an approved solid waste district.

(c) A landowner may dispose of solid waste on his property when the parcel is over five (5) acres in size and a plan for the disposition of the solid waste is included. The plan shall include:

(i) An analysis of soils and hydrology indicating the water pollution potential of the proposed site. The analysis shall be prepared by a professional engineer, soils scientist, or hydrogeologist.

(ii) Tests or information indicating the seasonal high groundwater depth at the proposed site.

(iii) Availability of equipment to operate and maintain the proposed site.

(iv) The proposed method of operation and maintenance of the site.

(11) Storm drainage.

(a) The department must receive a contour map showing the lots, drainages and drainage structures. The map shall conform to preliminary plat requirements of local subdivision regulations if subject to local review; if the subdivision is not subject to local review a 7 1/2 minute or 15 minute U.S.G.S. topographic quad map, or a contour map with contours no greater than 20 feet will be accepted.

~~(a)--When-deemed-necessary-by-the-department-drainage structures-shall-be-provided-to-prevent-improvement-of-storm water-near-the-living-area.~~

(b) Drainage structures including size shall be shown on the plan.

(i) The carrying capacity of the drainageway between the subdivision and point of disposal should be presented in the plan.

(ii) Plan shall include steps to prevent erosion during and after subdivision construction.

(c) Storm water that reaches state surface waters must be treated prior to discharge when the department determines that untreated storm water is likely to ~~degradate~~ degrade the receiving waters.

(i) Minimum treatment consists of removal of settleable solids and floatable material. The department may require more extensive treatment if deemed necessary to protect state waters from degradation.

(ii) Plans for the treatment facility must be approved

by the department.

(12) Road construction. Road construction and maintenance shall follow the department's "Environmental Protection Guidelines for Road Construction to Prevent Water Pollution".

(13) Waivers, exclusions and exceptions.

(a) No provisions of this rule shall be waived unless specifically granted in this subsection or specifically granted in section 69-5003, R.C.M. 1947. Waivers must be requested in writing and must be accompanied by data substantiating the request.

(b) A subdivision is excluded from this rule, is not subject to sanitary restrictions, and can be filed with the county clerk and recorder without department review when all of the following conditions are met:

(i) The subdivision is located totally within a master planned area adopted pursuant to sections 11-3801 through 11-3856, R.C.M. 1947.

(ii) The local governing body has certified that municipal services for water supply, sewage and solid waste disposal shall be provided within one year after notice of certification is issued.

(iii) Notice of certification shall be forwarded to the department by the local governing body within 20 days after receiving an application under the provisions of the Subdivision and Platting Act.

(iv) The notice of certification shall include:

(aa) Name and address of the applicant.

(ab) A copy of the preliminary plat or final plat where a preliminary plat is not necessary.

(ac) The number of proposed parcels in the subdivision.

(ad) A copy of an applicable zoning ordinance in effect.

(ae) How construction of the water supply and sewage disposal systems or extensions will be financed.

(af) A copy of the master plan if one has not yet been submitted to the department.

(ag) Relative location of the subdivision to the city or town.

(ah) Certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within one year.

(v) The required lot fees as determined in ARM 16-2.14(10)-S14341 have been submitted to the department.

(c) Exclusions of a subdivision from the requirements of this rule shall not relieve the party responsible for construction of municipal water and sewer from the duty to comply with the requirements of the Public Water Supply Act, Title 69, Chapter 49, R.C.M. 1947. Section 69-4905(4) states that "a person shall not construct, alter, or extend any system of water supply, water distribution, sewer drainage, waste water, or sewage disposal without first submitting necessary maps and plans and specifications to the department for its advice and approval".

(d) No construction of structures requiring water and sewerage facilities in a subdivision excluded under this rule shall commence until the department has reviewed and approved plans and specifications for the water and sewerage facilities.

~~(e)--The department will notify the county clerk and recorder when a subdivision qualified as an exclusion and are not subject to sanitary restrictions.~~

(e) The exceptions stated in section 11-3862(6)(a), (b), (d), (7), and (8), R.C.M. 1947, are subject to the provisions of this rule. The exemptions, stated in section 11-3862(6)(c), (9) and (10) are not subject to the provisions of this rule:

(i) Divisions created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (Section 93-9901 through 93-9926, R.C.M. 1947);

(ii) Divisions created to provide security for construction mortgage, liens or trust indentures.

(iii) Divisions which create an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(iv) Divisions which create cemetery lots;

(v) Divisions created by the reservation of a life estate;

(vi) Divisions created by lease or rental for farming and agricultural pruposes.

(vii) Sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land. (This exemption does not apply to condominiums prior to their construction.)

(f) The following divisions of land are also exempt from this rule:

(i) Divisions for the purpose of acquiring additional land to become part of a parcel that does not have sanitary restrictions imposed provided that no dwelling or structure requiring water or sewage be erected on the additional acquired parcel.

(ii) Divisions made to correct errors in construction where building or shrubs may encroach upon the neighboring property.

(iii) Divisions made for convenience when highway relocation divorces a portion of the land from the original tract making it more desirable for the property to be sold to become part of a contiguous tract or if sufficiently large as an individual tract.

(iv) Divisions made for agricultural or pasture use when no structures requiring water and sewage facilities are to be erected or utilized, provided the parties to the transaction enter into a covenant running with the land and revocable only by the governing body and the property owner. Any change in land use subjects the division to the provisions of section 69-5001

through 69-5009, R.C.M. 1947, and this rule.

(v) Boundary changes for the purpose of aggregating lots (five or fewer) in a platted subdivision ~~are involved and~~ when the lots are presently served by public water and sewer ~~and the aggregation does not decrease the size of any original lot~~.

(vi) Parcels used for utility sitings, easements, gravel pits and ski lifts provided no structure requiring water or sewerage disposal be erected on the parcel. Any change in land use subjects the division to the provisions of sections 69-5001 through 69-5009, R.C.M. 1947, and this rule.

(i) Subdivisions which are exempted in subsection (13)(f) of this rule must bear on the survey document the acknowledged certificate of the property owner stating that the division of land in question is exempt from review and quoting in its entirety the wording of the applicable exemption.

3. A public hearing on the proposed amendment was held September 26, 1977, at 9:00 a.m., in the Conference Room of the Cogswell Building, at which time oral comments were received. Written comments were received by the department from the date of notice until October 11, 1977.

Comment received from a number of people suggested that the rules be changed to allow initiation of subdivision review by the department without a final plat.

Response: The regulation has been changed to reflect that concern and allows initiation of a subdivision upon receipt of a preliminary plat. A final plat, however, must be received by the department before final approval can be given.

A number of comments were received indicating that requiring plans specific enough to be let for bids was inordinately excessive and that it would result in extremely high front-end cost to the developers.

Response: This section has been changed to reflect that concern. Complete plans and specifications will be deemed to be those which are in compliance with the Public Water Supply Act.

A number of comments were received objecting to change in the rule's language from the mandatory "shall" to the permissivle "may:.

Response: The change to the permissive language was made in those certain circumstances where the department found that it is unreasonable in every instance to require the specific things required by the mandatory language. This in no way weakens the department's control of subdivision development.

A number of people objected to the definition of "usable area" because it excluded roadways, water courses, utility easements, and rock outcroppings.

Response: The definition of "usable area" is stated to mean that portion of a lot which can be used for placement of a water supply or sewage treatment system. The areas excluded are areas which cannot be used for such systems, and therefore

are unusable for the purposes of this act.

A number of commenters expressed the desire to have the rules for information required stated in such a way that the required information was clearly listed and discernable.

Response: In response to that suggestion, the department has re-arranged the format of the rules in such a way as to make it clear what should be required upon an application.

The comment was made that the regulations should include a section saying that "available water" includes a water right which is not subject to reasonably foreseeable challenge.

Response: Such a section would be virtually unenforceable in that water rights may exist with one right having priority over another. Challenge to the use of the right could happen for virtually any appropriated water right at virtually any time of low water conditions, and such situations are **not reasonably foreseeable.**

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State October 13, 1977

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment to rule ARM 16-2.14(10)-S14341 relating to fee schedules for plat or subdivision review	))))	NOTICE OF THE AMENDMENT OF RULE ARM 16-2.14(10)-S14341

TO: All Interested Persons:

1. On August 25, 1977, the Department published notice of a proposed amendment to rule ARM 16-2.14(10)-S14341 concerning subdivision review procedure at page 214 of the 1977 Montana Administrative Register, issue number 8.

2. The agency has amended the rule with the following changes:

ARM 16-2.14(10)-S14341 FEE SCHEDULE FOR PLAT OR SUBDIVISION REVIEW

(1) Purpose. The purpose of this rule is to establish a schedule of fees to be paid to the department for the local and state review of plats and subdivisions. The schedule consists of three sections relating to the collection of fees for the review of divisions of land, condominiums and areas providing permanent multiple space for recreational camping vehicles and mobile homes. The fees relate to the complexity of

the review of the types of water and sewage disposal systems to serve the subdivision.

(2) Definitions. In addition to the terms defined in section 69-5002, R.C.M. 1947:

(a) "Condominium" means the ownership of single units with common elements located on property and is a subdivision.

(b) "Condominium living unit" means a part of the property of a condominium intended for occupancy.

(c) "Parcel" means a part of land which is created by a division of land (referred to in ARM 16-2.14(10)-S14340 as lots) or a space in an area used for recreational camping vehicles and mobile homes.

(3) Fee schedules. The fees described below pertain only to review of subdivisions as mandated by section 69-5001, et seq., R.C.M. 1947. An additional fee may be requested pursuant to the Montana Environmental Policy Act (Section 69-6501, et seq., R.C.M. 1947) for the preparation of an environmental impact statement.

(a) The fees in Schedule I shall be charged:

(i) Per parcel when land is divided into one or more parcels.

(ii) Per condominium living unit.

SCHEDULE I

Fee schedule for division of land into one or more parcels and for condominiums.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer previously approved (no extensions required)
Individual Water Supply	$25	$25	$25	$20
Public Water Supply requiring Department review	$25	$25	$25	$20
Water extension requiring Department review	$25	$25	$25	$20
Existing Water Supply previously approved (no extension is required)	$20	$20	$20	$10

(b) The fees in Schedule II shall be charged per mobile home/trailer court parcel.

[Schedule II on following page]

SCHEDULE II

Fee schedule for mobile home/trailer courts.

	Individual Sewerage System	Public Sewer requiring Department approval	Sewer Extension requiring Department approval	Existing Sewer previously approved (no extensions required)
Individual Water Supply	$15	$15	$15	$10
Public Water Supply requiring Department review	$15	$15	$15	$10
Water Extension requiring Department review	$15	$15	$15	$10
Existing Water Supply previously approved (no extension is required)	$10	$10	$10	$ 5

(c) The following fees shall be charged for recreational camping vehicles and tourist campgrounds.

(i) Where water and sewer hookups are to be provided, the fee shall be five dollars ($5) per vehicle parcel.

(ii) Where no water and sewer hookups are provided, the fee shall be two dollars ($2) per vehicle parcel.

(4) Disposition of fee money.

(a) The department will reimburse local governing bodies under department contract to review the minor subdivisions in the following amounts:

(i) Five dollars ($5) for major subdivisions with individual sewage treatment systems.

(ii) Five dollars ($5) per parcel for major and minor subdivisions coming under master plan exclusions.

(iii) Five dollars ($5) per mobile home/trailer court parcel for courts or parks installing individual or multiple family sewage treatment systems.

(iv) Ten dollars ($10) per parcel for minor subdivisions with public sewer.

(v) Fifteen dollars ($15) per parcel for minor subdivisions with three or more parcels on individual sewage treatment systems.

(vi) Twenty dollars ($20) per parcel for divisions of two (2) parcels or less on individual sewage treatment systems.

(b) The department may reimburse counties not involved in the minor subdivision review program in the following amounts:

(i) Two dollars ($2) per parcel for major subdivisions with individual sewage treatment systems.

(ii) Five dollars ($5) per parcel for minor subdivisions with individual sewage treatment systems.

(iii) Reimbursement to counties in this category is dependent upon departmental determination of the amount of involvement by local health department in the review process.

(c) Funds will be reimbursed to the counties quarterly, based upon a fiscal year starting on July 1, 1977 and ending June 30, 1978.

(d) Payment should be by check or money order made payable to the Department of Health and Environmental Sciences.

(5) When a subdivision is changed by the developer during the review process or as a resubmittal, the subdivision shall be subject to additional review fees not to exceed the amounts listed in subsection (3) of this rule. The exact amount of the additional fee shall be determined by the department and will be based on the scope of the change(s) and how much additional review time the change(s) will require.

3. A public hearing on the proposed amendment was held September 26, 1977, at 9:00 a.m., in the Conference Room of the Cogswell Building, at which time oral comments were received. Written comments were received by the Department from the date of notice until October 11, 1977.

A number of comments suggested that the fee schedule was not in compliance with state law because it did not require the department to pay a minimum of ten dollars per lot for all subdivisions whether major or minor.

Response: Section 69-5005(5), R.C.M. 1947, requires that ten dollars per lot only go to subdivisions with "five lots or less". Those come within the definition of "minor subdivisions". Therefore, our obligation to remit at least ten dollars to the county extends only to the situations in which they review, for the department, subdivisions of five lots or less.

The comment was made that the department lacks the authority to adopt certain of the fee distribution portions of the proposed rule, specifically that section remitting money to the local governments not contracted to review minor subdivisions.

Response: The opening clause of Section 69-5005, R.C.M. 1947, allows the department to adopt reasonable rules setting forth fees, not to exceed $25 per parcel for services rendered in their review of plats necessary. In addition, Sections 69-4503 and 69-4508, R.C.M. 1947, allow the department to allocate funds to local boards. The regulation proposed is to set a uniform reimbursement to the counties for the limited services they provide and is consistent with the department's authority to allocate funds to the counties.

A C Knight

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State October 13, 1977

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of Rule 200 modifying and adopting the Model Procedural Rules proposed by the Attorney General as stated in MAC 1-1.6-(2)-P650 through MAC 1-1.6(2)-P6320.	))))))	NOTICE OF THE ADOPTION OF RULE 200 (Incorporation of Model Rules)

TO: ALL INTERESTED PERSONS

1. On July 25, 1977, the Department of Labor and Industry published notice of a proposed amendment to Rule 200 concerning procedural conduct of hearings in the Department of Labor and Industry at page 35 of the 1977 Montana Administrative Register, issue number 7.

2. The Department of Labor and Industry has adopted the amendment as proposed. No testimony or comments were received. The reason for the adoption of the amendment of Rule 200 is to limit the time within which a party may appeal a hearing order to the Commissioner of Labor and Industry, in order to encourage the speedy resolution of contested cases.

Commissioner of Labor and Industry

Certified to the Secretary of State, October 13, 1977.

THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the proposed adoption of Rules to implement Title 41, Chapter 26, R.C.M. 1947.	))))	NOTICE OF THE ADOPTION OF RULES (MATERNITY LEAVE)

TO: All Interested Persons:

1. On July 25, 1977, the Department of Labor and Industry published notice of a proposed adoption of rules concerning the Maternity Leave Act at pages 30-34 of the Montana Administrative Register, issue number 7.

2. The agency has adopted the rules with the following changes:

RULE I. DEFINITIONS. (a) "Commissioner" means the Commissioner of Labor and Industry.

(b) "Disability as a result of pregnancy" includes any physical condition certifiable by a ~~licensed physician~~ medical doctor as disabling, whether the condition arises as a result of the normal course of pregnancy, ~~childbirth, miscarriage, abortion, or recovery therefrom~~ or as a result of ~~complications~~ or abnormal medical conditions which occur in the course of a pregnancy, ~~childbirth, miscarriage, abortion, or recovery therefrom~~ may cover the time period beginning with conception through termination of gestation and a reasonable period for recovery therefrom.

(c) "Employee" means any individual employed by an employer.

(d) "Employer" means an employer of one (1) or more persons.

(e) "Maternity Leave" means any leave of absence granted to or required of an employee because of such employee's ~~pregnancy, childbirth, miscarriage, abortion, or recovery therefrom~~ disability due to pregnancy.

RULE II. COMPLAINT-HOW FILED. (a) Section 41-2603 **provides that** a person claiming to be aggrieved by a violation of Section 41-2602 may file a verified complaint with the Commissioner of Labor and Industry which shall state the circumstances of the violation. In addition, the commissioner whenever he has reason to believe that section 41-2602 has been or is being violated, may issue a complaint and order setting said matter for hearing. Within 60 days ~~of receipt of a complaint~~ after the complaint is issued the commissioner shall state his findings of fact and decision. If the Commissioner finds that a respondent has engaged in a violation

of Section 41-2602, he shall state his findings of fact and decision. If the commissioner finds that a respondent has engaged in a violation of Section 41-2602, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay the complainant the damages resulting from the violation. If the commissioner finds the respondent has not engaged in a violation of Section 41-2602 he shall state his findings of fact and dismiss the complaint.

Rule III. CONTESTED CASES-PROCEDURE. (a) Contested cases will be governed by MAC 24-2.2(1)-P200.

