RESERVE

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

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BEFORE THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 12-2.6(1)-S630 Relating to Roadside Zoo License Regulations	))))	NOTICE OF AMENDMENT OF RULE 12-2.6(1)-S630 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 27th day of December, 1977, the Department of Fish and Game proposes to amend Rule 12-2.6(1)-S630 as follows (additions underlined, deletions interlined):

12-2.~~6(1)-S630~~ 10(22)-S10240 ROADSIDE ZOO REGULATIONS

(1) through (6) same.

(7) Disposing of Wildlife Stock.

(a) Those game animals, game birds, and fur bearing animals captured or taken from the wild, wildlife on loan from the department, and any progeny of the above shall not be sold and may be exported or exchanged only by permit issued by the department.

(b) Those game animals, game birds, and fur bearing animals lawfully obtained from a licensed game farm or fur farm within the state or lawfully obtained outside the state may be propagated, sold, exchanged, or donated only under authority of a game or fur farm permit issued by the department.

~~(7)~~ (8) Display of Permit and Standards (same).

~~(8)~~ (9) Insurance Required.

(a) No permit will be issued or renewed nor will any transfer of permit be approved, unless and until the ~~B~~ director ~~of the State Fish and Game Commission~~ . . . (remainder the same).

2. The proposed amendment modifies Rule 12-2.6(1)-S630 found on page 12-14 of the Administrative Rules of Montana.

3. The rationale for this amendment is as follows:

Section 26-1209 is ambiguous as to the disposition of wildlife stock possessed under a roadside zoo or menagerie permit. The proposed amendment would clarify contradictions within that section.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th

Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 24th day of December, 1977.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Mr. Wambach at the above stated address prior to the 24th day of December, 1977.

6. If the Director receives requests for a public hearing on the amendment of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 25.

8. The authority of the Department of Fish and Game to make the proposed rule is based upon Sections 26-106.3, 26-1206, R.C.M. 1947.

Dated this 14th day of November, 1977.

Robert F. Wambach, Director
Department of Fish and Game

By: _____
Orville N. Lewis
Associate Director

BEFORE THE DEPARTMENT OF FISH AND GAME
OF THE STATE OF MONTANA

In the matter of the Amendment of Rule 12-2.18(1)-S1810 Relating to Regulations for Construction and Maintenance of Fish Ladders	NOTICE OF AMENDMENT OF RULE 12-2.18(1)-S1810 NO PUBLIC HEARING CONTEMPLATED

TO ALL INTERESTED PERSONS:

1. On the 27th day of December, 1977, the Department of Fish and Game proposes to amend Rule 12-2.18(1)-S1810 as follows (additions underlined, deletions interlined):

12-2.18(1)-S1810 REGULATIONS FOR CONSTRUCTION AND MAINTENANCE OF FISH LADDERS

(1) The director shall, from time to time, examine all dams and other man-made obstructions, hereinafter merely referred to as dams, on all rivers and streams in this state naturally frequented by food and game fish, to determine if there is free passage for such fish over, around, or through said dams and report his findings to the commission. If, after reviewing said reports, the commission shall further determine that there is not free passage for fish over, around, or through any dam in this state, the commission shall cause plans to be prepared for a suitable fish ladder at said dam as near the main channel of the river or stream as practicable, and shall serve the same upon the owner or owners of said dam, hereinafter referred to as the owner, together with a demand in writing directing the owner to commence construction of such fish ladder on or before a date stated in said demand not less than ~~thirty~~ ~~(30)~~ days from the date of service thereof, and directing completion of such fish ladder to the satisfaction of the commission on or before a date stated in said demand and further informing the owner that such fish ladder must be installed, repaired, and maintained at owner's expense. ~~If the owner does not comply with said demand within the time therein set forth, the commission shall direct that appropriate legal action be brought in a court of this state to compel such construction.~~

~~(2)~~ delete

~~(3)~~ delete

~~(4)~~ (2) If the commission finds that any fish ladder in this state, which it deems necessary, is not properly maintained, repaired, and operable,

with an adequate supply of water flowing over it, the commission shall serve demand upon the owner, directing such repair and maintenance as the commission deems necessary, and setting a date for the completion of such repair and maintenance.

(3) Commission hearing upon said demand for such construction, repair, and maintenance shall be allowed ~~upon request in the same manner as hereinabove provided in the case of demand for fish ladder construction,~~ according to the Attorney General's Model Procedural Rules adopted by ARM Section 12-2.2(1)-P200.

2. The proposed amendment modifies Rule 12-2.6(1)-S630 found on page 12-53 of the Administrative Rules of Montana.

3. The rationale for this amendment is as follows: The hearing procedure in the present rule was adopted prior to enactment of the Montana Administrative Procedures Act and the Attorney General's Model Procedural Rules which provides a standard procedure. The Department has adopted the Model Procedural Rules and incorporated them by reference in 12-2.2(1)-P200. Adoption of the proposed amendment will create a uniform hearing procedure.

4. Interested parties may submit their data, views, or arguments covering the proposed rule in writing to Robert F. Wambach, Director, Department of Fish and Game, 1420 East 6th Avenue, Helena, Montana 59601. Written comments in order to be considered must be received by not later than the 24th day of December, 1977.

5. If any person directly affected wishes to express his data, views, or arguments orally or in writing at a public hearing, he must make a written request for a public hearing and submit this request, along with any written comments, to Mr. Wambach at the above stated address prior to the 24th day of December, 1977.

6. If the Director receives requests for a public hearing on the amendment of the foregoing rule from 25 or more of the persons directly affected, a public hearing will be held at a later date. Notification will be given of the date and time of the hearing.

7. Ten percent (10%) of those persons directly affected has been determined to be in excess of 25.

8. The authority of the Department of Fish and Game to make the proposed rule is based upon Sections 26-104 and 26-106.3, R.C.M. 1947.

Dated this 14th day of November, 1977.

Robert F. Wambach, Director
Department of Fish and Game

BY: _____
Orville W. Lewis
Associate Director

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(30)-S8360 SPECIFYING PROCEDURE FOR FACT FINDING	)))))	NOTICE OF PROPOSED AMENDMENT OR RULE 24-3.8(30)-S8360 (Petition for Fact Finding) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or about December 27, 1977, the Board of Personnel Appeals proposes to amend rule 24-3.8(30)-S8360, which now requires this Board to submit a list of seven qualified, disinterested persons to act as fact finders when a request for a fact finder is submitted to this Board. The rule also requires that each party will strike three names and the remaining name will be the fact finder.

2. The amended rule would require this Board to submit a list of five names of qualified, disinterested persons, and the parties would be required to alternately strike two names, and the remaining name will be the fact finder. The rule as amended would read as follows:

(Factfinder) (a) Either party to a dispute may petition the Board to initiate fact-finding or the Board, if it is apparent that matters in disagreement might be more readily settled if the facts involved were determined and publicly known, may initiate fact-finding in accordance with Section 59-1614 (4), R.C.M. 1947.

(b) Within three days of receipt of a petition for fact-finding the board shall submit a list of five qualified, disinterested persons to each of the parties to the dispute.

(c) Within five days of receipt of the list the parties shall select a fact finder by having the petitioner strike two names and then the other party strike two names. The remaining name is that of the fact finder.

(d) The parties shall immediately notify the Board of the name of the fact finder. The Board shall notify the fact finder and request him to immediately establish dates and places of hearings.

(e) Within twenty (20) days from his notification by the Board the fact finder shall make written findings of fact and recommendations for resolution of the dispute. The findings shall be served on both parties and a copy sent to the Board.

(f) The fact finder may request the Board to make the report public five (5) days after the parties are served with the findings.

(g) Fifteen (15) days after the parties are served the Board shall provide that the report is open to public inspection.

(h) The fact finder shall submit his costs and fees to the Board which shall send copies of an invoice to both parties on which they will be billed for one-third (1/3) of the total. The parties shall pay the Board within five (5) days and the Board shall forward the total amount to the fact finder.

3. The Board of Personnel Appeals proposes the amendment in order for its rules to conform with the controlling statute, section 59-1614, R.C.M. 1947. Section 59-1614 was amended in 1975 changing the number of names this Board must submit for fact finding lists from seven to five, and changing the number of names which must be struck from three to two. This rule was never changed to conform with the amended, controlling statute.

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 December 26, 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 December 26, 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 amendment is based on section 59-1613(4), R.C.M. 1947.

BRENT CROMLEY, Chairman
BOARD OF PERSONNEL APPEALS

Certified to the Secretary of State November 14, 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(1)-0800, 24-3.8(2)-P810, 24-3.8(6)-S830, 24-3.8(6)-S840, 24-3.8(6)-S850, 24-3.8(6)-S855, 24-3.8(6)-S870, 24-3.8(6)-S880, 24-3.8(26)-S8330, 24-3.8A (1)-S8380, 24-3.8A(2)-P8390, 24-3.8A(6)-S8410, 24-3.8A(6)-S8430, 24-3.8A(6)-S8440, 24-3.8A(6)-S8450, 24-3.8A(6)-S8460, 24-3.8A (6)-S8470, 24-3.8A(6)-S8480, 24-3.8A(6)-S8490, 24-3.8A(6)-S8520, 24-3.8B(1)-08550, 24-3.8B(2)-P8560, 24-3.8B(6)-S8590, 24-3.8B (6)-S8600, 24-3.8B(6)-S8610, 24-3.8B(6)-S8630, 24-3.8B(6)-S8640, 24-3.8B(6)-S8680, 24-3.8B(6)-S8690, AND ADOPTION OF UNIFORM RULES.	NOTICE OF REPEAL OF RULES AND ADOPTION OF UNIFORM RULES TO REPLACE THEM, NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On or about December 27, 1977, the Board of Personnel Appeals proposes to repeal rules 24-3.8(1)-0800, 24-3.8(2)-P810, 24-3.8(6)-S830, 24-3.8(6)-S840, 24-3.8(6)-S850, 24-3.8(6)-S855, 24-3.8(6)-S870, 24-3.8(6)-S880, 24-3.8(26)-S8330, 24-3.8A(1)-S8380, 24-3.8A(2)-P8390, 24-3.8A(6)-S8410, 24-3.8A(6)-S8430, 24-3.8A(6)-S8440, 24-3.8A(6)-S8450, 24-3.8A(6)-S8460, 24-3.8A(6)-S8470, 24-3.8A(6)-S8480, 24-3.8A(6)-S8490, 24-3.8A(6)-S8520, 24-3.8B(1)-08550, 24-3.8B(2)-P8560, 24-3.8B(6)-S8590, 24-3.8B(6)-S8600, 24-3.8B(6)-S8610, 24-3.8B(6)-S8630, 24-3.8B(6)-S8640, 24-3.8B(6)-S8680, 24-3.8B(6)-S8690, and adopt a uniform set of rules.

2. The uniform rules are as follows:

(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, one member representing employees or employee organizations, and one member representing the neutral position. (3) The board shall select a member or an agent to act as administrator of the board.

(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 pro-posed by the attorney general as adopted by the Department of Labor and Industry.

(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 hearing 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.

3. The Board of Personnel Appeals proposes the repeal of the rules and the adoption of the uniform rules in order to make its rules more uniform, cut down the number of pages its rules now use in the Administrative Rules of Montana, and hopefully make the rules less confusing to persons who

appear before this board. This Board is responsible for the admintration of four different programs: Public Employee Collective Bargaining, State Employee Classification Grievances, Highway Grievances, and Fish and Game Grievances. With each program this Board adopted a set of rules. For example, the same organizational rule appears in all four sets of rules with four separate numbers. This is bulky and causes confusion. Therefore, this Board is proposing to repeal those rules which appear in each set of rules and adopt one uniform rule. There are language differences in some of the rules, therefore the merging of the rules was not always possible. To avoid later rule disputes this Board desires to repeal the rules and adopt new rules so that there can be no challenge that this Board intended the uniform rules as they appear in this notice as those which govern each program this Board administers. To gain this uniformity it was necessary to change two specific rules, the changes should be addressed here:

1. 24-3.8B(6)-S8590 was amended to conform to 24-3.8(6)-S830(b) and 24-3.8A(6)-S8440(2). Specifically, 24-3.8(6)-S830(b) and 24-3.8A(6)-S8440 required that if a contested case was not heard by the full board it could be heard by a quorum of the board as long as at least one member represented management, at least one member represented labor and one member represented the neutral position were present. Section 24-3.8B(6)-S8590 required that a quorum could hear the contested case as long as at least one member represented management and at least one member represented labor were present. There was no requirement that the member representing the neutral position be present. The compostion of the board is two management positions, two labor positions, and a neutral chairman position. The neutral's function is to allow the board to reach a conclusion. To insure that the Board is able to reach a decision, the Board desires to make the uniform rule require that the neutral position be present to hear contested cases.
2. Rule 24-3.8B(6)-S8600 stated that all references to days shall mean working days. This was not consistent with the other sets of rules. Therefore, this Board is repealing that rule, inserting the word "working" where this board meant working days, and have made the rules uniform by saying all computation of time and service shall be in conformance with the rules of civil procedure.

4. Interested parties may submit their data, views, or arguments concerning the proposed repeal and adoption of uniform rules 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 December 26, 1977.

5. If a person directly affected wishes to express his data, views, and arguments orally or in writting 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 December 26, 1977.

6. If the Board receives requests for a public hearing on the proposed repeal and adoption of uniform rules 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 and adopt the uniform rules is based on section 59-1613(4), 82A-1014(4), 82A-709, 26-109.1

BRENT CROMLEY, Chairman
Board of Personnel Appeals

Certified to the Secretary of State November 14, 1977.

EMPLOYMENT SECURITY DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of Rule 24-3.10(10)-S10030 relating to effective dates of initial, additional and continued claims.	)))))	NOTICE OF PROPOSED AMENDMENT OF RULE (Initial, Additional, and Continued Claims) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On December 27, 1977, the Employment Security Division, Department of Labor and Industry, proposes to amend Rule 24-3.10(10)-S10030 as follows (matter to be stricken is interlined):

MAC 24-3.10(10)-S10030 EFFECTIVE DATE OF INITIAL, ADDITIONAL AND CONTINUED CLAIM

(1) A claim of eligibility shall be effective as of the first day of the calendar week in which claimant presents himself in person at any employment service office and files his claim, ~~if the claim is filed Monday, Tuesday or Wednesday of that week. If the claim is filed on Thursday or later, the claim is effective beginning With the first day of the following calendar week,~~ unless he is permitted to file his claim under the conditions outlined in Rules MAC 24-3.10(10)-S10020 and MAC 24-3.10(10)-S10040. Such filing within a period of seven (7) days following a claimant's first day of unemployment shall be deemed effective as of the first day of the calendar week in which he became unemployed, if the claimant presents to the satisfaction of the division sufficient grounds to justify or excuse the delay.

(2) With respect to claims for weeks of unemployment in which the individual was not working for his regular employer, the division shall, under circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an additional claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

2. The proposed amendment modifies Rule 24-3.10(10)-S10030 found on pages 24-38 and 24-39 of the Administrative Rules of Montana.

3. The reason for amending this rule is the same appears to be in conflict with Section 87-148(d), Revised Codes of Montana, 1947, which describes the benefit year.

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 December 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 Mr. Brickett on or before December 23, 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 87-148(d), R.C.M. 1947.

Fred Barrett, Administrator

Certified to the Secretary of State November 14, 1977.

BEFORE THE BOARD OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the Repeal of Rule 32-2.6A(46)-S6240 duties of deputy state veterinarians and the adoption of new rules in lieu thereof.	NOTICE OF PUBLIC HEARING FOR REPEAL OF RULE 32-2.6A(46)-S6240 AND FOR ADOPTION OF NEW RULES IN LIEU THEREOF

(Deputy State Veterinarians)

TO: ALL INTERESTED PERSONS

1. On January 13 at 9:00 a.m. in the meeting rooms of the City Center Motel, 507 W. Main, Bozeman, Montana, a public hearing will be held to consider the repeal of Rule 32-2.6A(78)-S6240 relating to the duties of deputy state veterinarians and the adopting of new rules on the same subject. In addition new rules of the subject of state veterinarian deputyship appointments and revocation or suspension of such appointments will also be considered.

2. The proposed rules replace existing rule 32-2.6A(78)-S6240.

3. The language of the proposed rules are as follows:

Rule I. DEFINITIONS.

(1) "Department" means the Department of Livestock.

(2) "District Veterinarian" means a veterinarian licensed in the State of Montana in the full time employ of the Montana Department of Livestock or a veterinarian in the full time employ of USDA serving in Montana and authorized to perform state functions.

(3) "Deputy State Veterinarian" means a veterinarian licensed in the State of Montana and deputized to perform state functions pursuant to Rule II of this subchapter who is not in full time employ of the department or USDA.

(4) "USDA" means the Veterinary Service Division of the Animal, Plant Health Inspection Service, United States Department of Agriculture.

Rule II. APPOINTMENT AS DEPUTY STATE VETERINARIAN.

(1) The State Veterinarian is authorized to deputize a veterinarian when he determines that such veterinarian

(a) is a graduate of a school of veterinary medicine approved by the American Veterinary Medical Association;

(b) is licensed to practice veterinary medicine in Montana;

(c) has made formal application for deputization upon forms provided by the department;

(d) has passed an examination of his knowledge of regulatory veterinary medicine administered by the State Veterinarian or his designate; and

(e) has been accredited by USDA pursuant to 9 CFR, Chapter 1, Subchapter 1, Part 161.

Rule III. DUTIES OF DISTRICT VETERINARIANS.

(1) Each District Veterinarian without further instructions from the Montana Department of Livestock, Animal Health Division shall

(a) investigate immediately all reports of infectious, contagious, or dangerous disease;

(b) make such inspections, tests and investigations in his district as shall be deemed necessary for the control of such diseases of livestock and poultry;

(c) make such inspections, tests, and investigations in his district as shall be deemed necessary for the proper inspection and scoring of dairies, milk plants, slaughterhouses, and rendering plants;

(d) supervise the sanitary conditions at public stockyards and shall take such action as he considers necessary for the proper observation and compliance with orders and regulations issued by the Montana Board of Livestock;

(e) quarantine all animals exposed to or infected with a serious, contagious, infectious, or dangerous disease which are required to be quarantined under the rules of the department to specified quarantined premises;

(f) issue quarantine releases and release animals from quarantined herds to proper destinations in accordance with the rules of the department;

(g) require all fees paid to him for supplying veterinary services to be made payable to the department and remit such fees promptly to the department to be deposited in the Animal Health earmarked revenue account.

Rule IV. DUTIES OF DEPUTY STATE VETERINARIANS.

Deputy State Veterinarians shall

(a) report immediately all cases of infectious, contagious or dangerous diseases of livestock or poultry to the State Veterinarian at Helena. If the disease is of a serious nature and the Deputy State Veterinarian cannot secure the immediate services of a District Veterinarian, then the Deputy State Veterinarian shall make an immediate investigation without awaiting order from the State Veterinarian. Where the disease reported is not of a serious or dangerous character requiring immediate action, then the Deputy State Veterinarian shall report the condition to the State Veterinarian and await instructions;

(b) in the event the services of a District Veterinarian are not available and a serious, contagious or infectious disease exists, the Deputy State Veterinarian shall quarantine in writing all animals exposed to or infected with such disease, and shall immediately report the fact of the quarantine to Helena by telephone and mail a copy of the written quarantine to Helena;

(c) upon direction of the State Veterinarian issue quarantine releases or release animals from quarantined herds to

proper destinations in accordance with the rules of the department;

(d) be responsible for proper use of all certificates, forms, records, reports, tags, brands, bands, or other identification used in his work as a Deputy State Veterinarian and take proper precautions to prevent misuse thereof;

(e) immediately report to the State Veterinarian, the loss, theft, or deliberate or accidental misuse of any such certificate or accidental misuse of any such certificate form, record, report, tag, band, brand, or other identification. He shall not permit the materials mentioned above to be kept in the custody of anyone but himself prior to official use;

(f) file a completed form SV 18 "Veterinarian Animal Disease Report" monthly with the department.

Rule V. DUTIES TO BE PERFORMED BY BOTH DISTRICT AND DEPUTY STATE VETERINARIANS.

(1) All District and Deputy State Veterinarians shall

(a) report all outbreaks of serious infectious, contagious or dangerous diseases by telephone to the State Veterinarian at Helena. All such reports shall be confirmed by letter giving complete details;

(b) for any quarantines they may have issued either deliver the written quarantine notice to the owner of the animals or his agent or forward such notice to the owner of the animals or his agent through the United States mail;

(c) report at the end of each week all official work performed during the week on Form SV-27 made out in accordance with the instructions issued by the State Veterinarian. All required inspection forms, test charts, health certificates, and vaccination certificates made during the week shall be mailed in at the end of each week;

(d) pay close attention to the regulations of the different states relative to interstate shipments of livestock. Inspections and tests shall be made strictly in accordance with the regulations of the state to which the stock is consigned and with the regulations promulgated by the United States Department of Agriculture, Animal and Plant Health Service, Veterinary Services. Positively no deviation is to be made from the general regulations unless permission is first obtained from the sanitary authorities of the state to which the shipment is destined. When an exception is granted, such fact shall be noted on the certificate issued;

(e) submit expense accounts monthly on forms and in the manner prescribed by the Montana Department of Administration;

(f) perform such other duties as may be assigned by rule, order or directive of the department.

Rule IV. USE OF OFFICIAL FORMS

No person except a veterinarian duly deputized pursuant to this subchapter or a district veterinarian is permitted to

make certifications, sign, or otherwise fill out official forms of the department; provided that a licensed and specifically authorized veterinary technicial or other person specifically authorized by the State Veterinarian, may sign and use such forms as his authorization permits.

Rule VII. STANDARDS FOR DEPUTY STATE VETERINARIANS.

(1) A Deputy State Veterinarian shall conduct his practice and the performance of his official duties in accordance with the rules in this chapter and accepted standards of veterinary practice in this state.

(2) A Deputy State Veterinarian shall not issue a certificate, form, record or report which reflects the results of any inspection, test, vaccination or treatment performed by him, with respect to any animal or poultry, unless he has personally inspected each animal, bird, or flock in such a manner as to detect abnormalities, such as, but not limited to, locomotion, body excretion, respiration, and skin conditions. A Deputy State Veterinarian shall thoroughly examine each animal, bird, or flock showing abnormalities, in order to determine whether or not there is the presence or absence of a communicable disease.

(3) A Deputy State Veterinarian shall not sign any certificate, form, record or report, or permit such a certificate form, record, or report to be used until and unless, he has ascertained that it has been accurately and fully completed clearly identifying the animal(s) or bird(s) to which it applies and showing the results of the inspection, test, or vaccination, etc. he has conducted, except as provided in paragraph (3) of this section. The Deputy State Veterinarian shall distribute copies of certificates, forms, records, and reports, according to instructions issued to him by the State Veterinarian.

(4) A Deputy State Veterinarian shall not issue or sign any certificate, form, or report which reflects the results of any inspection, test, vaccination, or treatment, performed by another Deputy State Veterinarian or U.S.D.A. Accredited Veterinarian from another state, unless the certificate, form, or report indicates that the inspection, test, vaccination, or treatment was performed by the other veterinarian; identifies the name of such other veterinarian; and includes the date and the place where such inspection, test, or vaccination was performed.

(5) A Deputy State Veterinarian shall perform official tests, inspections, treatments, and vaccinations and shall submit specimens to designated laboratories in accordance with Federal and State regulations and instructions issued to the Deputy State Veterinarian by the State Veterinarian.

(6) A Deputy State Veterinarian shall take such measures as are necessary to prevent the spread of communicable diseases of livestock or poultry. Such measures shall include, but are

not limited to, the use of sanitized instruments to collect specimens from, or to administer vaccines to such individual animals, birds, or poultry, and the cleaning and disinfecting of footwear, restraining chutes, and other equipment before proceeding to another premises.

(7) A Deputy Veterinarian shall keep himself currently informed on advances in his areas of veterinary practice, on Federal and State regulations governing the movement of animals and poultry, and on procedures applicable to disease control and eradication programs, including emergency programs. He shall carry out all of his responsibilities under the applicable state programs and State-Federal cooperative programs in accordance with such regulations and instructions issued to him by the State Veterinarian.

(8) A Deputy State Veterinarian shall not use or dispense in any manner, any drug, chemical, vaccine or serum, or other biological product authorized for use under any Federal regulation or cooperative disease eradication program, without authorization or in contravention of any Federal or State statute or regulation, or instruction.

Rule VIII. SUSPENSION OR REVOCATION OF STATE VETERINARIAN DEPUTYSHIP. (1) The State Veterinarian may suspend or revoke a deputyship for a given period of time not less than six months when he determines the Deputy State Veterinarian has not complied with the rules of this subchapter, or in lieu thereof may issue written notice of reprimand to the Deputy State Veterinarian when he determines a notice of reprimand will be adequate to obtain compliance with the rules of this subchapter.

(2) A State Veterinarian Deputyship shall be automatically terminated when the veterinarian's license to practice veterinary medicine is terminated or suspended or when his accrediation under 9 CFR, Chapter 1, Subchapter 1, Part 161 is suspended or revoked, or when he is convicted of a crime in state or federal court if such conviction is based upon the performance or non performance of any act required of him in his capacity as a Deputy State Veterinarian or veterinarian accredited under 9 CFR, Chapter 1, Part 161.

Rule IX. DISCIPLINARY ACTIONS AFFECTING DISTRICT VETERINARIANS. Matters concerning the improper conduct of a district veterinarian shall be handled pursuant to the personnel policies and practices of the employing agency.

Rule X. INSTITUTION OF PROCEEDINGS.

(a) Complaint. A complaint in writing shall be issued by the State Veterinarian and served on the Deputy State Veterinarian, whenever there is reason to believe that he has not complied with the rules contained in this chapter. The complaint shall state briefly and clearly the allegations of fact

which constitute the basis for the proceeding and shall specify the standards alleged to have been violated. At any time prior to the close of the hearing the complaint may be amended; but, at the request of the Deputy State Veterinarian, the hearing shall be adjourned for a period not exceeding 15 days.

(b) Answer. The Deputy State Veterinarian shall file with the State Veterinarian an answer to the complaint within 10 days after service of the complaint. Such answer shall be signed by the Deputy State Veterinarian or his attorney. Upon request by the Deputy State Veterinarian and where the circumstances warrant the State Veterinarian may extend the period of time for filing of the answer. The answer shall contain a statement of the facts which constitute the grounds of defense and shall specifically admit, deny, or explain each of the allegations of the complaint. The answer may be supported by such affidavits, depositions or other documents which the Deputy State Veterinarian desires to submit. Failure to file an answer to or plead specifically to any allegation of fact in the complaint shall constitute an admission of such allegation.

(c) Suspension of accreditation pending final determination. When the State Veterinarian deems such action necessary in order to adequately protect the public health interest, or safety, he may suspend the deputyship of an Deputy State Veterinarian pending final determination in the matter.

(d) Informal conference and consent orders. At the request of the Deputy State Veterinarian, the State Veterinarian will arrange an informal conference to discuss the matter, at a time and place designated by the State Veterinarian. The Deputy State Veterinarian may bring with him to the conference any representative or other person whom he desires. If the Deputy State Veterinarian, in writing admits the facts alleged in the complaint, or states that he neither admits or denies the facts alleged in the complaint, and consents to the issuance of an order revoking his deputyship, such an order will be issued without further procedure.

(e) Service of the complaint and all subsequent documents in the proceeding shall be made in accordance with the provisions of the Montana Rules of Civil Procedure.

Rule XI. HEARING; REQUEST FOR FORMAL HEARING; HEARING PROCEDURE; PROCEDURE UPON ADMISSION OF FACTS AND WAIVER OF HEARING; HEARING OFFICER'S REPORT; EXCEPTIONS TO HEARING OFFICER'S REPORT; PREPARATION AND ISSUANCE OF FINAL ORDER.

(1) Request for formal hearing. A Deputy State Veterinarian may request a formal hearing on the allegations set forth in the complaint by including such request in the answer or by a separate request in writing filed with the Chairman of the Board of Livestock. Failure to request a formal hearing at

the conclusion of an informal appearance referred to in Rule X or within the time allowed for the filing of the answer, shall constitute a waiver of such hearing. If the Deputy State Veterinarian does not request a formal hearing, the State Veterinarian may request the Chairman of the Board of Livestock to order that such a hearing be held if he determines that a hearing is necessary to fully develop the facts. Upon receipt of such a request the Chairman shall order the hearing to take place.

(2) Hearing Procedure. Upon request by the Deputy State Veterinarian for a formal hearing or upon the order of the Chairman of the Board of Livestock, a hearing within 30 days shall be arranged. The following shall apply to such hearing:

(a) Notice of the time and place of such hearing shall be given to the Deputy State Veterinarian in writing at least 10 days prior to the hearing.

(b) Such hearing shall be held before the Board of Livestock or its designated hearing officer.

(c) The parties may appear in person or by counsel or other representative.

(d) A representative of the Department shall proceed first at the hearing topresent the facts upon which the complaint was based.

(e) The Board of Livestock or hearing officer shall be authorized to administer oaths and affirmations, examine witnesses at such hearing and rule upon motions and requests.

(f) All testimony of witnesses at the hearing shall be upon oath or affirmation and subject to cross-examination. Any witness may, in the discretion of the Board of Livestock or hearing officer, be examined separate and apart from all other witnesses except the interested parties.

(g) The Board of Livestock or hearing officer may exclude obviously immaterial or irrelevant evidence, but the party offering such evidence may state what he expects to prove thereby.

(h) The Board of Livestock or hearing officer may postpone or adjourn a hearing for good cause shown.

(i) Oral argument will be permitted before the Board or hearing officer at the close of the hearing and any agrument advanced will be embodied inthe record.

(j) A manual or electronic recording of the hearing shall be made. If the matter is heard by a hearing officer, a transcriptionof the recording shall be made to which the hearing officer shall attach his certificate stating that the transcript is a true hearing, except in such particulars as he shall specify, and that the exhibits accompanying the transcript are all the exhibits introduced at the hearing, with such exceptions as he shall specify. If the matter is heard before the Board, the Deputy State Veterinarian may also

request such a transcript to be made at his own expense.

(k) Written briefs or arguments may be submitted and made a part of the record if received by the Board of Livestock or the hearing officer with 15 days after the close of the hearing. This period may be extended by the Board of Livestock or the hearing officer for good cause shown.

(l) If the Deputy State Veterinarian, after being duly notified, fails to appear at the hearing, he will have waived the right to a hearing.

(3) Procedure upon admission of facts; waiver of hearing. The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the complaint shall constitute a waiver of hearing. Upon such admission of acts, unless the Chairman of the Board of Livestock has ordered that a hearing be held, the hearing officer, without further procedure, shall prepare his report, in which he shall adopt as his proposed findings of fact the material facts alleged in the complaint.

(4) The hearing officer's report. If the matter is heard before a hearing officer he, within a reasonable time after the termination of the period allowed for the filing of written briefs or arguments following the hearing, shall prepare upon the basis of the record and submit to the Board of Livestock his report together with the record of the proceeding. Such report shall include recommended findings of fact and conclusions of law. A copy of the report shall be served upon the parties.

(5) Exceptions to the hearing officer's report. Within 15 days after the receipt of the hearing officer's report, exceptions thereto, and written arguments or a brief in support of such exceptions, may be filed with the Chairman of the Board. The Chairman of the Board may extend such period for good cause shown.

(6) Preparation and issuance of order. As soon as practicable after the termination of the period allowed for the filing of exceptions ot the hearing officer's report the Board, upon the basis of and after due consideration of the record, shall prepare its decision and order in the proceeding. Such decision and order shall be issued and served upon the parties and shall be the final and conclusive order in the proceeding.

Rule XII. EFFECT OF RULES UPON VETERINARIANS PRESENTLY DEPUTIZED. These rules shall apply to all persons presently serving as state veterinarians, except that such persons shall be deemed to have already complied with the provisions of rule II. Any Deputy State Veterinarian losing his deputyship after the effective date of these rules, may, after the period of suspension or revocation has elasped, apply for reappointment provided he meets the requirements of rule II.

4. The purpose of these proposals is to deliniate in greater detail the manner in which a Deputy State Veterinarian is appointed to, functions in, and is removed from that office. As the hearing is being held in conjunction with the winter meeting of the Montana Veterinary Medical Association it is anticipated that a number of suggestions for altering the proposals will be made. All such suggestions will be considered and, where appropriate, acted upon.

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

(6) The hearing will be conducted before the Board of Livestock, Robert G. Barthelmess, Chairman, presiding.

(7) The authority of the department to make the proposed rule is sections 46-208 and 82A-107 R.C.M. 1947.

Robert G. Barthelmess

ROBERT G. BARTHELMESS, Chairman
Board of Livestock

Certified by the Secretary of State, November 14, 1977.

BEFORE THE BOARD OF
NATURAL RESOURCES AND CONSERVATION
STATE OF MONTANA

In the Matter of the Amendment of Rules MAC 36-2.8(1)-S800 through 36-2.8(10)-S880 and the Adoption of New Rules Pertaining to Notices of Intent to File an Application Pursuant to the Major Facility Siting Act, and Pertaining to Exemptions from Compliance with the Requirements of the Major Facility Siting Act	NOTICE OF PUBLIC HEARING FOR ADOPTION OF AMENDMENTS TO RULES (MONTANA MAJOR FACILITY SITING ACT)

TO: All Interested Persons

1. On December 21, 1977, at 10:00 a.m., in Room 106, Miles Community College, Miles City, Montana, and on December 22, 1977, at 10:00 a.m., in the conference room of the Montana Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, a public hearing will be held to consider the amendment of Major Facility Siting Act Rules MAC 36-2.8(1)-S800 through 36-2.8(10)-S880, and the adoption of new rules relating to notices of intent to file an application, and relating to exemptions from compliance with the requirements of the Major Facility Siting Act.

2. The Board proposes to amend the existing rules in several respects, particularly rules relating to definitions; general requirements for applications filed under the Major Facility Siting Act; content of applications for energy generating and conversion plants; content of applications for electric transmission lines and gas or liquid transmission lines; filing fee, and estimated cost of facilities; general requirements for long range plans submitted under the Major Facility Siting Act; and content of long range plans submitted under the Major Facility Siting Act. The adoption of the new rules pertain to notices of intent to file an application under the Major Facility Siting Act and exemptions from compliance with the requirements of the Major Facility Siting Act.

3. The rules as proposed to be amended and adopted are too voluminous to include herein. A copy of the entire proposed rules may be obtained by contacting Mr. Bob Anderson, Administrator, Energy Planning Division, Department of Natural Resources and Conservation, 32 So. Ewing, Helena, MT 59601. The rules as proposed to be amended and adopted provide in

substance:

(A) Sub-Chapter 1. Definitions - definitional changes to update changes made in Major Facility Siting Act. Terms "transmission substation," "block board," and "notice" are defined.

(B) Sub-Chapter 2. Applications - the general requirements for the filing of an application are clarified and expanded. The content requirements for applications for energy generating and conversion plants are amended: to require more specific information in explaining the need for a proposed facility as defined in § 70-803(3)(a) and § 70-803(8) of the Major Facility Siting Act; and, to require more specific information for an application for a facility (either utility or nonutility) as defined in § 70-803(3)(a) of the Major Facility Siting Act. The content requirements for an application for electric transmission lines and gas or liquid transmission lines are amended to require more specific information for facilities defined in § 70-803(3)(b) and 70-803(3)(c) of the Major Facility Siting Act. The information required to be filed with an application concerning the filing fee and estimated cost of a facility is more specifically described.

(C) Sub-Chapter 4. Notice of Intent to File an Application. This is a new rule implementing § 70-806(7). The rule sets forth the general requirements and content requirements for a notice of intent to file an application.

(D) Sub-Chapter 6. Long-Range Plans - The general requirements and content requirements are amended to provide for more pertinent and specific information.

(E) Sub-Chapter 10. The transmission corridor rule is amended to include pipeline corridors.

(F) Sub-Chapter 12. Exemption of Generation Additions to Existing Hydrogeneration Facilities - This is a new rule implementing § 70-804(4). The rule establishes exemptions from the Major Facility Siting Act for the relocation, reconstruction, or upgrading of a facility that is unlikely to have a significant environmental impact.

4. The rationale for this request to amend and adopt rules pursuant to the Major Facility Siting Act is to substantially update such rules. The present rules were adopted under the Montana Utility Siting Act of 1973. Subsequently, the legislature has amended and renamed the act to the Montana Major Facility Siting Act. The definitional changes are made to comply with the Major Facility Siting Act. There is a critical need to amend the rules to describe more clearly the general requirements for the filing of an application and to more specifically describe the content of applications for energy generating and conversion plants as well as applications for electrical transmission lines and gas or liquid transmission lines. There is also a need to revise the rules relating to the filing fee and estimated costs of the facility so as to more particularly describe cost estimation for filing fee

purposes. The rationale for the proposed adoption of rules with respect to notices of intent to file an application is created by the legislation enacted by the 1977 legislative assembly. The rationale for the proposed amendments to the rules concerning long range plans is the need to more specifically set forth the content of a long range plan. Amendments to the rules concerning transmission corridors is made to include pipeline corridors in addition to transmission corridors. The rationale for the proposed adoption of rules with respect to exemptions from compliance with the requirements of the Major Facility Siting Act is to implement reasonable rules establishing exemptions from the act for the relocation, reconstruction, or upgrading of a facility that is unlikely to have a significant environmental impact.

5. 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 Donald D. MacIntyre, Department of Natural Resources and Conservation, 32 South Ewing, Helena, Montana, 59601 at any time prior to December 30, 1977. Written data, views or arguments received by the Department after December 30, 1977 or post mark dated after December 30, 1977 may not be considered in the adoption of the rules.

6. Donald D. MacIntyre, 32 South Ewing, Helena, Montana, 59601, has been designated to preside over and conduct the hearing.

7. The authority of the Board of Natural Resources and Conservation to adopt and amend these rules is based upon Section 70-820, R.C.M. 1947.

Cecil Weeding

CHAIRMAN
BOARD OF NATURAL RESOURCES
AND CONSERVATION

Certified to the Secretary of State November 14, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF HEARING AID DISPENSORS

IN THE MATTER of the Proposed Adoption of a new rule relating to public participation in Board decision making functions.)	NOTICE OF PROPOSED ADOPTION of a new rule relating to public participation in Board decision making functions.
	No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On December 26, 1977 the Board of Hearing Aid Dispensors proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule, as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter two (2), Sub-chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Hearing Aid Dispensors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than December 23, 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 Hearing Aid Dispensors, LaLonde Building, Helena, Montana, on or before December 23, 1977.

5. If the Board of Hearing Aid Dispensors receives requests for a public hearing on the proposed adoption of a new rule from more than four(4) 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 of the Board of Hearing Aids to make the proposed adoption of a new rule is based on Section 66-3005, R.C.M. 1947.

DATED THIS 14th DAY OF Nov, 1977.

BOARD OF HEARING AID DISPENSORS
ROBERT JUROVICH
CHAIRMAN

BY: Timothy J. Meloy
TIMOTHY J. MELOY
ACTING DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State 11/14, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SUVERYORS

IN THE MATTER of the Proposed) Adoption of ARM 40-3.86(6)-) S86075 Reciprocity for Regis-) tered Land Surveyors, and ARM) 40-3.86(6)-S86105 Corporate) or Multi-person Firms; amend-) ment of ARM 40-3.86(6)-S8690) Code of Ethics, ARM 40-3.86) (6)-S86020 Applications, ARM) 40-3.86(6)-S86030 Grant and) Issue Licenses, ARM 40-3.86) (6)-S86050 Examinations, ARM) 40-3.86(6)-S86060 Renewals,) ARM 40-3.86(6)-S86070 Dupli-) cate or Lost Licenses, and) ARM 40-3.86(6)-S86090 Fees) Schedule.)	NOTICE OF ADOPTION AND AMENDMENT No Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On December 26, 1977, the Board of Professional Engineers and Land Surveyors proposes to make the above stated adoptions and amendments.

2. The changes as proposed are in the matter of a complete review of the Board rules as required by section 82-4204 R.C.M. 1947. Such changes do not intend to delete or impose substantive requirements, rather are intended only to eliminate out-dated or redundant provisions and to amplify or clarify existing provisions. This notice therefore does not state a rational for each proposed change. However, the Board will do so upon request.

3. The adoption of ARM 40-3.86(6)-S86075 Reciprocity for Registered Land Surveyors will read as follows:

"40-3.86(6)-S86075 RECIPROCITY FOR REGISTERED LAND SURVEYORS: (1) Registration by Endorsement: The Board may, upon application therefore and payment of proper fee and passing a written eight (8) hour examination, issue a certificate of registration as a Land Surveyor to any person who submits evidence that he holds a certificate of registration issued to him by proper authority of any state or territory or possession of the U.S., or of any country provided that the applicant's qualifications meet the requirements of the act and the rules established by the Board. Sections S86070(1)(a), S86070(1)(b), S86070(1)(c), and S86070(2) are also applicable to this section S86075.

(2) Non-resident Practice in Montana: A person not a resident of and having no established place of business in this state, practicing or offering to practice land surveying shall be in violation of the act."

4. The adoption of ARM 40-3.86(6)-S86105 Corporate or Multi-person Firms will read as follows:

"40-3.86(6)-S86105 CORPORATE OR MULTI-PERSON FIRMS: A firm, copartnership, corporation, or joint-stock association may offer and perform professional engineering or land surveying services in this state upon complying with the following:

1. All officers of the entity in responsible charge of engineering and/or land surveying must be registered under this act.

2. All resident representatives of the entity must be registered under this act.

3. All individuals performing engineering or land surveying services within the state must be registered under this act.

4. All entities offering Engineering or Land Surveying services in the state must be represented by residents registered under this act.

5. The term Associates in the name of a firm shall be construed to represent individuals who are registered in this state, who can be identified and show responsibility to the professional and operation decisions of the firm."

5. The amendment of ARM 40-3.86(6)-S8690 Code of Ethics will read as follows; (Deleted matter interlined, new matter underlined)

"40-3.86(6)-S8690 CODE OF ETHICS (1) The Board will expect all engineers and land surveyors to uphold and advance the honor and dignity of the Engineering and Surveying Profession and Registration law within the ethical standards set forth in both the "Codes of Ethics" included ~~in~~ on the application form. ~~and as published by the National Society of Professional Engineers.~~"

6. ARM 40-3.86(6)-S86020 Applications is proposed to be amended by inserting the following words into the existing subsection (3), and adding a new subsection (7); (new matter underlined)

"(3) References: Upon receipt of an application, a copy of the Board's uniform questionnaire and form letter shall be transmitted to five(5) or more references. Applicants will note that three or more of the references shall be registered in the profession being applied for as Professional Engineers or Land Surveyors. No member of the Board will be accepted as a reference.

(7) Applications by holders of National Engineering Certificates: Applicants who have a current NEC certif-

icate number must complete the following section of the Application for Registration as Professional Engineer 1 - General Information, 2 - Registration in other states, 9 - Affidavit."

7. ARM 40-3.86(6)-S86030 Grant and Issue Licenses is proposed to be amended by inserting certain words in subsection (1)(a), deleting certain words in (1)(b), and replacing existing subsection (3) through (8) with a new subsection (3), as follows: (new matter underlined, deleted matter interlined)

"(a) Seals for Professional Engineers and Land Suveyors will be furnished by the board ~~at cost~~, at a fee, upon request. Seals of two different sizes are authorized; pocket seal, the size commercially designated as a 1-5/8 inch seal; or a desk seal, commercially designated as a 2 inch seal. The seal will bear the registrant's name, serial number, and the legend "Registered Professional Engineer", "Registered Land Surveyor", or "Registered Professional Engineer and Land Surveyor".

(b) For stamping plans, specifications, and reports, registrants are authorized to have a rubber stamp copy made of their official seal; ~~however,~~ the title page of all sets of plans and all documents filed with public authorities must bear the ~~imprint of the official~~ seal.

(3) Classification of Experience: Engineering experience or land surveying experience "of a character satisfactory to the Board" shall include the following:

(a) Sub-Professional Work shall be construed to cover the time spent as Rodman, Chainman, Instrumentman, Inspector, Recorder, Draftsman, Computor, Tester, Superintendent of Construction, or Clerk of the Works, Junior Engineer, or similar work; that is, positions in which the responsibility is slight and the individual performance of a task, set and supervised by a superior, is all that is required. It shall also include full time engineering employment before the applicant graduated from an approved college of univeristy.

(b) Each year of experience in Sub-Professional Work, as defined herein may be credited as one-half (1/2) year toward the requirement of experience or practice of a character satisfactory to the Board. Only experience of the applicant which is classified as Sub-Professional or Pre-Professional Work by the Board will be considered.

(c) Pre-Professional Work is work performed before registration in Montana, which is of a character worthy of the profession. Pre-Professional Work shall include the time after the applicant has graduated from an approved college or university, during which he has been accepted in engineering work of a higher grade and

responsibility than that above defined as Sub-Professional Work. Successful completion of graduate study in engineering shall be considered Pre-Professional Work, but such study will not be credited as more than 1 year of Pre-Professional Work. The mere execution, as a contractor, of work designed by an engineer, or the mere supervision of construction of such work as foreman or superintendent shall not be deemed to be Pre-Professional Work.

(d) Education may be considered as Pre-Professional or Land Survey Work experience for applications considered under "Temporary Qualifications". Each academic year successfully completed in a school approved by the Board shall be rated as one (1) year of Pre-Professional or Land Survey Work experience. However, not more than two (2) years experience shall be credited to undergraduate educational qualifications.

(e) Experience time may be counted as Pre-Professional or Sub-Professional for work done during years counted for education.

(f) Land Survey Experience consists of work done under supervision of registered land surveyor such as section break downs, retracing old boundaries, establishing new boundaries, corner search and re-establishment, calculations and preparations of certificates of surveys, deed searches, corner recordation, etc.

(g) Other Survey Experience is survey work which may not be done under the supervision of a registered land surveyor. It includes such work as construction layout of buildings and miscellaneous structures; surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc., construction staking for land modifications; construction staking for highways, roads, utilities, etc.

(h) Non Survey Experience is work not related to surveying.

(I) Part time survey work, if any, which may or may not run concurrent with a full time engagement, shall be listed as a separate engagement with total hours worked converted to years by dividing by a normal work year of 2080 hours.

(j) Full time work is considered a normal work week of 40 or more hours.

(k) Pre-Professional work (in charge) means: In the field, the applicant must have directed the work. The successful accomplishment of the work must have rested upon him. He must have made decisions regarding methods of execution and suitability of materials, without relying upon advice or instructions from his superiors.

In the office, the applicant must have had to undertake investigations, or carry out important assignments, demanding resourcefulness and originality, or to make plans, write specifications and direct drafting and computation for designs or engineering, with only rough sketches, general information and field measurements for reference and guidance.

In teaching, the applicant must have taught an engineering program of recognized standing, and must have been engaged in research, product development, or consulting as a concurrent activity.

(l) Pre-Professional work (Design) means: all that is given above as Pre-Professional in charge and in addition one qualified in design must have met the exigencies encountered in engineering design and fulfilled the requirements of local circumstances and conditions, without violating any of the cannons of engineering.

(m) The Board, in passing on each of these requirements as defined, will carefully weigh the evidence of experience submitted by the applicant and the replies received from his references."

8. ARM 40-3.86(6)-S86050 is proposed to be amended by replacing existing subsection (1) and (2), renumbering subsection (4) as subsection (3), inserting certain language into subsection (5) and renumbering it (4) and renumbering subsection (6) as (5) as follows (new matter underlined, deleted matter interlined):

"40-3.86(6)-S86050 EXAMINATIONS (1) After July 1, 1975 registration as a Professional Engineer and/or Land Surveyor in Montana, requires in part, examinations. The examinations required are defined in Section 66-2359.

(2) Applicants will be notified of the time and place of examination at least thirty (30) days in advance.

~~(4)~~ (3) A passing grade of seventy (70) per cent in each part of the examination will be required.

~~(5)~~ (4) A candidate failing to pass any ~~part of the~~ examination~~,~~ may take that examination ~~part~~ a second time at a subsequent examination period upon payment of a fee established by the Board.

~~(6)~~ (5) The examinee may review his examination paper in the Board office within 90 days after being notified of his status. No notes are to be made nor any marks made on the examination paper.

The examination documents (test papers) will be retained in the examinee's file for a period of two years, and then destroyed."

9. ARM 40-3.86(6)-S86060 Renewals is proposed to be amended by replacing the catch phrase, replacing the first half of subsection (1) and redesignating the second half

of subsection (1) as subsection (2) as follows:

"40-3.86(6)-S86060 ~~RENEWALS~~ EXPIRATION-RENEWALS-FEE. (1) Certificates of registration expire each year and shall be renewed as outlined in Section 66-2361 upon receipt of the renewal fee set by the Board. ~~(1) Certificates of registration shall expire on the last day of the month of December following their issuance or renewal and shall become invalid on that date unless renewed; provided, however, that certificates issued prior to January 1, 1950, shall expire December 31, 1950. It shall be the duty of the Board to notify every person registered under the act, of the date of the expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be affected at any time during the month of December by the payment of a fee of ten ($10.00) dollars for either a Professional Engineer or Land Surveyor or both.~~

(2) The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of the right of renewal but the fee to be paid for the renewal of a certificate after the month of December shall be increased ~~to~~ ten percent for each month or fraction of a month that payment of renewal is delayed; provided, however, that the maximum fee for delayed renewal shall not exceed twice the normal renewal fees."

10. ARM 40-3.86(6)-S86070 Reciprocity is proposed to be amended as follows (new matter underlined, deleted matter interlined);

"40-3.86(6)-S86070 RECIPROCITY FOR PROFESSIONAL ENGINEERS (1) Registration by Endorsement: The Board may, ~~without written examination~~, upon application therefore and payment of proper fee, issue a certificate of registration as a Professional Engineer to any person who submits evidence that he holds a certificate of Qualification or Registration issued to him by proper authority of the National Engineering Certification Committee of ~~Bureau of Engineering Registration operated by~~ the National Council of ~~State Board of~~ Engineering Examiners, or of any State or Territory or Possession of the United States, or of any country provided that the applicant's qualifications meet the requirements of the act and of the rules established by the Board. Such applicants shall, as part of their application, complete and send to the Board the Board application form.

(2) When application for registration by endorsement is made the Montana Board shall secure from the examining

board by which the certificate of registration involved was issued, complete information as to the basis for the issuance of said certificate, provided, however, that if the applicant presents evidence of a certificate issued by the National ~~Bureau of Engineering Registration~~ Engineering Certification Committee of NCEE bearing thereon as an endorsement proper authorization by the authorized official of the State Board of Engineering Registration of the state in which the holder of the certificate is a resident, such inquiry may be omitted.

(b) All non-resident applicants must be registered in their states of residence and original registration, before their application can be considered. ~~who are not registered in their home state or who registered under standards lower than Section 66-2357 of the act shall not be eligible for registration by endorsement.~~

(c) The Board will, upon application for reciprocal registration by one of its registrants, certify as to his qualifications.

(2) Non-Registered, Non-Residents: Applications for registration as Professional Engineer and/or Land Surveyor from persons who are not residents of Montana and who are not registered in their home state or country will not be approved by the Board.

(3) Registration by Reciprocity Without Examination: An out-of-state registrant, whose ~~has not entered his registration~~ conditions did not include examination may ~~by examination, will generally~~ be granted registration ~~in Montana~~ by the Board without examination ~~as follows:~~ if the original certificate of registration was granted under any of the following provisions:

(a) Engineers holding a certificate of qualification issued by the National Council ~~of State Boards~~ of Engineering Examiners Committee on National Engineering Certification (NEC). ~~or by the National Bureau of Engineering Registration.~~

(b) Engineers registered under a provision of the law permitting registration to applicants who have graduated from a school or college in an engineering curriculum of four (4) years or more plus four (4) years or more of experience in engineering work of a character satisfactory to the Board; provided the certificate of registration was issued prior to July 1, 1948, for civil engineers and July 1, 1957, for others.

(c) Engineers registered under a provision of the law permitting registration to applicants who have a specific record of twelve (12) years or more of lawful practice in engineering work of a character satisfactory to the Board, of which at least five (5) years has been in responsible

charge of important work, provided such registration was granted after the individual was thirty-two (32) years of age, and the certificate was issued before July 1, 1975 and under requirements not lower than those of the Montana Law and the by-laws and rules of this Board at the time the certificate was issued.

(4) Registration by Reciprocity Without Education: An out-of-state registrant whose registration conditions did not include graduation from a four (4) year approved curricula, may be granted registration by the Board if the registrant has successfully passed the eight (8) hour E.I.T. and the eight (8) hour P.E. examinations issued by NCEE and has had eight (8) years of engineering work experience satisfactory to the Board, and provided that the certificate was issued before July 1, 1979.

(5) ~~(4)~~ Non-Resident Practice in Montana: A person not a resident of and having no established place of business in this state, practicing or offering to practice within the profession of Professional Engineering when such practice is for one specific engagement not exceeding one year shall not be required to register in Montana, provided:

(a) Such person is legally qualified by registration to practice the said profession in his own State or Country in which the requirements and qualifications under which he registered were not lower than those of this state.

(b) Such person notify the Board of his desire to practice in this state prior to making an agreement for such practice and setting forth the name of the client, description of the job, date such practice will start and cease.

(c) Such person submit evidence of legal registration in his own state, and receive the approval of the Board for such practice.

(d) Such person notify the Board at the completion of practice in this date of the exact date such practice started and ended.

(e) Such person shall remit sixty dollars ($60.00) with his permit form."

11. ARM 40-3.86(6)-S86080 Duplicate or Lost Licenses is proposed to be amended by changing the word "Licenses"in the catch phrase to the word "Certificate".

"40-3.86(6)-S86070 DUPLICATE OR LOST ~~LICENSES~~-CERTIFICATE"

12. ARM 40-3.86(6)-S86090 is proposed to be amended by inserting the following words into subsection three; (new matter underlined, deleted matter interlined)

"(3) The annual renewal fee for registration as a Professional Engineer, or Land Surveyor, shall be twelve

dollars ($12.00) or Professional Engineers and Land Surveyors shall be ~~ten~~ eighteen dollars ~~($10.00)~~ ($18.00).

13. Interested parties may submit their data, views or arguments concerning the proposed adoption and amendments in writing to the Board of Professional Engineers and Land Surveyors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than December 23, 1977.