RULE IV. ENFORCEMENT. (a) Section 41-2604 provides that the commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions or matters as they consider appropriate to determine whether any person has violated any provision of the act or any regulation issued thereunder, or which may aid in the enforcement of the act and regulations. The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

Rule V. TERMINATION OF EMPLOYMENT DUE TO PREGNANCY PROHIBITED. (a) Section 41-2602(1)(a), provides that it shall be unlawful for an employer or his agent to terminate a woman's employment because of her pregnancy. In applying this section, the commissioner shall consider "termination" to include all involuntary dismissals, all resignations in which the employee's resignation was required by the employer or permitted as the sole alternative to dismissal and those situations in which the totality of the circumstances surrounding a resignation by an employee indicate that the resignation was compelled by the conduct or policy of the employer or agent. Coercive conduct by an employer or his agent toward an employee in order to secure her resignation, when the employee's pregnancy constitutes a substantial reason for the conduct, shall be considered a violation of Section 41-2602(1)(a).

Rule VI. RIGHT TO REASONABLE LEAVE OF ABSENCE. (a) Section 41-2601(1)(b), R.C.M. 1947 provides that it shall be unlawful for an employer or his agent to refuse to grant to the employee a reasonable leave of absence for pregnancy. In determining the standards which shall apply to a request for a leave of absence for pregnancy, an employer shall apply standards at least as inclusive as those which he applies to

requests for leave of absence for any other valid medical reason. ~~In no case shall such leave be for a shorter period of time than that period both before and after childbirth during which the physician attending the employee shall certify that valid medical reasons exist why she should not be performing her employment duties.~~

Rule VII. MANDATORY LEAVE FOR UNREASONABLE TIME PROHIBITED. (a) Section 41-2601(1)(e), R.C.M. 1947 provides that no employer or agent of an employer may require that an employee take a mandatory maternity leave for an unreasonable length of time. The reasonableness of the length of time for which an employee is required to take a mandatory maternity leave shall be determined on a case by case basis. However, the employer shall have the burden of proving that a maternity leave for a longer period of time than that prescribed by the employee's ~~personal physician~~ medical doctor is reasonable, and in no case shall an employee be required to take an uncompensated maternity leave for a longer period of time than a ~~competent physician~~ medical doctor who has actually examined the employee shall certify that the employee is unable to perform her employment duties. Neither this section nor any other section of these regulations shall prohibit an employer and employee from mutually agreeing, in the case of the particular employee, to a longer period of maternity leave, either compensated or uncompensated than is permitted by this regulation. However, no employer may enter into a general agreement with any group or association of employees which requires a longer period of mandatory maternity leave than is permitted by this regulation.

Rule VIII. PREGNANCY-RELATED DISABILITIES TO BE TREATED AS TEMPORARY DISABILITIES. (a) Disabilities ~~caused or contributed to by~~ as a result of pregnancy, ~~childbirth, miscarriage or abortion and recovery therefrom~~ are, for all job-related purposes, temporary disabilities and shall not be treated less favorably than other temporary disabilities under any health, medical, or temporary disability insurance plan or sick leave plan ~~available in connection with employment~~ maintained by employer. The question of maintenance is one of fact which will be judged upon all of the evidence. No written or unwritten employment policies or practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement or payment under any health, medical, or temporary disability insurance plan, or under any sick leave, disability leave or disability benefit plan whatsoever, whether formal or informal, shall be applied to disability due to pregnancy, ~~childbirth, miscarriage or abortion or recovery therefrom~~, on terms or conditions less

favorable than those applied to other temporary disabilities.

Rule IX. RETURN TO EMPLOYMENT AFTER MATERNITY LEAVE. (a) Section 41-2602(2) R.C.M. 1947 requires that an employee who has signified her intent to return at the end of her maternity leave of absence shall be reinstated to her original job or an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it unreasonable or impossible to do so. Any private employer who claims that his circumstances have so changed as to make compliance with Section 41-2602(2) impossible or unreasonable shall have the burden of proving his claim ~~and a standard of strict scrutiny shall be applied to all such claims of exception~~ based upon all of the evidence.

Rule X. VERIFICATION OF DISABILITY. (a) In any case where an employee makes a claim against her employer for any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, including any insurance or other disability plans referred to in Section ~~IV~~ VIII above of these rules, and the claim is based on a disability covered by and defined in Title 41, Chapter 26, R.C.M. 1947, and these regulations, the employer may require that the disability be verified by medical certification by ~~the employee's physician~~ a physician competent to treat and diagnose the particular disability, that the employee is, or at the time for which the claim is made, was unable to perform her employment duties. For purposes of obtaining this medical certification the employer may require that the claimant submit to a physical or mental examination by the physician chosen by the employer to verify the claimed disability by medical certification. In cases where a dispute in medical evidence exists, the Commissioner shall determine the weight and credibility of the testimony of the physicians involved.

Rule XI. RETALIATION PROHIBITED. (a) Section 41-2602 (1)(d), R.C.M. 1947, provides that no employer or his agent may retaliate against any employee who files a complaint with the Commissioner of Labor and Industry alleging a violation of Title 41, Chapter 26, R.C.M. 1947. Discharge or demotion of an employee during the pendency of a complaint filed by or on behalf of that employee or during the reporting or compliance period of a conciliated agreement in regard to such complaint or within six (6) months of the resolution of a complaint on any basis shall raise a rebuttable presumption that the discharge or demotion was in retaliation for the filing of the complaint.

3. At the public hearing, John Sullivan, an attorney for Mountain States Telephone and Telegraph, objected both orally and in writing that:

Proposed Rule I uses the ambiguous term "licensed physician", and that the rule ultra vires in its application to normal and post partum pregnancies.

The term licensed physician has been changed to medical doctor to eliminate the ambiguoity and follow the statutory phrase, "medical certification".

The argument that the Maternity Leave Act does not include normal and post pregnancy disabilities is overruled for several reasons. Significantly, a review of the exhibits of legislative history entered at the hearing shows that an amendment to limit the act to abnormal pregnancies was rejected. The testimony of Dorothy Bradley, one of the sponsors of the Maternity Act in the legislature showed that the clear and ordinary meaning of the law was to cover pregnancy related disabilities in a broad and remedial scope.

Furthermore, any suggestion that the term "pregnancy" is limited only to ante partum disabilities must be overruled. Pregnancy is inclusive of all physiological phenomena associated with gestation, childbirth and recovery therefrom as the term is used in the Maternity Act. Section 41-2602(1)(a) proscribes termination of employment because of pregnancy. If the coverage of Section 41-2602(1)(a) were limited to the ante partum aspect of pregnancy, an employee could be discharged after the birth of her child. Such a statutory interpretation is not the therapeutic and constructive legislative intent.

Proposed Rule VI was objected to for the use of the phrase, "valid medical reason" and that it granted too much individualization to the law's reasonable and uniform application.

The objectionable phrase has been dropped and the last sentence of the rule has been deleted to meet the objection and also to provide a minimum guideline for granting maternity leaves of absence.

Proposed Rule VIII was objected to for the use of the phrase, "caused or contributed to by pregnancy, childbirth, miscarriage or abortion and recovery therefrom." The proposed rule has been changed in the final version to follow the language of the statute. The objection is therefore mooted.

Objection was also made for similar reasons to the phrase "plans available in connection with employment" when the statute says, "plans maintained by the employer". This objection is constructive criticism well taken and the proposed rule has been amended to follow the statutory language.

Objection was also made that the Commissioner does not have the authority to enumerate specific aspects of what are

prohibited benefit denials. This objection is overruled. Section 41-2605 R.C.M. 1947 directs that rules be adopted to flesh out the broad provisos of the statute, and the delineation of specific areas of protected coverage gives notice to all parties of the application of the act. It is also noteworthy that the public who attended the hearings were demonstrably in favor of the proposed rules.

Proposed Rule IX was objected to for setting the procedural burden of proof as one of strict scrutiny. The statute provides that the Commissioner shall determine violations upon all of the evidence and the statutory phrase has been substituted, thus mooting the objection.

Proposed Rule X has been objected to for an erroneous reference to Rule IV and that medical certification need not come only from the employee's own physician.

The reference to Rule IV was a clerical error and has been changed to read Rule VIII.

The objection to requiring medical certification to be given by the employee's attending physician and to give that testimony great deference has been subject to several conferences and subsequent written comment. The employer should be allowed to have his doctor examine the complainant. Questions of disagreements among medical experts should be resolved by the Commissioner upon a consideration of all of the evidence. The rule has been so amended.

Proposed Rule XI was objected to for the creation of the rebuttable presumption that a discharge during the pendency of the filing of a complaint would be evidence of employer retaliation in violation of 41-2602(1)(d).

This objection is overruled because an employer can overcome the rebuttable presumption if he has just cause to discharge the employee. The Commissioner has seen too many people discharged from employment for exercising legitimate rights guaranteed by statute. The protection afforded a complainant by Rule XI is consistent with the legislative intent and principles of common sense in addition to being supported by the majority of the public and two of the legislative sponsors, Dorothy Bradley and Gail Stoltz.

Commissioner of the Department of Labor and Industry.

Certified to the Secretary of State this 13th day of October, 1977.

DEPARTMENT OF LIVESTOCK

STATEMENT OF REASONS IN SUPPORT OF THE AMENDMENT OF ARM RULE 32-2.6A(26)-S6025 TESTING OF ANIMALS.

On September 24, 1977 the Board of Livestock amended ARM Rule 32-2.6A(26)-S6025 relating to brucellosis testing of investment owned cattle. This action followed notice of the proposed amendment published in the Montana Administrative Register August 25, 1977 on pages 248 and 249. No public hearing was conducted and no requests for hearing were made. One comment was received from Oppenheimer Industries, Inc., a firm which has investment owned cattle in Montana. They requested that rules on this subject not be so inflexible as to require a brucellosis test on every change of pasturage. Because the rules already provide for a waiver of the change of pasture test no action on Oppenheimer's comment was taken, except to advise them of that option.

It was determined by the Board that the proposed change excusing in-state investment services from the requirements of the test or seeking the waiver should not be made.

This amendment represents a loosening of test requirements on cattle owned by corporations the majority of whose shareholders are not primarily engaged in the production of livestock by exempting in-state corporations from that requirement. The exemption is made because of the relative ease of insuring compliance with the rule by in-state corporations.

As the amendments were finally adopted the affected portion of Rule 32-2.6A(26)-S6025 reads as follows:

(4) (a) Cattle capable of breeding two years of age and over, owned or managed by an investment service or an out-of-state corporation the majority of whose shareholders are not primarily engaged in the production of livestock which are moved from one premise to another non contiguous premise shall be found negative to an official test for brucellosis made not more than thirty (30) days prior to such a movement. The owner or manager of such cattle may petition the state veterinarian for a waiver of such test requirements. Upon a finding that the interests of animal disease control will not be harmed, the waiver may be granted.

STATEMENT OF REASONS IN SUPPORT OF THE AMENDMENT OF ARM RULES 32-2.6A(118)-S6790 TUBERCULIN TESTS OF CATTLE EXHIBITED AT FAIRS AND SALES; 32-2.6A(118)-S6830 INDIVIDUAL ACCREDITED HERD PLAN; 32-2.6BI(1)-S670 ANIMAL HEALTH: and 32-2.6BI(10)-S6220, REQUIREMENTS FOR LICENSED FARMS PRODUCING MILK FOR MANUFACTURING.

On September 24, 1977 the Board of Livestock amended rules 32-2.6A(118)-S6790, 32-2.6A(118)-S6830, 32-2.6BI(1)-S670, and 32-2.6BI(10)-S6220 relating to testing for Bovine Tuberculosis.

DEPARTMENT OF LIVESTOCK

This action followed notice of the proposed amendments published in the Montana Administrative Register on August 25, 1977. The rules were amended without public hearing. The amendments were made to decrease bovine tuberculosis testing as a result of Montana's upgrading to accredited free tuberculosis status by the United States Department of Agriculture. Since no comments were received after proper notice, and since no other compelling reason required a change the amendments were adopted as proposed on pages 250 and 251 of the 1977 Montana Administrative Register Issue No. 8.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF DENTISTS

Amendment of Rule 40-3.34(6)-S3430 EXAMINATIONS and Rule 40-3.34(10)-S3470 SET AND APPROVE REQUIREMENTS AND STANDARDS.

1. The Board of Dentists published Notice No. 40-3-34-6 of a proposed amendment to ARM 40-3.34(6)-S3430 Examinations; and ARM 40-3.34(10)-S3470 Set and Approve Requirements and Standards on October 25, 1977 at Page 252, Montana Administrative Register, 1977, Issue No. 8.

2. The amendment of Rule 40-3.34(6)-S3430 adds an additional requirement to the existing section on examinations by offering the examination twice a year, but limiting the December examination to a total of twenty (20) applicants. The reasons are stated in the Notice.

No requests for hearing were made, or comments received.

The amendment to this rule has been adopted exactly as proposed.

3. The amendment of Rule 40-3.34(10)-S3470 Set and Approve Requirements and Standards proposed to do two (2) things;

a. To delete existing sub-section (3) (g) because it imposed a requirement on hygienist licensees which was specifically exempt by statute.

b. To add certain language as a new subsections which would impose a general supervisory relationship between the dentist and the hygienist when oral health instruction is being given.

A request for hearing was made by the requisite 25 or more persons, however no reasons were stated. Because such petition may have been generated out of a misunderstanding, because petitioners have indicated that they may withdraw their petition, and because it was submitted after the cut off date for making hearing requests, the Board has adopted the proposed amdendment stated above in 3. a.

The Board also received certain oral objections along with a letter from the Montana Administrative Code Committee objecting to the adoption of part 3.b. stated above. Pursuant to such objection, the Board has tabled any further action to adopt said part 3.b.

BEFORE THE DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of rule MAC 46-2.10(14)-S11150 pertaining to eligibility requirements for AFDC.	NOTICE OF THE AMENDMENT OF RULE MAC 46-2.10(14)-S11150 PERTAINING TO ELIGIBILITY REQUIREMENTS FOR AFDC.

TO: All Interested Persons

1. On July 25, 1977, the Department of Social and Rehabilitation Services published notice of a proposed amendment to rule MAC 46-2.10(14)-S11150 concerning eligibility requirements for AFDC at page 119 of the 1977 Montana Administrative Register, issue number 7.

2. The agency has amended the rule as proposed.

3. No comments or testimony were received. The agency has amended the rule to bring Montana Administrative Codes for the Department of Social and Rehabilitation Services in compliance with changes in the Federal regulation on Aid to Families with Dependent Children (AFDC) involving the Unemployed Father (AFDC/UF), whereby an unemployed father of dependent children must apply for and accept unemployment benefits. However, the unemployed father still qualifies for AFDC payments, but the unemployment benefits are subtracted from the AFDC payments to which he is entitled.

Patrick E. Melby
Director, Department of Social
and Rehabilitation Services

Certified to the Secretary of State October 7, 1977.

REASON FOR ADOPTING EMERGENCY RULE 46-2.10(18)-S11465

Montana's Medicaid program is facing an impending financial crisis which, if not averted, will seriously affect the health and safety of Montana's Medicaid recipients. If the Medicaid program does not immediately act to reduce its anticipated expenditures, a severe cutback of both eligibility maximums and benefits under the Medicaid program will have to be imposed. Therefore, the following emergency rule has been determined necessary by the Department.

46-2.10(18)-S11465 MEDICAL ASSISTANCE, TEMPORARY PROHIBITION OF CERTAIN PROVIDER FEE INCREASES (1) From the effective date of this rule until its expiration, no fee increases to Medicaid providers are allowed, except as provided in subsection (2) of this section.

(2) This prohibition does not apply to any fee increase required by federal Medicaid law or regulations, including but not limited to federally required fee increases for nursing home care providers and hospital providers.

(3) This rule, for its effective duration, takes precedence over any other rules in this Title which are in conflict, including but not limited to 46-2.10(18)-S11460. (History: Sections 71-1511, 71-1517, R.C.M. 1947; EMERG, Order MAC 46-2-67; Adp. 10/13/77; Eff. 10/13/77.)

INTERPRETATION SECTION

VOLUME NO. 37 OPINION NO. 61

COUNTIES - Permissable use of revenue sharing funds; powers to construct doctors' medical facility; mode of exercise of Industrial Development Project Act powers; inherent powers to prevent destruction of its property;
FEDERAL AID - Permissable use of federal revenue sharing funds and payments in lieu of taxes by Counties;
INDUSTRIAL DEVELOPMENT PROJECTS ACT - Impowerment to construct a doctors' medical facility; mode and manner of financing projects as excluding use of general federal aid to counties;
MEDICAL FACILITIES - Counties' and hospital district powers to construct medical facility for doctors and method of financing.
PUBLIC HOSPITAL DISTRICT - Power to build or lease doctors' medical facility.
SECTIONS - 11-4101, et seq., 16-1008A, 16-1185, 16-1037, 16-4301, et seq., 71-106, R.C.M. 1947; 31 U.S.C.A. §§1222-1243, 31 U.S.C.A. §1601, 43 U.S.C.A. §1701(13).

HELD: 1. A county has no authority under Sections 16-1008A or 71-106, R.C.M. 1947, to construct a medical facility which would provide office and laboratory space for county doctors. A county does have power under the Industrial Development Projects Act, Section 11-4101, et. seq., R.C.M. 1947, to construct such facility using

industrial revenue bonds or gifts.