14. 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 Professional Engineers and Land Surveyors, LaLonde Building, Helena, Montana on or before December 23, 1977.

15. If the Board of Professional Engineers and Land Surveyors receives requests for a public hearing on the proposed adoption and amendments 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 in the Administrative Register.

16. The authority of the Board of Professional Engineers and Land Surveyors to make the proposed adoption and amendments is based on Section 66-2332 R.C.M. 1947.

DATED this 14th day of Nov. 1977.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
WILLIAM TANGEN, PRESIDENT

BY: Timothy J. Meloy
Timothy J. Meloy, Acting Dir.
Department of Professional
and Occupational Licensing

Certified to the Secretary of State 10/14, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF PROFESSIONAL ENGINEERS' AND LAND SURVEYORS

IN THE MATTER OF THE Proposed) Adoption of a new rule relat-) ing to public participation in) Board decision making functions)	NOTICE OF PROPOSED ADOPTION of a new rule relating to public participation in Board decision making functions. No Hearing Contemplated.

TO: ALL INTERESTED PERSONS

1. On December 26, 1977 the Board of Professional Engineers and Land Surveyors proposes to adopt a new rule relating to public participation in Board decision making functions.

2. The rule as proposed, will incorporate as rules of the Board the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and are published in Title 40, Chapter Two (2), Sub-chapter 14, of the Montana Administrative Code.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency the Board has reviewed and approved the department rules and by this Notice seeks to incorporate them as their own.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Professional Engineers and Land Surveyors, LaLonde Building, Helena, Montana, or or before December 23, 1977.

5. If the Board of Professional Engineers and Land Surveyors receives requests for a public hearing on the proposed adoption of a new rule from more than 25 or more 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 of the Board of Professional Engineers and Land Surveyors to make the proposed adoption of a new rule is based on Section 66-2353, R.C.M. 1947.

DATED THIS 14th DAY OF November, 1977.

BOARD OF PROFESSIONAL ENGINEERS
AND LAND SURVEYORS
BILL TANGEN, CHAIRMAN

BY: _____
TIMOTHY J. MELOY
ACTING DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State 11/14, 1977.

STATE OF MONTANA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BEFORE THE BOARD OF WATER WELL CONTRACTORS

IN THE MATTER of the Proposed Amendment of ARM 40-3.106(6)-S10630-Set and Approve Requirements and Standards - General	NOTICE OF PROPOSED AMENDMENT of ARM 40-3.106(6)-S10630-Set and Approve Requirements and Standards-General No Hearing Contemplated

TO: ALL INTERESTED PERSONS

1. On December 26, 1977 the Board of Water Well Contractors proposes to amend ARM 40-3.106(6)-S10630-Set and Approve Requirements and Standards - General.

2. The amendment as proposed will make the following changes in sub-section (1) of the rule; (deleted matter interlined, new matter underlined.)

"Sealing and grouting of the annular space between the casing and the drill hole or the space between the inner and outer casing is necessary to prevent contamination from entering a well. The depth of seal required for protection depends upon the character of the formation, whether porous or impervious, fine or coarse grained, and upon the depth and proximity of pollution sources, such as sink holes, sewage disposal units, abandoned or poorly constructed wells, mine workings, outcrops, etc. The seal shall ~~extend to a minimum of 1 1/2 inches thick.~~ positively fill the annular space on the outside of the casing. There shall be placed a ~~slab two feet long and two feet wide and four inches thick around the casing.~~ seal of cement, bentonite, or puddle clay, immediately under the pitless adaptor.

When no pitless adaptor is used all wells drilled by the rotary method and those wells of less than 40 feet deep drilled by the cable tool method shall be sealed for a minimum depth of ~~20~~ 12 feet below the top of the ground and completed at the surface with a ~~slab of grout or cement 2 feet by 2 feet by 4 inches thick.~~ seal and sloped away from the well."

The reason for the proposed amendment is to make the rule conform to the original intent, which was not accurately stated. Thus, the Board has, by this proposed change, reinforced the seal requirements so as to insure that the well is given completely adequate protection from contamination.

3. Interested parties may submit their data, views or arguments concerning the proposed amendment in writing to the Board of Water Well Contractors, LaLonde Building, Helena, Montana. Written comments in order to be considered must be received no later than December 23, 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 Water Well Contractors, LaLonde Building, Helena, Montana, on or before December 23, 1977.

5. If the Board of Water Well Contractors receives requests for a public hearing on the proposed adoption of a new rule from more than 19 or more 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 of the Board of Water Well Contractors to make the proposed amendment is based on Section 66-2605, R.C.M. 1947.

DATED THIS 14th DAY OF Nov., 1977.

BOARD OF WATER WELL CONTRACTORS
WESLEY LINDSAY
CHAIRMAN

BY: _____
TIMOTHY J. MELOY
ACTING DIRECTOR
DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL LICENSING

Certified to the Secretary of State 11/14, 1977

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of rules relating to Corporation License Tax Regulations.) NOTICE OF PUBLIC HEARING ON AMENDMENT OF RULES PERTAIN-ING TO CORPORATION LICENSE TAX REGULATIONS

TO: All Interested Persons

1. On January 10, 1978, at 3:00 p.m., in the 4th floor Conference Room, of the Mitchell Building, the Department of Revenue proposes to amend the rules 42-2.6(1)-S600, -S610, -S630, -S640 -S650, -S660, -S670, -S675, -S6120, -S6140, -S6150, -S6160, -S6170, -S6180, -S6190, -S6200, -S6210, -S6220, -S6250, -S6260, -S6470, -S6510, -S6520, -S6475, -S6750, -S61610, -S61650.

2. The rules to be amended are to be found on pages 42 through 54.5 of the Montana Administrative Code.

3. The proposed changes provide as follows, (old matter interlined, new matter underlined).

42-2.6(1)-S600 CORPORATION LICENSE TAX ~~(1)--The corporation license tax is an excise tax on the privilege of engaging in business in the state of Montana in a corporate capacity. The tax is measured by net income derived from all sources within the state during the taxable period, which may be either the calendar year or a fiscal year ending on the last day of any month other than December.~~ (1) Every corporation doing (engaging in) business in Montana, except those specifically exempted by law, shall annually pay the state treasurer a corporation license tax, an excise tax imposed as a license fee for the privilege of carrying on business in this state within a corporate capacity. The license tax rate, as amended, shall be computed on the basis of the taxpayer's total net income from all sources derived from or properly attributable to Montana for the taxable year, excepting income specifically exempted by law.

(2) An election for small business corporations is available to those corporations meeting qualifications under MAC 42-2.6(3)-S61610.

(3) See 42-2.6(1)-S660 for a listing of exempt corporations.

42-2.6(1)-S610 ALTERNATIVE TAX (1) ~~Effective with~~ For each taxable ~~periods~~ year beginning on ~~and~~ or after January 1, 1971, a corporation ~~deriving income from sources both within and without Montana and whose only activities in Montana consist of making sales and do not include owning or renting real or tangible personal property, and whose dollar volume of gross sales made in Montana during the~~

~~taxable-period-do-not-exceed-$100,000-may-elect-to-pay-a-tax-of-one-half-of-one-percent-on-the-gross-volume-of-sales made-in-Montana-during-the-taxable-period.--Such-is-in lieu-of-the-tax-based-upon-net-income.~~ otherwise liable for Montana corporation license tax may elect the alternative tax, if it satisfies the following conditions

(a) It has income from sources both in-state and out-of state;

(b) It neither owns or rents property, real or personal, which is in Montana; and

(c) Its only activity in Montana is sales, the gross volume of which does not exceed $100,000 per year.

(2) The alternative tax rate is 1/2 of 1% of the gross volume of sales which the corporation makes in Montana during the taxable year.

(3) The gross volume of sales is determined by MAC 42-2.6(4)-S61980, 42-2.6(4)-S61990, and 42-2.6(4)-S62000.

(4) To elect the alternative tax, a return is filed on Form CLT-4 with corporation tax division of the Department of Revenue. To Form CLT-4 shall be attached an affidavit that the corporation's only activity in Montana is sales and that it neither owns nor rents property, real or personal, which is in Montana.

(5) The alternative tax is in lieu of the corporation license tax.

42-2.6(1)-S630 CORPORATION DEFINED (1) The term "corporation"- includes, but is not limited to, companies, associations, societies, joint stock companies, joint stock associations, common law trusts ~~and~~ or business trust which do business in an organized capacity, whether or not created, organized or existing under and pursuant to ~~state~~ the laws, agreements, or declarations of trust of any state, country or the United States, wherein interest or ownership is evidenced by certificates or other written instruments or where the interest or rights of stockholders, members, associates or beneficiaries are represented by units or shares.

42-2.6(1)-S640 DOING BUSINESS (ENGAGING IN BUSINESS) DEFINED (1) ~~A-corporation-is-"doing-business"-or-"engaging in-business"-in-Montana-when-it-actively-engages-therein-in-any-profit-seeking-activity.--The-fact-that-its-activity-may result-in-a-loss-is-not-material.~~ Doing business (engaging in or carrying on business) in Montana means any transaction through which a corporation actively seeks a financial or pecuniary gain or profit. That a loss may or does result is immaterial.

42-2.6(1)-S650 AMOUNT OF TAX CREDITS ALLOWED ~~(1)--Every corporation engaged in business in Montana must annually pay the statutory percentage of its total net income received from all sources within the state during the preceding year.--The tax may not be less than the specified minimum, which must be paid even though a net loss was sustained during the reporting period.--However, no tax is assessable against a corporation which was not engaged in business within the state during the reporting period.~~

~~(2)~~ (1) A direct credit against the corporation license tax liability is allowed for ~~"public contractor's gross receipts~~ tax~~"~~ paid pursuant to the provisions of Section 84-3505(5), R.C.M. 1947, the public contractor's gross receipts license fee. The credit is allowed ~~with respect to the corporation's Montana Corporation License Tax liability~~ against liability determined for the taxable ~~period~~ year ~~within~~ in which ~~the~~ net income from contracts subject to the gross receipts tax is reported. If the corporation reports its income from contracts on a percentage of completion basis, the credit must be allocated accordingly.

(2) The amount of credit allowable is ~~the net public contractor's gross receipts tax (after personal property tax credit) actually imposed against and paid by the corporation but not in excess of its Montana Corporation License Tax liability.~~ the gross receipts license fee minus any personal property tax credit, the remainder of which is to be subtracted from the license tax liability of the corporation. However, the tax liability cannot be reduced by this method beyond zero; nor is the corporation entitled to a refund for any credit which cannot be applied against the license tax liability; nor can any part of the credit be carried over or carried back to other tax years. ~~The~~ This credit is allowed ~~without regard to the fact that~~ even though the public contractor's gross receipts license ~~tax~~ fee is an allowed deduction in determin~~ing~~ation of net income subject to the Montana ~~Corporation License Tax~~ corporation license tax. ~~In the event the public contractor's gross receipts tax is paid by a joint venture or a partnership, the members thereof shall be entitled to the credit for the tax as their respective interests appear.~~

(3) If ~~the tax is paid by~~ a corporation ~~electing partnership type~~ which elects tax treatment ~~under~~ pursuant to Section 84-1501.2, R.C.M. 1947, pays the public contractor's gross receipts license fee, the credit resulting pursuant to this rule is passed through to its shareholders according to their respective interest in ~~the corporation's~~ issued and outstanding common stock ~~issued and outstanding~~.

(4) For provisions of the corporation license tax credit see MAC 42-2.6(6)-S62050, et seq.

42-2.6(1)-S660 EXEMPT ORGANIZATIONS (1) ~~The following organizations are exempt from the Corporation License Tax, provided, however,~~ Income of organizations listed below shall not be taxed, unless that income is derived from or attributable to business activities unrelated to the exempt purposes ~~of any of these organizations shall be subject to tax.~~ of the organization. See MAC 42-2.6(1)-S675 for the definition and explanation of unrelated income of exempt corporations:

(a) Labor, agricultural or horticultural organizations. These types of organizations contemplated by Section 84-1501, R.C.M. 1947, as entitled to exemption from the corporation license tax are those which:

(i) have no net income inuring to the benefit of any individual member;

(ii) are educational or instructive in character; and

(iii) have as their objects the betterment of the conditions of those engaged in such pursuits, the improvement of the grade of their products and the development of a higher degree of efficiency in their respective occupations.

(b) Fraternal beneficiary societies, orders or associations operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sickness, accident or other benefits to the members of such societies, orders or associations or their dependents.

(i) A society is operating under the lodge system if it carries on its activities under a form of organization that comprises local branches, chartered by a parent organization, and largely self-governing, called lodges, chapters or the like.

(c) Cemetery companies owned and operated exclusively for the benefit of ~~their~~ members, lot owners who hold such lots for bona fide burial or cremation purposes and not for purposes of resale; and which are not operated for profit.

(d) Corporations or associations organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual. Provisions must be made in the articles of incorporation for the distribution of assets upon dissolution to another exempt corporation of like nature.

(i) A corporation organized exclusively (i.e., primarily) for religious purposes is one engaged in the espousal, propagation, or adherence to a system of faith or worship, but does not include organizations whose primary purpose is to promote, aid, encourage, or finance an exempt religious organization.

(ii) Corporations organized and operated exclusively for charitable purposes comprise, in general, organizations for the the relief of the poor. The fact that a corporation established for the relief of indigent persons may receive

voluntary contributions from the person intended to be relieved will not necessarily deprive it of exemption.

(iii) Scientific organizations organized and operated in the public interest. The term "scientific" includes carrying on scientific research in the public interest.

(aa) Scientific research does not include activities of a type ordinarily carried on as an incident to commerical or industrial operations.

(ab) Scientific research will be regarded as carried on in the public interest --

(aaa) If the results of such research are made available to the public on a nondiscriminatory basis;

(aab) If such research is performed for the United States, or for a state or political subdivision thereof; or

(aac) If such research is directed toward benefiting the public.

(ac) The fact that any organization carries on research which is not in furtherance of an exempt purpose will not preclude such organization from meeting the requirements of Section 84-1501, R.C.M. 1947, so long as the organization is not operated for the primary purpose of carrying on such research.

(iv) A corporation organized exclusively (i.e., primarily) for educational purposes is one which offers a regular course of instruction in an institution established for that purpose and which maintains a trained staff. The subject matter of the academic course should be designed to instruct the student in one of the recognized branches of art, science, or business and lead to degrees, diplomas or certificates upon completion of the course of study which are accepted as evidence of preparation for the pursuit of profession, business or vocation; or, under exceptional circumstances, an organization whose sole purpose is to instruct the public, or an association whose primary purpose is to present lectures or artistic performances in areas useful to the individual and beneficial to the community, even though an association of either class has incidental amusement features, and which do not have as primary object the propagandizing of partisan ideas or effecting a change in the laws through legislation.

(v) For a hospital to claim tax exemption as a charitable corporation, provision must be made in the articles of incorporation that admission to the hospital must not be refused to any prospective patient on account of race, creed, color, or ability to pay for hospitalization.

(vi) Money contributed by members of an organization to a common fund to be applied to the relief of the particular members of the organization or their families when in sickness, unemployed, in want, or under other disability is not a charitable fund.

(e) Business leagues, chambers of commerce, or boards of trade not organized for profit, and not part of the net income of which inures to the benefit of any private stockholder or any individual.

(i) A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber or board of trade. Thus its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purposes is to engage in a regular business of a kind ordinarily carried on for profit even though the business is conducted on a cooperative basis or produces only sufficient income to be self-sustaining, is not a business league. An association engaged in furnishing information to prospective investors, to enable them to make sound investments, is not a business league, since its activities do not further any common business interest, even though all of its income is devoted to the purposes stated.

(f) Civic leagues or organizations not organized for profit, but operated exclusively for the promotion of social welfare.

(i) Civic leagues entitled to exemption under Section 84-1501, R.C.M. 1947, comprise those not organized for profit but operated exclusively for purposes beneficial to the community as a whole, and in general, included organizations engaged in promoting the welfare of mankind. Not included are those organizations which are operated primarily to provide benefits, services or facilities to their members or patrons or to a particular group or class of citizens, even though the end result of their activities may be incidentally beneficial to the public generally.

(g) Clubs organized and operated exclusively for pleasure, recreation and other non-profit~~able~~ purposes, no part of the net income of which inures to the benefit of any private stockholder or any member.

(i) The exemption granted by Section 84-1501, R.C.M.1947, applies to practically all social and recreational clubs which are supported by membership fees, dues and assessments. If a club engages for profit in business in agriculture or horticulture, or in the sale of real estate, timber, etc., or in the resort business, such club is not organized exclusively for pleasure, recreation, or social purposes. Generally, an incidental sale of property will not deprive the club of the exemption.

(iii) Where the activities of a social club in making its facilities available to the general public are of such

magnitude and recurrence as to constitute engaging in business, the club will be deemed not to be operated exclusively for pleasure, recreation or other non-profitable purposes. This does not mean that all dealings with the general public are necessarily precluded. The general public may, on occasion, be permitted to participate in a club affair, provided such participation is incidental to and relevant to the club's purpose and there is no purpose of profit or economic benefit to the members manifested in the character or manner of conduct of the occasion.

(h) Farmers' or other mutual hail, cyclone, or fire insurance companies, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations of a purely local character, the income of which consists solely of assessments, dues and fees collected from member for the sole purpose of meeting expenses. At least 85% of the income of such organizations shall consist of amounts collected from members for the sole purpose of meeting losses and expenses.

(i) Cooperative associations or corporations engaged in the business of operating a rural electrification systems for the transmission or distribution of electrical energy on a cooperative basis.

(j) Corporations or associations organized for the exclusive purpose of holding title to property, collecting income thereform, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the Corporation License Tax.

(k) State-chartered credit unions pursuant to Section 14-672, R.C.M. 1947, as amended.

(2) In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

42-2.6(1)-S670 ~~ESTABLISHMENT OF EXEMPTION~~ DEFINITION AND ESTABLISHMENT OF EXEMPTION (1) A corporation is not exempt from ~~this~~ the corporation license tax merely because it is not organized and operated for profit. A corporation seeking the benefits of exemption must prove strict compliance with all statutory conditions ~~authorizing and classification claimed. In~~ in order to establish its exemption and thus be relieved of the duty of filing returns and paying ~~the~~ taxes. ~~each~~ Each organization claiming exemption must file an affidavit with the Department ~~of Revenue an affidavit~~ showing:

(a) The character of the organization~~,~~;

(b) The purposes for which it was organized~~,~~;

(c) Its actual activities~~,~~;

(d) The sourses and the disposition of its income~~, and~~,

(e) Whether or not any of its income may inure to the benefit of any private shareholder or any other individual~~,~~;

(f) And in general, other facts relating to its operations which affect its right to exemption. Accompanying the affidavit shall be copies of: ~~A copy of~~

(i) the articles of association or incorporation~~,~~;

(ii) ~~a copy of~~ the bylaws of the organization;

(iii) and ~~copies of~~ the latest financial statements showing the:

(aa) assets,

(bb) liabilities, and

(cc) receipts and disbursements ~~must be submitted with the affidavit~~.

These articles should clearly indicate the disposition to be made of surpluses in the event of termination. In addition, if the Internal Revenue Service has granted the organization exemption from the Federal Income Tax, a certified copy of the exemption certificate or letter shall also be filed with the department.

(2) When an organziation has established its right to exemption, it need not thereafter voluntarily make a return or any further showing with respect to its status, unless it changes the character of its organization and operations or the purposee for which it was organized, or unless the department requests the filing of returns or the furnishing of other information. Copies of supplemental or amended articles of incorporation and amendments to by-laws should be promptly forwarded to the department for study as to effect upon exemption. The department may from time to time require that the corporation file an affidavit revealing the corporation's current status.

42-2.6(1)-S675 TAX ON UNRELATED BUSINESS INCOME OF EXEMPT ORGANIZATIONS (1) Every tax-exempt corporation having gross income of $1,000 or more for the year from an unrelated trade or business must file a tax return (Form CLT-4) and pay any tax due thereon.

(2) An organization which is otherwise exempt under Section 84-1501, R.C.M. 1947, shall be subject to tax on business taxable income from any unrelated trade or business if:

(a) The activity is a trade or business;

(b) The trade or business is regularly carried on; and

(c) The trade or business is not substantially related to the organization's exempt purpose except for the fact that the organization has a need for the profits derived from this activity.

(3) The term "trade or business" generally includes any activity carried on for the production of income from the sale of goods or performance of services.

(4) The term "regularly carried on" includes trade or business activities that show a frequency and continuity, and

are pursued in a manner similar to comparable commerical activities of nonexempt organizations.

(6) The term "unrelated taxable business income" means the gross income derived from any unrelated trade or business regularly carried on by the exempt organization, less the deductions directly connected with carrying on such trade or business. In order to qualify as allowable deductions in computing unrelated business taxable income, expenses, depreciation, and similar items must qualify as allowable income tax deductions, and also must be directly connected with carrying on an unrelated trade or business.

42-2.6(1)-S6120 DEDUCTIONS FROM GROSS INCOME (1) IN computing net income, all deductions permitted by ~~the Internal Revenue Code of 1954,~~ Section 84-1502, R.C.M. 1947, as amended, may be taken from gross income~~, except that specific deductions provided for by Montana law, see rules~~ in accordance with MAC 42-2.6(1)-S6130 through 42-2.6(1)-S6260~~, must be taken in accordance therewith~~.

42-2.6(1)-S6140 INTANGIBLE DRILLING COSTS (1) ~~Subject to the restrictions provided in the Federal Income Tax laws and Regulations, an operator of an oil or gas well may charge intangible drilling and development costs to capital or to expense in accordance with~~ All elections made under the provisions of the internal revenue code in effect for the taxable year with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for ~~Federal income Tax~~ federal income tax purposes.

42-2.6(1)-S6150 DIVIDENDS (INTEREST) ON DEPOSITS (1) In the case of mutual savings banks, cooperative banks, domestic building and loan associations and other savings institutions chartered and supervised as savings and loan or similar associations under ~~Federal or State~~ federal or state law, there shall be allowed as deductions in computing taxable income, amounts paid to, or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts, ~~provided~~ if such amounts paid or credited are withdrawable on demand subject only to customary notice of intention to withdraw.

(2) Any deduction for interest paid upon deposits or withdrawable shares in building and loan associations, savings and loan associations and mutual savings banks may not include amounts paid on nonwithdrawable shares or amounts credited to undivided profits, surplus and/or contingent funds.

(3) So-called interest on preferred stock which is in reality a dividend thereon, cannot be deducted in computing net income.

42-2.6(1)-S6160 BUSINESS EXPENSES (1) All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of the business and properties, including a reasonable allowance for salaries and other compensation for personal services actually rendered (subject to the limitation set forth in MAC 42-2.6(1)-S6260) and rentals or other payments required to be made as a condition to the continued use and possession of property to which the corporation is not taking title or in which it has no equity shall be allowed.

(2) To be deductible as an "ordinary and necessary expense" within the meaning of this subsection, ~~a payment~~ the expenses must have a direct relation to the business of the corporation~~, it~~. It must be shown that it is necessary to the taxpayer's business, that it is ordinary with reference to the relation of the expense to the business, and that it is made with the expectation of a financial return or its equivalent commensurate with the amount of payment.

42-2.6(1)-S6170 LOSSES (1) All losses actually sustained and charged off within the year and not compensated for by insurance or otherwise shall be allowed as deductions. A loss is ~~must have been~~ sustained within the year in the sense that the full measure of the loss was ascertained within the year. The determination of the year in which a loss is sustained ~~must be~~ is made on the basis of the facts as they exist at the close of the reporting period. No deduction is allowed ~~for a loss~~ which is not bona fide, or for anticipated or contingent losses or for any additions to reserves for such losses.

42-2.6(1)-S6180 NET OPERATING LOSS DEDUCTION ~~(1)--The net operating loss deduction is allowed in accordance with the Internal Revenue Code of 1954, as amended, for taxable periods ending on or before December 31, 1970.--For taxable periods which begin on and after January 1, 1971, the net operating loss deduction is allowed as below provided.--(2)~~ (1) ~~The term "net~~ Net operating loss deduction" means the aggregate of the net operating loss carryovers plus the net operating loss carrybacks applicable to the taxable period. ~~The term "net~~ Net operating loss" means the excess of deductions over the gross income for a particular taxable period with the following modifications:

(a) No deduction is allowed for any net operating loss carryover or carryback from any another year.

(b) Any excess of percentage depletion over cost depletion must shall be added back to net income.

~~(3)~~ (2) For any taxable year beginning on or after January 1, A a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding

period, then to the first preceding period, and then forward to the next five succeeding taxable periods in the order of their occurrence. ~~However, since the net operating loss deduction is allowed only for taxable periods beginning on and after January 1, 1971, a net operating loss sustained for the year 1971 can not be carried back but must be carried forward to 1972 and subsequent taxable years. By the same token, a 1972 net operating loss must be carried back to 1971 and then forward to 1973 and subsequent years.~~ For any taxable year ending on or after January 1, 1976, a net operating loss is carried back to the third preceding taxable period from which it was incurred. Any balance remaining must be carried to the second preceding period, then to the first preceding period, and then forward to the next seven succeeding taxable periods in the order of their occurrence.

~~(4)~~ (3) When a net operating loss exceeds the net income of the year to which it is carried, the net income for such year ~~must be~~ is adjusted by making the following modifications to determine the unused portion of the net operating loss to be carried forward:

(a) No deduction is allowed for any net operating loss carryover or carryback from any another year.

(b) Any excess of percentage depletion over cost depletion ~~must be~~ is ~~eliminated~~ added back to net income. ~~The taxable~~ Taxable income as modified by these adjustments shall not be ~~considered to be~~ less than zero. The amount of the net operating loss which may be carried forward is the excess of the loss over the modified net income.

~~(5)~~ (4) Every corporation claiming a net operating loss deduction for any taxable period must file a schedule with its return for such period ~~a schedule~~ showing in detail the computation of the net operating loss deduction claimed for the period. If a corporation has a net operating loss, which when carried back to a prior taxable period results in an overpayment of tax for such taxable period, a refund may be obtained by filing an amended return for that period claiming the net operating loss deduction and recomputing the tax liability accordingly. Interest does not accrue on overpayments of tax resulting from a net operating loss carryback or carryover. Claims for refund of tax resulting from a net operating loss carryback must be filed within five years from the due date of the return for the year to which the loss is carried or within one year from the date of the overpayment, whichever period expires later.

~~(6)~~ (5) In the case of a merger of corporations, the surviving corporation may not claim a net operating loss deduction for net operating losses incurred by any of the merged corporations prior to the date of merger. Similarly, in the case of a consolidation of corporations, the new

corporate entity may not claim a net operating loss deduction for net operationg losses incurred by the dissolved corporations prior to the date of consolidation.

(6) A net operating loss deducton is allowed only for losses attributable to the business carried on within this state.

42-2.6(1)-S6190 DEPRECIATION AND OBSOLESCENCE (1) A reasonable allowance for the exhaustion, wear and tear, and obsolescence of property arising out of its use or employment in the trade or business is allowed as a depreciation deduction. ~~The term "reasonable~~ Reasonable allowance" as used in the preceding sentence includes the 20% additional first-year depreciation allowance provided for in Section 179, of the Internal Revenue Code of 1954, as amended. The basis upon which depreciation is to be computed shall be the adjusted basis for determining gain on a sale or other disposition as provided in MAC 42-2.6(1)-S6470. However, no asset shall be depreciated below its reasonable salvage value. In computing the allowance for depreciation use of the rates and methods prescribed or permitted to be used for ~~Federal Income Tax~~ federal income tax purposes ~~will~~ are considered correct in the absence of evidence that the use of such rates or methods do not result in a reasonable allowance in a particular case.

42-2.6(1)-S6200 DEPLETION ~~(1) In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion may be claimed. With the exception of property with respect to which an election to claim percentage depletion has been exercised, the capital sum recoverable through depletion allowances is the adjusted basis for determining gain on a sale or other disposition as specified in MAC 42-2.6(1)-S6470.~~

(1) A reasonable, annual depletion allowance shall be given to corporations engaged in business activities directly involved with the extraction or production of natural resources, both renewable and non-renewable, such as timber, natural gas, mineral and other deposits. The rate of allowance, ~~for depletion~~ the kind of resources for which an allowance would be granted, and any other aspect of taking such allowance ~~shall be~~ is determined according to the provisions of the Internal Revenue Code of 1954, as amended, ~~relating thereto~~ in effect for the ~~reporting period~~ taxable year in which the allowance is claimed.

42-2.6(1)-S6210 INTEREST (1) Interest is deductible if paid within the year on indebtedness incurred in the operation of the business from which the income subject to this tax is derived. However, no deduction is ~~allowable~~ allowed for interest paid on an indebtedness incurred for the

purchase, maintenance or improvement of property or for the conduct of a business, if the income derived from such property or business is not subject to the Corporation License Tax.

42-2.6(1)-S6220 INTEREST INCOME FROM OBLIGATIONS OF THE STATE OF MONTANA AND POLITICAL SUBDIVISIONS THEREOF (1) Effective for taxable periods beginning on and after December 31, 1971, to the extent interest income received from obligations issued by the state of Montana or any political subdivision or municipality thereof has been included in gross income for the taxable period, the amount of such interest income is an allowable deduction in determining taxable income for that taxable period.

(2) For purposes of administration, the deduction allowed for interest income from obligations of the state, its political subdivisions, and municipalities shall be treated as an exclusion from gross income.

42-2.6(1)-S6250 TAXES DEDUCTIBLE ~~(1)--Taxes-paid within-the-year,-with-the-exception-of-the-following-taxes specifically-excluded-as-deductions-by-statute:~~

~~(a)--Montana-Corporation-License-Tax;~~

~~(b)--Taxes-assessed-against-local-benefits-of-a-kind tending-to-increase-the-value-of-the-property-assessed;~~

~~(c)--Taxes-on-or-according-to-or-measured-by-net-income or-profits,-imposed-by-authority-of-the-Government-of-the United-States;~~

~~(2)--With-the-exception-of-the-Contractor's-Gross-Receipts Tax,-taxes-may-be-claimed-only-as-deductions-in-determining-net income-and-cannot-be-converted-into-a-credit-against-the-Corporation-License-Tax.~~ (See MAC 42-2.6(1)-S650 for details. ~~concerning-the-credit-allowed-with-respect-to-the-Contractor's-Gross-Receipts-Tax.~~ (1) Except as specified in Section 84-1502(6), R.C.M. 1947, all taxes allocable to this state which are imposed on the taxpayer claiming the deduction are deductible from gross income for the year when paid.

42-2.6(1)-S6260 ITEMS NOT DEDUCTIBLE (1) In computing net income, deductions may be claimed only for items specifically recognized by ~~the-law-as-deductible~~ Section 84-1502, R.C.M. 1947, as amended.

(2) The following are examples of the more common items not allowed as deductions:

(a) Capital expenditures ~~of-any-nature~~. For example, expenditures for buildings, permanent improvements or betterments made to increase the value of any property or estate; or expenditures for restoring property or making good the depreciation thereof for which an allowance is or has been made. ~~are-not-deductible.~~

~~(b)--Interest-paid-on-an-indebtedness-created-for-the purchase,-maintenance-or-improvements-of-property-or-for-the~~

~~conduct of busines, if the income from such property or business is not subject to tax under the Corporation License Tax Act.~~

~~(c)~~ (b) Insurance premiums paid on any policy covering life of any officer or employee where the taxpayer is directly or indirectly a beneficiary.

(c) Contributions or gifts.

(d) ~~Montana Corporation License Tax.~~ Salaries paid which are subject to the Montana state income tax and upon which said tax has not been paid.

~~(e) Taxes on or according to or measured by net income or profits, imposed by authority of the Government of the United States.~~

~~(f) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.~~

(g) Salaries paid which are subject to the Montana State State Income Tax and upon which said tax has not been paid.

(e) Interest paid on debt incurred for the purchase, maintenance or improvement of property or for the conduct of business, the income of which is not subject to tax under Montana law. If such debt can be specifically identified, the interest paid thereon is non-deductible in whole. If such debt cannot be specifically identified, the ratio of average net assets employed in the production of non-taxable income to the average total net assets is multiplied by the total interest expense for the taxable year to determine the portion of total interest expense for the taxable year which is non-deductible.

(ii) if a corporation subject to the corporation license tax has such property or conducts business operations which give rise to non-taxable income as a part of the business operations and cannot specifically identify the indebtedness created, the portion of interest paid which is reasonably attributable to the exempt property or business is non-deductible. In such case, the ratio of the average net assets employed in the production of non-taxable income to the average total net assets shall be applied to total interest paid and that portion of total interest shall be non-deductible.

(f) Interest paid by the taxpayer for someone else. Likewise, interest not paid pursuant to a valid, bona fide obligation incurred in a transaction at arm's length with creditor.

(g) Any fine or penalty, including interest thereon, paid to a government for the violation of a law.

(h) Montana corporation license tax. If a taxpayer is subject to the provisions of sub-chapter 4 herein, then the Montana corporation license add-back will occur after computation of income apportioned to Montana.

computation of income apportioned to Montana.

(i) income taxes paid to the United States, another state or a foreign country.

(ii) interest to be deductible must be paid on debt of the taxpayer claiming the deduction; it is not deductible if paid by the taxpayer for another. Likewise, to be deductible, interest shall be paid pursuant to a valid, bona fide obligation incurred in a transaction at arm's length with the creditor.

(iii) no deduction is allowed for any interest on a fine or penalty paid to a government for the violation of any law.

(iv) interest which is calculated for cost accounting or other purposes on capital or surplus invested in the business and which does not represent a charge arising under an interest-bearing obligation is not an allowable deduction.

42-2.6(1)-S6470 BASIS FOR DISPOSITION OF PROPERTY (1) The basis for determining gain or loss from the sale or other disposition of property shall be the basis prescribed by the provisions of the Internal Revenue Code and federal regulations in effect during the reporting period, except as such provisions therein as are inconsistent with the express provisions of these regulations or other Montana law ~~the Corporate License Tax Act. In applying the federal rules pertaining to basis, the effective date of this act shall be substituted for the effective date of the Federal Income Tax Act.~~

42-2.6(1)-S6510 MEANING OF NET INCOME (1) The term "net income" means the gross income of the taxpayer less the ~~allowable~~ deductions allowed by Section 84-1502, R.C.M. 1947, as contained in MAC 42-2.6(1)-S6120 through 42-2.6(1)-S6280.

42-2.6(1)-S6520 GROSS INCOME (1) The term "gross income" means all income ~~from sources within Montana~~ recognized ~~as~~ in determining the taxpayer's gross income to the ~~corporation in determining Federal income Tax liability~~ for federal income tax purposes, plus or minus the following modifications:

(a) Gross income includes interest income exempt from Federal Income Tax.

(b) Effective for taxable years beginning on and after January 1, 1971, gross income does not include interest income derived from obligations of the United States.

(2) Although State law does not specifically provide for deduction of interest income from obligations of the United States, federal law requires that such interest income

be treated in the same manner as interest income from state obligations. Therefore, interest income from obligations of the United States must also be allowed as a deduction from gross income to the extent included therein effective with taxable years beginning on and after January 1, 1971.

42-2.6(1)-S6745 CLOSING AGREEMENTS WITH DIRECTOR At the mutual discretion of the Department and the taxpayer, a written agreement may be executed to permanently enjoin the department and the taxpayer from any further action or claim with respect to the taxable years and matters stipulated to in the agreement. Any matter not included in such an agreement would remain subject to action, adjustment, assessment or claim until such time as the statute of limitations expires: for example, Internal Revenue Service audit adjustments (RAR's) which are received subsequent to the closing agreement would remain subject to assessment or refund claim.

42-2.6(1)-S6750 OVERPAYMENT OF TAX -- REFUNDS AND CREDITS -- ADMINISTRATIVE PROCEDURES (1) If the Department determines from an examination of a return, or upon a claim for refund, or upon final judgment of a court that the amount of tax, penalty or interest due for a particular year is less than the amount paid, the amount of the overpayment will be credited against any tax, penalty or interest then due from the taxpayer and the balance will be refunded to said taxpayer or to its successor through reorganization, merger or consolidation, or to its shareholders upon dissolution.

(2) If the Department disallows a claim for refund, in whole or in part, it will notify the taxpayer accordingly, stating the grounds for its actions. If the taxpayer does not agree with the Department's action, it may, within thirty days from the date the notice was mailed, appeal in writing to the ~~Board of Equalization~~ state tax appeal board for reconsideration of the action taken with respect to the claim for refund. Such appeal must state the grounds upon which it is based, and the taxpayer may request an oral hearing before the ~~Board of Equalization~~ state tax appeal board and the opportunity to present additional evidence bearing on its tax liability. If a written appeal is not made by the taxpayer, the Department's action in denying the claim for refund in whole or in part becomes final upon the expiration of the 30 day period. If, however, the taxpayer does appeal within the specified 30 day period, the ~~Board of Equalization~~ state tax appeal board ~~must reconsider its action. If the taxpayer has requested a hearing, it will be held at a mutually agreeable time in the Board's office in the Mitchell, Helena, Montana,~~ shall grant the taxpayer an oral hearing. The hearing will be at the offices of the state tax appeal board, unless the members of the board agree to have the have

the hearing elsewhere. After consideration of the appeal, the ~~Board of Equalization~~ state tax appeal board will mail notice to the taxpayer of its decision. The ~~Board's~~ board's action on the appeal is final upon mailing notice of its decision.

42-2.6(3)-S61610 DEFINITION OF AND ELECTION BY SMALL BUSINESS CORPORATION (1) A ~~Small~~ small business corporation, ~~as defined by Section 84-1501.1, R.C.M. 1947,~~ means is a corporation doing business in Montana that ~~which~~ does not have:

(a) ~~more than 10~~ 11 or more shareholders (see subsection (2) for rules affecting the number of shareholders);

(b) ~~as~~ a shareholder ~~a person~~ (other than an estate and other than a trust as described in Section 84-1501.1(e), R.C.M. 1947) who is not ~~an individual~~ a natural person;

(c) a nonresident alien as a shareholder; and

(d) more than one class of stock.

(2) When determining the number of shareholders for subsection (1)(a), the following rules apply:

(a) Stock is treated as owned by one shareholder when it is owned by a husband and wife under the provisions of section 84-1501.1(c), R.C.M. 1947.

(b) In two situations, there may be more than 10 shareholders, but in no event shall there be more than 15 shareholders, if the corporation has taken the small business corporation election for at least 5 consecutive taxable years immediately preceding the year in question; or, if the number of shareholders exceeds 10 solely because the additional shareholders acquired their stock through inheritance. However, in all situations the number of shareholders may be 11 or more only if an election is already in effect.

~~(2)~~(3) A ~~qualified~~ small business corporation may elect not to be subject to the ~~tax imposed by Section 84-1501.2~~, R.C.M. 1947, as amended, provided, the stockholders of such corporation include the corporate net income or loss in their adjusted gross income as such is defined in Section 84-4905, R.C.M. 1947, as amended. An election is effective for the entire taxable year of the corporation for which it is made and for all succeeding taxable years, unless it is terminated with respect to any taxable year. The election has a continuing effect and it does not need to be renewed annually.

~~(3)~~(4) "Electing small business corporation" means, ~~with respect to any taxable year,~~ a small business corporation which has made the election under Section 84-1501.2, R.C.M. 1947, which election has not been terminated. ~~and such~~ Such election is in effect ~~for~~ beginning with the taxable year in ~~question~~ which it is made. A corporation is not an electing small business corporation as to a particular taxable year if, at any time during that taxable year, it ~~was~~ is ineligible to make ~~the~~ such an election or if a termination is effective ~~as to such~~ for that taxable year.

42-2.6(3)-S61650 NEW SHAREHOLDERS (1) If a person becomes a shareholder of an electing small business corporation after the first day of the taxable year for which the election is effective, or after the day on which the election is made (if such day is later than the first day of the taxable year) the statement of consent of such shareholder shall be filed with the department within the period of ~~30~~ 60 days, ~~beginning with~~ which period shall include the day on which the person became a new shareholder.

(2) If the new shareholder is an estate, the ~~thirty-day~~ sixty-day period shall not begin until the ~~personal representative has been appointed, but in no event shall such period being later than 30 days following the close of the corporation's taxable year in which the estate became a shareholder~~ earlier of the following:

(a) the day on which the executor or administrator of the estate qualifies; or

(b) the last day of the taxable year of the corporation in which the decedent died.

42-2.6(3)-S61660 FAILURE OF NEW SHAREHOLDER TO CONSENT (1) The election shall terminate if any person who was not a shareholder on the first day of the first taxable year for which the elections is effective, or on the day on which the election is made (if such day is later than the first day of the taxable year), becomes a shareholder and ~~does not~~ affirmatively refuses to file a statement of consent to the election within the time prescribed in MAC 42-2.6(3)-S61650. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder and for all succeeding years. In the event of a termination under this section, the corporation shall notify the department within 30 days from the date the termination occurred.

4. The purpose of these regulations is to clarify and implement law governing corporation license tax, Title 84, Chapter 15, R.C.M. 1947, pursuant to the power granted the Department of Revenue in Section 84-1508, R.C.M. 1947, and to comply with Section 82-4204(6), R.C.M. 1947, of the Administrative Procedure Act which requires review of agency rules.

5. Interested parties may submit their data, views or arguments concerning the proposed rules in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Mitchell Building, Helena, Montana 59601. Written Comments in order to be considered must be received not later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and to conduct the hearing.

7. The authority of the Department of Revenue to amend the rules is based on Section 84-1508, R.C.M. 1947.

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the proposed repeal of MAC 42-2.6(1) -S620 -S6460, -6480, -S6490 and -S6500 relating to Corporation Tax.	))))	NOTICE OF PUBLIC HEARING ON THE PROPOSED REPEAL OF MAC 42-2.6(1)-S620, -S6460 -S6480, -6490 and S6500

TO: All interested person

1. On January 10, 1978, at 3:30 p.m., in the 4th floor Conference Room, of the Mitchell Building, the Department of Revenue proposes to repeal rules 42-2.6(1)-S620, -S6460, -S6450, -S6460, -S6470, -S6480 and -S6500 relating to Corporation Tax. The rules proposed for repeal duplicate other permanent rules.

2. The rules under consideration for repeal are found on pages 42-31, 42-41 and 42-42 of the Montana Administrative Code.

4. The purpose of repealing this regulation is that it makes provisions similar to those in MAC 42-2.6(1)-S600.

5. MAC 42-2.6(1)-S620 has been replaced by new language, as proposed, for MAC 42-2.6(1)-S600. MAC 42-2.6(1)-S6460, is now out-of-date because §84-1503 was amended in 1973. MAC 42-2.6(1)-S6480, Accounting Periods; MAC 42-2.6(1)-S4690, Notice of Election of Fiscal Year and MAC 42-2.6(1)-S6500, Change of Accounting Period, each of these last three Sections are considered out-of-date and have have been superseded by the amendment of Section 84-1504(1), R.C.M. 1947.

6. Interested parties may submit their data, views or arguments concerning the proposed repeal in writing to R. Bruce McGinnis, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601. Written comments in order to be considered must be received not later than January 10, 1978.

7. Mr. Ross Cannon has been designated to preside over and to conduct the hearing.

8. The authority of the Department of Revenue to make the proposed repeal is based on §§84-708.1 and 84-4930, R.C.M. 1947.

RAYMON E. DORE
Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of Rule 42-2.10(2)-S10040, -S10041, -S10043, S10044, -S10045, -S10046, -S10047, relating to the deferred payment.	))))))	NOTICE OF PROPOSED ADOPTION OF REGULATIONS CONCERNING INHERITANCE TAX - DEFERRED PAYMENT. NOTICE OF PUBLIC HEARING.

TO: All Interested Persons:

1. On January 10, 1978, 17, 1977, at 9:00 a.m., in the 4th floor Conference Room of the Mitchell Building, the Department of Revenue proposes to adopt the rules 42-2.10(2)-S10040, -S10041, -S10043, -S10044, -S10045, -S10046 and -S10047.

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

3. The proposed changes provide as follows, (old matter interlined, new matter underlined).

42.2.10(2)-S10040 WHEN TAX DUE - TAX LIEN - LIABILITY (1) All taxes imposed by this chapter are due and payable at the time of death of the decedent, unless otherwise provided. Every tax so imposed shall remain a lien upon the property transferred for a period of ten (10) years from the date of death of the decedent. If the ten year period elapses and the tax remains uncollected, the lien on the property is extinguished by law,. ~~but the tax liability remains.~~

(2) If payment of taxes is deferred pursuant to MAC 42-2.10(2)-S10041 et seq., the 10 year lien on transferred property shall be extended for however long the tax was deferred.

42-2.10(2)-S10041 DEFERRAL OF TAX (1) The department of revenue has authority to grant deferral of payment of any tax levied under Section 91-4401 through 91-4406. Payment may be deferred only if the department gives its permission and only if the conditions as hereinafter established are met.

42-2.10(2)-S10043 FORM FOR REQUEST Request for deferral of payment of tax, allowed by MAC 42-2.10(2)-S10041, must be made on the form prescribed by the department of revenue. Until that form is available, request must be made by letter from the beneficiary, beneficiaries, or personal representative to the administrator of the inheritance tax division of the department of revenue.

42-2.10(2)-S10044 TIME FOR MAKING REQUEST Request must be made within 18 months after either the date of death of the decedent or the date property was transferred. The

day of death or the day of transfer is not included in the 18 month period. If the period ends on a weekend or a state holiday, it shall be extended through the next full working day for the state.

42-2.10(2)-S10045 DEFERRAL NOT A RIGHT The department of revenue has discretion as to which requests it will allow. The taxpayer is not entitled to deferral unless permission is granted by the department. The department is not required to give its permission.

42-2.10(2)-S10046 LENGTH OF DEFERRAL: CONDITIONS Payment be deferred for not longer than 5 years. For deferrals of 5 years or less, the department of revenue may require any conditions and terms which, in its estimation, would more nearly assure payment of the taxes. The department is not required to show that the conditions it has required are better assurance of payment than other conditions may have been. In determining what conditions it will require, the department shall consider pertinent factors, such as the following: value of the property, nature of the life estate with remainder; ability of the beneficiary to pay financial background of the beneficiary or beneficiaries; any liens on the property; will contests, quiet title actions, contract actions, and any other litigation, judicial or quasi-judicial which might affect title of value of the property; residence of the beneficiary or beneficiaries, whether in-state our out-of-state; age and health of the beneficiary or beneficiaries; age of the life tenant; actuarial date of actual possession and enjoyment; nature of assets, including whether stock and bonds can be sold without loss and the current market value of minerals and precious stones, or anything else which might affect liquidation of assets; present use of capital assets; expected life and depreciation of asset; or anything else which might beneficially or detrimentally affect the life, value, utilization, inhrent worth, or ability of the asset to contribute to payment of the tax.

42-2.10(2)-S10047 INTEREST OF DEFERRED PAYMENT If permission to defer payment of tax has been granted, and the tax has been determined as of the date of death of the decedent, the interest rate on the deferred tax shall be 6% per annum, to accrue starting one year after the date of death of the decedent. Interest shall be levied only against the unpaid balance of the deferred taxes.

If permission to defer payment of tax has not been granted, and the tax has not been paid within 18 months after the date of death of the decedent, but upon reasonable efforts could have been determined and paid, the interest on the deferred tax shall be 10% per annum starting on the date of death of the decedent.

Rationale 42-2.10(2)-S10040 to -S10047 establish the procedure for deferring payment of inheritance taxes as provided by Section 91-4419, R.C.M. 1947, as well as detailing the larger range of factors the Department may consider in making its decision.

Interested persons may present their data, views, or arguments, either orally or in writing, at the hearing; or they may be sent to R. Bruce McGinnis, Deupty Chief Tax Counsel, Mitchell Building, Helena, Montana 59601.

Mr. Ross Cannon has been designated to preside over and conduct the hearing.

The authority of the agency to make the proposed rule is based on section 91-4419, R.C.M. 1947.

RAYMON E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of amending Rule 42-2.10(1)-S1040 Transfers of Joint Interest Property	)	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE MAC 42-2.10(1)-S1040 regarding transfers of joint interest property.

TO: All interested parties

1. On January 10, 1978, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider amending the rule relating to transfers of joint interest property.

2. The proposed amendment provides as follows (new matter is underlined, old matter interlined):

42-2.10(1)-S1040 TRANSFERS OF JOINT INTEREST PROPERTY (1) Whenever a government bond of the United States inscribed in co-ownership form, or any other property held in joint tenancy by two or more persons, and payable to the survivor(s) of them upon death of one of them, the right of the survivor(s) to the immediate possession or ownership of the interest of the decedent is a taxable transfer.

(2) The Tax

(a) Where the decedent dies before July 1, 1977, or where the surviving joint tenant is the decedent's spouse, ~~T~~the tax is upon the transfer of the decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property had belonged to the decedent and survivor~~(s)~~ as tenants in common and had been bequeathed or devised to the survivor~~(s)~~ by will.

(b) Where the decedent dies on or after July 1, 1977, and the surviving joint tenant is not the decedent's spouse, the full value of the property not originally belonging to the survivor is taxable.

(c) Where there is more than one surviving joint tenant and where the decedent dies before July 1, 1977, the transfer of decedent's interest to each surviving joint tenant is taxable. Where the decedent dies on or after July 1, 1977, the decedent's interest passing to the decedent's spouse and to each of the other joint tenants is taxable. In addition, the entire share of each of the non-spousal survivors (not just that interest which passed at death) is taxable to the extent it originally belonged to the decedent. The full value of the non-spousal survivor's share in the joint interest property after the decedent's death would be taxable if it originally belonged to the decedent.

(3) Exception In all of the above situations ~~T~~the inheritance tax shall not apply to the transfer by right of survivorship of any property which can ~~of decedent's interest in such property if it may~~ be shown to have ~~that such property~~ originally belonged to the survivor~~(s)~~ and never to have belonged to the decedent prior to the creation of the joint interest. For this exception to apply, the survivor(s) must show that the decedent had no interest, equitable or legal,

in the property immediately prior to the creation of the joint ~~tenancy~~ interest. This exception does not apply where the interest passes to a survivor and the property had originally belonged to a different survivor. It applies only where the interest passing originally belonged to the specific survivor claiming the exception.

(4) How Joint Interests are Taxed

(a) Where the decedent dies prior to July 1, 1977, or where the surviving joint tenant is the decedent's spouse, and ~~W~~where ~~a~~ the joint interest in property ~~is~~ was created either within three (3) years ~~prior to~~ before A's death or in such a manner so as to take effect at or after the death of A, if A was the sole contributor or owner of the jointly held property immediately prior to the creation of the joint tenancy, such property may be completely taxable, i.e., the decedent's interest that passed to the survivor(s) is taxable to the survivor(s) under Section 91-4405 and the survivor(s) interest is taxable to the survivor(s) under Section 91-4402 as either a gift in contemplation of death (unless the three year presumption is rebutted) or as a gift to take effect at or after death.

Under the above circumstances, if A should be predeceased by the other holding joint interests, A should not have to pay inheritance tax if he shows that he was the sole contributor or owner of the property immediately prior to the creation of the joint tenancy or interest.

(b) Where the decedent dies prior to July 1, 1977, or where the surviving joint tenant is the decedent's spouse, ~~A~~ a joint tenancy created more than three (3) years prior to the death of the decedent will result in only the decedent's interest passing to the survivor(s) being taxable under Section 91-4405, even if the decedent was the sole owner of the property prior to the creation of the joint tenancy.

(c) Where the decedent dies on or after July 1, 1977, and the surviving joint tenant is not the decedent's spouse, the full value of the property originally belonging to the decedent is taxable even if the joint interest was created more than three (3) years prior to decedent's death.

3. The rule, as proposed to be amended, reflects the changes brought about by the amending of Section 91-4405, R.C.M. 1947. The tax imposed where the survivor is not the decedent's spouse is no longer limited to the interest passing at death. Further changes were made to clarify the exception allowed where contribution can be shown and to explain the situation where there is more than one survivor.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

5. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

6. The authority of the Department of Revenue to make the proposed amendment is based on Section 84-708.1(4), R.C.M. 1947.

RAYMON E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of rule MAC 42-2.10(2)-S10030	NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE MAC 42-2.10(2)-S10030 regarding general exemption provisions of inheritance tax regulations.

TO: All interested parties

1. On January 10, 1978, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of rule MAC 42-2.10(2)-S10030.

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

42-2.10(2)-S10030 GENERAL EXEMPTIONS ~~FROM FIRST $25,000~~

(1) The provisions of Section 91-4414, R.C.M. 1947, allow certain exemptions to be granted to each person, institution, association, corporation, and body politic becoming beneficially entitled to property by virtue of the death of the decedent. The exemption granted is to be applied in the computation of inheritance tax to the first $25,000 so passing, with the remainder if any being applied to the second $25,000 so passing, unless, of course, the beneficiary is totally exempt from inheritance tax.

(2) Transfers Totally Exempt All property transferred to the following entities is totally exempt from the inheritance tax:

(a) transfers to the state of any of its institutions;

(b) transfers to municipal corporations within this state when the property so transferred is to be used for strictly county, city, town, or municipal purposes; and

(c) transfers to any society, institution, or association, in trust or otherwise, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is attempting to influence legislation, IF ANY of the following conditions exist:

(i) the entity is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States; or

(ii) the property transferred is limited to use within this state; or

(iii) if the entity is organized under the laws of another state of the United States or of a foreign state or country, at the date of the decedent's death any one of the following conditions existed: the other state, foreign state, or foreign country did not impose a death tax with respect

to property transferred to a similar entity organized or existing under the laws of this state; or reciprocity was established by law or otherwise between such other state, foreign state, or foreign country and this state providing that the respective states would not tax such transfers; or the entity owns or operates a hospital for crippled children within the United States, to which the children of Montana may be admitted without discrimination, and the property so transferred is limited to use at such hospital.

(3) ~~$25,000-$5,000-$2,000 Exemption,-When~~ Amounts

(a) ~~$25,000-Exemption--The-first-$25,000-of-property transferred-to-the-husband-or-wife-of-the-decedent-shall-be exempt-from-the-inheritance-tax.--This-exemption,-when-to-the widow-of-the-decedent,-shall-include-all-of-her-statutory-dower and-other-allowances.~~ Where the decedent dies on or after July 1, 1977, the clear value of one-half of the property distributed or passing to the decedent's surviving spouse is exempt. The following amounts of property are also exempt:

The first $40,000 transferred to the surviving spouse.