2. A county may not use federal revenue sharing funds or payments in lieu of taxes to construct a medical facility pursuant to the Development Projects Act, Section 11-4101, et. seq., R.C.M. 1947.

3. Where a county operated nursing home and a district hospital will close as a result of the failure of the county to construct a doctors' facility, the county has the inherent power to construct the facility using federal revenue sharing funds and payments in lieu of taxes. The power is implied and is incident to a county's inherent power to preserve its property. However, the power arises only when there is no alternative for building the facility and the county can conclusively demonstrate that its hospital or nursing home would have to cease operations.

4. A county may lease a medical building constructed pursuant to the Industrial Development Projects Act to a hospital district which is located within the county.

5. A public hospital district organized pursuant to Section 16-4301, et. seq., R.C.M. 1947, may construct a medical building which would provide offices and medical facilities for county doctors, but the county may not distribute federal revenue sharing funds or federal payments in lieu of taxes to the district to finance such construction.

1 September 1977

Charles M. Joslyn, Esq.
Teton County Attorney
Larson Building
Choteau, Montana 59422

Dear Mr. Joslyn:

You have requested my opinion concerning whether Teton County has authority under Section 16-1008A, R.C.M. 1947, or Section 71-106, R.C.M. 1947, to construct and lease a medical building which would provide offices and laboratory facilities for the County's two doctors. In subsequent communications with my office you have asked that the scope of your original request be expanded. I have stated your questions as follows:

1. Does Teton County have power under Sections 16-1008A or 71-106, R.C.M. 1947, or any other statutory provision, to construct a medical facility which would provide office and laboratory space for the County's two doctors?

2. If Teton County may construct such medical facility, may it do so utilizing federal revenue sharing funds and federal payments in lieu of taxes?

3. Where a County has only two practicing physicians that may leave the County if the County does not build a medical facility, does the County have additional, implied power to spend federal revenue sharing funds and payments in lieu of taxes to build such a facility?

4. If Teton County may construct a medical facility, may it thereafter lease the facility to the County's public hospital district, which in turn would lease to doctors practicing medicine in the County?

5. May the public hospital district located wholly within Teton County construct a medical facility which would provide office and laboratory space for the County's doctors, and, if so, may the County distribute federal revenue sharing funds and payments in lieu of taxes to the district to finance the construction?

I

Your first question makes specific reference to county powers under Sections 16-1008A and 71-106, R.C.M. 1947.

Teton County did not adopt a self-government form of government during the recent local governmental elections which

were held pursuant to Section 16-5115.10, R.C.M. 1947. The County adopted the traditional form of county commissioner government to which the general county government statutes apply, including Sections 16-1008A and 71-106.

Section 16-1008A, R.C.M. 1947, provides in relevant part:

> Erection and management of county buildings and other improvements. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law: To cause to be erected, furnished and maintained a courthouse, jail, hospital, civic center, park buildings, museums, recreation centers, and any combination thereof, and such other public buildings as may be necessary.
>
> * * *
>
> A county hospital so erected and furnished may be used for the hospitalization of the indigent sick of the county. Any county hospital which has heretofore been, or which may hereafter be, erected and furnished under the provisions of this act may also be used for the hospitalization of the non-indigent sick, provided such nonindigent sick pay a reasonable fee for such hospitalization, and provided further that, except in cases of emergency, there are no indigent sick needing hospitalization who would be deprived of hospitalization by reason of the use of said hospital facilities by nonindigents. The board of county commissioners of any county of this state which now has, or may hereafter acquire, title to a site and building, or buildings, suitable for county hospital purposes, shall have jurisdiction and power under such limitations and restrictions as are prescribed by law to furnish and equip such building, or buildings, for hospital purposes in accordance with and as provided by the provisions of this act. (Emphasis added.)

Section 71-106, R.C.M. 1947, provides:

> Support of poor and indigent persons--tax levy. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law:
>
> To provide for the care and maintenance of the

> indigent sick, except as otherwise provided in other parts of this act, or the otherwise dependent poor of the county; erect and maintain hospitals therefor, or otherwise provide for the same, and for said purposes to levy and collect annually a tax on property not exceeding thirteen and one-half (13 1/2) mills, which levy shall be made at the time other tax levies are made on property, as provided by law. (Emphasis added.)

Both Section 16-1008A and Section 71-106 give counties authority to construct "hospitals", the former for county residents generally, and the latter for the indigent sick of the county. I conclude that the proposed facility is not a hospital. The words of a statute are to be interpreted in their every day sense unless a contrary interpretation is indicated in the statute, State v. Ruona, 133 Mont. 243, 248, 321 P.2d 615 (1958); and the term hospital has a general and accepted meaning, being an in-patient institution where sick and injured persons are given medical and surgical care on a twenty-four hour a day basis. A doctors' building is not a hospital. Parker v. Rush, 236 S.W. 2d 687, 688, 314 Ky. 609.

I find no language in Section 16-1008A, Section 71-106, or related provisions which evidences a legislative intention to employ the word "hospital" in any sense other than its plain and ordinarily understood meaning. To the contrary, where the legislature has enacted legislation concerning medical facilities other than hospitals, it has used explicit language which distinguishes such facilities. E.g., Section 69-5201, R.C.M. 1947; Section 16-4301.1, R.C.M. 1947. I conclude that a county's powers to build hospitals does not extend to construction of the proposed facility.

Section 16-1008A gives counties additional power to build and maintain "such other public buildings as may be necessary." In Yegen v. Board of County Commissioners, 34 Mont. 79, 89 (1906), the Montana Supreme Court considered the scope of power granted by these words, and concluded that the phrase does not enlarge or expand the classes of purposes for which buildings may be erected. The words "public buildings" mean nothing more or less than buildings which a governmental entity, here the County, is enpowered to build or purchase, 36 Official Opinions of the Attorney General, No. 52. A county's power to erect a particular building depends upon whether the building is expressly authorized, such as a hospital and jail, or is incidental and necessary to some

duty or power expressly mandated by statute. Arnold v. Custer County, 83 Mont. 130, 269 P. 396 (1928); 28 Opinions of the Attorney General, Nos. 13 and 42. A doctor's building in an ordinary sense is a private building, and unless the building of such facility is in fullfillment of or incident to the exercise of some specific county power it is not a public building.

An express grant of power to build the proposed doctors' building is found in the Industrial Development Projects Act, Section 11-4101, et seq., R.C.M. 1947. Section 11-4102 empowers counties as follows:

> General municipal and county powers. In addition to any other powers which it may now have, each municipality and each county shall have without any other authority the following powers:
>
> (1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more projects, which shall be located within this state, and may be located within, without, partially within or partially without the municipality or county;
>
> (2) To lease to others any or all of its projects for such rentals and upon such terms and conditions as the governing body may deem advisable and as shall not conflict with the provisions of this act;
>
> (3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any project or projects, and to secure the payment of such bonds as provided in this act, which revenue bonds may be issued in two (2) or more series or issues where deemed advisable, and each such series or issue may contain different maturity dates, interest rates, priorities or revenues available for payment of such bonds and priorities on securities available for guaranteeing payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this act; and
>
> (4) To sell and convey any real or personal property acquired as provided by subdivision (1) of this section, and make such order respecting the same as may be deemed conducive to the best interest of the municipality or county; provided, that such sale or conveyance shall be subject to the terms of any lease but shall be free and clear

> of any other encumbrance.
> No municipality or county shall have the power to operate any project, referred to in this section, as a business or in any manner except as the lessor thereof, nor shall they have any power to acquire any such project, or any part thereof, by condemnation.

The "projects" which counties are authorized to undertake are set forth separately in Section 11-4101, R.C.M. 1947:

> Definition of terms. As used in this act, unless the context otherwise requires:
> * * *
> (2) "Project" means any land, any building or other improvement, and all real and personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises, recreation or tourist facilities, state and federal government facilities, and retirement housing, hospitals, long-term care facilities or medical facilities;
> * * *
> (Emphasis supplied.)

Unlike the word "hospital", which counties are also authorized to construct under the Act, "medical facilities" is a broad and general term encompassing a wide variety of facilities related to medical care. The purpose of the Act is to give counties and cities and towns broad powers using industrial revenue bonds to encourage and aid the development of the resources of the State of Montana and to promote the general health, welfare and safety of the State's citizens. Fickes v. Missoula County, 155 Mont. 258, 267-269, 470 P.2d 287 (1970). I conclude that the proposed doctor's building is a "medical facility" within the meaning of the Act.

The mode and manner of undertaking and financing projects under the Industrial Development Projects Act is set forth with particularity in Sections 11-4103 through 11-4108, R.C.M. 1947. Here, the county is limited to financing this project through revenue bonds or gifts. It has long been Montana law that where the mode and manner of exercise of a power are provided by statute, that mode and manner is exclusive and must be followed. Thompson v. Gallatin County, 120 Mont. 263, 270, 184 P.2d 998 (1947); and see Smith v. City of Bozeman, 144 Mont. 528, 541, 398 P.2d 462 (1965).

Although Article XI, Section 4 of the 1972 Montana Constitution provides that the powers of cities and towns and counties shall be liberally construed, requirements of the Industrial Development Projects Act are plain and explicit and there is nothing left to construe. Security Bank & Trust Co. v. Connors, 550 P.2d, 1313, 1317 (1976). The constitutional rule of liberal construction does not give local governments inherent powers. Local governments without self-government powers must still look to legislative grants of powers. The rule has applicability only to those situations where the grant of powers, denial of power, or other legislation applicable to local governments is ambiguous. If ambiguity exists then the constitutiona provision requires that all doubts must be resolved in favor of the local government. In the present question, the statute is clear and precise. A County must therefore comply with the requirement that the Board of County Commissioners, after notice and hearing, find the project to be in the "public interest", Section 11-4103(5), R.C.M. 1947; and is limited to financing the project with industrial revenue bonds or gifts, Section 11-4102(1) and (3), R.C.M. 1947.

II

Your second question concerns the use of federal revenue sharing funds and federal payments in lieu of taxes to finance the proposed project.

Section 16-1185, R.C.M. 1947, permits county commissioners to expend federal funds, including federal revenue sharing funds, "according to federal requirements".

Federal revenue sharing funds are distributed to units of local government on the basis of a specific mathematical formula. 31 U.S.C.A. §§1225 and 1226. Prior to January 1, 1977, expenditures of such funds by units of local government were limited to priority matters, 31 U.S.C.A. §§1222, 1223, and 1243(a)(3); but that requirement was repealed as of January 1, 1977, by Pub. L. 94-488, 90 Stat. 234.

Federal payments in lieu of taxes are similar to revenue sharing funds in that they are grants specifically appropriated by Congress to aid local governments. The grants are appropriated by 31 U.S.C.A. §1601, et seq., and are based upon the amount of federal entitlement-land located within the beneficiary unit of local government and upon population. 31 U.S.C.A. §1602. The legislative history of the appropriation, particularly the Senate Report, makes

clear that the purpose of these grants is to alleviate, in part, financial hardship caused local governments as the result of federal ownership of local lands and the immunity of such lands from state and local taxation. 1976 U.S. Code Cong. and Adm. News, pp. 5968-5978. The grants are the implementation of the statement of purpose found in 43 U.S.C.A. §1701(13), which states:

> The federal government should, on a basis equitable to both the federal and local taxpayer, provide for payments to compensate state and local governments for burdens created as a result of the immunity of federal lands from state and local taxation.

31 U.S.C.A §1601 provides that such grants may be used by local governments "for any governmental purpose". For purposes of this opinion I am assuming that "governmental purpose" means that the expenditure must be within the power of the governmental unit which makes it.

The lack of a federal restriction on the expenditure of the funds in question indicates Congressional intention that the funds be expended in accordance with state spending requirements. See Wheeler v. Barrera, 417 U.S. 402, 416-417 (1974). Section 16-1185 and the federal statutes in question here do not give local governments additional spending powers. The manner in which these funds may be expended is therefore controlled by state laws concerning the powers of local governments.

I have already concluded that the County has power to build the proposed doctors' building under the provisions of the Industrial Development Projects Act, but is limited to the mode and manner of financing which is prescribed by the Act. Supra, p. 4-5; See Thompson v. Gallatin County, supra; and Smith v. City of Bozeman, supra. It is apparent the legislature intended to preclude the use of general county funds for projects of this nature.

Cities, towns and counties are expressly prohibited from pledging their general credit and taxing power to finance industrial development projects. Section 11-4103(1), R.C.M. 1947. The general fund is thus conserved for other, more general public purposes. While industrial revenue projects serve public purposes, Fickes v. Missoula County, supra, 155 Mont. at 264; the benefits are indirect, obtained by facilitating the continued operation, expansion, or immigration of

private enterprise in the locality. These private businesses in turn provide jobs and services in the community. The method of financing specified in the Act reflects a legislative policy that benefitted businesses pay for the benefits. The projects are to be undertaken without burdening the local taxpayers or charging local funds available for other public purposes. Federal revenue sharing funds and payments in lieu of taxes may be spent for any purpose for which the local government may spend or pledge general tax revenues. See Yovetich v. McClintock, 165 Mont. 80, 526 P.2d 999 (1974). Expenditures of the funds for purposes which taxes and the general credit of the locality may be used permits either a reduction of taxes or the additional expenditures of money which would otherwise require a tax increase or pledge of additional local credit. Any expenditure of federal revenue sharing funds and payments in lieu of taxes therefore has an indirect impact upon taxes and the general credit and taxing powers of the County. Spending these federal funds for industrial development projects violates the obvious intent and purpose of the prescribed manner of financing such projects.

Section 11-4102(1) gives local government powers to use "gifts" for projects constructed pursuant to the Act, but federal grants are not gifts. The word "gift" means the giving of something of value by one party to another without compensation or other consideration in return. It is axiomatic that government expenditures, whether federal or state, must be for some governmental or public purpose. E.g., Helvering v. Davis, 301 U.S. 619, 640 (1937); Fickes v. Missoula County, supra, 155 Mont. at 266-270. We cannot assume that funds appropriated by Congress are gratuities or gifts. McLean v. United States, 226 U.S. 374, 380 (1912). To the contrary, in the case of governmental grants, the benefit to the government is the public purpose served by the expenditure of the funds, which is in the nature of consideration. Alameda County v. Carleson, 97 Cal. Rptr. 385, 396, 488 P.2d 953. Government grants are commonly understood to fall within a class separate and apart from gifts. In view of the legislature's intent to preserve the general fund for general tax funded purposes, it would be inconsistant to interpret the word "gifts" to include federal funds.

I therefore conclude that neither federal revenue sharing funds nor payments in lieu of taxes may be used to finance industrial development projects.

III

In your request for an opinion, you stated that Teton County presently has only two physicians. These physicians lack adequate medical facilities and may leave the County if the proposed doctor's building is not built. You have further pointed out in your request and subsequent communications with my office that the County's only public hospital, which is operated by a public hospital district, and the County operated nursing home, will have to be closed if the County is left without doctors. You have asked whether these facts give the County additional, implied powers which would permit the use of federal revenue sharing funds and payments in lieu of taxes, to construct the doctors' building.

Furnishing doctors with office space and laboratory facilities is not ordinarily necessary to the maintenance of a hospital or nursing home. However, local governmental units do have inherent authority to protect and preserve their property and are not constrained to stand by helplessly while valuable property is destroyed. Arnold v. Custer County, supra, 83 Mont. at 146-147.

If the hospital will cease operations because a doctors' building is not constructed, the hospital district has implied power to construct the facility for the purpose of preserving the hospital. The county has similar power to preserve a nursing home operated by it pursuant to Section 16-1037, R.C.M. 1947. However, the nature of the power is one of absolute necessity - it arises only when express and implied powers conferred by statute have been exhausted and the facility or institution cannot otherwise be preserved. To sustain such power the County carries a difficult if not insurmountable burden. First, it would have to show that other sources of financing the facility are unavailable and that the County's doctors are unwilling to do so. In particular, it would have to show that revenue bond financing under the Industrial Revenue Bond Act is not merely impractical or economically unattractive, but is unavailable and impossible. Second, it would need to demonstrate that if the facility is not built the doctors will leave the County and that no other doctors can be found to replace them.

If such showing can be made, which is unlikely, then the County may use federal revenue sharing bonds and payments in lieu of taxes to finance the project.

IV

Your fourth question is whether the County may lease the

proposed doctors' building, if built, to the hospital district. The district would in turn manage the facility and lease it to the County's doctors. I understand that the proposed building will be adjacent to the new hospital.

The Act contemplates leasing as an integral part of its execution, explicitly authorizing leases to "others". Section 11-4102(2), R.C.M. 1947. The Act sets forth specific provisions and requirements for all leases.

The Hospital District also has the authority to enter into leases. The powers granted hospital districts in administering hospitals is expressly broad. Section 16-4308, R.C.M. 1947, provides in relevant part:

> Powers of district. A hospital district shall have all powers necessary and convenient to the acquisition, betterment, operation, maintenance and administration of such hospital facilities and its board of trustees shall deem necessary and expedient. Without limitation on the foregoing general grant of powers, a hospital district, acting by its board of trustees, may:
>
> * * *
>
> (3) Lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, conditional sales contract, or otherwise, and acquire real or personal property by gift.
>
> (4) Lease or construct, equip and furnish necessary buildings and grounds and maintain the same.
>
> * * *

The powers of districts extend to "hospital facilities," a word which indicates that the legislature contemplated a broader class of places than the "in-patient" institutions which the word "hospital" signifies when used alone. "Hospital facilities" is defined in Section 16-4301.1, R.C.M. 1947:

> "Hospital facilities" defined. As used in this chapter, unless the context otherwise requires, "hospital facilities" means a hospital or a hospital-related facility, including out-patient facilities, public health centers, rehabilitation facilities, long-term care facilities and infirmaries.

The examples are not exhaustive, as indicated by the use of the word "including". It is my opinion that a medical building adjacent to the hospital, which would provide office space and laboratory facilities for the only two doctors serving the hospital, is a "hospital related facility", which districts are authorized to lease. Use of the words "convenient" and "expedient" in the general plan of power under Section 16-4308 is broad and flexible language further confirming this holding. The further words "without limitation on the foregoing general grant of powers" indicate that the enumerated, explicit powers are not inclusive and that facilities which are convenient to the administration of the hospital may be leased.

V

Based on the reasoning in Part IV of this opinion, I also conclude that a hospital district has the power to construct a doctors' building on property near the hospital. However, there is no authority for the use of either revenue sharing funds or federal payments in lieu of taxes to build such facility. Neither form of federal aid is granted directly to hospital districts. Although districts are created by the county commissioners, Section 16-4306, R.C.M. 1947, districts are distinct units of government. They are governed by separate boards of elected trustees and have enumerated governmental powers separate from those of the counties. See Sections 16-4308, 4309, 4309.1, 4309.2, and 4310, R.C.M. 1947. Use of federal funds would therefore require a transfer of such funds from the county to the hospital district. A county has only such power as is expressly conferred upon it by statute and such as is necessarily implied in the exercise of authority so conferred. Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1945); State ex rel Bowler v. County Commissioners, 106 Mont. 251, 257, 76 P.2d 648 (1938); and I find no statute which expressly or impliedly allows such transfer.

THEREFORE IT IS MY OPINION:

1. A county has no authority under Sections 16-1008A or 71-106, R.C.M. 1947, to construct a medical facility which would provide office and laboratory space for county doctors. A county does have power under the Industrial Development Projects Act, Section 11-4101, et. seq., R.C.M. 1947, to construct such facility using industrial revenue

bonds or gifts.

2. A county may not use federal revenue sharing funds or payments in lieu of taxes to construct a medical facility pursuant to the Development Projects Act, Section 11-4101, et. seq., R.C.M. 1947.

3. Where a county operated nursing home and a district hospital will close as a result of the failure of the county to construct a doctors' facility, the county has the inherent power to construct the facility using federal revenue sharing funds and payments in lieu of taxes. The power is implied and is incident to a county's inherent power to preserve its property. However, the power arises only when there is no alternative for building the facility and the county can conclusively demonstrate that its hospital or nursing home would have to cease operations.

4. A county may lease a medical building constructed pursuant to the Industrial Development Projects Act to a hospital district which is located within the county.

5. A public hospital district organized pursuant to Section 16-4301, et. seq., R.C.M. 1947, may construct a medical building which would provide offices and medical facilities for county doctors, but the county may not distribute federal revenue sharing funds or federal payments in lieu of taxes to the district to finance such construction.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 63

ATTORNEYS - Fees for county attorney in addition to salary;

COUNTIES - Fees for county attorney in addition to salary;

COUNTY OFFICERS AND EMPLOYESS - Fees in addition to salary;

FEES - Compensation of county attorney;

PUBLIC OFFICERS - Fees in addition to salary;

TAXATION AND REVENUE - Compensation of county attorney for county's intervention in tax appeal;

SECTIONS - 16-3101(3), 84-210, 84-301, 84-709.1, 84-4502, R.C.M. 1947.

HELD: A county attorney may not accept a fee from the county commissioners, in addition to his or her salary as county attorney, for prosecuting an appeal from a decision of the tax appeal board in which the county has intervened as party plaintiff.

12 September 1977

John S. Forsythe
Rosebud County Attorney
Rosebud County
Forsyth, Montana 59327

Dear Mr. Forsythe:

You have asked my opinion on the following question:

May I legally accept a fee from the county commissioners in addition to my salary as county attorney, for

> prosecuting an appeal from a decision of the tax appeal board in which the county has intervened as a party plaintiff?

Your question has never been directly answered by the Montana Supreme Court. The general rule is stated in 1 J. Dillon, Municipal Corporations, §426, at 739 (5th ed. 1911) (footnote omitted):

> It is a well-settled rule that a person accepting a public office, with a fixed salary, is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of those duties, even though the salary may be a very inadequate remuneration....The rule... should be rigidly enforced. The statutes of the legislature... seldom prescribe with much detail and particularity the duties annexed to public offices; and it requires but little ingenuity to run nice distinctions between what duties may and what may not be considered strictly official; and if these distinctions are much favored by courts of justice, it may lead to great abuse.

Cases have arisen involving express contracts for the performance of additional work at extra compensation. Those cases have generally held:

> If the extra services which the officer undertakes to perform at an agreed extra compensation are a part of or germane to the official duties of his office or are merely incidental to those duties, the existence of an express contract for additional compensation does not prevent the operation of the rule ... that he is not entitled to extra compensation for extra services rendered by him. In such case the contract for additional compensation is invalid as against public policy.

Annot., 159 A.L.R. 606, 607-608 (1945).

If the services are outside the scope of official duty and expressly contracted for, there are two lines of authority, one upholding, and the other denying the validity of the contract. Id. at 608. Montana upholds the validity of such contracts. Anderson v. Hinman, 138 Mont. 397, 412, 357 P.2d 895, 903 (1960). See also State v. Hale, 129 Mont. 449, 461, 291 P.2d 229, 235 (1955).

The answer to your question therefore turns on whether your prosecuting the tax appeal on behalf of Rosebud County is incidental to or outside of your statutory duty as county attorney.

Section 16-3101(3), R.C.M. 1947, says that a county attorney has a duty, inter alia, to:

> Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all recognizances forfeited in the courts of record, and all actions for the recovery of debts, fines, penalties, and forfeitures accruing to the state or his county...

The provision does not specifically require a county attorney to represent the county that intervenes as a party plaintiff. However, my opinion is that the function you are performing which prompted this opinion request is covered by the provision.

The facts as I understand them are these: The State Department of Revenue classified a county taxpayer's property as class four. The taxpayer paid under protest, contending that the property should have been classified as class seven, or new industrial property. Section 84-301, R.C.M. 1947. The taxpayer appealed the classification to the state tax appeal board. That board agreed with the taxpayer, and the Department of Revenue sought judicial review of the decision in district court under Section 84-709.1, R.C.M. 1947. Rosebud County, which had not been a party to the prior proceedings, then intervened under Rule 24(b), M.R. Civ. P., asking that the department's position be upheld.

Rather than seek administrative review of the classification by the tax appeal board, the taxpayer could have brought "an action in any court of competent jurisdiction against the

officers to whom said license or tax was paid, or against the county...in whose behalf the same was collected, and the state department of revenue...to recover such tax or license, or any portion thereof, paid under protest...." Section 84-4502, R.C.M. 1947 (emphasis added). Had the taxpayer brought such an action, the county's defense would clearly have been the duty of the county attorney. "The county attorney...must...defend all suits brought against...his county...." Section 16-3101(3), R.C.M. 1947.

Rather than pay the tax under protest, the taxpayer might also have refused payment, in which case the county's interest would have been represented by an action for payment of the tax. Again, the prosecution of that action would clearly have been the county attorney's duty. Sections 16-3101(3) and 84-210, R.C.M. 1947. The Montana Supreme Court has said that "the county attorney, in his official capacity,... is authorized to prosecute and defend actions on behalf of ... the county, in the name of the county, for the amounts of taxes due the ... county." Carlson v. Flathead County, 130 Mont. 36, 49; 293 P.2d 279, 285 (1955).

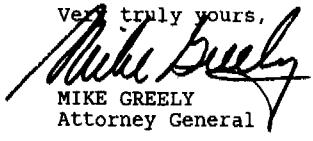
Whether the handling of this action is considered incidental to or outside of the statutory duties of a county attorney should not depend on how the taxpayer chooses to protest the tax. The interest of the county which the county attorney represents is the same regardless of the form that the action takes. The representation of the county, whether as prosecutor, defendant, or intervenor in an action determining protested taxes is the county attorney's duty. You are therefore not entitled to extra compensation for carrying out that duty.

As an elected county attorney you cannot provide special counsel for the county and receive compensation for both jobs. In 1905, Montana's Attorney General said that a board of county commissioners could employ special counsel for the prosecution of a civil case to which the county is a party. 1 Opinions of Attorney General 190 (1905). However, that opinion did not contemplate the hiring of the regular county attorney as special counsel, referring instead to situations where "the duly elected county attorney is, by reason of physical inability, self-interest, absence, or pressure of official business, unable to attend to the particular case or discharge the particular duty." Id. at 192. Those duties include "looking after the interests of the county in all matters of litigation." Id.

THEREFORE, IT IS MY OPINION:

A county attorney may not accept a fee from the county commissioners, in addition to his or her salary as county attorney, for prosecuting an appeal from a decision of the tax appeal board in which the county has intervened as party plaintiff.

Very truly yours,



MIKE GREELY
Attorney General

BG/ar

VOLUME 37 OPINION NO. 65

MUNICIPALITIES - Sewage rates;

CITIES AND TOWNS - Sewage rates

PUBLIC SERVICE COMMISSION - Jurisdiction over municipal sewer rates;

SECTION 11-2216;

SECTIONS 11-2217 to 2221;

SECTION 11-966;

SECTION 11-2302;

SECTION 11-2303;

SECTION 11-2401 to 2414;

SECTION 11-1001

HELD: Section 11-2216 confers jurisdiction over municipal sewage rates upon the Public Service Commission only when the city finances its sewer system under the SID method for district sewers and appropriates money from the general or sewer fund, or issues municipal bonds for public sewers, and the city has obtained voter approval to impose such rates as provided in Section 11-2216(3).

13 September 1977

Gordon E. Bollinger, Chairman
Public Service Commission
1227 11th Avenue
Helena, Montana 59601

Dear Mr. Bollinger:

You have requested my opinion on the following question:

> Under what circumstances does R.C.M. 1947, Section 11-2216 confer jurisdiction over municipal sewer rates upon the Public Service Commission?

Section 11-2216 is but one of several statutes relating to municipal sewers and sewage systems. See also Section 11-966 (purposes for which a city or town may incur indebtedness), Sections 11-2401 to 2414 (Municipal bonds and indebtedness), Sections 11-2401 to 2414 (Municipal Bond Act of 1939), Sections 11-2217 to 2221 (authorizing cities and towns to establish sewage systems, treatment plants, water supply and distribution systems); and Section 11-1101 (authorizing cities and towns to furnish water and sewage service to industries and persons without city limits.)

The language of Section 11-2216 is as follows:

> 11-2216. (5239) Sewer systems. (1) A sewer system may be established in a city or town, which may be divided into public, district and private sewers.
>
> Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.
>
> (2) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state. It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property

bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefitted thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are collected and taxed, or by such procedure as may be prescribed in the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4) The funds received from the collection of sewer rentals shall be kept as a separate and

distinct fund by the city treasurer, subject only to disbursement by order of the council. This fund shall be used for (1) the payment of the cost of management, (2) maintenance, (3) operation and (4) repair of the sewage system, including treatment and disposal works, (5) for the creation of a sinking fund for the retirement of any indebtedness, (6) for the payment of interest on any such indebtedness, and any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment and disposal works, and for retiring such debt, but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those above specified.

(5) Any twenty-five (25) or more electors of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6) It is further provided that all the provisions of this act referring to sewer rentals, shall apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, as provided for in chapter 133, Laws of 1929 and the powers herein conferred on councils shall be and are hereby conferred on the several boards of county commissioners for the purposes of said chapter 133, Laws of 1929--in so far as the same relates to sewers.

Section 11-2216 was enacted as a part of special improvement district (SID) legislation in 1913, and contained only subsections (1) and (2). Laws of Montana (1913), ch. 89, sec. 15. The section authorized SID financing of district

sewers. Subsection (2) created an exception to SID financing in the case of public or main sewers. Public sewer was defined as "[a] sewer which serves the public and connects with and receives the discharge from district sewers...." Rush v. Grandy, 66 Mont. 222, 227, 218 P.242 (1923). Cities were permitted to finance public sewers only by appropriation from the general or sewer fund, or from the issuance of bonds. Rush v. Grandy, 66 Mont. at 226.

Subsections (3) through (6) were added by amendment in 1933. Laws of Montana (1933), ch. 149, sec. 1. Subsection (3) provided for the creation of the "sewer fund" referred to in subsection (2), and the financing and payment of bonds and interest. The city was permitted, upon petition by the taxpaying freeholders, and election, to establish and collect rentals for the use of the system.

Subsection (5) which granted jurisdiction to the Public Service Commission specifically refers to the petition and election procedure followed in subsection (3):

> Any twenty-five (25) or more electors [originally freeholders] of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable....

This method of financing sewer systems--SID financing in the case of district sewers, and general or sewer fund appropriations or municipal bond issues for public sewers, is no longer the exclusive method of funding.

The Municipal Bond Act of 1939, Laws of Montana (1939), ch. 126, sec. 1, (located at R.C.M. 1947, Sections 11-2401 to 2414) permits cities to construct and maintain sewer systems and provides for the issuance of revenue bonds for these purposes. Sections 11-2402 to 2404. Rates, fees, and charges may be collected to finance the undertaking, Section 11-2403(d), and voter approval is not required to authorize such charges. Section 11-2409. The Public Service Commission has no jurisdiction of the rates fixed under this method of financing. Section 11-2412. The system authorized by this Act may extend beyond the territorial boundaries of the municipality. Section 11-2403(b).

Sections 11-2217 to 2221 also permit the construction, operation, and maintenance of a municipal sewage system, financed by rental charges and revenue bonds. Section

11-2217. The Act, Laws of Montana (1943), ch. 149, sec. 1, was erroneously placed in the special improvement district section of the Revised Codes of Montana (1947), and itself contains no authorization for SID financing of any part of the system therein permitted. The Public Service Commission has no jurisdiction over the rates fixed by the city council pursuant to this Act. 22 Opinions of the Attorney General, Opinion No. 127 (1948).

Cities may finance sewer systems in three ways: (1) by a combination of SID financing for district sewers, and general appropriation or general municipal bond financing for public sewers; (2) by issuing revenue bonds pursuant to the Municipal Bond Act of 1939; or (3) by utilizing service rentals and revenue bonds as provided in Sections 11-2217 to 2221. It is only when the city utilizes the first method of financing as established in Section 11-2216, that the Public Service Commission may assume jurisdiction over the rates fixed pursuant to that section.

THEREFORE, IT IS MY OPINION:

> Section 11-2216 confers upon the Public Service Commission jurisdiction over municipal sewer rates only when the city finances its sewer system under the SID method for district sewers and appropriates money from the general or sewer fund, or issues municipal bonds for public sewers, and the city has obtained voter approval to impose such rates as provided in Section 11-2216(3).

Very truly yours,

MIKE GREELY
Attorney General

BG/so

VOLUME NO. 37 OPINION NO. 66

BUILDING CODES - Authority of Counties to Adopt Building Codes;

LOCAL GOVERNMENT - Authority To Adopt Selective Portions Of The State Building Code;

SECTION 69-2112, R.C.M. 1947.

HELD: 1. Counties in Montana have the authority to establish a building code program.

2. Local government entities may adopt selected portions of the state building code leaving the remaining portions of the code to be enforced by the Department of Administration.

16 September 1977

Mr. Jack C. Crosser
Department of Administration
Mitchell Building
Capitol Complex
Helena, Montana 59601

Dear Mr. Crosser:

You have requested my opinion regarding the following questions:

1. Do counties in Montana have the authority to establish a building code program?

2. May local government entities adopt only selected portions of the state building code leaving the remaining portions of the code to be enforced by the Department of Administration?

Recently, Chapter 504, Laws 1977, was enacted amending Section 69-2112, R.C.M. 1947. The chapter allows counties to implement and enforce a building code program as long as the program is consistent with the state codes. That section now provides:

Municipal Building Codes - Applicability of State Code

(1) The local legislative body of a municipality or county may adopt a municipal building code by ordinance to apply to the municipal or county jurisdictional area. A municipal or county building code may include only codes adopted by the department.

(2) If a municipality or county does not adopt a building code as provided in subsection (1) of this section, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(3) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(4) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (3).

The statute, on its face, clearly authorizes counties to adopt building codes. It is a well-established rule of statutory construction that where the language of a statute is plain, unambiguous, direct and certain, the language speaks for itself. Montana Association of Underwriters v. State of Montana, 34 St. Rep. 297, 563 P.2d 577, (1977).

With respect to your second question, it is my opinion that the 1977 amendments to Section 69-2112 specifically allow local government entities to adopt selected portions of the state building code leaving to the state jurisdiction over the remaining codes. Prior to the adoption of the 1977 amendments, the last sentence of Section 69-2112(1) read:

> A municipal building code must cover all general areas included in the state building code.

This language was mandatory in nature and precluded the adoption of only selected portions of the state code. The above-quoted sentence was amended by Chapter 504, Laws 1977, to read as follows:

> A municipal or county building code may include only codes adopted by the department.