The first $15,000 transferred to minor lineal descendants.

The first $7,000 transferred to adult lineal descendants and ancestors.

The first $1,000 transferred to brothers, sisters, or descendants thereof.

The first $1,000 transferred to son's wife or daughter's husband.

(b) ~~$5,000-Exemption--The-first-$5,000-of-property transferred-to-each-minor-lineal-issue-of-the-decedent,-legally adopted-child-of-the-decedent,-mutually-acknowledged-child-of the-decedent,-or-any-lineal-issue-of-such-adopted-or-mutually acknowledged-child-shall-be-exempt-from-the-inheritance-tax To-be-afforded-this-exemption-the-mutually-acknowledged-child must-have-stood-in-such-relationship-with-the-decedent-beginning-prior-to-the-child's-fifteenth-birthday-and-continuing for-ten-consecutive-years.~~ Where the decedent died on or after July 1, 1974, but before July 1, 1977, the following amounts of property transferred are exempt:

The first $25,000 transferred to the surviving spouse.

The first $5,000 transferred to minor children of decedent.

The first $2,000 transferred to lineal ancestor or descendants, adopted child or lineal issue of adopted child.

The first $500 transferred to brother or sister, son's wife or daughter's husband.

(c) ~~$2,000-Exemption--The-first-$2,000-of-property transferred-to-each-lineal-issue-of-majority-age-and-to-each of-the-other-persons-described-in-the-first-subdivision-of Section-91-4409,-R.C.M.-1947,-shall-be-exempt-from-the-inheritance-tax.~~ Where the decedent died on or after July 1, 1969 but before July 1, 1974, the following amounts of property

transferred are exempt:

The first $20,000 transferred to the surviving spouse.

The first $5,000 transferred to minor children of decedent.

The first $2,000 transferred to lineal ancestor or descendent, adopted child or lineal issue of adopted child.

The first $500 transferred to brother or sister, son's wife or daughter's husband.

(d) Where the decedent died on or after July 1, 1965, but before July 1, 1969, the following amounts of property transferred are exempt:

The first $20,000 transferred to decedent's widow.

The first $10,000 transferred to decedent's husband.

The first $2,000 transferred to lineal ancestor or descendant, adopted child or lineal issue of adopted child.

The first $500 transferred to brother or sister, son's wife or daughter's husband.

(e) Where the decedent died before July 1, 1965, the following amounts of property transferred are exempt:

The first $17,500 transferred to decedent's widow.

The first $5,000 transferred to decedent's husband.

The first $2,000 transferred to lineal ancestor or descendant, adopted child or lineal issue of adopted child.

The first $500 transferred to brother or sister, son's wife or daughter's husband.

(4) The above exemptions when applied to a widow shall include all of her statutory dower and other allowances. The above exemptions when applied to children or adopted children of the decedent shall include mutually acknowledged children. To be afforded the exemption the mutually acknowledged child must have stood in such relationship with the decedent beginning prior to the child's fifteenth birthday and continuing for ten consecutive years.

~~(d)~~ (5) Tax Credit When a decedent transfers property to his ~~widow or widower~~ or her surviving spouse, who dies within ten years of the decedent and who transfers the same property to any child of the decedent, such child shall be allowed a tax credit in the amount that the ~~widow or widower~~ surviving spouse paid upon the transfer to ~~her~~ them, to be applied against the tax to be paid on the transfer to such child. Where the surviving spouse died before July 1, 1973, the credit can be applied only where the husband predeceased the wife.

~~(4) $500 Exemption The first $500 of property transferred to each of the persons described in the second subdivision of Section 91-4409, R.C.M. 1947, shall be exempt.~~

~~(5)~~ (6) Property Without This State Exempt, When Tangible personal property of a resident decedent having a situs without this state shall not be subject to the inheritance tax, if such property is subject to a death tax in the state in which it is located and if the other state allows

the same exemption to property located in this state and owned by a resident of the other state.

~~(6)~~ (7) When a decedent, resident or non-resident transfers property located both within and without this state, the beneficiary of the property transferred shall be entitled to only a prorata exemption, determined by the ratio that his Montana distributive share bears to his total distributive share both within and without this state. Under these circumstances the exemption allowed by Section 91-4414 (3), R.C.M. 1947 shall apply only to the surviving spouse's Montana distributive share.

3. The rule, as proposed to be amended, reflects the changes in exemption amounts brought about by the amendment to Section 91-4414, R.C.M. 1947, and also sets out the various exemption amounts depending upon the law in effect at the time of death.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

5. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

6. The authority of the Department of Revenue to make the proposed amendment is based on Section 84-708.1(4), R.C.M. 1947.

RAYMON E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of amending Rule 42-2.10(6)-S10100 INH-3 --) Application for determination of inheritance tax (non-probate)	NOTICE OF PUBLIC HEARING FOR AMENDMENT OF RULE 42-2.10(6)-S10100 INH-3 -- APPLICATION FOR DETERMINATION OF INHERITANCE TAX (NON-PROBATE)

TO: All interested parties

1. On January 10, 1978, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider amending the rule relating to application for determination of inheritance tax (non-probate).

2. The proposed amendment provides as follows (new matter is underlined, stricken matter is interlined):

42-2.10(6)-S10100 INH-3 -- APPLICATION FOR DETERMINATION OF INHERITANCE TAX (NON-PROBATE) (1) This form is designed to comply with Sections ~~91-4321.1 and 91-4469~~ 91-4470(2)(b), 91-4471(1)(a) and 91-4472(a), R.C.M. 1947, and is used only when the decedent owned no property requiring probate. The INH-3 must be submitted in duplicate.

3. The rule, as proposed to be amended, reflects the repeal of Sections 91-4321.1 and 91-4469, R.C.M. 1947 and the enactment of Sections 91-4470, 91-4471, and 91-4472, R.C.M. 1947.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

5. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

6. The authority of the Department of Revenue to make the proposed amendment is based on Section 84-708.1(4), R.C.M. 1947.

RAYMON E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of rule MAC 42-2.22(2)-S22090) NOTICE OF PUBLIC HEARING FOR PROPOSED AMENDMENT OF RULE MAC 42-2.22(2)-S22090 regarding assessment of business inventories.

TO: All interested parties

1. On January 10, 1978, at 1:30 p.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the amendment of rule MAC 42-2.22(2)-S22090.

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

42-2.22(2)-S22090 ASSESSMENT OF ~~STOCK OF MERCHANDISE~~ BUSINESS INVENTORIES

~~(1)--Assessed value for stock of merchandise shall be 60% of the dealer's cost for the entire inventory as it existed on the first day of January.~~ (1) The market value of business inventories shall be the cost or present value to the taxpayers subject to the payment of the tax.

(a) the taxable value of business inventories shall be 4.2% of market value.

~~(2)--(a)--(i)--The inventory reported to the county assessor must agree with the figure reported on form 1040 Schedule C, line 7 or form 1065 Schedule A, line 33, or form 1120 Schedule A, line 6, for all businesses paying tax on a calendar year basis.~~ (2) Any individual, firm or corporation required to report the value of its inventory as of January 1st, may satisfy that reporting requirement by attaching to the supplemental statement for use in reporting value of stocks, supplies, furniture and fixtures, a copy of the inventory schedule filed with the taxpayer's federal income tax return.

(a) Any corporation exercising the option to return the value of its inventory by filing a copy of their inventory schedule filed for federal income tax need only submit Schedule A of form 1120. All other schedules may be omitted or blanked out.

~~(a)--(2)--Businesses not reporting for the Montana income tax purposes on a calendar year basis must provide evidence of the actual cost of inventory as of January 1, to the county assessor on request.~~

~~(b)--The books of all business are subject to audit by the Department of Revenue to determine the accuracy of reported inventory at any time.~~

~~(3)--Any corporation or other business filing an income tax return covering more than one store or stock of merchandise must comply with the procedure outlined in Rule 2(a)-(2).~~ (3) The assessed value of business inventories shall be the present value or cost, whichever is less. For ad valorem taxation purposes, cost shall be deemed to

be the actual cost of the physical inventory on hand on January 1st or the day ending the taxpayer's fiscal year.

(4) If it appears from the inventory schedule filed by the taxpayer that a method of valuing the business inventory was used, that does not reflect the present value or actual cost of the goods on hand at the time the report was made, the department shall, pursuant to Section 84-411, Revised Codes of Montana 1947, revise the assessment to reflect the lower of present value or cost of actual goods on hand.

(5) Any person, firm or corporation reporting his income to the United States on a fiscal year basis will be allowed to submit to the assessor for purposes of returning his inventory for ad valorem taxation purposes the inventory schedule filed with his fiscal year tax return. The value shown on the schedule pursuant to the same restrictions contained in paragraphs 3 and 4 will be deemed to be the value of the taxpayer's inventory on January 1st.

3. The proposed amendment to the existing rule as found on page 42-176.1 of the Montana Administrative Code, replaces the present rule on the assessment of business inventories. The changes were caused by the 1977 Session of the Legislature. The Legislature established by statute the value of business inventory and allowed the reporting of that value by use of IRS schedules.

4. Interested persons may present their data, views or arguments, either orally or in writing, at the hearing, or may address comments in writing to R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

5. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

6. The authority of the Department of Revenue to make the proposed amendment is based on Section 84-708.1(4), R.C.M. 1947.

RAYMON E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of a proposed rule "1."	)	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE defining the terms used in the rules adopted pursuant to the Homestead Tax Relief Act of 1977.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 1. DEFINITIONS (1) "Homestead" means a dwelling and appurtenant land, not to exceed 1 acre, used as the principal residence of the household of the owner.

(2) "Dwelling" means a structure intended for human habitation; mobile homes, as defined in 84-6601, are specifically included.

(3) "Household" means a person or persons who live in the same dwelling sharing its furnishings, facilities, accommodations, and expense. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) "Total taxable value" means the taxable value of a homestead.

(5) "State's share of the taxable value" means a taxable value equivalent to $5,000 of the appraised value of a homestead or the total taxable value of a homestead, whichever amount is less.

(6) "State supported mill levies" means all property tax levies which apply to habitable property except levies for single purpose districts, voted elementary and secondary school levies, the university 6 mill levy for the retirement of bonded indebtedness, and voted levies for special improvement district reserve funds which are not countywide or which are supported by a fee or charge rather than an ad valorem tax levy.

(7) "Single purpose district" means a taxing jurisdiction created by resolution of the local governing body or petition of the residents to perform one governmental function, such as, but not limited to, fire, cemetery and lighting districts and weed, rodent, or mosquito control districts.

(8) "State's share of the tax liability" means the state share of the taxable value for each homestead in each taxing jurisdiction times the state supported mill levies in that taxing jurisdiction times the fraction obtained by dividing the fiscal year appropriation provided by the legislature

less administrative costs by the statewide value of the state's share of the taxable value.

(9) "Principal residence" means the dwelling wherein the applicant resides a greater portion of the time than any other residence.

(10) "Appraised value" pursuant to the terms of H.B. 70, will have the same meaning as market value.

4. This rule contains the definitions adopted by the electorate in the original act as well as definitions for terms used in the rules. The definitions from the act were included because they are used in the rules and it would be more convenient for the taxpayer to have them at hand.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "2."	)	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding who may apply for tax relief under the Homestead Tax Relief Act of 1977.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 2. WHO MAY APPLY (1) the person who owned and resided in the property on January 1, of the year of assessment may file the Homestead Tax Relief application if he fulfills all other requirements.

(2) To be eligible for the Homestead Tax Relief, the owner of the homestead must reside in the dwelling and the homestead must not have been rented or leased to others for a period exceeding three months in the year preceeding the filing of the application.

4. Under Section 5(2), Chapter 457, Laws of 1977, the department is given the responsibility for determining who is eligible to receive the tax relief. The department has determined that because the owner of the dwelling on January 1 is the person responsible for the payment of the taxes, then he should receive the tax relief. Section 84-406, R.C.M. 1947.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "3."	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding the state share of the tax relative to the Homestead Tax Relief Act of 1977.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 3. STATE SHARE OF THE TAX (1) the state share of tax liability is funded by an appropriation of the legislature for fiscal years 1978 and 1979.

(2) Each homeowner will receive his share of his Homestead Tax Relief computed on the following formula: State share of the tax liability equals the state supported mill levy times the smaller of the two quantities: $600.00 or the total taxable value of the resident.

(3) The amount of the state share will be reduced by the amount necessary to administer the program. The legislature provided that the funds necessary to administer the program would be included with the funds making up the state share of the Homestead Tax Relief.

4. This rule is in response to the legislature's action in amending the Homestead Tax Relief Act to expire after the 1978 tax year. The legislature further amended the act to provide that the costs of administering the act shall be taken from the amount appropriated for homestead tax relief.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "4."	)	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding the property tax due on homestead.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 4. PROPERTY TAX DUE ON HOMESTEAD (1) the property tax due on a homestead will be reduced by an amount equal to the state share of the tax liability.

(2) The tax statement mailed to the taxpayer shall separately state the homestead owners share of the tax liability and the state's share.

4. This rule implements the section of the act providing that the homeowner's tax liability will be reduced by the state share of tax liability and that the two amounts will be separately stated on the honeowner's tax bill.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside

over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "5."	)	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding application availability for tax relief under the Homestead Tax Relief Act of 1977.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 5. APPLICATIONS ARE AVAILABLE THROUGH DEPARTMENT OF REVENUE (1) The Department shall make applications available to all homestead owners through the county assessor's office.

(2) All persons eligible to receive tax relief in 1977 will be mailed applications by the Department in 1978.

4. The act provides that the department will make the applications available to homeowners and specifies that the applications may be obtained in county assessors' offices and will be mailed for the 1978 tax year.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "6.") NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding timely filing of applications for homestead tax relief.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 6. APPLICATION RETURN DATE (1) All completed applications must be returned to the county assessor in the county wherein the homestead owner resides not later than June 30.

(2) Applications mailed to the county assessor must be postmarked not later than 12:00 p.m., June 30.

4. This rule provides that a homeowner must return his application 30 days after he receives it to be eligible for tax relief. This rule states the department's policy of having the applications mailed by June 1 and returned by June 30. Also, the rule states that applications may be returned by mail.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "7.") NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding eligibility determination of homestead tax relief.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief

Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 7. DETERMINATION OF ELIGIBILITY (1) The Department of Revenue shall determine the eligibility of all persons to receive Homestead Tax Relief.

(2) Any persons whose application for relief is denied may within twenty days after receipt of such denial make an appeal to the Director of Revenue. The Director in his discretion may review the application, and either sustain or reverse the action of the division. In those cases where the Director deems it meritorious, the matter may be set for a hearing and treated as a contested case under the Montana Administrative Procedure Act.

4. Under the provisions of the act the department has the responsibility to determine eligibility for relief. This rule provides a procedure whereby the homeowner may obtain relief if his application is denied.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "8."	))))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding the responsibility of the state in computing and remitting state's share of tax liability to the counties.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 8. STATE SHALL COMPUTE STATE'S SHARE OF HOMESTEAD TAX (1) The Department shall compute the state share for each eligible homestead owner using the formula contained in Rule 3.

(2) The total of the state share will be certified to each county.

(3) The state share shall be remitted to the counties in two equal payments. The first payment will be made on or before November 30, and the second payment will be made on or before May 31.

4. This rule clarifies the department's responsibility to the counties by certifying the state's share and remitting the relief to the counties by the dates specified in the act.

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 R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

In the matter of the adoption of a proposed rule "9."	))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF A RULE regarding the effective date of the Homestead Relief program.

TO: All interested parties

1. On January 10, 1978, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Mitchell Building, Helena, Montana, to consider the adoption of a proposed rule pertaining to the Homestead Tax Relief Act of 1977.

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

3. The rule, as proposed for adoption, provides as follows:

Rule 9. EFFECTIVE DATE The Homestead Relief program will be effective for property tax due on residential property in 1977 and 1978 only.

4. This rule certifies that the Homestead Tax Relief program will be only for property tax due in 1977 and 1978.

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 R. BRUCE McGINNIS,

Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

6. Mr. Ross Cannon has been designated to preside over and conduct the hearing.

7. The authority of the Department of Revenue to make the proposed rule is based on Section 5(4), Chapter 457, Laws of 1977.

RAYMON E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF PROPOSED AMENDMENT
of rule MAC 42-2.18(6)-S18110) OF RULE MAC 42-2.18(6)-S18110
) regarding the provision that
) applications for special fuel
) licenses must be on a form
) prescribed by the department
) of revenue. NO PUBLIC HEAR-
) ING CONTEMPLATED

TO: All interested persons

1. On January 10, 1978, the Department of Revenue proposes to amend rule MAC 42-2.18(6)-S18110, which deals with special fuel licenses and vehicle permits.

2. The proposed amendment affects only subsection (1) of the existing rule, which appears on page 42-131 of the Montana Administrative Code. The subsection as proposed to be amended provides as follows (stricken matter is interlined, new material is underlined):

MAC 42-2.18(6)-S18110 SPECIAL FUEL LICENSE-VEHICLE PERMIT.

Amend subsection (1):

(1) Any person who uses fuel other than gasoline to propel a motor vehicle upon the highways of this state is required to make written application for and obtain a special fuel license, and a special fuel vehicle permit for each vehicle which is self-propelled upon the highways of this state. Application for a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit shall be filed upon a form prepared and furnished by the Department of Revenue and shall contain such information as the Department deems necessary. Any special fuel vehicle, whether bearing an SM plate, or registered under Title 53, R.C.M. 1947, shall be subject to all taxes and permits levied or imposed by Title 84, Chapter 18, R.C.M. 1947.

3. The rule, as proposed to be amended, provides that the applications for special fuel license must be on a form prescribed by the Department. This amendment is to standardize the application process and give the Department better control over the issuance of the special fuel users licenses.

4. Interested persons may submit written statements of their data, views, or arguments concerning the proposed amendment to R. BRUCE McGINNIS, Deputy Chief Tax Counsel, Department of Revenue, Mitchell Building, Helena, Montana 59601, no later than January 10, 1978.

5. The authority of the Department to make the proposed amendment is based on Section 84-1838(a), R.C.M. 1947.

RAYMOND E. DORE, Director
Department of Revenue

Certified to the Secretary of State November 14, 1977.

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

In the matter of the adoption of rules MAC 46-2.10(46)-S103000, 46-2.10(46)-S103010, 46-2.10(46)-S103020, 46-2.10(46)-S103030, 46-2.10(46)-S103040 and 46-2.10(46)-S103050 pertaining to emergency situations in counties.	))))))	NOTICE OF PUBLIC HEARING ON ADOPTION OF RULES PERTAINING TO PROVISIONS FOR EMERGENCY SITUATIONS IN COUNTIES.

TO: All Interested Persons

1. On December 15, 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 proposed adoption of rules MAC 46-2.10(46)-S103000, -S103010, -S103020, -S103030, -S103040 and -S103050, pertaining to emergency situations arising in counties, to be adopted January 4, 1978, and to be effective January 26, 1978. 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 December 14, 1977.

2. The proposed rules read as follows:

Sub-Chapter 46

Provisions for Emergency Situations

46-2.10(46)-S103000 EFFECT AND DURATION OF EMERGENCY PROVISIONS (1) The emergency provisions of this sub-chapter shall take precedence over and govern any other rule or rules of the Department which are directly or indirectly in conflict with the emergency provisions.

(2) The emergency provisions of this sub-chapter shall have effect in a county during the pendency of an emergency situation which impairs the effective functioning of that County's Department of Public Welfare. Upon the termination or cessation of an emergency situation, the emergency provisions shall be suspended and shall have no force and effect.

(3) The Director of the Montana Department of Social and Rehabilitation Services may declare that an emergency situation exists in a county when he has reason to believe that the effective functioning of that County's Department of Public Welfare has been impaired due to strike, or other labor activity, fire, flood, earthquake, or any other natural or man-made disaster. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103010 APPLICATIONS GENERALLY (1) The County Department of Public Welfare will only accept and process applications for public assistance of persons in emergency need. The County Department of Public Welfare may determine who is in emergency need.

(2) The County Department of Public Welfare may determine the date of application for public assistance from evidence presented by reasonable sources indicating the date upon which the applicant expressed a desire to apply. The date upon which the applicant expressed a desire to apply but was prevented from doing so by the emergency shall be deemed to be the date of application.

(3) The County Department of Public Welfare shall not be required to accept or process new applications for food stamps. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103020 PUBLIC ASSISTANCE PAYMENTS, GENERALLY (1) The County Welfare office shall not be required to modify any existing public assistance grant. The grant amount may remain at the payment level in effect immediately prior to the emergency.

(2) Any excess payment issued to a public assistance recipient by reason of the emergency shall not be treated as an overpayment, nor shall it be subject to recovery. An under-payment issued during the emergency shall not be subject to correction. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103030 FOOD STAMPS (1) The County Welfare office may continue to issue Food Stamps to persons already participating in the program. The bonus value shall remain at the certification level in effect immediately prior to the emergency.

(2) The County Welfare office is required to issue Food Stamps only on the basis of need during the emergency. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103040 AID TO DEPENDENT CHILDREN

(1) When new ADC applications are approved, advance payments may be issued by the County Department of Public Welfare.

(2) Advance payments shall be issued at the following monthly standard:

One Person	$ 4.00/day	$126.00/month
Two Persons	$ 5.00/day	$163.00/month
Three Persons	$ 7.00/day	$222.00/month
Four Persons	$ 9.00/day	$284.00/month
Five Persons	$10.00/day	$323.00/month
Six Persons	$11.00/day	$342.00/month

$1.00 per day for each additional person. (History: Sections 71-210 and 71-509, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

46-2.10(46)-S103050 WIN REQUIREMENTS (1) The requirements of registration and participation in the WIN Program shall not be imposed upon any applicant during the pendency of the emergency. (History: Section 71-210, R.C.M. 1947; NEW, Order MAC No. 46-2-65; MAC Notice No. 46-2-123; Adp. 1/4/78; Eff. 1/26/78.)

3. The rationale for the adoption of these rules is to assure that a County in an emergency situation may utilize its manpower and resources effectively in order to provide a minimum level of all welfare benefits and services to the needy of that County.

4. 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.

5. The authority of the Department of Social and Rehabilitation Services to adopt these rules is based on Sections 71-1511 and 71-1517, R.C.M. 1947.

Patricia E. Malley
Director, Social and Rehabilitation Services

Certified to the Secretary of State October 25, 1977.

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

In the matter of the adoption of rules pertaining to protective services for aged persons and disabled adults.	)))))	NOTICE OF PUBLIC HEARING FOR ADOPTION OF RULES PERTAINING TO PROTECTIVE SERVICES FOR AGED PERSONS AND DISABLED ADULTS.

TO: All Interested Persons

1. On December 16, 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 adoption of four rules pertaining to protective services for aged persons and disabled adults to be enacted no sooner than December 16, 1977, and to be effective on January 26, 1978. 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 December 15, 1977.

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

3. The proposed rules read as follows:

Rule #1 PROTECTIVE SERVICES FOR AGED PERSONS AND DISABLED ADULTS, PURPOSE (1) Protective services are intended to prevent or remedy neglect, exploitation or abuse of aged persons or disabled adults who are unable to protect their own interests.

Rule #2 PROTECTIVE SERVICES FOR AGED PERSONS AND DISABLED ADULTS, DEFINITIONS For purposes of providing services under the "Protective Services Act for Aged Persons or Disabled Adults," the following definitions apply:

(1) "Aged person" means a person 65 years of age or older.

(2) "Disabled adult" means a person of 18 through 65 years of age who:

(a) has been determined to be disabled by the Social Security Administration;

(b) has been determined to be fully disabled by the Veterans Administration;

(c) has been determined to be disabled by the Department's Vocational Rehabilitation Division;

(d) has been adjudicated to be disabled by a court of competent jurisdiction; or

(e) has been determined to be eligible for the Me-

dically Needy Program because of disability.

"Disabled adult" does not include the developmentally disabled as defined in Section 71-1901, R.C.M. 1947.

(3) "Protective services" means any services provided to an aged person or disabled adult under the Protective Services Act for Aged Persons or Disabled Adults, sections 1914-1919, R.C.M. 1947.

(4) "Voluntary services" means protective services requested or accepted by an aged person or disabled adult for him- or herself.

(5) "Non-voluntary services" means protective services offered under court-ordered legal guardianship in cases where the ward is an aged person or disabled adult.

(6) "Ward" means an incapacitated person for whom a guardian has been appointed by a court.

(7) "Department" means the Department of Social and Rehabilitation Services.

Rule #3 PROTECTIVE SERVICES FOR AGED PERSONS AND DISABLED ADULTS, SERVICES AVAILABLE (1) Voluntary services for aged persons or disabled adults include, but are not limited to, the following:

(a) identifying aged persons or disabled adults through receiving and investigating referrals as set out in Rule #4 below;

(b) counseling for the recipient and his/her family;

(c) facilitating changes in living arrangements;

(d) providing or arranging for health-related services;

(e) enlisting support and services from interested persons or agencies;

(f) establishing or maintaining other community focused activities for the recipient;

(g) providing or arranging for service to improve social relationships of the recipient; or

(h) changing or stabilizing the economic status of the recipient.

(2) Non-voluntary services include any services provided as voluntary services under subsection (1) above, in addition to any other services ordered by the court through guardianship proceedings.

Rule #4 PROTECTIVE SERVICES FOR AGED PERSONS AND DISABLED ADULTS, PROCEDURE TO OBTAIN SERVICES (1) The county department of public welfare shall receive and investigate requests for voluntary services from:

(a) aged persons or disabled adults;

(b) relatives or friends of such persons; or

(c) community agencies, resources or individuals such as doctors, lawyers, clergymen, health departments, alcohol treatment centers, hospitals, homemakers or any

other persons interested in the individual's welfare.

(2) The county department of social services shall make eligibility determinations using the criteria set out in the definitions of "aged person" or "disabled adult" in Rule #2 above.

(3) Upon request for non-voluntary services, the county social worker shall:

(a) investigate the situation to determine whether or not a petition for guardianship is necessary for the protection of the individual in question; and

(b) upon determination that guardianship proceedings are necessary, initiate through the county attorney a petition under Section 91A-5-303, R.C.M. 1947, to have the Department or another appropriate person appointed guardian, pursuant to Section 91A-5-311, R.C.M. 1947. Guardianship proceedings are contained in Title 91A, Chapter 5, Part 3, "Guardians of Incapacitated Persons."

4. The rationale for adopting the rules is to implement a law passed in the 1975 Legislature to cover protective services to adults which has been a part of our adult service program since 1962 and mandated by the Legislature in 1975.

5. 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.

6. The authority of the Department of Social and Rehabilitation Services to adopt these rules is based on Section 71-1511, R.C.M. 1947.

Patrick E. Melby
Director, Department of Social
and Rehabilitation Services

Certified to the Secretary of State November 14, 1977.

BEFORE THE SUPERINTENDENT OF PUBLIC
INSTRUCTION FOR THE STATE OF MONTANA

IN THE MATTER OF THE AMENDMENT OF RULE 48-2.18(30)-S18510 REQUIRING THE SUPERINTENDENT TO PROVIDE WRITTEN STATEMENT OF REASONS FOR REDUCTION IN BUDGET REQUEST	NOTICE OF PROPOSED AMENDMENT OF RULE 48-2.18(30)-S18510 (Computation and Limitations of Budget Requests) NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons

1. On January 8, 1978, the Superintendent of Public Instruction proposes to amend Rule 48-2.18(30)-S18510 which now provides in subpart (13) that the Superintendent of Public Instruction will meet, on request, with school district officials to discuss any reduction in their special education budget request.

2. The amended rule requires that in addition to meeting on request with school officials, the Superintendent of Public Instruction will provide them, on request, a written statement of reasons for any reduction in their special education budget request. The rule as amended would read as follows (new matter underlined):

48-2.18(30)-S18510 COMPUTATION AND LIMITATIONS. Administration.

(a) 01-01-0111 Salaries, Professional: B Calculation

(i) Documentation of administration charges against the special education program may be verified by finding the percentage of special education professional staff of the total professional staff of the school district. This percentage is verification of time spent on the special education program. The special education budget amount is determined by multiplying the ensuing administrative budget by the determined percentage figure. No other verification of time in this line item is necessary unless the school claims more than the percentage allowed. In this case, all individuals claimed must then maintain time records to substantiate their claims.

(ii) If a school district employs a supervisor of special education under 01-01-0215, this line item may not exceed five percent of the amount budgeted on projected general fund budget 01-01-0111 line item.

(b) 01-01-0113 Salaries, Clerical: C Calculation

(c) 01-01-0150 Supplies, Administrative: C Calculation

(2) Supervision and Instruction.

(a) 01-01-0211 Salaries, Principals: D Calculation

(i) Rather than keeping time records, verification of time district wide, up to the maximum allowable, is calculated

based on the percentage of special education professional staff to the total professional staff of the district. Whichever is smaller, the percentage times the current year's general fund line item 01-01-0211 or the D Calculation will be the authorized amount.

(b) 01-01-0212 Salaries, Teachers (Tutorial): B Calculation

(c) 01-01-0213 Salaries, Clerical: D Calculation

(i) Verification of time is same as 01-01-0211.

(d) 01-01-0214 Aides: B Calculation (Teacher aides, playground aides, transportation aides, etc.)

(e) 01-01-0215 Salaries, Special Education Teachers, Clinicians and Supervisors: A Calculation

(f) 01-01-0218 Travel, Mileage: A Calculation

(i) Travel expenses for special education personnel who must travel on an itinerant basis from school to school or district to district.

(ii) Travel expenses for resident district Child Study Teams are allowable costs as approved by the Office of Public Instruction. (See Rule 48-2.18(22)-S18430, Resident District Responsibilities.)

(g) 01-01-0232 Supplies, Instruction Shared: C Calculation

(h) 01-01-0233 Supplies, Instruction, Special Education: A Calculation

(i) Included in this line item are all supplies consumed in the teaching/learning process.

(i) 01-01-0241 Textbooks: C Calculation; Special Education Textbooks: B Calculation

(j) 01-01-0250 Other Expenses (including minor equipment less than $200): B Calculation

(k) 01-01-0280 Contracted Services: A Calculation

(i) This line item includes fees paid for professional advice and consultation regarding special students or the special education program and for the delivery of special education services by public or private agencies. All contracts must be approved by the Superintendent of Public Instruction prior to contracting for services.

(ii) The Superintendent of Public Instruction must approve all fees charged and may place limitations on the amount that can be charged.

(3) Library Services.

(a) 01-01-0310 Salaries: C Calculation

(b) 01-01-0342 Books and Periodicals: C Calculation

(c) 01-01-0350 Other Expenses: C Calculation

(4) Supportive Services.

(a) 01-01-0410 Salaries, Professional: B Calculation be documented either by schedules or time records. Eligible personnel are listed in Sub-Chapter 38.

(b) 01-01-0413 Salaries, Clerical: B Calculation

(i) Documentation by time records or schedules.
(c) 01-01-0418 Travel, Mileage: A Calculation
(i) The same provisions outlined in 01-01-0218 apply to supportive personnel travel.
(d) 01-01-0450 Other Expenses: C Calculation
(5) Transportation.
(a) 01-01-0555 Room and Board: A Calculation
(i) (See out-of-district placement in Rules 48-2.18(22)-S18430 and 48-2.18(26)-S18480(1) (b) of this chapter.)
(6) Operation of Plant
(a) 01-01-0600 Operation: E Calculation
(7) Maintenance of Plant.
(a) 01-01-0700 Maintenance: E Calculation
(8) School Food Services.
(a) 01-01-0800 School Food: C Calculation
(9) Student Body and Auxiliary Services.
(a) 01-01-0900 Salaries and Other Expenses: C Calculation
(10) Other Charges.
(a) 01-01-1021 Social Security: A Calculation
(b) 01-01-1022 Teacher Retirement Service: A Calculation
(c) 01-01-1023 Public Employee Retirement System: A Calculation
(d) 01-01-1024 Unemployment Compensation: A Calculation
(e) 01-01-1056 Rental of Land and Buildings: C Calculation
(i) (See Rule 48-2.18(26)-S18480(1)(f)(i)(ac) of this manual for an exception to the C Calculation. If exception is approved, it is an A Calculation.)
(f) 01-01-1057 Insurance: E Calculation
(i) Use E Calculation except when insurance is considered an employee benefit (such as workman's compensation or sickness and accident insurance). If insurance is considered an employee benefit, use actual cost--A Calculation.
(g) 01-01-1072 Interest on Warrants: A Calculation
(11) Capital Outlay.
(a) 01-01-1163 Remodeling and Improvements, General: C Calculation
(b) 01-01-1164 Equipment, Special Education, Major ($200 or more): B Calculation
(i) Only equipment essential to operation of the special education program is allowable. A school district must submit with its proposed budget an inventory of existing equipment in the special education program as well as projected equipment needs. The Superintendent of Public Instruction has authority to delete any pieces of equipment from the projected inventory list and disapprove them as an allowable cost. If any equipment is shared, that cost is

distributed equally, by use, among the programs using the equipment. General equipment costs should be calculated using the C Calculation.

(c) 01-01-1165 Remodeling, Special Equipment for School Buses: A Calculation. Other Expenses: C Calculation.

(i) Remodeling for handicapped and special equipment for district owned and/or contracted school buses is an A Calculation. All other expenses are a C Calculation. (Authorization for approval of expenditures under this line item must be pre-approved by the Superintendent of Public Instruction.)

(12) Previously Approved Emergency Special Education Budget Expenditures.

(i) This line item must have had specific authorization and approval from the Superintendent of Public Instruction under emergency budgeting provisions in order to be included on the ensuing year's budget. The actual expenditures or budget authority approved under this line item must have occurred during the current year but not included on the current year's budget. In the trustees annual report, the actual expenditure under the emergency budget must be reported.

(13) Discussion of Budget Adjustments.

(i) To provide for better communication between the Office of Public Instruction and school districts concerning the special education rules and budgeting procedures, the Superintendent of Public Instruction will meet, upon request, with school district officials to discuss any reduction in a school district's special education budget request within a reasonable time after the district is notified of any budget reduction.

(ii) Upon written request of the board of trustees the Office of Public Instruction shall send a written statement of the reasons for any reduction in a school district's special education budget request within a reasonable time.

3. The Superintendent of Public Instruction proposes the change to assure that school district officials are fully informed of the reasons for any reduction in a special education budget request.

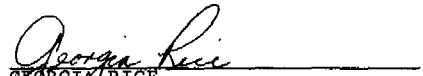
4. Interested parties may submit their data views or arguments concerning the proposed amendment in writing to Ms. Shirley Miller, Office of Public Instruction, State Capitol, Helena, Montana 59601. Written comments, to be considered, must be received no later than December 30, 1977.

5. 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 Ms. Miller on or before December 30, 1977.

6. If the Superintendent of Public Instruction 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 Superintendent of Public Instruction to make the proposed rule amendment is based on Section 75-7813.1,R.C.M.1947.



GEORGIA RICE
Superintendent of Public
Instruction

Certified to the Secretary of State November 9, 1977.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption) of Rules to implement Title) 25, Chapter 5, R.C.M. 1947)	NOTICE OF THE ADOPTION OF RULES (DECEDENT'S WARRANTS)

TO: All Interested Persons:

1. On August 25, 1977, the Department of Administration published notice of a proposed adoption of rules concerning the providing of decedent's warrants to designees of State employees at pages 191-194 of the Montana Administrative Register, issue number 8.

2. The agency has amended the rules with the following changes:

Rule I. In compliance with the provisions of Section 25.507.7, R.C.M. 1947, each State employee may designate a person to receive the employee's pay, benefits, and/or travel allowances due at the time of the employee's decease in connection with his/her state employment.

Rule III. DESIGNATIONS. Only one designee should be named on this form since only one warrant can be issued from the State Auditor's Office as a replacement for each warrant the decedent would have received.

Rule V. DECEASE OF AN EMPLOYEE. Upon the decease of an employee, the employing agency will immediately complete the information on the right hand margin of the designation form (employee's name, date deceased, and signature of certifying officer). ~~, and immediately forward the designation form to the State Auditor's Office. If an unnegotiated warrant or warrants are recoverable, they will be attached to the designation form and forwarded with it to the State Auditor's Office.~~ If the employee had completed an older form that does not have this information printed on the side, this same information should still be typed on the righthand margin. The employing agency should keep the original of the designation form on file at all times. Two xerox copies of the designation form should be sent to the State Auditor's Office with each unnegotiated warrant.

Applicable warrants are to be identified by number, date, and amount on the reverse side of the original designation. After all warrants have been delivered to the designee, the designation shall be cancelled and appropriately filed.

Rule VII. DELIVERIES OF WARRANTS. ~~Warrants delivered to a designee by a State agency shall be accompanied by a photocopy of the designation on file. Applicable warrants are to be identified by number, date, and amount on the reverse side of the designation. After all warrants have been delivered to the~~

~~designee, the designation shall be cancelled and appropriately filed.~~ Warrants shall be delivered to a designee by the State Auditor and shall be accompanied by a photocopy of the designation on file.

Rule IX. (b) This rule shall apply to all permanent, full-time, part-time or seasonal employees.

3. A public hearing on the proposed rules was held September 7, 1977, at 7:30 p.m. in the Department of Highways Auditorium. No oral comments were received at the hearing.

One written comment was received regarding Rule IX 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.

Jo Isaak, of the State Auditor's Office made a number of suggestions for changes in the proposed rules as they relate to the procedures to be followed by a State agency in the event of an employee's death to be sure the designee receives all applicable decedent's warrants. The final rules reflect these changes. Also, one part of the standard State form was amended to reflect these changes. Part 4 of the "Instructions to Employers" on the form now reads: "Forward two copies of the form with all unnegotiated warrants to the State Auditor's Office. Do not send it to Central Payroll." Also, the words at the bottom of the form, "Forward to State Auditor's Office upon employee's decease' have been removed to more closely follow the procedures set up in the rules.

Rules I through IX in the MAR, issue number 8, p. 191-194 will be consolidated into one rule ARM 2-2.14(10)-S14080.

Jack C. Crosser

Jack C. Crosser, Director

Certified to the Secretary of State November 14, 1977

DEPARTMENT OF AGRICULTURE

Amendment of Rule 4-2.6(6)-S662, TYPES OF SEEDS THAT PROCESSING PLANTS ARE AUTHORIZED AND LICENSED TO CLEAN

1. Department of Agriculture published Notice 4-2-43 of a proposed Amendment to ARM 4-2.6(6)-S662, Types of Seeds that Processing Plants are Authorized and Licensed to Clean 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)-S662. The above rule was amended to better clarify the language.

No testimony or comments were received.

3. This rule has been adopted as proposed with no language changes and becomes effective on November 26, 1977.

Adoption of Rules 4-2.28(1)-S2810 through 4-2.28(10)-S28050

1. Department of Agriculture published Notice 4-2-44 of a proposed Adoption of NEW rules 4-2.28(1)-S2810 through 4-2.28(10)-S28050 on October 24, 1977 at page 379, 380, 381, 382, 383 and 384, Montana Administrative Register; 1977 issue number 9.

2. Statement of reasons in support of the adoption of rules 4-2.28(1)-S2810 through 4-2.28(10)-S28050. The above rules were adopted to set guidelines and requirements for the loan programs in the Rural Development Unit, thus enabling the public the opportunity to be advised of the availability of funds, the purpose of the loans, who may apply and how to obtain the necessary forms.

No testimony or comments were received.

3. These rules have been adopted with the following changes and become effective on November 26, 1977.

The Chapter number ~~28~~ will become Chapter 6 since the department has undergone re-organization and this section of rules will be moved to the Centralized Services Division of the department. Which will make the rule numbers all different from the original notice.

The term ~~Rural Development Unit~~ will be changed to Rural Development Program.

Amendment of Rule 4-3.42(2)-P4200, PROCEDURAL RULES

1. Wheat Research and Marketing Committee published Notice 4-3-2 of a proposed Amendment to ARM 4-3.42(2)-P4200, Procedural Rules on October 24, 1977 at page 385, Montana Administrative Register; 1977 issue number 9.

2. Statement of reasons in support of the amendment of ARM 4-3.42(2)-P4200. The above rule was amended to better clarify the language.

No testimony or comments were received.

3. This rule has been adopted as proposed with no language changes and becomes effective on November 26, 1977.

DEPARTMENT OF AGRICULTURE

Adoption of Rules 4-3.42(2)-P4210, POLICIES AND OBJECTIVES; 4-3.42(2)-P4220, GUIDELINES; 4-3.42(2)-P4230, AWARDING OF CONTRACTS; and 4-3.42(2)-P4240, COMMITTEE LIAISON.

1. Wheat Research and Marketing Committee published Notice 4-3-3 of a proposed adoption of NEW rules to ARM 4-3.42(2)-P4210; 4-3.42(2)-P4220; 4-3.42(2)-P4230; & 4-3.42(2)-P4240 on October 24, 1977 at pages 387, 388, & 389, Montana Administrative Register; 1977 issue number 9.

2. Statement of reasons in support of the adoption of NEW ARM rules listed above. The above rules were adopted to comply with the laws in Section 82-4228, R.C.M. 1947.

No testimony or comments were received.

3. These rules have been adopted as proposed with no language changes but there may be a numbering change since the department has just undergone re-organization and all of Title 4 will be re-arranged. This will not effect the text of these rules though. These rules become effective on November 26, 1977.

Adoption of Rules 4-3.42(6)-S4260 through 4-3.42(10)-S42040

1. Wheat Research and Marketing Committee published Notice 4-3-4 of a proposed adoption of NEW rules to ARM 4-3.42(6)-S4260 through 4-3.42(10)-S42040 on October 24, 1977 at pages 390, 391, 392 and 393, Montana Administrative Register; 1977 issue number 9.

2. Statement of reasons in supoort of the adoption of NEW ARM rules listed above. The above rules were adopted to set guidelines in which the committee may make the public aware of the types of grants available through the Wheat Research and Marketing Committee and how to proceed with an application if a person, firm or organization is interested. Also among the reasoning is the need to establish procedures in which the committee will operate regarding the required reports on wheat and barley. These rules are necessary to the enforcement of various laws of the State of Montana.

No testimony or comments were received.

3. These rules have been adopted as proposed with no language changes but there may be a numbering change since the department has just undergone re-organization and all of Title 4 will be re-arranged. This will not effect the test of these rules though. These rules become **effective** on November 26, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
OF THE STATE OF MONTANA
WEIGHTS AND MEASURES DIVISION

In the Matter of the Readoption of Rule 8-2.10(6)-S1050 and the Amended Readoption of Rule 8-2.10(6)-S1060 Relating to Sampling and Standards for Petroleum Products	)))))	NOTICE OF THE READOPTION OF RULE 8-2.10(6)-S1050 AND THE AMENDED READOPTION OF RULE 8-2.10(6)-S1060

TO: All Interested Persons

1. On September 23, 1977, the Department of Business Regulation published notice of a proposed readoption of Rule 8-2.10(6)-S1050 and the amended readoption of Rule 8-2.10(6)-S1060 concerning sampling and standards for petroleum products at page 396 of the 1977 Montana Administrative Register, issue number 9.

2. The Department has readopted the rules as proposed.

3. No comments or testimony were received. The Department has readopted the rules because the past Legislative Assembly adopted new statutes replacing the authority formerly provided to the Department for the adoption of rules. The amendments to the permissible octane ratings are adopted in response to the need for varying ratings for unleaded gasoline.

Kent Kleinkopff

KENT KLEINKOPF, DIRECTOR
DEPARTMENT OF BUSINESS REGULATION

Certified to the Secretary of State November 14, 1977.

BEFORE THE DEPARTMENT OF BUSINESS REGULATION
STATE OF MONTANA
MILK CONTROL DIVISION

In the Matter of the Adoption of Rule 8-2.12(6)-S1230, Levying Additional Producer Assessments to Fund a Raw Milk Testing Program and the Amendment of Rule 8-2.12(1)-S1200 Providing for Distributor Collection of Assessment.	))))))	NOTICE OF THE ADOPTION OF RULE 8-2.12(6)-S1230 AND THE AMENDMENT OF RULE 8-2.12(1)-S1200

TO: All Interested Persons

1. On July 25, 1977, and September 23, 1977, the Department of Business Regulation published notice of a proposed adoption of a new rule and amendment of Rule 8-2.12(1)-S1200 concerning the levy and collection of additional producer assessments. Publication was made at pages 9 and 394 of the 1977 Montana Administrative Register, issue numbers 7 and 9, respectively.

2. The Department has adopted the new Rule 8-2.12(6)-S1230 as proposed. The Department has amended Rule 8-2.12(1)-S1200 with the following changes:

"(3) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and administrative assessments due the Department from such producers under ~~R.C.M. 1947, 27-409~~, Sections 27-409 and 27-430, R.C.M. 1947, as amended. ~~, and~~ The distributor shall transmit such fees and assessments to the Department ~~at the time required by law~~ together with a statement of individual producer assessment payments. Assessments under Section 27-409, R.C.M. 1947 shall be reported and paid at least quarterly, as provided in that section. Assessments under Section 27-430, R.C.M. 1947 and Rule 8-2.12(6)-S1230 shall be separately reported and paid monthly."

3. At the public hearing, held on November 2, 1977, all testimony supported the Department's proposals. Although other individuals attended, only representatives of the Montana Dairyman's Association testified. Accordingly, the new rule was adopted as proposed and only minor changes were made in the proposed amendment.

Kent Kleinkopf

Kent Kleinkopf, Director
Department of Business Regulation

Certified to the Secretary of State on November 14, 1977.

DEPARTMENT OF FISH AND GAME

Amendment of Rule 12-2.2(6)-P260 LIST OF DEPARTMENT DECISION MAKING

1. The Department of Fish and Game published Notice No. 12-2-46 of a proposed amendment to ARM 12-2.2(6)-P260 regarding the list of Department decision making on September 23, 1977, at page 401, Montana Administrative Register; 1977 issue Number 9.

2. The Department has amended this rule to accommodate public response to Department decisions not involving the Commission as a result of bifurcated decision making under Chapter 417, Section 16, Laws of Montana, 1977.

3. No testimony or public comments were received.

4. The Department has adopted the foregoing amendment as proposed with no change in the text as it appears in the published notice.

Amendment of Rule 12-2.14(6)-S1430 NONGAME WILDLIFE IN NEED OF MANAGEMENT

1. The Department of Fish and Game published Notice No. 12-2-47 of a proposed amendment to ARM 12-2.14(6)-S1430 regarding nongame wildlife in need of management on September 23, 1977, at page 403, Montana Administrative Register; 1977 issue Number 9.

2. The Department has amended this rule in order to provide for the necessary management of the lynx (Lynx canadensis). The Department has determined that it is essential that it implement 26-1804, R.C.M. 1947, because of unprecedented fur prices for spotted cats which cause year-round harassment.

3. No testimony or public comments were received.

4. The Department has adopted the foregoing amendment as proposed with no change in the text as it appears in the published notice.

Amendment of Rule 12-2.26(1)-S2670 CRITERIA FOR RECREATION AND PARK SYSTEM

1. The Department of Fish and Game published Notice No. 12-2-45 of a proposed amendment to ARM 12-2.26(1)-S2670 regarding the criteria for recreation and park system on September 23, 1977, at page 398, Montana Administrative Register; 1977 issue Number 9.

2. The Department has amended this rule to reflect development of criteria since the rule was initially adopted, at which time certain criteria for system components were incomplete.

3. No testimony or public comments were received.

4. The Department has adopted the foregoing amendment as proposed with no change in the text as it appears in the published notice.

Transfer of Rule 12-2.6(1)-620 SHOOTING PRESERVE BIRD TAGS to Rule 12-2.10(22)-S10230 on page 12-48.6 of the Administrative Rules of Montana (internal transfer with no change in text).

BEFORE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES
OF THE STATE OF MONTANA

In the matter of the amendment to rule ARM 16-2.22(6)-S2270 expanding the definition of "patient"	NOTICE OF THE AMENDMENT OF RULE ARM 16-2.22(6)-S2270

TO: All Interested Persons:

1. On September 23, 1977, the Department published notice of a proposed amendment to rule ARM 16-2.22(6)-S2270, modifying the definition of "patient", and located on page 415 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has amended the rule with the following changes:

ARM 16-2.22(6)-S2270 EMERGENCY MEDICAL SERVICES, AMBULANCE SERVICE, LICENSING.

* * *

(3) General definitions: . . .

"Patient" means an individual who is sick, injured, wounded or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

* * *

3. A public hearing on the proposed amendment was held October 17, 1977, at 1:00 p.m., in the Conference Room at 836 Front Street, Helena, Montana. No oral or written comments were received by the department from the date of the notice until October 24, 1977.

A. C. KNIGHT, M.D., Director

Certified to the Secretary of State November 14, 1977

BEFORE THE DEPARTMENT OF
COMMUNITY AFFAIRS OF THE
STATE OF MONTANA

In the matter of the amendment of Rules 22-2.4B(1)-S400 through 22-2.4B(30)-S4100 prescribing minimum requirements for subdivision regulations and regulating the form, accuracy, and descriptive content of records of Survey	NOTICE OF THE AMENDMENT OF RULES 22-2.4B(6)-S420, 22-2.4B(10)-S430, 22-2.4B(18)-S4030, 22-2.4B(22)-S4060, 22-2.4B(30)-S4090, 22-2.4B(30)-S4100

TO: All Interested Persons

1. On July 25, 1977, the Department of Community Affairs published notice of proposed amendments of rules 22-2.4B(1)-S400 through 22-2.4B(30)-S4100 concerning minimum requirements for subdivision regulations and the form, accuracy, and descriptive content of records of survey at page 20 of the 1977 Montana Administrative Register, issue number 7.

2. The agency has amended the rules as proposed with the following changes:

22-2.4B(6)-S420 PROCEDURAL REQUIREMENTS FOR LOCAL REGULATIONS

(1)(f) Specify that at least the following information be shown on the face of the preliminary plat or on supplements to it (The DHES/Local Government Joint Subdivision Application Form may be used to submit the information):

Comment: Amendments by the 1977 Legislature to the Sanitation in subdivisions Act require DCA and the Department of Health

and Environmental Sciences to prepare and distribute a joint application form for use by subdividers. DCA believes the requirements for local procedures should refer to that form.

(1)(f)(xvi) Amended as proposed

(1)(g) Amended as proposed

(1)(i) Amended as proposed

(1)(o) Amended as proposed

(1)(p)(iv) ~~Certificate by the State Department of Health and Environmental Sciences or local officials, when applicable, under Title 69, Chapter 50, that the plans and specifications for sanitary facilities have been approved.~~

Certification by the State Department of Health and Environmental Sciences that the sanitary facilities have been approved, or where applicable under Section 69-5003, R.C.M. 1947, by the local officials that adequate municipal facilities will serve the subdivision.

Comment: The Department of Health submitted a written statement that the Sanitation in Subdivisions Act does not authorize

local officials to approve sanitary facilities for subdivisions to be served by municipal systems. The adopted language more accurately reflects the role and authority of local government under that law.

(1)(t) Amended as proposed

(1)(u) Amended as proposed

(4) Procedures for divisions of land exempted from local review as subdivisions.

(a) Determining when the exemptions listed in sections 11-3862(6) and 11-3862(9) are being used for the purpose of evading the subdivision law. The governing body shall, by March 1, 1978, adopt criteria for determining when the exemptions contained in sections 11-3862(6) and 11-3862(9) are being used for the purpose of evading the act. As a minimum these criteria shall address: the number of parcels created through use of the exemptions, the disposition of prior exempted parcels, the length of time since previous exempted divisions of land from the original tract, and the number, size and configuration of remainders created by the use of the exemptions.

(b) In addition to any criteria adopted by local officials the following provisions shall govern the use of exemptions:

(1) For an occasional sale exemption authorized under section 11-3862(6)(d), only one occasional sale may be made within any 12-month period from any tract of record or from contiguous tracts of land created of public record on or after July 1, 1973, and held in single or undivided ownership. No portion or a tract or parcel of land may be the subject of an occasional sale more than once within any 12-month period.

(2) For a gift or sale to any member of the immediate family authorized under section 11-3862(6)(b), one conveyance of a parcel of land to each member of the landowner's immediate family is eligible for exemption from review and approval of the governing body, providing that the exemption creates no more than one remaining parcel of less than 20 acres in size. A second or subsequent proposed gift or sale to the same family member must be reviewed by the governing body to determine if the use of the exemption is intended to evade the purpose of the act.

Comment: Written and oral testimony was overwhelmingly against DCA's proposal to repeal its two rules restricting the use of the exemptions for an occasional sale and transfer to a member of the immediate family. The Attorney General has issued an opinion that the rule regarding limitation of the occasional sale was a valid exercise of DCA's rule making authority, but that the rule relating to

family member conveyances would likely fall if challenged in court. However, the opinion also stated that while the current rules would likely be found too restrictive, some restrictions would be permissible. The Attorney General stated that it would be reasonable to require the landowner to demonstrate that a second conveyance to a family member was not intended to evade the act. In keeping with the expressed public opinion and the reasoning of the Attorney General the Department proposes to retain the rule governing the occasional sale exemption, change the rule relating to the family conveyance and require local officials to adopt criteria for determining when use of the exemptions constitutes evasion of the act.

22-2.4B(10)-S430 COMPLIANCE WITH OTHER REGULATIONS OR PLANNING repealed as proposed.

22-2.4B(18)-S4030 MOBILE HOME PARKS

(1)(h) Repealed

Comment: In response to a written comment the Department learned that the Department of Administration did not adopt these standards.

(1)(i) Repealed as proposed

22-2.4B(22)-S4060 ENVIRONMENTAL ASSESSMENT

(1) Amended as proposed

(1)(d)(iii) Repealed

(1)(i)(i) The distribution of major vegetation types such as march, grassland, shrub, ~~coniferous forest, deciduous forest, mixed~~ forest.

(1)(i)(ii) Repealed

(1)(j) Measures to be taken to preserve trees and ~~critical plant communities~~ vegetative cover (e.g. design and location of lots, roads and open spaces).

Comment: These changes and deletions to the information required in the environmental assessment are made to eliminate the submittal of duplicative or unnecessary information.