While the apparent intention of this particular amendment is to preclude the adoption of codes not utilized by the Department of Administration, it also strikes the mandatory "must" and replaces it with a permissive "may" concerning the adoption of building codes. In addition the specific requirement that the local codes must cover "all general areas" covered by the state building codes has been deleted, thereby opening the door for selective adoption. In the construction of an amendatory act it is presumed that the legislature intended to make a change in the existing law. Pilgeram v. Hass, 118 Mont. 431, 167 P.2d 339; Montana Department of Revenue v. American Smelting and Refining Co., 34 St. Rep. 597 (1977).

Allowing selective adoption is consistent with the recent expansion of local government powers pursuant to Article XI, of the Montana Constitution. And, although building codes

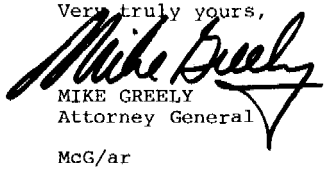
are in an area that has clearly been subjected by law to state regulation and control, as defined by §47A-7-203, these powers have been specifically delegated to local governments by the above quoted provisions. Of course, under the statute, the state code and enforcement procedures will apply in areas not encompassed by local code.

THEREFORE IT IS MY OPINION:

1. Counties in Montana have the authority to establish a building code program.

2. Local government entities may adopt selected portions of the state building codes leaving the remaining portions of the code to be enforced by the Department of Administration.

Very truly yours,



MIKE GREELY
Attorney General

McG/ar

GAMBLING - Cities and towns, regulation of hours, police powers;

CITIES AND TOWNS - Gambling, regulation of hours, police powers;

ORDINANCES - Gambling, police power, regulation of hours;

HELD: The City of Great Falls may restrict by ordinance the hours of licensed gambling between 2:00 a.m. and 1:00 p.m. on Sunday and between 2:00 a.m. and 8:00 a.m. on any other day.

21 September 1977

David W. Gliko, Esq.
Great Falls City Attorney
P.O. Box 1609
Great Falls, Mt. 59403

Dear Mr. Gliko:

You have requested my opinion on the following question:

> May the City of Great Falls restrict by ordinance the hours of licensed gambling between 2:00 a.m. and 1:00 p.m. on Sunday and between 2:00 a.m. and 8:00 a.m. on any other day?

Section 5.28.380 of the Great Falls gaming ordinance provides:

No game of chance or authorized card game may be operated in any premises, licensed under this chapter, during the following hours:

A. Sunday from two a.m. to one p.m.;

B. On any other day between two a.m. and eight a.m.

Article III, §9 of the Montana Constitution empowers the Legislature to authorize gambling. Otherwise all forms of gambling are prohibited. The Montana Card Games Act, the Bingo and Raffles Law, and the authorization for sports pools were enacted in 1974, as Sections 62-701 through 62-736, R.C.M. 1947. The Card Games Act is found at Sections 62-701 through 62-714.

While that Act prescribes several rules for authorized card games (See. e.g., Sections 62-703, 62-704, 72-705 and 62-706) the primary regulatory authority is vested in local governing bodies. Sections 62-707 and 62-708 provide, respectively:

62-707. Local governing bodies may issue licenses. (1) Any city, town or county may issue licenses for the gambling games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town or county, no gambling game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof shall acquire any vested rights therein or thereunder.

62-708. Governing body may establish regulations. The governing body authorized to issue gambling licenses pursuant to this act shall have the authority to establish by ordinance or resolution, regulations governing the qualifications for and the issuing, suspension and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license shall be issued to:

1. A person who has been convicted of being the keeper or is keeping a house of ill fame.

2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

3. A person whose license issued under this act has been revoked for cause.

4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceeding the filing of the application for license.

6. A person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

The question, therefore, is whether these two sections authorize the City of Great Falls, as a local governing body to regulate the hours of gambling.

A local government unit without self-government powers, such as the City of Great Falls, has the "powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law." Montana Constitution, Article XI, Section 4; Section 11-102, R.C.M. 1947. These powers must be liberally construed. Id. Pursuant to the "general welfare clause" of Section 11-901, a city can legislate as necessary for the government and management of its affairs, the maintenance of peace and order, the preservation of health, the convenient transaction of

business, etc. State v. Libby, 107 Mont. 216, 230 (1938). This power of legislation may not, however, contravene constitutional or statutory provisions (Id.) and the state can preempt the regulation of an area so as to prohibit local control. State v. Haswell, 147 Mont. 492 (1966). Besides the specific licensing and regulatory powers in the Card Games Act quoted above, a city has general powers to "license all industries, pursuits, professions, and occupations" (Section 11-903) and may "fix the amount, terms and manner of issuing and revoking licenses...." (Section 11-904).

These statutory powers construed together, and construed liberally, empower a city to regulate the hours of a licensed card game.

Section 62-707 empowers a city to license gambling games and to collect fees therefor. Section 62-708 empowers a city to adopt "regulations governing the qualifications for and the issuing, suspension and revocation" of gambling licenses. In addition to "any other requirements," licenses may not be issued to certain persons listed in subsections one through six of Section 62-708. The last sentence of subsection six provides:

> Additional regulations may also be adopted for the purpose of the protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act.

A city's powers must be construed liberally. Article XI, Section 4, Constitution of Montana. The power in Section 62-708 to regulate the suspension or revocation of licenses would be essentially meaningless if the city could only regulate the initial personal qualifications for licensure. To regulate means "to adjust; to govern by rule, to direct or manage according to certain standards or laws; to subject to rules, restrictions or governing principles." City of Butte v. Paltrovich, 30 Mont. 18, 22 (1903). Further, a city must adopt the statutory list of persons not entitled to a license in addition to "any other requirements" it may enact (emphasis added). Finally, the last sentence of Section 62-708 broadly empowers the city to regulate in the interest of public health, welfare and safety. The intent that the city have broad regulatory powers is patent upon the face of the Act. A city may not regulate or prohibit conduct in an area, preempted by state law, State v.

Haswell, supra, but may clearly regulate gambling where authorized to do so by state law. Woolverton v. Denver, 361 P.2d 982 (Colo. 1961). There is nothing in the Card Games Act to indicate an intent to preempt the question of gambling hours.

The conclusion that the city is empowered to regulate the hours of gambling is not necessarily determinative, and a large body of law has been developed on the question of local regulation of business and their hours of operation. It has been said that:

> No generalization can safely be stated as to the validity and reasonableness of municipal regulations of the time during which businesses may be conducted. The result depends largely upon the nature of the business sought to be regulated.

56 Am.Jur.2d Municipal Corporations, §474. While the Constitution protects the right to engage in lawful business, the government is not deprived of the power to regulate "useful occupations" in those special situations in which their nature or location may prove injurious to the public. Neither is a municipality restrained from prohibiting a business which is "inherently vicious and harmful," and between these extremes lie many "non-useful" occupations which may or may not be harmful to the public. Murphy v. California, 225 U.S. 623 (1912). (Municipal regulation of the location pool halls). Thus, courts have stricken municipal ordinances restricting the hours of barber shops (See 98 A.L.R. 1093) and ordinances prohibiting selling cars on Sunday (Courtsey Motor Sales v. Ward, 179 N.E.2d 692 (Ill. 1962). However, an ordinance closing dance halls on Sunday has been upheld as reasonable and not arbitrary. State v. Loomis, 75 Mont. 88 (1925). In City of Butte v. Pattrovich, supra, the municipality prohibited operation of licensed pawn shops between 6:00 p.m. and 7:00 a.m., pursuant to state authorization to "license, tax and regulate" certain businesses. The defendant pawn shop operator made a series of arguments which were rejected by the Court:

1. The power to regulate did not encompass the power to prohibit his business during a portion of every day. The Court responded that every police regulation operates to some extent as an interference with the free exercise of business, and that the factor alone is not determinative. If the regulation affords "reasonable facilities" for the

conduct of the business it will be sustained (30 Mont. at 22).

2. Possession of city and state licenses which did not limit his hours precluded city regulation. The Court responded that the licenses were "mere permits" which the defendant took charged with the knowledge that the city could impose regulations necessary to preserve "peace and good order." (30 Mont. at 22); See Section 62-707(3).

3. Unlawful discrimination was alleged, since only pawn shops, of all the businesses listed in the state statute, were subjected to regulation by the city. The Court rejected this argument by holding that only where persons in the same business are subjected to different regulations or are granted different privileges under the same conditions is discrimination open to challenge. (30 Mont. at 22-23). See also City of Bozeman v. Nelson, 73 Mont. 147, 154 (1925); People v. Raub, 155 N.W.2d 878, 881 (Mich.1967).

4. The ordinance was unreasonable. The Court replied (30 Mont. at 23-24):

> The only remaining question is, is the regulation provided by this ordinance a reasonable one? The mere fact that appellant's business is legitimate, and specifically recognized as such by legislative enactment, does not render ineffectual the power conferred by Subdivision 16 above. The police power is not confined to the regulation of those classes of business which are essentially legal, for, if illegal, in the sense that they are prohibited by law, it is not easily understood how they could be regulated at all.
>
> It is of the very essence of the exercise of police powers that citizens may, for the public good, be constrained in the conduct with reference to matters in themselves lawful and right. It is not a material inquiry to attempt to ascertain the reason which impelled the legislature to designate the business of pawnbrokers as subject to police regulations. It is sufficient for us to know that it has done so, and deal with the law as we find it. The fact that appellant cannot prosecute his business whenever he may desire to do so is hardly a sufficient reason for saying that the restrict-

> ions imposed are unreasonable. However comprehensive the terms "individual liberty," so frequently made use of, are, and however broad the claim which may be advanced that every one may employ his time in a lawful undertaking as may best serve his own interests, still the liberty referred to is a relative term, and, at most, means liberty regulated by just and impartial laws, while all sorts of reasonable restrictions are imposed upon the actions of men for the common welfare and good for society.
>
> However, the question of the reasonableness of the regulation is one of fact, of which the city council is the best judge, and in the absence of a clear showing to the contrary its reasonableness will be presumed. [citations ommitted, emphasis added].

See also City of Bozeman v. Nelson, supra, 73 Mont. at 155; Bettey v. City of Sidney, 79 Mont. 314, 319 (1927).

While courts recognize that private business may be regulated for the common good and welfare, a recent case concluded that the majority of jurisdictions considering ordinances restricting business hours have stricken the ordinances. Fasino v. Mayor, 300 A.2d 195, 198 (N.J. 1973). These cases often involve broad ordinances requiring all businesses to close, which are found to be broad, sweeping, arbitrary and unrelated to the municipality's legitimate goals. Fasino, supra; Dyess v. Williams, 444 W.2d 701, 702 (Ark. 1969); Goodin v. City of Philadelphia, 75 So.2d 279, 280 (Miss. 1954). However, an ordinance which is narrowly drawn, which has a substantial relation to the public health, safety or welfare, and which is not unreasonable, arbitrary or capricious will be upheld. Fasino, supra; City of Butte v. Paltrovich, supra.

Thus, ordinances narrowly drawn to apply to only certain classes of business, the regulation of which is reasonably necessary to promote the public health, safety, or welfare, have been upheld. Township of Little Falls v. Husni, 352 A.2d 595 (N.J. 1976) (laundromat hours); People v. Raub, 155 N.W.2d 878 (Mich. 1967)(carwash hours); Ratliff v. Hill, 168 S.W.3d 336 (Ky. 1943)("roadhouse" hours). See also State v. Loomis, supra, (dance hall hours); City of Butte v. Paltrovich, supra (pawn shop hours).

The regulation of gambling hours is the type of matter touching upon the public health, safety and welfare. In Attorney General's Opinion No. 86, Vol. 35, it was said, speaking of the "general welfare" powers of Section 11-901, noted above:

> Under this section the Montana Supreme Court has held that when an activity or business is greatly concerned with the health, morals and welfare of the public, then it is within the police power of a city or town to regulate it. Unquestionably, gambling affects the health morals and welfare of the public. Therefore, it is clear that all gambling can be regulated through the legislative police power that is bestowed generally on the cities and towns through section 11-901, supra, but more specifically, through sections 62-707 and 62-719, supra, of the new gambling provisions. [emphasis added].

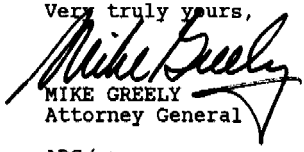
Since municipal ordinances possess a strong presumption of validity, Township of Little Falls v. Husni, supra, courts will not interfere unless there has been a strong showing of invalidity. State v. Loomis, supra; City of Bozeman v. Nelson, supra. The reasonableness and necessity for a particular regulation are matters, in the first instance, for local determination, Bettey v. City of Sidney, supra, based upon local knoweldge of conditions and needs, City of Butte v. Paltrovich, supra.

Under these principles, it cannot be said that the present ordinance of the City of Great Falls is invalid. Local regulation is sanctioned by state law in order to allow for local variations to regulate gambling. Gambling is the type of subject matter traditionally the object of reasonable regulation for the protection of the public health, safety and welfare as determined by the local governing body. The regulation is specific and narrowly drawn, and is thus not void as being overbroad.

THEREFORE, IT IS MY OPINION:

The City of Great Falls may restrict by ordinance the hours of licensed gambling between 2:00 a.m. and 1:00 p.m. on Sunday and between 2:00 a.m. and 8:00 a.m. on any other day.

Very truly yours,



MIKE GREELY
Attorney General

ABC/ar

VOLUME NO. 37 OPINION NO. 68

LOCAL GOVERNMENT - Self-Government Powers;

SALARIES - Local Government Officials;

COUNTY ASSESSOR - Status Under Self-Government Charter;

SECTION - 25-605 and Title 47A, R.C.M. 1947.

HELD:

1. Under a form of government with local self-government powers the replacement of former county officers with department supervisors is a legitimate exercise of such local self-government powers.

2. Recent amendments to Section 25-605, R.C.M. 1947, raising the salary of certain county officials, do not apply to the appointed department supervisors in Anaconda-Deer Lodge County by virtue of the self-government charter recently adopted in that community.

3. The Anaconda-Deer Lodge Commission does not have the authority to enact any ordinance inconsistent with state law regarding the functions of the office of county assessor.

22 September 1977

John N. Radonich
County Attorney
Anaconda-Deer Lodge County
108 E. Park Avenue
Anaconda, Montana 59711

Dear Mr. Radonich:

You have requested my opinion concerning the following questions:

1. In the transition to a new form of local government, is the replacement of former county officers with department supervisors a legitimate exercise of local self-government powers?

2. Do the salary increases authorized by recent amendments to Section 25-605, R.C.M. 1947, apply to the department supervisors in charge of the former offices of clerk and recorder, clerk of the court, county treasurer, sheriff, and county superintendent of schools, who now are appointed positions by virtue of the self-government charter recently adopted in Anaconda-Deer Lodge County?

3. What is the status of the county assessor under a recently adopted self-government charter?

Anaconda-Deer Lodge has recently adopted a charter form of government with self-government powers pursuant to Article XI, Section 5, of the Montana Constitution and Section 47A-3-208, R.C.M. 1947. The self-government provisions of Title 47A were enacted in 1975 and became effective on May 2, 1977. These provisions are contrary to the previously well-settled principle that local governments had only those powers specifically granted them by state law. Compare, Leishner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959). It is therefore important to briefly review the new self-government provisions before we attempt to determine the precise effect the changes have had on prior authority.

Article XI, Section 6, of the Montana Constitution provides:

> A local government unit adopting a self-government charter may exercise any power not prohibited by this Constitution, law, or charter.

The convention notes to that section clearly indicate that local government units with self-government powers have all powers not specifically denied.

Title 47A of the Revised Codes of Montana defines the powers and limitations of self-government localities. Section 47A-7-102 affirms the constitutional provision that a local government unit with self-government powers may exercise any power or perform any service or function not prohibited by the constitution, law, or charter. Section 47A-7-103 provides that a self-government unit which performs a service or function which may also be performed by a general power government is not subject to the limitations that may be placed on the general power governments but is subject only to state laws that are made specifically applicable to self-government units. And, under Section 47A-7-106, local self-government powers must be liberally construed and every reasonable doubt must be resolved in favor of the local unit.

Title 47A contains specific statutory limitations upon self-government powers. Generally speaking, Section 47A-7-204 provides that the local unit is subject to all state provisions that involve: (a) the election or establishment of local governments; (b) eminent domain and zoning requirements; (c) laws regulating the budget, finance or borrowing procedures and powers of local government; and (d) laws requiring local governments or officers to perform a specific function or service. Sections 47A-7-201 and 202 provide a list of other specific powers prohibited to the locality, which include a wide range from the imposition of a sales tax to the denial of a certificate of public convenience.

Of fundamental importance is the fact that self-government units are also prohibited the exercise of any power in a manner "inconsistent with state law or administrative regulations in any area that is affirmatively subjected by law to state regulation or control," by Section 47A-7-203. That section further provides that:

> (2) The exercise of a power is inconsistent with state law or regulation if it establishes standards or requirements which are lower or less stringent than those imposed by state law or regulation" and
> (3) An area is affirmatively subjected to state control if a state agency or officer is directed to establish administrative rules or regulations governing the matter or if enforcement of standards or requirements established by statute is vested in a state officer or agency."

Consequently, in determining whether a self-government power is authorized, it is necessary to: 1) consult the charter and consider constitutional ramifications; 2) determine whether the exercise is prohibited under the various provisions of Section 47A or other statute specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmately subjected to state control as defined by Section 47A-7-203. If none of the above conflict, then the power should be liberally construed in favor of the self-government unit.

As mentioned above, Anaconda-Deer Lodge County has adopted a charter form of consolidated local government pursuant to Section 47A-3-208. Under its charter the governing commission adopted Resolution #1, which provides in essence that the offices of certain elected officials are abolished and replaced by appointed supervisors of the various departments. Those departments include the former office of clerk and recorder, clerk of the court, treasurer, sheriff, and county superintendent of schools. As I understand it, Resolution #1 does not eliminate the functions or services previously performed under those elected officials.

Both Article XI, Section 7(3), Montana Constitution and Section 47A-3-208(2) provide that;

> Charter provisions establishing executive, legislative and administrative structure and organization are superior to statutory provisions.

In addition, Chapter 477, Laws of 1977, created Section 47A-3-108 which gives consolidated local governments with self-government powers authority over local offices and functions created under general laws:

> Operation of Self-Government Consolidated Units of Local Government.
>
> (2)...The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers,

> or employees of the local government, notwithstanding the fact that the state law may assign the function or service to a specific office.

Article III, Section 1 of the Anaconda-Deer Lodge Charter gave the governing commission that capability:

> "Except as otherwise provided by the Charter, the commission shall exercise all powers of Anaconda-Deer Lodge County which include, but are not limited to, the power:
> ...
> h. to establish and prescribe functions of all administrative departments and agencies," and
>
> i. to create, transfer, reorganize, adjust, abolish, or absorb the boundaries of all existing boards, bureaus, commissions, agencies, special districts, and political subdivisions of the consolidated governments.

The commission exercised the powers granted to it by the charter with the adoption of Resolution #1. It is apparent that the implementation of the appointed supervisor system is a proper function of a self-government unit under the above-cited provisions. There are no specific limitations upon the exercise of that power in Title 47A, or other statute; nor is it inconsistent with state law in an area that has been affirmatively subjected to state control. In fact, the power is expressly delegated to self-governments and is totally consistent with the intent of the constitutional convention and the legislature in providing for self-government powers.

Your second question is whether recent amendments to Section 25-605, increasing the salaries of certain county officers, apply to the department supervisors of Anaconda-Deer Lodge County. It is my opinion that Section 25-605 does not apply to self-government units. As Section 25-605 is not a state law that specifically applies to self-government units, it may be superseded by ordinance or resolution of the commission as noted in Section 47A-7-105. The Anaconda-Deer Lodge Charter provides that the administrative structure

is to be established by the commission. Moreover, as noted above, Section 47A-3-108 expressly gives self-government units the authority to combine or abolish offices or exchange the functions of any local office irrespective of other state laws. Implicit within those capabilities is the authority to establish salaries.

A question does arise as to whether setting the salary level of those county officials is prohibited by statutory limitations on self-government power. Section 47A-7-204 provides in pertinent part:

> Mandatory Provisions
>
> A local government unit with self-government powers is subject to the following provisions. These provisions are a prohibition on the self-government unit acting other than as provided:
> ....
> (7) Any law regulating the budget, finance or borrowing procedures and powers of local governments, except that the mill levy limits established by state law shall not apply. (Emphasis supplied)

It is my opinion that that section applies to the budget procedures and powers of local governments and does not apply to individual items within particular budgets. When the language of a statute can be interpreted from its plain meaning it has been held that there is nothing left to construe. Keller v. Smith, 33 St. Rep. 228, 553 P.2d 1002 (1976). The issue we deal with here does not address the Anaconda-Deer Lodge budget procedures or powers.

There are no constitutional or specific statutory prohibitions regarding the exercise of that authority; nor, regarding those supervisors, is the exercise inconsistent with state law in an area that has been affirmatively subjected to state control as defined by Section 47A-7-203. Again Section 47A-7-106 provides that every reasonable doubt as to the existence of a local self-government power or authority should now be resolved in favor of the local government.

The office of county assessor, however, is different than the offices described above. The duties and functions of the office of county assessor are within an area that is affirmatively subjected to state control.

The Constitution of Montana, Article VIII, §3, provides:

> The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law. (Emphasis supplied)

Opinion 68, Volume 36, Opinions of the Attorney General, held that the burden of maintaining the office of county assessor rests with the Department of Revenue. That Opinion described at length the authority of the State Department of Revenue regarding the appraisal and taxation of all property within the state, basing its decision primarily upon the Constitutional provision quoted above and Chapter 4, Title 84, R.C.M. 1947. Under those provisions the department is directed to establish rules and regulations as well as enforce the statutory provisions regarding the appraisal and assessment of property. Section 84-402(2) even makes county assessors agents of the department.

As noted earlier, Section 47A-7-203 precludes a local government with self-government powers from exercising any power in a manner inconsistent with state law in any area affirmatively subjected to state regulation and control. Clearly, the duties and functions of the office of county assessor is in an area that is affirmatively subjected to state control as defined by that statute and consequently local ordinances must be consistent with state law. Of course, there is nothing in state law that precludes the assessor from being appointed in the same manner as the other county officers. See Section 61-2406 and Section 47A-3-108.

THEREFORE IT IS MY OPINION:

1. Under a form of government with local self-government powers the replacement of former county officers with department supervisors is a legitimate exercise of such local self-government powers.

2. Recent amendments to Section 25-605, R.C.M. 1947, raising the salary of certain county officials, do not apply to the appointed department supervisors in Anaconda-Deer Lodge County by virtue of the self-government charter recently adopted in that community.

3. The Anaconda-Deer Lodge Commission does not have the authority to enact any ordinance inconsistent with state law regarding the functions of the office of county assessor.

Very truly yours,

MIKE GREELY
Attorney General

McG/ar

VOLUME NO. 37 OPINION NO. 69

ALCOHOLIC BEVERAGES - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein;

COUNTY OFFICERS & EMPLOYEES - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein;

TAXATION & REVENUE - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein;

LICENSE FEES - Each county treasurer is required to apportion the liquor license tax to all cities and towns within the county, regardless of whether a state-owned liquor store is located therein.

SECTION - 4-1-401, R.C.M. 1947.

HELD: The county treasurer of each county is required by law to apportion the license tax on liquor to all incorporated cities and towns in his county, regardless of whether a state-owned liquor store is located therein. Since the statistical information necessary for such an apportionment was not available in the past, and will not be available until October 1, 1977, such apportionment will

commence with the quarter beginning October 1, 1977.

22 September 1977

Theodore P. Cowan
Attorney for Town of Moore
Suite 208
Bank Electric Building
Lewistown, Montana 59457

Dear Mr. Cowan:

You have requested my opinion concerning the apportionment of the license tax on liquor. The specific question you have presented is whether county treasurers are required by law to apportion the license tax on liquor to all incorporated cities and towns in each county, or only to those cities and towns where state-owned liquor stores are located.

It appears from your correspondence that the latter method of apportionment has been used in the past.

Section 4-1-401, R.C.M. 1947, provides in pertinent part:

> . . . provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in Section 4-1-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.
>
> The county treasurer of each county shall retain one-fourth (1/4) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (3/4) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sales of liquor in such incorporated city or town bears to the gross

sale of liquor in all of the incorporated cities and towns in his said county.

From the statute it is clear that the percentage of gross sales in each municipality, as they relate to sales in other municipalities within the county, is the basis for the distribution. The statute contains no language indicating that disbursement applies only to sales from state liquor stores. When construing a statute, one must ascertain and declare what is in terms or substance contained in the statute and not to insert what has been omitted. State ex rel Nawd's TV & Appliance Inc. v. District Court, 168 Mont. 456, 543 P.2d 1336 (1975). A plain reading of this statute indicates that the tax be distributed on the basis of gross sales of liquor through all retail dispensers in the county, regardless of whether they are public or private stores. The purpose of this apportionment, as found in Section 4-1-402, R.C.M. 1947, is to fund law enforcement and the regulation of liquor on local levels. Hence, the spirit of this legislation is to provide funds to all municipalities. Legislative intent is the controlling factor in construing statutory language. The legislative intent must be determined from a reading of the statute in its entirety and not from one particular sentence or section therein. Vita-Rich Dairy, Inc. v. Dept. of Business Regulation, ___ Mont. ___, 553 P.2d 980, 33 St. Rptr. 760 (1976).

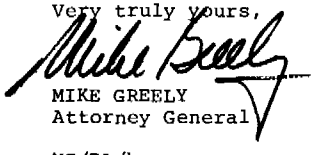
The problem that now exists has resulted from a lack of statistical information to ascertain the percentage of sales in municipalities without state stores. Currently, the Department of Revenue reports only state store sales to the county treasurers. The treasurers are basing their tax distributions on the basis of these statistics and interpreting the words "gross sales of liquor" to mean sales from a state store in the incorporated city or town.

Although the county treasurers are primarily responsible for the proper apportionment of the license tax, this problem has been brought to the attention of the Department of Revenue in order to provide the necessary statistical data to the treasurers to enable proper apportionment. The Department of Revenue has assured this office that a new computer program can provide this information. This new program will not be implemented until the quarter beginning October 1, 1977.

THEREFORE, IT IS MY OPINION:

The county treasurer of each county is required by law to apportion the license tax on liquor to all incorporated cities and towns in his county, regardless of whether a state-owned liquor store is located therein. Since the statistical information necessary for such an apportionment was not available in the past, and will not be available until October 1, 1977, such apportionment will commence with the quarter beginning October 1, 1977.

Very truly yours,



MIKE GREELY
Attorney General

MG/RA/br

COUNTIES - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in Section 25-605, R.C.M. 1947;

COUNTY ATTORNEY - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in Section 25-605, R.C.M. 1947;

COUNTY OFFICERS AND EMPLOYEES - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in Section 25-605, R.C.M. 1947;

SALARIES - A county having self-government powers may grant an increase in salary to its county attorney, in excess of the amount provided in Section 25-605, R.C.M. 1947;

SECTION 25-605, R.C.M. 1947.

HELD: The Madison County Board of County Commissioners may grant an increase to their county attorney in excess of the amount provided in Section 25-605, R.C.M. 1947, as a valid exercise of their self-government powers pursuant to the newly adopted charter form of government. However, the cost of such an increase must be borne by the general fund of the county. The state's share of the county attorney's salary will continue to be computed in accordance with Section 25-605, R.C.M. 1947.

23 September 1977

Chester L. Jones, Esq.
County Attorney
Madison County
Virginia City, Montana 59755

Dear Mr. Jones:

You have requested my opinion on the following question:

> Whether the Madison County Board of County Commissioners, pursuant to a newly adopted charter form of government, may grant an increase in the county attorney's salary, in excess of the amount provided in Section 25-605, R.C.M. 1947?

Madison County has recently adopted a charter form of government with self-government powers, pursuant to Article XI, Section 5, 1972 Montana Constitution and Section 47A-3-108, R.C.M. 1947. The scope of powers available to local governments adopting self-government powers is contrary to the previously well-settled doctrine that local governments had only those powers specifically granted to them by state law. Compare Leishner v. City of Billings, 135 Mont. 109, 337 P.2d 359 (1959). The scope of self-government powers, on the other hand, is that local government units may exercise any powers not specifically denied by the Constitution, law, or charter. For a thorough discussion of self-government powers see Opinion 68, Volume 37, Attorney General Opinions.

In determining whether a self-government power is authorized, it is necessary to: 1) consult the charter and the Montana Constitution for any prohibitions; 2) determine whether the exercise is prohibited under the various provisions of Title 47A, R.C.M. 1947 or other statutes specifically applicable to self-government units; and 3) decide whether it is inconsistent with state provisions in an area affirmatively subjected to state control, as defined by Section 47A-7-203, R.C.M. 1947.

Article IV, Section 4(1)(i) of the Charter of Madison County expressly gives the commission the power to set salaries of all elected officials. There is no constitutional or specific statutory prohibitions regarding the exercise of

that authority. Section 25-605, R.C.M. 1947, may be superceded by ordinance or resolution of the commission pursuant to Section 47A-7-105, R.C.M. 1947. See Opinion 68, Volume 37, Attorney General Opinions.

However, the salary of the county attorney presents a unique situation since one-half of the salary is payable from the general fund of the county with the remaining one-half payable from the state treasury upon the warrant of the state auditor. Section 25-601, R.C.M. 1947. Thus, the salary of the county attorney is not purely a local government matter. The duties and functions of the state auditor are wthin an area that is affirmatively subjected to state control, and a local government unit cannot impose a duty inconsistent with that imposed upon the auditor by state law. It is inherent that when Section 25-601, R.C.M. 1947, directs the state auditor to pay one-half of county attorney's salary that one-half will be computed on the basis of the schedule provided in Section 25-605, R.C.M. 1947.

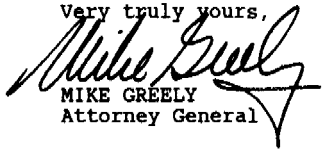
Consequently, any increase granted to the county attorney by Madison County in excess of the schedule in Section 25-605, R.C.M. 1947, must be borne by the general fund of the county. The state's share of the county attorney's salary will continue to be computed in accordance with Section 25-605, R.C.M. 1947. Therefore, Madison County will be required to continue providing the information necessary under Section 25-605, R.C.M. 1947 to compute the state's share.

THEREFORE, IT IS MY OPINION:

The Madison County Board of County Commissioners may grant an increase to their county attorney in excess of the amount provided in Section 25-605, R.C.M. 1947, as a valid exercise of their self-government powers pursuant to the newly adopted charter form of government. However, the cost of such an increase must be borne by the general fund of the county. The

state's share of the county attorney's salary will continue to be computed in accordance with Section 25-605, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

MG/RA/so

LICENSES - Real estate firms;

LICENSES, OCCUPATIONAL AND PROFESSIONAL - City licensing;

LICENSES, OCCUPATIONAL AND PROFESSIONAL - Real estate firms;

LOCAL GOVERNMENT - Licensing of real estate firms;

MUNICIPAL CORPORATIONS - Licensing of real estate firms;

REAL ESTATE AGENTS, DEALERS, AND SALESMEN - Licensing by city;

SECTIONS 11-918; 66-1924(2), (3); 1925(4); 1934(4), R.C.M. 1947.

HELD: The city of Missoula may not require real estate firms to obtain business licenses.

5 October 1977

Mae Nan Ellingson
Assistant City Attorney
City of Missoula
Missoula, Montana 59801

Dear Ms. Ellingson:

You have asked my opinion on the following question:

May a city require real estate firms to obtain business licenses?

It is my opinion that cities, at least those with only general government powers, no longer have that authority. An incorporated city with general government powers, such as Missoula, has all powers that are provided or implied by law. Article XI §4(1)(a), 1972 Montana Constitution. Of course those powers may be specifically denied as they have been in this case. As amended by Chapter 533, Section 13, 1977 Laws of Montana, Section 66-1934(4), R.C.M. 1947 provides:

> No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

The amendment to Section 66-1934, when read in the context of the Real Estate License Act of which it is a part, prohibits a municipality's imposition of a license fee on firms as well as brokers and salesmen.The distinction between the licensing of real estate firms and brokers or salesmen is an illusory one. My research has not uncovered any law recognizing that distinction.

The Act makes it "unlawful for a person...to engage in...the business...of a real estate broker or a real estate salesman within this state without a license as a broker or salesman, or otherwise complying with this act." Section 66-1924(2), R.C.M. 1947. The term "person" includes "individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this act it means an individual." Section 66-1925(4), R.C.M. 1947 (emphasis added).

The Act directly covers the licensing of individuals, but it indirectly covers the licensing of firms as well, allowing a corporation or partnership to act as a real estate broker "if every corporate officer, and every partner, performing the functions of a 'broker'...is licensed as a broker." Section 66-1924(3), R.C.M. 1947 (emphasis added). When a corporation or partnership acts as a real estate broker in violation of this provision, every officer or member, licensed or unlicensed, also violates the Act. Id.

A previous Attorney General's opinion recognized that the Real Estate License Act controls corporations as well as individuals, holding that "[a] corporation...must comply with the licensing requirements of the Real Estate License Act in order to conduct its operations in Montana." 34 Op. Atty. Gen. No. 23, at 155 (1971).

In construing this section the intent of the legislature controls. Security Bank and Trust Co. v. Connors, ____ Mont. ____, 550 P.2d 1313, 1317 (1976). That intent must be ascertained from the statutes as a whole, not just from the wording of the particular section involved. Vita-Rich Dairy, Inc. v. Department of Business Regulation, ____ Mont. ____, 533 P.2d 980, 984 (1976). The Real Estate License Act as a whole indicates the legislature intended to regulate real estate firms through regulation of the individuals comprising those firms. It follows, therefore, that the legislature, in denying municipalities the power to license individuals, meant to deny the power to license firms also.

Opinions concerning other professions have confirmed the power of the legislature to prohibit municipal licensing of professions regulated by the state, despite Section 11-918, R.C.M. 1947, which says:

> The city or town council has power to license all industries, pursuits, professions and occupations, and to impose penalties for failure to comply with such license requirements.