22-2.4B(30)-S4080 UNIFORM STANDARDS FOR MONUMENTATION

(1)(a) Proposed change is withdrawn

(1)(3) Proposed change is withdrawn

Comment: Over 30 surveyors petitioned the Department to delete the specified standards for size and type of survey

monuments. A spokesman for the petitioners supported the proposed deletions because surveyors would be allowed to exercise their professional judgement in selecting a size and type of monuments. Other surveyors and the Montana Association of Registered Land Surveyors contend that the currently required sizes and types can be used without difficulty and the standardization facilititates identification of monuments in the field. The Department chooses to retain the specified standards because of the easier identification and use of standard survey monuments and the sizes and types specified in the rules are satisfactory to most surveyors.

22-2.4B(30)-S4090 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1)(a) Proposed change is withdrawn

Comments: *The proposal to allow three different sizes of certificates of survey was supported by a spokesman for approximately 30 petitioning surveyors and by representatives of Stillwater County. The petitioning surveyors favored the proposal because it would give them discretion to select the sheet size most appropriate to the size and configuration of the survey. The spokesman for Stillwater County favored the proposal if local officials could choose the size. The county does not*

have a blueprint reproduction machine and would like the authority to require all certificates of survey to be 8½" x 14". The president of the Montana Association of Registered Land Surveyors, however, testified that it preferred the county to county uniformity which one specified size provides and that the currently required 18" x 24" size is workable in most cases. A number of local officials also objected to permitting surveyors to select their size of sheet because most counties have filing systems that accommodate only the one size and the cost of converting to a multi-size system would be prohibitive. Some local officials noted that the 18" x 24" was a good working size which provided space for all required information.

(1)(b) Proposed change is withdrawn

Comment: *The department proposed this amendment to allow a convenient method for clerks and recorders to maintain records of changes to plats in those situations where such changes may be made without local government approval. Since making this proposal, the department has concluded that a preferable method of recording unreviewed changes to platted subdivisions is to file an amended plat which is not reviewed by the local governing body. A new provision for filing such a plat is adopted as Rule 22-2.4B(30)-S4100(2)(s).*

(2) The certificate of survey shall show~~, or contain~~ on its face or on separate sheets referenced on ~~the~~ its face ~~of the certificate of survey~~ the following information only:

Comment: The substantive change is that only the information required may be shown on the certificate of survey. Local officials may not add to, nor delete from, the requirements and surveyors may not include items other than those specified.

(3) Amended as proposed

(3)(a) Repealed as proposed

(3)(d) The existing language is deleted as proposed but the following language will be substituted therefor:

For an exemption as an "occasional sale," the certificate of survey must bear a certificate of the property owner that the exempted division of land meets the criteria specified in local regulations and Rule 22-2.4B(6)-S420(4).

(3)(e) The existing material is deleted as proposed, but the following material is substituted therefor:

For an exemption as a gift or sale to a member of the immediate family, the certificate of survey must bear a certificate of the property owner that the exempted division of land

meets the criteria for use of the exemption specified in local regulations and Rule 22-2.4B(6)-S420(6)(e). The certificate of survey must also indicate the name of the grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee.

Comment: The clerk and recorder can more readily enforce the filing requirements if the landowner is required to certify that the exemptions comply with the requirements set forth in S420(4) and the local criteria for determining when an exemption is intended to evade the act. The requirement helps assure that the landowner is aware of the limitations on use of the exemptions.

(3)(f) Repealed as proposed

(3)(g) Repealed as proposed

A new provision is adopted under this rule:

For an exemption as a relocation of a common boundary line, the certificate of survey must bear the signatures of all landowners whose parcels are changed by the relocation. The certificate of survey must show that the exemption was used only to change the location of a boundary line dividing two parcels, and must clearly distinguish the prior boundary location (shown, for example, by a dashed or broken line or a notation) from the new boundary (shown, for example, by a solid line or notation).

Comment: The new provision clarifies that the exemption is only used to change the location of a common boundary line, and not to create new boundaries. Requiring the signatures of all landowners whose parcels are affected by the relocation assures that they are aware of, and agree to, the changes.

22-2.4B(30)-S4100 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1)(a) Proposed change was withdrawn

Comment: The issues here are the same as they were for certificates of survey (Rule 22-2.4B(30)-S4090). Petitioning surveyors wanted some flexibility in selecting plat sizes, but the Montana Association of Registered Land Surveyors favored the uniformity of one plat size. A number of local officials preferred a single plat size to avoid purchasing additional filing facilities. The Department decided to retain the single size of 24" by 36" because people are accustomed to using it and very few problems have arisen since its adoption.

(1)(d) A new provision is adopted as follows:

Changes to a filed subdivision plat must be filed with the county clerk and recorder as an amended plat. An amended plat may not be filed unless it meets the filing requirements for a final subdivision plat specified in these rules, except

that approval by the local governing body is not required where waived by Section 11-3862(6), R.C.M. 1947 for relocation of common boundary lines or aggregation of five or fewer lots.

Comment: The Department received written testimony that the rules did not provide filing requirements for amended plats. This provision clarifies that amended plats are to be treated as any other final plat. The 1977 legislature amended the law to allow certain changes in platted subdivision without local approval and this provision will require that those changes be filed as amended plats but without the approval of the local governing body.

(2)(s) A new provision is adopted as follows:

Certification by the governing body that the final subdivision plat is approved, except where the plat shows changes to a filed subdivision plat which are exempt from local government review under Section 11-3862(6), R.C.M. 1947. Where an amended plat qualifies for such a waiver the plat must contain a statement that pursuant to Section 11-3862 (6), approval by the local governing body is not required for relocation of common boundary lines or aggregation of lots.

Comment: This provision will clarify that a plat must show the

approval of the governing body, but that amended plats which show relocation of common boundaries or aggregation of lots within a platted subdivision need not have that approval.

3. Effective date. The above amendments are effective November 26, 1977.

Harold A. Fryslie, Director
Department of Community Affairs

Certified to the Secretary of State November 14, 1977.

DEPARTMENT OF LIVESTOCK

STATEMENT OF REASONS IN SUPPORT OF THE AMENDMENT OF ARM RULE 32-2.6B(2)-S610 PASTEURIZATION PLANT CODE NUMBERS.

On November 8, 1977 the Board of Livestock amended ARM Rule 32-2.6B(2)-S610 relating to milk plant pasteurization code numbers. This action followed notice of the proposed amendment published in the Montana Administrative Register September 23, 1977. No public hearing was conducted and no requests for hearing were made. The amendments were made to conform the numbering system identifying pasteurized milk plants in Montana, current interstate milk shipping requests, to make the list of such plants current and to make minor corrections eliminating ambiguities in the rule.

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 472 through 475 of the 1977 Montana Administrative Register Issue No. 9.

STATEMENT OF REASONS IN SUPPORT OF THE AMENDMENT OF ARM RULE 32-2.6A(78)-S6330 IMPORTATION REQUIREMENTS.

On November 8, 1977 the Board of Livestock amended ARM Rule 32-2.6A(78)-S6330 relating to import requirements concerning Equine Infectious Anemia (EIA) import test for horses and other equidae. Pursuant to the notice a public hearing was held in Helena Montana on November 8. At the hearing comments were received in support and in opposition to the proposal. Those opposing the proposed amendment argued that the current requirement that equidae be tested for EIA no more than six months prior to importation into Montana was not soundly based, but since the requirement existed, no exceptions or weakening of it should be made. Opponents also argued that the proposal would be difficult to enforce because of the ease by which horses could be substituted into a supposedly closed herd. The Board determined once again that the EIA inport test was necessary to prevent Montana from being a dumping gound for EIA reactors. The Board also determined that the limited relaxation of the test requirement made by the proposed amendment would not allow the dumping of EIA horse into Montana, because a total herd test was required at least annually; horses moving between Montana and an adjacent state were not as likely to be exposed to EIA as horses coming in after movement through several states, and the state veterinarian could choose to not grant the test waiver.

Therefore the proposed amendment was adopted as proposed on page 476 of the 1977 Montana Administrative Register, Issue No. 9.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF COSMETOLOGISTS

Repeal of Rule 40-3.30(6)-S3020 through 40-3.30(6)-S30400; and Adoption of rule 40-3.30(6)-S3025 through 40-3.30(6)-S30155; and Amendment of rule 40-3.30(10)-S30410 through 40-3.30(10)-S30560.

1. The Board of Cosmetologists published Notice Number 40-3-30-24 of a proposed repeal, adoption and amendment on September 23, 1977 at page 488 of the Administrative Rules of Montana 1977, issue Number 9.

2. The repeal, adoption and amendment were not the nature of a complete review of the board rules. However, no substantive changes were made. Rather the sole purpose of the revision was to eliminate outdated and duplicating language, unnecessary repetition of statute, and to restructure the order of the rules so that specific requirements may be more easily located.

3. No requests for hearing were made or comments received.

4. The repeal, adoption and amendment has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF OPTOMETRISTS

Adoption of Rule 40-3.70(2)-P7015 CITIZEN PARTICIPATION RULES - INCORPORATION BY REFERENCE

1) The Board of Optometrists published Notice No. 40-3-70-3 of a proposed adoption of new rules relating to public participation in board decision making on September 23, 1977 at page 508 ARM 1977, issue No. 9.

2) The adoption incorporates, as rules of the board, the rules of the Department of Professional and Occupational Licensing regarding public participation in department decision making, which have been duly adopted and published in Title 40, Chapter 2, Sub-chapter 14, of the Administrative Rules of Montana.

The reason for the adoption is that such action is mandated by Section 82-4228, R.C.M. 1947. That section requires all agencies to adopt rules which specify the means by which the public may participate in decision making functions. Rather than adopt its own set of rules and for the sake of expediency, the board has reviewed and approved the department rules, and has incorporated them as their own.

3. No requests for hearing were made or comments received.

4. The adoption of the rule has been made exactly as proposed.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING
BOARD OF PHARMACISTS

Repeal of Rule 40-3.78(6)-S7860 SET AND APPROVE STANDARD REGULATION - SUBSTITUTION and
Adoption of a New Rule Regarding Passing Grades for Examination

1. The Board of Pharmacists published Notice No. 40-3-78-16 of a proposed repeal of ARM 40-3.78(6)-S7860, Set and Approve Standard Regulation - Substitution and adoption of a new rule regarding passing grades for examination on September 23, 1977 at page 510, ARM 1977, issue No. 9.

2. The reason for the repeal was that the matters and requirements imposed by the rule were preempted by the passage of the Drug Product Selection Act in the 1977 Legislature.

The new rule was adopted in order to assure that applicants are put on notice of passing grade requirements and to insure that such requirements are enforceable.

3. No requests for hearing were made or comments received.

4. The repeal and the adoption have been made exactly as proposed.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of) NOTICE OF PROPOSED ADOPTION
Rule 42-2.12(6)-S1500 relating) OF REGULATION CONCERNING
to combined populations of) COMBINED POPULATIONS OF
municipalities.) MUNICIPALITIES.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the adoption of rules relating to the Combined Populations of Municipalities at page 528-529 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has adopted rule 42-2.16(6)-S1500 with the following changes:

That a new sub-section should be added:

(4) In the event an aggregation of the populations of adjacent cities results in fewer licenses for the entire populated area than would be available if the municipalities were treated separately, the department shall consider the municipalities as separate for the purpose of determining the quota for each municipality. Aggregation, as described in the preceding subsections, shall occur only when the quota for the combined area is larger than the quota for each municipality within the entire populated area.

For purposes of the public hearing Mr. Peter Meloy has suggested that an additional section be added to ensure that the aggregation of population will not result in a decrease in the number of licenses in the combined population area.

At the public hearing a representative of the Administrative Code Committee stated that the rule should not be adopted for the following reasons:

(1) That the transfer provisions do not accord with the restrictions on transfers found in Section 4-4-206(4)(a), R.C.M. 1947;

(2) That the rule omits pertinent portions of Sections 4-4-201(b) and 4-4-202(2), R.C.M. 1947.

The suggested addition of Mr. Meloy has merit. Accordingly, the rule has been modified to allow its addition as sub-paragraph (4) of the rule.

The arguments of the representative of the Administrative Code Committee are overruled.

In regards to Section 4-4-206(4)(a), that statute concerns solely quota excess licenses (floater licenses). This rule has no application to quota excess licenses (floater licenses).

In regard to Sections 4-4-201(b)(retail beer licenses) and 4-4-202(2)(all-beverage license) the respective statutory language contained therein, while applicable to this rule, is sufficiently clear and does not require further rule-making for elaboration.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of) NOTICE OF ADOPTION OF
Rule 42-2.12(6)-S1510 relating) REGULATION CONCERNING FEES
to fees of combined populatiCn) FOR COMBINED POPULATION AREAS
areas.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the adoption of rules relating to the Regulation Concerning Fees for Combined Population Areas at page 530-531 of the 1977 Montana Administrative Register, issue number 9.

2. No comments or testimony were received. The agency has adopted the rules because of the same rationale as given in original notice.

The adoption of this rule is to become effective on November 26, 1977.

By E. Dore
RAYMON E. DORE
Director
Department of Revenue

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the income adjustment for capital inves - ment for energy conservation) NOTICE OF ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the income adjustment for capital investment for energy conservation at page 522-523 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has adopted rule 42-2.6(1)-S6161 with the following changes: (text of rule with matter stricken interlined and new matter underlined.

Under sub-section 1

A deduction is allowed for a portion of expenditures made for ~~energy-conservation-purposes~~ the purpose of conserving energy.

The Revenue Oversight Committee passed a resolution stating that it believes the intent of H.B. 292 is to allow a tax deduction for any capital investment for an energy conservation purpose in an existing building, regardless of whether that investment brings the building above established energy code standards.

The resolution of the Revenue Oversight Committee to allow a deduction for capital investments in existing buildings regardless of whether they exceed established standards has merit. This regulation has been modified to recognize any capital investments that has a true energy conservation purpose in an existing building.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of rules relating to the income adjustment for capital investment for energy conservation) NOTICE OF ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the definition of income adjustment for capital investment for energy conservation at page 524-525 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has adopted rule 42-2.6(1)-S6162 as proposed.

3. The agency did not receive any adverse comment or testimony.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Income adjustment for capital investment for energy conservation.) NOTICE OF THE ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of rules relating to the definition of income adjustment for capital investment for energy conservation at page 526-527 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has adopted the rule with the following changes: (text of rule with matter stricken interlined and new matter underlined.

42-2.6(1)-S6163 - CAPITAL INVESTMENT WITH AN ENERGY CONSERVATION PURPOSE:

Under sub-section 1

are among those that can result in ~~a~~ the conservation of energy:

Under sub-section 1

delete a through m and add the following:

(a) Insulation in existing buildings of floors, walls, ceilings and roofs;

(b) Insulation in new buildings of floors, walls, ceilings and roofs insofar as it produces an insulating factor in excess of established standards;

(c) Insulation of pipes and ducts located in non-heated areas and of hot water heaters and tanks;

(d) Special insulating siding with a certified insulating factor substantially in excess of that of normal siding;

(e) Storm or triple glazed windows;

(f) Storm doors;

(g) Insulated exterior doors;

(h) Caulking and weather stripping;

(i) Devices which limit the flow of hot water from shower heads and lavatories;

(j) Waste heat recovery devices;

(k) Glass fireplace doors;

(l) Exhaust fans used to reduce air conditioning requirements;

(m) Replacement of incandescent light fixtures with light fixtures of a more efficient type;

(n) Lighting controls with cut-off switches to permit selective use of lights;

(o) Clock regulated thermostats.

This is not be considered an exhaustive list of qualifying capital investments. The Department will consider other investments that substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for the heating, cooling or lighting of buildings.

The Revenue Oversight Committee passed a resolution stating that it believes the intent of H.B. 292 is to allow a

tax deduction for any capital investment for an energy conservation purpose in an existing building, regardless of whether that investment brings the building above established energy code standards.

The resolution of the Revenue Oversight Committee to allow a deduction for capital investments in existing buildings regardless of whether they exceed established standards has merit. This regulation has been modified to recognize any capital investments that has a true energy conservation purpose in an existing building.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Income adjustment for capital investment for energy conservation.	))))	NOTICE OF THE ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the income adjustment for capital investment for energy conservation at page 514-515 of the 1977 Montana Administrative Register, issue number 9

2. The agency has adopted the rule with the following changes: (text of rule with matter stricken interlined and new matter underlined.

42-2.8(1)-S80540 - Income adjustment for capital investment for energy conservation:

Under sub-section 1

portion of expenditures made ~~for energy conservation purposes~~ in both residential and nonresidential buildings for the purpose of conserving energy.

Under sub-section 2

~~will be entitled to a~~ is to be used in calculating the deduction. ~~in computing taxable income.~~

The Revenue Oversight Committee passed a resolution stating that it believes the intent of H.B. 292 is to allow a tax deduction for any capital investment for an energy conservation purpose in an existing building, regardless of whether that investment brings the building above established energy code standards.

At the public hearing a written statment was received from Gerhard M. Knudsen, Department of Natural Resources, suggesting that tax payers should have the option of determining whether their capital expenditures are allowed as a deduction under Section 84-7403, R.C.M. 1947, or as a credit pursuant to Section 84-7414, R.C.M. 1947.

The resolution of the Revenue Oversight Committee to allow a deduction for capital investments in existing buildings regardless of whether they exceed established standards has merit. This regulation has been modified to recognize any capital investment that has a true energy conservation purpose in an existing building.

The argument of Mr. Knudsen is overruled. Section 84-7414, R.C.M. 1947, provides incentives for the installation or aquisition of non-fossil energy generation systems. Section 84-7403, R.C.M. 1947, establishes a deduction for capital investments for the purpose of conserving energy. The Legislature intended that these Acts be mutually exclusive. The Department does not have authority to enlarge or alter their scope.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Income adjustment for capital investment for energy conservation.	))))	NOTICE OF THE ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the income adjustment for capital investment for energy conservation at page 516-517 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has adopted rule 42-2.8(1)-S80541 as proposed.

A written statement was received from Randy Moy suggesting that the definition of "energy conservation purpose" should include renewable energy systems. He argues that both a tax deduction and a tax credit should be given for an investment in renewable energies.

The argument of Mr. Moy is overruled. The definition of "energy conservation purpose" is taken directly from Section 84-7402(3), R.C.M. 1947. The Department does not have the authority to alter this definition to include renewable energies or to allow both a tax deduction and a tax credit for investments in renewable energy systems.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Income adjustment for capital investment for energy conservation.	))))	NOTICE OF THE ADOPTION OF RULES RELATING TO THE INCOME ADJUSTMENT FOR CAPITAL INVESTMENT FOR ENERGY CONSERVATION

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the income adjustment for capital investment for energy conservation at page 518-519 of the 1977 Montana Administrative Register, issue number 9.

2. The agency has adopted the rule with the following changes: (text of rule with matter stricken interlined and new matter underlined.

42-2.8(1)-S80542 - Capital investment with an energy conservation purpose:

Under sub-section 1

<u>are among those that can result in</u> ~~a~~ <u>the conservation of energy:</u>

Under sub-section 1
delete a through m and add the following:

(a) Insulation in existing buildings of floors, walls, ceilings and roofs;

(b) Insulation in new buildings of floors, walls, ceilings and roofs insofar as it produces an insulating factor in excess of established standards;

(c) Insulation of pipes and ducts located in non-heated areas and of hot water heaters and tanks;

(d) Special insulating siding with a certified insulating factor substantially in excess of that of normal siding;

(e) Storm or triple glazed windows;

(f) Storm doors;

(g) Insulated exterior doors;

(h) Caulking and weather stripping;

(i) Devices which limit the flow of hot water from shower heads and lavatories;

(j) Waste heat recovery devices;

(k) Glass fireplace doors;

(l) Exhaust fans used to reduce air conditioning requirements;

(m) Replacement of incandescent light fixtures with light fixtures of a more efficient type;

(n) Lighting controls with cut-off switches to permit selective use of lights;

(o) Clock regulated thermostats.

This is not to be considered an exhaustive list of qualifying capital investments. The Department will consider other investments that substantially reduce the waste or dissipation of energy, or reduce the amount of energy required for the heating, cooling or lighting of buildings.

Written statements filed by Mr. Gerhard Knudsen and Mr. Randy Moy pointed out that this regulation should clarify that it is not an all-inclusive list and that other capital investments may qualify as having an energy conservation purpose.

The Revenue Oversight Committee passed a resolution stating that it believes the intent of H.B. 292 is to allow a tax deduction for any capital investment for an energy conservation purpose in an existing building, regardless of whether that investment brings the building above establised energy code standards.

The arguments of Mr. Knudsen and Mr. Moy are meritorious wherein they argue that this regulation should make it clear that the list of capital investments that can result in energy conservation is non-exclusive. Accordingly, this rule has been modified to clarify that the list is non-exclusive.

The resolution of the Revenue Oversight Committee to allow a deduction for capital investments in existing buildings regardless of whether they exceed established standards has merit. This regulation has been modified to

recognize any capital investments that has a true energy conservation purpose in an existing building.

The adoption of this rule is to become effective on November 26, 1977.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of adoption of rules relating to the Tax credit for nonfossil energy generation systems.	)))	NOTICE OF THE ADOPTION OF RULES RELATING TO THE TAX CREDIT FOR NON-FOSSIL ENERGY GENERATION SYSTEMS.

TO: All Interested Persons:

1. On September 23, 1977, the Department of Revenue published notice of a proposed adoption of a rule concerning the tax credit for non-fossil energy generation systems at page 520-521 of the 1977 Montana Adminstrative Register, issue number 9.

2. The agency has adopted the rule 42-2.8(1)-S80550 with the following changes:

3. That sub-section 5 be deleted in its entirety and that sub-section 6 become 5.

At the public hearing a written statment was received from Gerhard M. Knudsen, Department of Natural Resources suggesting that tax payers should have the option of determining whether their capital expenditures are allowed as a deduction under Section 84-7403, R.C.M. 1947, or as a credit pursuant to Section 84-7414, R.C.M. 1947.

The argument of Mr. Knudsen is overruled. Section 84-7414, R.C.M. 1947, provides incentives for the installation or aquisition of non-fossil energy generation systems. Section 84-7403, R.C.M. 1947, establishes a deduction for capital investments for the purpose of conserving energy. The Legislature intended that these Acts be mutually exclusive. The Department does not have authority to enlarge or alter their scope.

In accordance with a recommendation from the Revenue Oversight Committee the Department drafted this regulation to allow a tax credit for the installation of efficient wood burning stoves. In direct opposition to this approach the Administrative Code Committee, concluded that it was not the intention of the Legislature to allow a tax credit for the installation of a wood burning stove.

In order to resolve the difference in opinion between the Administrative Code Committee and the Revenue Oversight Committee regarding the deductability of wood burning stoves the Department requested that the Legislature be polled pursuant to Section 82-4203.5, R.C.M. 1947. The result of the poll showed that it was not the intention of the Legislature to allow a deduction for wood burning stoves. This regulation has been modified to eliminate this deduction.

The adoption of this rule is to become effective on November 26, 1977.

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

In the matter of the adoption of rule MAR 46-2.10(18)-S11447 pertaining to personal care services in a recipient's home.	))))	NOTICE OF THE ADOPTION OF A RULE PERTAINING TO PERSONAL CARE SERVICES.

TO: All Interested Persons

1. On September 23, 1977, the Department of Social and Rehabilitation Services published notice of a proposed adoption of a rule concerning personal care services at page 532 of the 1977 Montana Administrative Register, Issue No. 9.

2. The agency has adopted the rule with the following change in sub-section (2)(d):

(d) Dressing (changing garments)

3. At the public hearing the comment was made that providers of services under the program would not be required to meet the same standards as Home Health Care agencies, which also provide personal care services.

It has been determined by the Montana Department of Health and Environmental Sciences that the Department of Social and Rehabilitation Services and its employees providing personal care services are not Home Health Care agencies as defined by federal and state law. There is no requirement that the providers of personal care services under the program meet the same standards as Home Health Care agencies. Due to the nature of the services provided under the program, there is no practical necessity for meeting the same standards as Home Health Care agencies, whose primary purpose is the provision of skilled nursing services.

The comment was made that daily supervision of Home Attendants providing personal care services by a Social Worker was inadequate, and that direct supervision by a Registered Nurse should occur at least every two weeks.

The rule under consideration requires that the Personal Care Services Plan must be developed and carried out under the supervision of a Registered Nurse. It is within the discretion of the Nurse to determine the frequency and extent of supervisory visits necessary to assure quality care in each individual case. Supervision could, if necessary, occur daily, weekly, or at any other interval.

The comment was received that a Social Worker Case Manager is not an adequate liaison between the prescribing physician and the Home Attendant.

Although the Social Worker Case Manager is responsible for obtaining the doctor's orders, that responsibility may be delegated to the supervising Registered Nurse. The complexity of the case, the convenience of the Registered Nurse, Social Worker and physician, and the recommendation of the Registered Nurse and physician should all be considered. In any event,

the initial Personal Care Services Plan is devised by the Registered Nurse in concert with the prescribing physician.

The comment was received that the Registered Nurses providing supervision in the program should meet the Merit System qualifications for Registered Nurses providing Community Nursing Services to assure that the supervisors are current in nursing skills.

As a prerequisite to participation in the program, a Registered Nurse must be currently licensed by the Board of Nursing to practice in the state of Montana. The federal regulations which govern the program require only current state licensure. However, the Social and Rehabilitation Nurse Consultant contracts with Registered Nurses who are current in nursing practice. Home Health Care Agency Registered Nurses and Public or Community Health Nurses are the primary resource. The Department of Health and Environmental Sciences, Bureau of Nursing, is informed of Registered Nurses who are providing supervision to the Social and Rehabilitation Home Attendants in the area of personal care services.

The comment was received that the program imposes liability on the Registered Nurses who supervise, and the Home Health agencies which may employ those Registered Nurses, while limiting the supervisory powers of the Registered Nurses and withholding the "hire-fire" power.

A participating Registered Nurse may incur liability for her negligent acts or omissions, and is certainly in some sense responsible for the quality of care provided under the program. A Registered Nurse who is unable or unwilling to accept that responsibility need not participate in the program. As stated above, the extent and nature of supervision is left to the discretion of the participating Registered Nurse. The Department will certainly be receptive to recommendation by Registered Nurses as to hiring and firing practices; however, there is no possible mechanism by which the supervising Registered Nurse could exercise that absolute power over employees of the state and county departments.

The concern was expressed that the Home Attendants would provide certain services (e.g., bowel and bladder training) which are outside the scope of their training and professional competence.

Home Attendants may only perform those services described in the rule under the auspices of the program. Effective supervision should assure compliance with the rule's limits.

Comments were received concerning the rate of payment for Registered Nurse services under the program.

The rule under consideration does not deal with rates of payment.

The comment was received that the language of sub-section (2)(d) of the rule was unclear, in that it could be interpreted to allow Home Attendants to change surgical or sterile dressings.

The sub-section has been amended to clarify the meaning.

The comment was received that the program duplicates

existing services in some areas of the state, and the recommendation was made by WestMont Home Health Care, Inc. that all clients in those areas be referred to existing Home Health Care agencies, and that as Home Health Care agencies are established in an area the program clients be referred to the newly-established Home Health Care agency.