See 17 Op. Atty. Gen. No. 83, at 94 (1937) (prohibiting cities and towns from licensing businesses to engage in the operation of certain gambling); 17 Op. Atty. Gen. No. 314, at 380 (1938) (prohibiting cities and towns from collecting license fees from barbers for police regulation); 19 Op. Atty. Gen. No. 50, at 94 (1941) (prohibiting cities and towns from imposing a license upon barbers for the privilege of operating a barber shop within the city or town). The rationale for these provisions, applicable here as well, is that a later enactment which is a specific statute prevails over the general law, above. See, e.g., State ex rel. Browman v. Wood, ____ Mont. ____, 543 P.2d 184, 187 (1975).

You have interpreted Stephens v. Great Falls, 119 Mont. 368, 175 P.2d 408 (1946) as holding that even though cities had no power to license or regulate individuals involved in the sale of alcoholic beverages, the city could limit, restrain or otherwise regulate the businesses. I cannot agree with that interpretation. Stephens did say that a city could "limit or restrict, by ordinance, the number of places where beer may be sold within the city," 119 Mont. at 381, 175

P.2d at 414, but that holding interpreted a statute providing that the Montana Beer Act not be construed to prevent cities and towns from licensing and regulating places of business where beer is sold. Section 2815.44, R.C.M. 1935. No such statute appears in the Real Estate License Act. To the contrary, as I have explained above, Section 66-1934(4) indicates that cities are prevented from licensing real estate businesses.

THEREFORE, IT IS MY OPINION:

The city of Missoula may not require real estate firms to obtain business licenses.

Very truly yours,

Mike Greely

MIKE GREELY
Attorney General

SS/so

VOLUME NO. 37 OPINION NO. 72

ADULTS - Defined; effect of constitutional provision fixing 18 year old age of majority upon Department of Institutions aftercare authority over persons between the ages of 18 and 21 who have been released from youth corrections facilities;

CONSTITUTIONAL LAW - Article II, Section 14, Montana Constitution; effect of provision fixing age of majority at 18 years;

DEPARTMENT OF INSTITUTIONS - Effect of constitutional provision fixing 18 year old age of majority upon Department of Institutions aftercare authority over persons between the ages of 18 and 21 who have been released from youth corrections facilities;

JUVENILE DELINQUENTS AND COURTS - Effect of constitutional provision fixing 18 year old age of majority upon Department of Institutions aftercare authority over persons between the ages of 18 and 21 who have been released from youth corrections facilities;

MINOR - Defined; effect of constitutional provision fixing 18 year old age of majority upon Department of Institutions aftercare authority over persons between the ages of 18 and 21 who have been released from youth corrections facilities.

1972 MONTANA CONSTITUTION, ARTICLE II, SECTION 14.

SECTIONS - 80-1414, 80-1414.1, 80-1415, R.C.M. 1947; Title 10, Chapter 12, R.C.M. 1947 (Passim).

HELD: Article II, Section 14 of the 1972 Montana Constitution does not prohibit the Aftercare Bureau of the Department of Institutions from exercising supervisory authority over persons aged 18 through 20 who have been released from youth corrections facilities after executing aftercare agreements with the Department as provided in Section 80-1414, R.C.M. 1947.

3 October 1977

Lawrence M. Zanto, Director
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion concerning the following question:

> Does Article II, Section 14 of the 1972 Montana Constitution prevent the exercise of aftercare authority by the Department of Institutions under Section 80-1415, R.C.M. 1947, over individuals who are between the ages of 18 and 21?

The statute in question, Section 80-1415, R.C.M. 1947, provides:

> CONTROL OVER MINOR SO RELEASED VESTED IN DEPARTMENT. The department has control over a child released under section 80-1414 until he attains the age of twenty-one (21) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by the child while under the control of the department. (Emphasis supplied.)

This section is a part of an overall treatment and corrections scheme for delinquent youths and youths in need of supervision. Delinquent juveniles are persons under the age of 18 who have been found guilty of committing offenses which if committed by adults would be criminal; or persons who have been adjudicated as youths in need of supervision and have violated conditions of probation. Section 10-1203(12), R.C.M. 1947. Youths in need of supervision are persons under the age of 18 who have been found beyond a reasonable doubt to have committed offenses which are prohibited by law but which if committed by adults would not constitute crimes. Section 10-1203(13), R.C.M. 1947. The standard of proof applicable to adjudicatory hearings is "beyond a reasonable doubt," Section 10-1220(2), R.C.M. 1947. Adjudicated delinquent youths and youths in need of supervision may be committed to the custody of the Department of Institutions and placed in youth corrections facilities. The maximum duration of Departmental custody and incarceration is to age 21 in the case of delinquent juveniles, Section 80-1415, R.C.M. 1947. Departmental custody and incarceration of youths in need of supervision is limited to a maximum period of six months unless a subsequent hearing is held and an order entered for an additional time. Section 10-1222(1)(d), R.C.M. 1947.

Section 80-1414, R.C.M. 1947, conditions the release of youths incarcerated in youth corrections facilities upon the execution of an "aftercare agreement." The aftercare provisions are akin to parole. The contents of the agreement are prescribed in Section 80-1414, R.C.M. 1947, which provides:

> Aftercare agreement to be signed by youth before release from juvenile facility to custody of department - agreement to contain notice of youth's right to hearing on violation of agreement. A youth released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:
>
> (1) A statement of the terms and conditions of his release, including a list of the acts, which, if committed by the youth, may result in his return to the facility; and
>
> (2) A statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in section

80-1414.1, R.C.M. 1947, before he may be returned to the facility. The youth, upon advice of an attorney, may waive his right to a hearing.

Upon execution of such agreement, youths under age 21 are released to the custody of the Department, subject to the terms and conditions of the agreement, and the Department's supervisory authority continues to age 21. Section 80-1415, R.C.M. 1947. The Department's aftercare authority applies only to delinquent youths; custody of the Department over youths in need of supervision is separately limited to 6 months by Section 10-1222(1)(d), R.C.M. 1947.

Article II, Section 14 of the 1972 Montana Constitution provides, "A person 18 years of age or older is an adult for all purposes." There is no constitutional counterpart to this provision in the 1889 Montana Constitution and the provision has not been construed by the Montana Supreme Court or prior Attorney General's opinion. Questions concerning its effect on juvenile and youth statutes are therefore ones of first impression.

Montana's constitutional provision fixing an age of adulthood "for all purposes" is unique. I have been unable to find any similar, broad entitlement in the constitution of any other State, although many State Constitutions fix a minimum voting age. E.g., Constitutions for the States of Alaska, California, Colorado, Delaware, Florida and Georgia; and see also Amendment 26, United States Constitution.

At the time of ratification of the 1972 Montana Constitution on June 6, 1972, the authority of the Department of Institutions under juvenile aftercare agreements continued to age 21. Chapter 158, Section 2, Laws of 1969. After ratification of the new Constitution, the legislature reduced the specified age to 18. Chapter 94, Section 29, Laws of 1973. Then, in 1975 the legislature raised the age to 21. Chapter 15, Section 1, Laws of 1975. It is presumed that in 1973 and 1975 the legislature was fully aware of the mandate of Article II, Section 14 of the Constitution. See Fletcher v. Page, 124 Mont. 114, 119, 200 P.2d 484 (1950). Its actions therefore refute any contention that the Department's authority over persons aged 18 to 20 pursuant to Section 80-1415 was impliedly repealed by the 1972 Constitution. Your question therefore assumes constitutional proportions. Is that part of Section 80-1415 which gives the Department of Institutions authority over persons between 18 and 21 years of age unconstitutional?

While constitutional provisions are binding upon the legislature, Noll v. City of Bozeman, 534 P.2d 880 (1975), constitutional review of a statute is not undertaken lightly. A statute will not be declared unconstitutional unless it is shown "beyond a reasonable doubt" that it violates a constitutional guarantee. Billings Properties, Inc. v. Yellowstone County, 144 Mont. 25, 30, 394 P.2d 182 (1964).

The burden of constitutional review is particularly heavy in this instance since the result in this decision may bear upon the constitutionality of those portions of the "Montana Youth Court Act", Chapter 12 of Title 10, R.C.M. 1947, which recognize continued jurisdiction of the youth court and specified state agencies over certain youths between the ages of 18 and 21, e.g., Sections 10-1206, 10-1208, 10-1232, 10-1247, and 10-1248, R.C.M. 1947; and the 21 year old provision for mandatory release from juvenile corrections institutions which is set forth in Section 80-1410, R.C.M. 1947.

The constitutionality of Section 80-1415 must be determined by first ascertaining the meaning and scope of Article II, Section 14.

Judicial decisions of other States which have held that juveniles are entitled to release from juvenile institutions upon reaching the age of majority provide no guidance in construing Article II, Section 14. Those cases all share one thing in common - they are based on legislation lowering the age of applicability of juvenile statutes, either expressly, e.g., State ex rel. Johnson v. Hershman, 200 N.W. 2d 65 (Wisconsin, 1972); Flowers v. Haugh, 207 N.W. 2d 766 (Iowa, 1973); or impliedly, e.g., Ex Parte Sweeden, 179 P.2d 695 (Oklahoma, 1947), State in Interest of Braswell, 294 So. 2d 896 (La. App., 1974); State v. Huard, 296 A.2d 141 (Maine, 1972); In re Carson 530 P.2d 331 (Washington, 1975). The decisions concern reconciliation among statutes, which are "in pari causa".

Little history exists concerning the intention of the framers of the Montana Constitution in their choice of words. Comments and debate were brief and limited exclusively to questions of 18 year old suffrage and the right to hold political office. Comments of the Bill of Rights Committee, February 23, 1972, pp. 27-28; Transcript of Convention Proceedings, pp. 5380-5390. In a constitutional setting, "***this is a case for applying the cannon of construction of the wag who said, when the legislative history is doubtful,

go to the statute." Greenwood v. United States, 350 U.S. 366, 374 (1956). Fundamental rules of constitutional interpretation are set forth in the recent Montana case of Keller v. Smith, 553 P.2d 1002, 1006 (1976):

> The same rules of construction apply in determining the meaning of constitutional provisions as apply to statutory construction. In determining the meaning of a given provision, the intent of the framers is controlling. Such intent shall first be determined from the plain meaning of the words used, if possible, and if the intent can be so determined, the courts may not go further and apply any other means of interpretation. (Citations omitted.)

In a general sense the word "adult" signifies a condition of maturity in the sense of full size and strength. But in legal contexts, the word is used as the antithesis of the word "minor" or "minority." Minority is a legal "status", the effect of which is described in a frequently cited case, Re Davidson, 26 N.W. 2d 223, 170 ALR 215, 219 (Minnesota, 1947). Therein the Minnesota Supreme Court, referring to "majority" and "minority", said:

> * * *
>
> One is a counterpart of the other. It is elementary that a person who has reached his majority has thereby arrived at the status or condition of full age whereby he is entitled, at law, to the management of his own affairs and to the enjoyment of civic rights.
>
> 2. Majority is the age at which the disabilities of infancy are removed. These disabilities, which are in fact personal privileges conferred on infants by the law of their domicile, constitute limitations on the legal capacity of infants, not for the defeat of their rights, but to shield and protect them from the acts of their own improvidence, as well as from the acts of others. The removal of these disabilities does not result in the creation of any new rights, but merely in the termination of certain personal privileges. There is no vested property right in the personal privileges

> of infancy. In short, majority or minority is a status and not a fixed or vested right. Status, which takes a variety of forms, is simply a legal personal relationship or condition, not temporary in its nature nor terminable at the mere will of the parties, with which third persons and the state are concerned. (Citations and footnotes omitted.)

See also Shoaf v. Shoaf, 192 S.E. 2d 299, 302 (N.C. 1972); Annotation: Statutory Change of Age of Majority as Affecting Pre-existing Status or Rights, 75 ALR 3d 228, 238-239 (1977); and generally 42 Am Jur 2d, Infants, §§1, 8-9. In the context of Article II, Section 14, the word "adult" is plainly used in its legal sense. Section 14 is nothing more or less than a provision fixing the age of majority.

The Montana Constitution is an enumeration of prohibitions and restrictions upon the powers of state government, Board of Regents of Higher Education v. Judge, 168 Mont. 433, 444, 543 P.2d 1323 (1975); and Section 14 of Article II must be construed as a specific limitation on legislative power to fix an age of majority older than age 18. The use of the words "for all purposes," prevents legislation making persons 18 years of age or older adults for some purposes but not for others.

To test the constitutionality of Section 80-1415, a determination must be made concerning the effect of fixing an age of majority and the extent of powers thereby denied the State. Traditionally, the fixing of an age of majority has been the absolute prerogative of state legislatures, Shoaf v. Shoaf, supra; Valley National Bank v. Glover, 62 Ariz. 538, 159 P.2d 292, 300-301 (1945). This prerogative has been exercised in a piece-meal manner, fixing one age for one purpose and another age for another purpose, without raising constitutional issues.

At law, the achievement of adulthood or the age of majority signifies the removal of the legal disabilities or incapacities of minority or childhood, incapacities which apply to all persons under a specified age. In Re Davidson, supra. These legal disabilities and incapacities are premised on a recognition that persons of young age are physically, emotionally, intellectually and experiencially unprepared to care for themselves and form mature judgments. Legislative enactments are in the exercise of a State's parental, "parens patriae", powers as the ultimate guardian over children

within its jurisdiction. See 42 Am Jur. 2d, Infants, §§14-15, pp. 20-21. Legal disabilities of minors usually fall within two classes; first, incapacities relating to the conduct of personal affairs and business, see generally 42 Am. Jur. 2d, Infants; 43 C.J.S., Infants; and second, those incapacities relating to participation in public and civic affairs, or government. Statutes making minors incapable of contracting; denying minors access to courts except through adult guardians and next of friends; and subjecting minors to the direction and control of their parents fall within the former class. Minimum age requirements for voting or holding office fall within the latter. In a third class of legislation are those statutes which deny minors civil rights which adults enjoy; however, the extent to which a state may deny minors civil rights and protections has been severely restricted by recent court decisions. It is now established that basic rights under the United States Constitution extend, at least in part, to minors. E.g., Tinker v. Des Moines School District, 393 U.S. 503 (1968)(schools cannot prohibit "symbolic speech" of students where such speech is not actually or potentially disruptive of educational activities); In re Gault 387 U.S. 1, (1967)(right to counsel in juvenile proceeding where proceeding tantamount to criminal proceeding); Carey v. Population Services International, ___U.S.___, 52 L. Ed.2d 675 (1977)(prohibition on sale of contraceptives to minors declared an unconstitutional invasion of minors' privacy). Montana has clarified the applicability of its own Declaration of Rights to minors in Article II, Section 15 which states, "The rights of persons under age 18 shall include but not be limited to, all fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Attainment of an age of majority eliminates those civil disabilities traditionally associated with minority and entitles those reaching such age to the full exercise of their civil rights. Adults are not and never have been entitled to identical treatment under law. Adults are constitutionally protected only from arbitrary treatment by the State and from treatment which infringes some identifiable constitutional right, federal or state. The principal provisions concerning equality of treatment is the equal protection clause of the Fourteenth Amendment to the United States Constitution (and see its Montana counterpart, Article II, Section 4, 1972 Montana Constitution), but that clause permits different treatment of classes of persons so long as the treatment of any class is rationally related to legitimate state purposes and does not infringe some other consti-

tutionally protected right. Eisenstadt v. Baird, 405 U.S. 438, 446, (1972).

Age based classifications have traditionally been employed by both the United States and individual States in furtherance of permitted State purposes. Selective Service laws subjecting males 18 1/2 to 26 years of age to the military draft have been upheld against an equal protection challenge that males over the age of 27 are not similarly subject to conscription. United States v. Davis, 319 F. Supp. 1306 (W.D.Pa. 1970). Mandatory retirement ages have been upheld. E.g., Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976); Armstrong v. Howell, 371 F. Supp. 48 (D.C. Neb. 1974). Examples of age related classifications of adults are present in Montana statutes. Section 11-1814, R.C.M. 1947, provides that only those persons who are at least 20 years of age and no more than 40 years of age are eligible for appointment to city police departments. Section 11-1905, R.C.M. 1947, prevents appointment of firemen who are over the age of 31 years. Both statutes reflect the dangerous and physical nature of the jobs, and the police statute reflects the need for greater experience and maturity among those persons who are charged with enforcing the law.

In a recent case, the United States Supreme Court settled the equal protection status of age based classifications under the United States Constitution. In Massachusetts Board of Retirement v. Murgia, 427 U.S. 307 (1976), the Court held that age based classifications are permissable under the Equal Protection Clause and are not a "suspect class" subject to "strict judicial scrutiny" but must only meet the traditional test that they rationally further identifiable and legitimate governmental purposes.

Thus, the United States Constitution does not per se prohibit age based classifications. Article II, Section 14, Montana Constitution, itself erects no such prohibition. The plain words of Article II, Section 14 speak of treating persons 18 years of age and older as "adults." It does not announce new rights for adults or declare that adults shall be free from State classifications based upon consideration of age. As to persons aged 18 or more, the provision only eliminates those traditional legal disabilities or incapacities of minority which pertain to the management of personal business and affairs and apply to all persons under a specific age where all persons over said age possess the legal ability or capacity denied the younger persons. The provision also entitles persons 18 years of age or older to the full protec-

tion and exercise of all constitutional and civil rights.

It is my opinion that Section 80-1415, R.C.M. 1947, is not unconstitutional. No legal abilities, capacities, or constitutional rights which are possessed by persons over age 21 are denied all persons who are more than 18 and less than 21 years of age. Section 80-1415 applies only to delinquent youths who have committed crimes or offenses against the State. See Sections 10-1203(12),(13), and 10-1220, R.C.M. 1947. Incarceration of delinquent youths until age 21 under Sections 10-1222(d) and 80-1415, R.C.M. 1947, and the Department's parole type authority under aftercare agreements over released youths to age 21 derive from the State's police power to define crimes and offenses against the State and to punish and rehabilitate offenders.

Adults as well as minors are subject to deprivations of liberty upon conviction of crimes or offenses against the State. In sentencing convicted persons, "the Constitution permits qualitative differences in meting out punishment, and there is no requirement that the persons convicted of the same offense receive identical sentences." In re State in Interest of K.V.N., 283 A.2d 337, 343 (N.J. 1971). States have customarily required the tailoring of sentences to fit not only the crime but also the individual. See People v. Bruebaker, 539 P.2d 1277, 1278-1279 (Colo. 1975). Within equal protection limitations, the legislature has wide discretion to create different classes of offenders for separate treatment, including classes based on age. In re State in Interest of K.V.N., supra, 283 A.2d at 343.

In the area of criminal law, age related sentencing provisions specifically directed at youthful offenders have been adopted in several jurisdictions. The most well known is the Federal Youth Corrections Act (FYCA), 18 U.S.C. §§5005 through 5026, which provides for special sentencing treatment of youthful offenders aged 18 to 22 and in certain cases "young adult" offenders age 22 to 26 who have been convicted of crimes. The FYCA, enacted in 1950, has been repeatedly sustained against attacks on equal protection grounds that the potential length of sentences imposed thereunder exceeded the maximum sentences which could be imposed upon older offenders. E.g., Cunningham v. United States, 256 F. 2d 467 (5th Cir. 1958); Rogers v. United States, 326 F.2d 56 (10th Cir. 1963); Eller v. United States, 327 F.2d 639 (9th Cir.-Mont. 1964); see generally Annotation: Validity, Construction and Application of Provisions

of Federal Youth Corrections Act (18 USC §5010) Governing Sentencing and Rehabilitative Treatment of Youth Offenders, 11 ALR Fed. 499 (1972); and compare with People v. Olivas, 551 P.2d 375, 385-388, 131 Cal. Rptr. 55 (1976)(criticizing cases upholding FYCA sentences which potentially exceeded maximum sentences authorized for older adults). The United States Supreme Court in Dorszynski v. United States, 418 U.S. 424, 433-434 (1974), approvingly described the justifications for treating young offenders, including young adult offenders, differently from older adult offenders:

* * *

> The Act was thus designed to provide a better method for treating young offenders convicted in federal courts in that vulnerable age bracket, to rehabilitate them and restore normal behavior patterns. Ibid.
>
> To accomplish this objective, federal district judges were given two new alternatives to add to the array of sentencing options previously available to them, * * * .
>
> The objective of these options represented a departure from traditional sentencing, and focused primarily on correction and rehabilitation.
>
> An important element of the program was that once a person was committed for treatment under the Act, the execution of sentence was to fit the person, not the crime for which he was convicted. ... An integral part of the treatment program was the segregation of the committed persons, insofar as practicable, so as to place them with those similarly committed, to avoid the influence of association with the more hardened inmates serving traditional criminal sentences. 18 USC §5011 [18 USCS §5011]. (Emphasis supplied.)

Other States have adopted similar youth offender acts applicable to young adults, including Minnesota, Minn. Stat. §§242.01 to 242.55; North Carolina, N.C. Gen. Stat. §§148-49.1 to 148.49.9; and South Carolina, S.C. Code §§24-19-50 to 24-15-510.

Montana's criminal laws could treat minors, young adults, and adults identically, prosecuting and sentencing all age groups as adults. Gallegos v. Tinsley, 337 P.2d 386, 387 (Colo. 1959)(citing 43 C.J.S. Infants, §96(g), p.222).

However, it has rejected that alternative and adopted more sensitive sentencing considerations, distinguishing youthful offenders from older offenders. Montana's youth court provisions are not delimited by the age of majority. In State ex rel. Foot v. District Court, 77 Mont. 290, 295, 250 P. 973 (1926), the Montana Supreme Court held that the controlling element in Montana's then existing juvenile laws was "age not minority." The rationale for sentencing young offenders, without regard to age of majority under special statutes providing for treatment and rehabilitation at youth correction facilites, is well stated in State v. Meyer, 37 N.W. 2d 3, 11 (Minn. 1949):

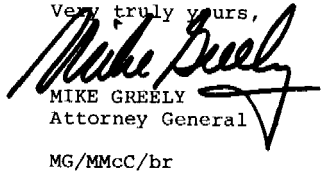
> The Youth Conservation Act is only another attempt to find the most effective method of accomplishing the desirable object of rehabilitating and reforming youthful offenders. It recognizes that the formative years of youth offer the greatest opportunity for reformation and that youthful offenders often can be handled more effectively by some method other than commitment to a penal institution, and still it safeguards society by providing means whereby those who are a menace may be confined the same as under prior law.

Montana's provisons for youthful offenders are appropriately calculated to achieve similar objectives, requiring that offenders sentenced to youth corrections facilities be provided with diagnosis, care, training, education, and rehabilitation, Section 80-1410, R.C.M. 1947; providing that all adjudications for offenses against the State be deemed non-criminal, Section 10-1235, R.C.M. 1947; and providing for expungement of juvenile records, Section 10-1232, R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

> Article II, Section 14 of the 1972 Montana Constitution does not prohibit the Aftercare Bureau of the Department of Institutions from exercising supervisory authority over persons aged 18 through 20 who have been released from youth corrections facilities after executing aftercare agreements with the Department as provided in Section 80-1414, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 73

TAXATION - Coal Severance Tax, Distribution of Revenues Formula, Application;

COAL - Coal Severance Tax, Distribution of Revenues Formula, Application.

HELD: The distribution formula embodied in Chapter 540, Laws of Montana, 1977, applies only to taxes assessed on coal mined after July 1, 1977.

5 October, 1977

B.J. "Swede" Goodheart, Chairman
Montana Coal Board
Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Goodheart:

You have requested my opinion on the following question:

> Does the coal tax distribution formula embodied in Chapter 540, Laws of Montana, 1977, apply to taxes assessed on coal produced before July 1, 1977, but paid after that date.

The Forty-Fourth Montana Legislature adopted a formula allocating the proceeds of the coal severance tax among a number of funds and agencies. Chs. 501, 502, 525, Laws, 1975, see Section 84-1319, R.C.M. 1947. That formula became effective on July 1, 1975, but was only applied to taxes assessed on coal produced after that date. The same Legislature proposed a constitutional amendment to

dedicate a portion of the severance tax to a trust fund. Ch. 499, Laws 1975. The proposed amendment was approved by the voters in the November, 1976, general election.

The new section of the Constitution (Art. IX. §5) provides:

> The legislature shall dedicate not less than one-fouth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

Since this section directs the Legislature to dedicate a portion of the severance tax to the trust fund, while the 1975 legislation had apportioned the entire severance tax for other purposes, the Forty-Fifth Legislature enacted

> [a]n Act to bring the coal tax distribution formula into compliance with the Montana Constitution as amended in 1976 by creating a trust fund; revising the percentages distributed to local governments and state programs and the programs funded thereunder....

Ch. 540, Laws 1977. This Act, like the constitutional amendment, became effective on July 1, 1977. Section 43-507, R.C.M. 1947.

The issue here is whether this new distribution formula applies to taxes accrued on coal produced between April 1, 1977, and June 30, 1977. The question arises because those taxes accrued while the original allocation formula was in effect, but were not actually collected until after July 1, 1977, when the new allocation formula was in effect. The delay in collection is in accordance with Section 84-1315, R.C.M. 1947, which provides:

> Each coal mine operator shall compute the severance tax due on each quarter-year's worth of production on forms prescribed by the department. The statement shall indicate the tonnage produced, the average BTU value of the production, the contract sales price received for the production, and such other information as the department may require. The completed form in duplicate, with the tax payment, shall be delivered to the department not later than thirty (30) days following the close of the quarter.

If the new formula applies to the accrued tax on coal produced between April 1, 1977 and June 30, 1977, then the beneficiaries of the coal tax revenues, especially the counties, will lose a substantial amount of revenue which they anticipated under the coal tax allocation of Section 84-1319 prior to its 1977 amendments.

The constitutional amendment establishing the trust fund is silent on the issue of whether it applies to taxes on coal mined between April 1 and June 30, 1977. It merely directs the Legislature to "dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund...." The Legislature implemented this provision by adopting Chapter 540, Laws 1977 amending Section 84-1319, effective July 1, 1977, which provides in part:

> Severance taxes collected under the provisions of this chapter are allocated as follows:
>
> (1) To the trust fund created by Article IX, section 5, of the Montana constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 79-309(5) and invested by the board of investments as provided by law.
>
> (2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:....

The difficulty with this statute arises from the legislature's use of the word "collections" in the allocation formula. In the taxation area, the term "collection" ordinarily refers to the actual recipt of tax money, as distinguished from the term "assessment." See e.g., Denny v. Wooster, 27 P.2d 328, 329 329 (Wash, 1933); United States v. Krapf, 180 F.Supp. 886, 890 (D.N.J. 1960). This, however, is not always the case, and the term "collection" has been construed as an ambiguous term. See, e.g., Board of Commissioners v. Hazelwood, 192 P.217, 218 (Okla. 1920); Parsons v. People, 76 P.666, 669 (Colo. 1904). In Section 84-1323, for example, the term "collected" is used in conjunction with the seizure and sale of property to enforce tax liens.

The problem occasioned by the use of the term "collections" in Section 84-1319 is exacerbated here by the Legislative and administrative history. The Legislature intended the distribution formula embodied in Chapter 540 to apply only to coal mined after July 1, 1977. The Department of Revenue did not apply the 1975 formula to taxes on coal mined between April 1 and June 30, 1975, although those taxes were paid after July 1, 1975, and the formula allocated "taxes collected." Section 8, Chapter 525, Laws 1975. Previous legislative history made this a reasonable procedure for the Department to adopt. The Forty-Fourth Legislature had revised not only the distribution formula but the coal tax base and tax rate as well. Section 3, Chapter 525, Laws 1975. If the Department of Revenue had applied the new distribution formula to all taxes paid (as opposed to taxes on coal mined) after July 1, 1975, the result would have been the application, for one month only, of the new distribution formula to the old coal tax.

The Legislature's understanding that the 1975 distribution formula was to be treated in conjunction with the new coal tax is reflected in the fact that both were assigned to the same conference committee (Senate Jour., 44th Legis., 1345; House Jour., 44th Legis., 1491) and to the interim Coal Tax Oversight Committee (§15, Chapter 502, Laws 1975). The Oversight Committee was informed of the Department of Revenue's decision to restrict the new distribution formula to taxes on coal produced after July 1, 1975. Minutes of the Coal Tax Oversight Committee, October 16, 1975. The Committee voted to recommend a new formula to the Forty-Fifth Legislature, but did not recommend any change in the

Department of Revenue's practice concerning the time of applying a new formula. Minutes of the Coal Tax Oversight Committee, November 30, 1976. This formula was adopted by the Legislature. Chapter 540, Laws 1977.

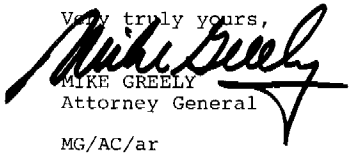
The Legislature was not simply left to infer from the 1975 procedure that the Department of Revenue would restrict the 1977 distribution formula to coal mined after July 1. The Legislature had an even more persuasive reason to expect the former procedure to be repeated. In accordance with Sections 43-1001 and 43-1002, R.C.M. 1947, the Legislature was presented with a fiscal note to indicate the fiscal impact of the proposed distribution formula. The note applied the 1975 formula to taxes on coal produced between April 1, and June 30, 1977, and only applied the new formula to taxes on coal produced after July 1, 1977. With this fiscal note before it, the Legislature clearly intended to adopt the distribution formula embodied therein.

One of the purposes of the coal tax is to "stabilize the flow of tax revenue from coal mines to local governments...." (Section 84-1312). In furtherance of this purpose each county was allocated for local expenditure a certain percentage of the coal tax on coal "mined for each calendar year" in the county (Section 84-1319, prior to 1977 amendments). While the legislature was not bound to maintain this allocation formula, many affected counties had relied upon this percentage of coal tax revenue in their budgeting and spending. Construing the 1977 amendments to Section 84-1319 to apply only to taxes assessed after July 1, 1977, will soften the impact of the statutory reduction in county income, and will further the stated purpose of stabilizing tax flows.

THEREFORE, IT IS MY OPINION:

> The distribution formula embodied in Chapter 540, Laws of Montana, 1977, applies only to taxes assessed on coal mined after July 1, 1977.

Very truly yours,



MIKE GREELY
Attorney General

MG/AC/ar

VOLUME 37 OPINION NO. 74

SUBDIVISIONS - Remainders, subdivision plats, Sanitation in Subdivisions Act;

SANITATION - Subdivisions, remainders, review by the Department of Health and Environmental Sciences;

PLATS - Subdivisions, remainders.

HELD: 1. The Department of Health and Environmental Sciences may require that plats submitted under the Sanitation in Subdivisions Act show the remainder of land less than twenty acres left after the segregation of subdivided parcels.

2. The Department of Health and Environmental Sciences has the authority to review remainders under the Sanitation in Subdivisions Act.

7 October 1977

Ms. Sandra R. Muckelston
Chief Legal Counsel
Department of Health
and Environmental Sciences
Helena, Montana 59601

Dear Ms. Muckelston:

You have requested my opinion on the following question:

1. Does the "remainder" of the original tract left after the subdivision and sale of the balance of

the tract have to be shown on plats submitted to the Department pursuant to the Sanitation in Subdivisions Act?

2. Does the Department have authority to review remainders pursuant to the Sanitation in Subdivisions Act?

Subdivision development in Montana is primarily related by the Subdivision and Platting Act, Section 11-3859 et seq., R.C.M. 1947, and the Sanitation in Subdivisions Act, Section 69-5001 et seq., R.C.M. 1947. Until recently, both Acts defined the term "subdivision" in substantially identical language which provided that a subdivision included "only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels...." (Sections 11-3861(12) and 69-5002(1). Chapter 557 of the 1977 Session Laws, an "Act to generally revise Title 69," amended the above-quoted language in Section 69-5002(1) of the Sanitation Act to provide that a subdivision includes "only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels...." (Emphasized language new). As a result of this amendment, the Platting Act and the Sanitation Act now contain differing definitions of the term "subdivision."

An example of the situation in question here would involve the subdivision of two five-acre tracts from a twenty-acre parcel, with the remaining ten acres being retained by the original owner. Prior to the 1977 amendment to the Sanitation Act, neither of the Acts considered this "remainder" to be part of the subdivision. The subdivision included only those parcels segregated from the original tract.

A comparison of the original "subdivision" definition with the amended definition in the Sanitation Act clearly shows that the legislature intended, for the purposes of that Act, that all parcels of land less than twenty acres "created by a division of land" be deemed part of the subdivision. In the example given above, the ten-acre tract remaining in original ownership is created by the division of land the same as are the two five-acre tracts which were separated and sold. Since the Department must review and approve "subdivisions" (Section 69-5003), the ten-acre "remainder," as well as the segregated tracts, is subject to review under the Sanitation Act.

It is further clear that this "remainder" must be shown on the plat submitted to the Department for review under the Sanitation Act. Section 69-5001(1), as amended, clearly requires that "all...parcels" created by a division of land must be shown on the plat. As determined above, these parcels incude not only the segregated parcels, but also any tract less than twenty acres remaining in original ownership.

While these determinations lead to somewhat different treatments of subdivisions under the two Acts, that is a result mandated by the legislature. Further, there were differences in the Acts prior to the amendment. A "plat" under the Platting Act is a "graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications." (Section 11-3861(6). While the Platting Act is broadly concerned with all aspects of subdivision development (See Sections 11-3860 and 11-3863), the Sanitation Act is primarily concerned with the public health aspects of water supply, sewage disposal, and solid waste disposal (See Section 69-5001). In contrast to the "plat" defined for purposes of the Platting Act, the plat submitted under the Sanitation Act mut show such things as the total development area, the total number of proposed dwellings, evidence of sufficient water supply, evidence of potability of the water supply, storm drainage plans, sanitary sewer plans, water supply systems, and solid waste disposal plans (See Section 69-5005(3)). Thus there were preexisting differences in the Acts resulting from the more specialized nature of the Sanitation Act.

THEREFORE, IT IS MY OPINION:

1. The Department of Health and Environmental Sciences may require that plats submitted under the Sanitation in Subdivisions Act show the remainder of land less than twenty acres left after the segregation of subdivided parcels.

2. The Department of Health and Environmental Sciences has the authority to review remainders under the Sanitation in Subidivisions Act.

Very truly yours,

MIKE GREELY
Attorney General

ABC/so