The program was instituted to meet a perceived need for personal care services in the state. To date, the program has provided services to approximately 290 needy persons in the state. If it appears that the necessary personal care services of similar quality and cost can be provided by Home Health Care agencies, the Department may contract with and refer all clients to those agencies. In any event, the program is not intended to be in direct competition with existing providers.

The comment was received that physicians may be hesitant to prescribe personal care services due to unfamiliarity with the Home Attendant and supervisor providers.

In many instances, the Social and Rehabilitation Services Home Attendants are the main contact between clients and physicians. They provide the transportation/escort to needed medical services. The Department is confident that a high quality service will be provided under the program, and that physicians will recognize the program as a competent and efficient means of providing personal care services. Any adverse effect upon the relationship of physicians and existing Home Health Care agencies has not been demonstrated and is not anticipated.

Patrick E. Mahey

Director, Social and Rehabilitation Services

Certified to the Secretary of State November 14, 1977.

VOLUME 37 OPINION NO. 75

TEACHERS - American Indian Studies Act, Applicability to Tenured Teachers;

SCHOOL DISTRICTS - Trustees, American Indian Studies Act, Applicability to Tenured Teachers;

HELD: The provisions of the Indian Studies Act, Sections 75-6121 through 75-6132, R.C.M. 1947, are applicable to tenured teachers.

11 October 1977

Georgia Rice
Superintendent
Office of Public Instruction
State Capitol
Helena, Montana 59601

Dear Ms. Rice:

You have requested my opinion concerning the following question:

> Can boards of trustees for elementary and secondary public school districts on, or located in the vicinity of Indian reservations refuse to re-employ tenured teachers who have not satisfied the requirements for instruction in American Indian studies, as defined in Section 75-6130, R.C.M. 1947?

Section 75-6131(1), R.C.M. 1947, the American Indian Studies, Act, was effective on July 1, 1973, and provides:

> By July 1, 1979, all boards of trustees for elementary and secondary public school districts on, or in public schools located in the vicinity of, Indian reservations where the enrollment of Indian children qualifies the school for federal funds for Indian education programs, shall employ only those certified personnel who have satisfied the requirements for instruction in American Indian studies as defined in Section 2 (75-6130) of this act. (Emphasis added).

The policy underlying this requirement is set out in Section 75-6129:

> It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of the American Indians and to be committed in its educational goals to the preservation of their cultural heritage. It is the intent of this act, predicated on the belief that school personnel should relate effectively with Indian students and parents, to provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

Section 75-6130 provides that the instruction in American Indian Studies required by Section 75-6131 may be met in three different ways:

> (a) A formal course of study offered by a unit of higher education developed with the advice and assistance of Indian people;
> (b) In-service training developed by the superintendent of public instruction in co-operation with educators of Indian descent and made available to school districts; or
> (c) In-service training provided by a local board of trustees, which is developed and conducted in co-operation with local Indian people.

The answer to the question herein depends upon the answers to the following questions: First, did the legislature intend that the requirements of Section 75-6131 apply to tenured teachers; and second, if so, is that imposition constitutionally permissable?

Section 75-6103, the tenure act, provides:

> [w]henever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent, the teacher shall be deemed to be re-elected from year to year thereafter as a tenure teacher at the same salary and in the same or a comparable position of employment as that provided by the last executed contract with such teacher, unless:
>
> (1) the trustees resolve by a majority vote of their membership to terminate the services of the teacher in accordance with the provisions of section 75-6104; or
>
> (2) the teacher will attain the age of sixty-five (65) years ....(Emphasis supplied).

While the Indian Studies Act does not specifically mention tenured teachers, it broadly applies to "certified personnel" (Section 75-6131). A school district may employ only certified teachers (Section 75-6102), and therefore "certified personnel" in Section 75-6131 refers to both tenured and nontenured teachers.

The Indian Studies Act permits school districts to employ only those personnel who have met the specified requirements (Section 75-6131). The word "employ" generally signifies both initial and continued employment. Hinek v. Bowman Public School District, 232 N.W.2d 72, 74 (N.D. 1975). While the Tenure Act uses the term "re-elected" (Section 75-6103), that term has been construed to mean re-employed. Stoneman v. Tonworth School District, 320 A.2d 657, 660 (N.H. 1974). Therefore, "employment" in the continuing sense in the Indian Studies Act, and "re-elected" in the Tenure Act are essentially identical terms. If the legislature had intended to limit the Indian Studies Act to the

initial employment of a teacher, it could have done so. However, since the language of the Indian Studies Act is broad and comprehensive, it is plain that the legislature intended it to apply to all certified teachers, whether tenured or not. It is interesting to note that House Bill 463, introduced in the Forty-fifth Legislature to "revise the requirements and procedures" of the Indian Studies Act was killed in committee. While that bill sought to revise the Act, it only did so in regard to extending the time limits within which compliance with the Act is required. It did not seek to limit the application of the Act as to tenured teachers, and in fact proposed a subsection 3 to Section 75-6131 which would have required compliance by July 1, 1984, by "all persons certified to teach in the public schools." Therefore, if the Legislature had intended to limit the application of the Indian Studies Act, such an intention would certainly have surfaced either in the original Act or in the amendments proposed in 1977.

Since the Indian Studies Act on its face applies to tenured teachers, the second inquiry is whether that application is constitutionally permissable. The crux of that inquiry depends upon whether the statutes governing teacher tenure create contractual rights in and of themselves in favor of tenured teachers. If so, the extent of those rights must be determined. The legislature is then prohibited from enacting a statute in derogation of those rights by Article II, Section 3, of the Montana Constitution, which prohibits the legislature from enacting "any law impairing the obligation of contracts...."

Considerable litigation has arisen concerning the question of whether a contract is created by teacher tenure legislation, and United States Supreme Court decisions have reached both affirmative and negative conclusions. In Phelps v. Board of Education, 300 U.S. 319 (1937), the New Jersey tenure statute under consideration provided that after three years teaching; no teacher could be dismissed or subjected to a salary reduction except for cause and after hearing. The Court held (300 U.S. at 322-23) that this did not amount to a legislative contract. The tenure act was "but a regulation of the conduct of the [school] board and not a term of a continuing contract indefinite in duration with the individual teacher." By contrast, Anderson v. Brand, 303 U.S. 95 (1938) involved a tenure act which provided for an "indefinite contract" after five years of teaching. The Court held

(303 U.S. at 100) that a legislative enactment may contain provisions which as to individuals become contracts between them and the state or its subdivisions, and these contracts are subject to the constitutional prohibition against legislative impairment. The Anderson Court found the whole tenor of the act in question to be one of creating a contract. For example, the word "contract" appeared 25 times in its first four sections. The act assured affected teachers of a binding and enforceable contract against the school district, and repeal of the act could not affect any rights acquired thereunder.

Dodge v. Board of Education, 302 U.S. 74, 78-79 (1938), involved a change in an annuity statute. The Court stated the following guidelines:

> The parties agree that a state may enter into contracts with citizens, the obligation of which the legislature can not impair by subsequent enactment. They agree that legislation which merely declares a state policy, and directs a subordinate body to carry it into effect, is subject to revision or repeal in the discretion of the legislature. The point of controversy is as to the category into which the Miller Law falls.
>
> In determining whether a law tenders a contract to a citizen it is of first importance to examine the language of the statute. If it provides for the execution of a written contract on behalf of the state the case for an obligation binding upon the state is clear. Equally clear is the case where a statute confirms a settlement of disputed rights and defines its terms. On the other hand, an act merely fixing salaries of officers creates no contract in their favor and the compensation named may be altered at the will of the legislature. This is true also of an act fixing the term or tenure of a public officer or an employee of a state agency. The presumption is that such a law is not intended to create private contractual or

> vested rights but merely declares a policy to be pursued until the legislature shall ordain otherwise. He who asserts the creation of a contract with the state in such a case has the burden of overcoming the presumption. If, upon a construction of the statute, it is found that the payments are gratuities, involving no agreement of the parties, the grant of them creates no vested right. (Emphasis added).

Generally, an enactment will not be construed to create private contractual rights which limit or extinguish the power of the government to completely control the subject matter of the enactment unless the intent to create a contract clearly appears. "An agreement requiring the surrender or suspension of legislative control will not be raised by mere implication." Taylor v. Board of Education, 89 P.2d 148, 152 (Cal. 1939).

The basic purpose of teacher tenure statutes is generally agreed upon:

> The evident purpose of the Tenure of Instructors Act is to protect competent and worthy instructors and other members of the teaching profession against unjust dismissal of any kind--political, religious or personal, and secure for them teaching conditions which will encourage their growth in the full practice of their profession, unharried by constant pressure and fear, but it does not confer special privileges upon them to retain permanently their positions or salary nor permit their interference with the control or efficient operation of the public-school system; and, notwithstanding it grants tenure to those who have taught the requisite period, it nonetheless empowers Boards of Education to discharge them for just cause in an orderly manner by the procedures specified.

Million v. Board of Education, 310 P.2d 917, 921 (Kan. 1957). Tenure has been described as a "substantial, valuable and beneficial right, which cannot be taken away except for good cause...." Saxtroph v. District Court, 128 Mont. 353, 361 (1954). Tenure protects teachers from being fired for political, partisan or capricious reasons. Graham v. Board of Education, 305 N.E.2d 310, 313 (Ill. 1973).

The question of whether the Montana teacher tenure statutes create contractual rights in and of themselves has not been directly decided. The most illuminating case is Eastman v. School District No. 1, 120 Mont. 63 (1947), which basically involved the extent of notice that must be given to refuse to reemploy a tenured teacher. The majority discussed the relationship among the teacher, the school board, and the tenure act as follows (120 Mont. at 68):

> The so-called teachers' tenure act which is operative after the third consecutive year of a teacher's employment does not do away with the necessity of having a contract as required by section 75-6102. The only effect of said section 75-6103 is to renew the teacher's existing contract for another year by operation of law, after her election for the third consecutive year unless the notice specified in said section is given. Therefore, whether a teacher is the holder of a written contract for her first year's service or whether her contract has been extended by operation of law under section 75-6103, the situation is the same. The teacher is still employed under a contract, a teacher cannot be employed, he cannot perform services as a teacher, he cannot draw pay from the school district without a contract. Accordingly,...a person's right to teach in the public schools of Montana is created by contract, rests upon contract and ceases upon expiration of the contract.... (Emphasis original).

The year-to-year nature of the tenure right was explained in the concurring opinion (120 Mont. at 74-75):

> The statute is not open to the construction that the teacher, after serving three consecutive years, is placed upon a continuing, permanent tenure contract. Rather the statute permits and authorizes the school board to re-employ the teacher for another year in one of three methods, or to decline to re-employ her.
>
> * * *
>
> Obviously under the statute a teacher who has taught for three consecutive years obtains only the rights provided for by statute. Those rights are simply that he shall be automatically considered an applicant for the position from year to year and if the board does not affirmatively re-elect him before a stated time or give notice that it refuses to re-employ him, then his re-election is automatic.
>
> In other words the effect of the statute is to place such a teacher in exactly the same position as a new applicant for the position, with the added feature of re-employment automatically if no action be taken by the board before May 1st. The board is confronted each year, not with the problem of whether it will discharge a teacher who has served three consecutive years or more but whether it will re-employ him.

The subsequent decision in Saxtroph v. District Court, supra, also primarily involved a sufficiency of notice question, but was decided after the tenure statute construed in Eastman had been amended to provide for notice and hearing upon the termination of tenured teacher services. Thus, while Saxtroph indicated that it overruled anything inconsistent in Eastman, the discussion of the nature of tenure in the latter case should not be affected. Saxtroph overrules Eastman only as to the notice required to terminate tenured teacher services.

More recently, in Stephens v. City of Billings, 148 Mont. 372 (1966), the dispute involved a seniority ordinance for

firemen. In determining that the ordinance created no contract between the city and the firemen, the Court quoted exensively from the ALR annotation on teacher tenure (147 A.L.R. 293) to the effect that in absence of language expressing an intent to confer contractual rights, recognition of permanent status does not create contractual rights immune from legislative encroachment.

As previously noted, Section 75-6103 provides that if a teacher has been "elected" by offer and acceptance of a contract from the district for four consecutive years, then he or she is "deemed to be re-elected from year to year." This right is subject to numerous qualifications. The District trustees may notify all tenured teachers of their reelection by April 1 of each year, and the tenured teacher must accept the "conditions of" this offer within 20 days, or a conclusive presumption of nonacceptance arises (Section 75-6105). If the trustees do not provide this written notice of reelection, a tenured teacher is deemed re-elected by virtue of Section 75-6103. Alternatively, the trustees can resolve to terminate the services of a tenured teacher by following the notice, hearing and appeal procedures of Section 75-6104.

A district may only employ certified teachers, and only under a written contract (Section 75-6102). Therefore, a tenured teacher must maintain certification pursuant to Section 75-6001 through 75-6011, or the district may not employ him. The Board of Education has adopted detailed policies on certification pursuant to Sections 75-6002 and 75-6003, requiring, inter alia, continuing education credits for all Class Two certified teachers. Certificates are valid for five years (Section 75-6008), but may not be issued to any person who has not complied with these certification requirements (Section 75-6003).

The fact that tenure is not a complete, automatic and perpetual right is evident from the preceeding discussion of the statutory provisions. Tenure, for example, does not insure the re-election of a teacher if doing so would violate the state's statutory nepotism provisions. State v. School District No. 13, 116 Mont. 294, 298-99 (1944).

A situation similar to the one under consideration arose in Campbell v. Aldrich, 79 P.2d 251 (Ore. 1938), where the existing tenure law was amended to provide for mandatory retirement at age 65. Proceeding upon a statute similar to

Montana's, the court found no contractual right to exist, by virtue of the statute, between the state and the teachers. The statute vested the teachers with a statutory status embodying certain procedural safeguards, but the court was unable to find any indication that the legislature intended to surrender its control over the subject of teacher tenure by enacting effectively irrevocable statutes.

Tenure is an essentially contingent right which gives a teacher year-to-year employment unless terminated according to the statutory procedure. It has been held in Montana that the provisions of the tenure statutes become part of the contract for employment between the district and the teacher by operation of the law. McBride v. School District No. 2, 88 Mont. 110, 115 (1930); Kelsey v. School District No. 25, 84 Mont. 453, 458 (1929). If the statutes themselves had created a contract in favor of the teachers, there would be no reason for implying the statutes into the actual contract with the district. It is clear that any contract which exists vis a vis a tenured teacher is the one with the district, and not one with the state by virtue of the existance of the tenure statutes.

The legislature has retained, and in the case of the Indian Studies Act, has exercised its prerogative to alter the conditions of tenure. This is not to say that the legislature could repeal the tenure statutes and thereby destroy the rights of those teachers who had acquired tenure. Local #8 v. City of Great Falls, Montana Supreme Court, No. 13616, Decided August, 1977, As the Court said in Campbell v. Aldrich, supra, 78 P.2d at 261:

> In our opinion, the sovereign power vested in the Legislature to enact laws for the betterment of common schools is one which cannot be bartered away. The exercise of such power at one time does not mean that future Legislatures may not, in the light of experience, declare a different policy. If such is not the law, there is no hope for progress, and future legislators, in determining educational policies concerning the tenure of teachers, must follow in trodden paths.

The legislative policy of the Indian Studies Act is clear, and applies to all teachers.

Even assuming arguendo that teachers enjoy contractual rights by virtue of the teacher tenure statutes, a majority of the presently tenured teachers would still be subject to the Indian Studies Act requirements. The Act became effective July 1, 1973, and therefore any teacher becoming tenured after that date took tenure with notice of the Act and is clearly subject to its provisions. This would be true regardless of whether or not contractual rights exist.

Any tenure contractual rights that may exist are subject to the certification policies of the Board of Public Education. Section 75-6002. Further, all teachers under the Class Two Standard certificate are presently subject to continuing education requirements for the five-year renewal of their certificates. Thus, these teachers, even though tenured, are on notice that they have continuing education requirements, and the imposition of the Indian Studies Act requirements does not add or change their contractual rights as a legal matter. There is nothing in the certification statutes, Section 75-6001, et seq., to indicate that the legislature intended that the certification policies could never be changed once they were adopted. To the contrary, the purpose of the certification policy is to establish and maintain professional standards. Section 75-6001. Thus, the Board has the power to change the certification policies as necessary to maintain professional standards without impairing any tenured teacher's rights. If such a power exists in the Board, it certainly exists in the legislature.

The Indian Studies Act provides a six-year period (July 1, 1973 until July 1, 1979) to comply with its requirements. Every teacher certified on July 1, 1973, would have to be re-certified at some time during that period, and would complete the continuing education requirements with knowledge of the Act. If those requirements have not been met, then the legislature has clearly prohibited the school districts from rehiring any non-complying teacher.

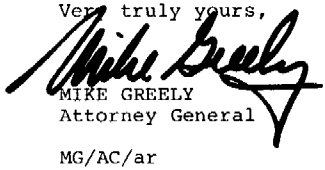
Affected teachers still have until July 1, 1979, to comply with the requirements of the Indian Studies Act. Compliance with the Act is presently difficult in some areas of the state. If in-service training programs as described in

Section 75-6130(2) are expeditiously established around the state, then all affected teachers will have reasonable opportunity to comply with the law.

THEREFORE, IT IS MY OPINION

The provisions of the Indian Studies Act, Sections 75-6121 through 75-6132, R.C.M. 1947, are applicable to tenured teachers.

Very truly yours,



MIKE GREELY
Attorney General

MG/AC/ar

STATE CONSERVATION DISTRICTS - Legal status;

STATE CONSERVATION DISTRICTS - Legal representation;

STATE CONSERVATION DISTRICTS - Taxation;

STATE CONSERVATION DISTRICTS - Employees, private counsel;

ATTORNEY GENERAL - Duty to represent conservation district;

ATTORNEY GENERAL - Supervisory powers;

COUNTY ATTORNEY - No duty to represent conservation district

TAXATION - Definition of "real property";

SECTIONS - 76-103(1), 76-108(14), 76-104, 76-108A, 76-208, 76-105(4), 76-101 to 117, 76-105(9), 76-107(5), 16-1301(9), 82-401(5), 84-101, 67-206, 67-207.

HELD:

1. The Flathead Conservation District is a governmental subdivision of the State of Montana and a public body corporate and politic.

2. Conservation Districts are separate and distinct from any city, town, and county, and as separate legal entities may independently exercise the power granted them by statute.

3. The Attorney General is responsible for their civil legal representation upon request from the supervisors of such District, but the supervisors may instead hire private counsel and such counsel may be empowered to act as Special Assistant Attorneys General. Should the supervisors hire private counsel, they may determine their

compensation and such compensation is an obligation of the District. County attorneys' duty to represent conservation districts extends only to giving their opinion in writing to the officers of the district on matters pertaining to their offices.

4. "Real property" as used in R.C.M. 1947, §76-208 means both real estate and improvements as those terms are defined in R.C.M. 1947, §84-101.

14 October 1977

Patrick M. Springer
Flathead County Attorney
P.O. Box 121
Kalispell, Montana 59901

Dear Mr. Springer:

You have requested my opinion on the following questions, all of which relate to the Flathead Conservation District:

1. What is the legal existence of the Flathead Conservation District?

2. What is the relationship of the District to the state, county, and other governmental entities?

3. Who is responsible for legal representation of the District, excluding criminal prosecution?

4. What is the definition of "real property" as used in Section 76-208, R.C.M. 1947?

Your first two questions are closely related since the District's legal status determines its relationship to other state governmental entities. The Flathead Conservation District is a "governmental subdivision of this state, and a public body corporate and politic...," §76-103(1), R.C.M. 1947 "exercising public powers...." §76-108A, R.C.M. 1947.

A conservation district attains this status upon compliance with various provisions of the State Conservation District Law (located at §§76-101 to 117, R.C.M. 1947; see especially §76-105(9)).

Conservation districts are "separate and distinct from any city, town or county and...may overlap county boundaries." Vol. 37 Opinions of the Attorney General, No. 20 (1977). The Districts, as subdivisions of the state, are creatures of the legislature with no inherent or common law powers. As such, they have only those powers expressly conferred by statute or by necessary implication from express statutory grants. Vol. 36, Opinions of the Attorney General, No. 97 (1976).

The responsibility for their civil legal representation is determined by statute. §76-107(5), R.C.M. 1947 provides that the supervisors of a conservation district "may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff."

The application of this section was discussed in Vol. 26, Opinions of the Attorney General, No. 43 (1955). The Attorney General determined that the supervisors "may call upon the Attorney General for legal services and the Attorney General may...direct county attorneys to furnish such assistance." Id. He also determined that the supervisors could hire private counsel and that he, as Attorney General, could empower such counsel to act as Special Assistant Attorneys General. Id. The Attorney General also cited §16-3101(6), R.C.M. 1947 which provides that a county attorney must "[g]ive when required, and without fee, his opinion in writing to the...district... officers, on matters relating to the duties of their... offices." Id. The power to direct county attorneys to furnish legal assistance is justified in the opinion by §§16-3101(9) and 82-401(5), R.C.M. 1947, pertaining to the Attorney General's supervisory powers. Id.

I reaffirm the opinion except to the extent it relates to my supervisory powers. I believe that such powers were interpreted overbroadly in the opinion. §16-3101(8), R.C.M. 1947 provides that the Attorney General may direct a county attorney to bring an action in the name of the state. Conservation districts are separate and distinct legal entities and may sue and be sued in their own name. §76-108(10), R.C.M. 1947. Also, §16-3101(9), R.C.M. 1947

relates to the Attorney General's power to "order and direct...county attorneys in all matters pertaining to the duties of their office." §82-401(5), R.C.M. 1947 likewise defines the supervisory power in terms of the duties of the office of county attorney. The duty to represent the conservation districts is placed upon the office of Attorney General by §76-107(5), not upon the office of county attorney. Therefore, a county attorney's duty to represent conservation districts extends only to giving his opinion in writing to the district officers on matters relating to their offices as provided in §16-3101(6), R.C.M. 1947. A county attorney has no other statutory obligation to represent the district in civil matters and will not be ordered to do so under my supervisory powers. This is not to say that a county attorney or other public agency or attorney may not, in their discretion, represent a district. The district may request and such agency or attorney may provide such services unless prohibited by law.

If the supervisors hire private counsel, they may determine their compensation and such compensation is an obligation of the District. See §76-106(5).

You request the definition of "real property" for tax purposes in order to establish the proper tax base for funding the District. §76-108(14), R.C.M. 1947 empowers the supervisors "[t]o cause taxes to be levied in the same manner provided for in Title 76, Chapter 2, R.C.M. 1947, for the purpose of paying any obligation of the district...." §76-108, R.C.M. 1947 provides for a regular annual assessment "not to exceed one and one-half (1 ½) mills on the dollar of the total taxable valuation of real property within the district...(such) valuation...determined according to the last assessment roll" (emphasis added).

"Real property" is not defined in either chapter 1 or 2 of Title 76. §84-101, R.C.M. 1947, a tax statute of general application, uses the terms "real estate" and "improvements." Resolution of your question therefore involves determining whether "real property" encompasses both real estate and improvements as those terms are used in assessing property and levying taxes.

In determining the intention of the legislature, "[a] primary rule of statutory construction is that the legislature must be assumed to have meant precisely what the words of the law, as commonly understood, import." Northern Pacific Railway v. Sanders County, 66 Mont. 608, 614, 214 P.

596, 599 (1923). Historically, "real property" has meant all but "personal property," and this distinction is made by §67-206, R.C.M. 1947. §67-207, R.C.M. 1947 specifically defines real property:

Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law.

Therefore, real property, by common legal definition, includes both real estate or land and improvements as defined by §84-101, R.C.M. 1947.

Both the Departments of Natural Resouces and Conservation and Revenue concur in interpreting "real property" to include both real estate and improvements. The Department of Natural Resources assists the supervisors in carrying out projects instituted under the State Conservation District Law. §76-104, R.C.M. 1947. The Board of Natural Resources is responsible for determining that proposed programs are administratively practicable and feasible. R.C.M. 1947, §76-105(4). In making this determination the Board has interpreted "real property" to mean, and advises district petitioners, that the tax levy will be made on both real estate and improvements. The Department of Revenue has made a similar determination. Such agency determinations are entitled to weight in construing ambiguous statutes. See In re. Fligman's Estate, 113 Mont. 505, 501, 129 P.2d 627 (1942).

THEREFORE, IT IS MY OPINION THAT:

1. The Flathead Conservation District is a governmental subdivision of the State of Montana and a public body corporate and politic.

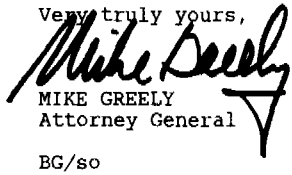
2. Conservation Districts are separate and distinct from any city, town, and county, and as separate legal entities may independently exercise the power granted them by statute.

3. The Attorney General is responsible for their civil legal representation upon request from the

supervisors of such District, but the supervisors may instead hire private counsel and such counsel may be empowered to act as Special Assistant Attorneys General. Should the supervisors hire private counsel, they may determine their compensation and such compensation is an obligation of the District. County attorneys' statutory duty to represent conservation districts extends only to giving their opinion in writing to the officers of the districts on matters pertaining to their officers.

4. "Real property" as used in §76-208, R.C.M. 1947 means both real estate and improvements as those terms are defined in §84-101, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 77

RETIREMENT SYSTEMS - The pension supplement provided by Section 11-1846.1, R.C.M. 1947 is to be paid in monthly installments beginning in July, 1977;

POLICE - The pension supplement provided by Section 11-1846.1, R.C.M. 1947 is to be paid in monthly installments beginning in July, 1977;

SECTION 11-1846.1, R.C.M. 1947

HELD:

1. The first supplemental payment to the recipients was intended to be made in July, 1977. A lump sum payment to cover the months of July, August, September and October should be made immediately.

2. The supplement is to be paid in monthly amounts after the initial lump sum payment is made.

3. The appropriate funding to be implemented may be determined by the administrator of the Public Employees Retirement Division in conformity with this opinion.

14 October 1977

J. Michael Young, Administrator
Insurance and Legal Division
Department of Administration
1501 East Sixth Avenue
Helena, Montana 59601

Dear Mr. Young:

You have requested my opinion as to the procedural implementation of Section 11-1846.1, R.C.M. 1947, enacted by the 1977 Legislature. Section 11-1846.1. R.C.M. 1947, provides for minimum payments to police officers, spouses, and minor children who were receiving retirement benefits from police reserve funds prior to July 1, 1975.

The specific questions raised in your request are as follows:

1. When must the first supplemental payment to the recipients be made?

2. Is the supplement to be paid on a monthly basis or in a lump sum at the end of each fiscal year?

3. When must the State Auditor transfer funds to the administrator of the police reserve fund?

Section 11-1846.1, R.C.M. 1947 is a remedial statute designed to give increased retirement benefits to police officers, spouses, and minor children who were receiving retirement payments from police reserve funds prior to July 1, 1975. Chapter 335, Session Laws of 1974, created a disparity in retirement benefits between the policemen already on the reserve list as of July 1, 1975 and those who retired after July 1, 1975. Therefore, since Section 11-1846.1, R.C.M. 1947 is remedial in nature, it is entitled to be liberally construed to effectuate the relief sought. Attix v. Robinson, 155 F.Supp. 592 (D.C. Mont. 1957). It should also be noted that Section 11-1846.1, R.C.M. 1947 was made effective immediately upon passage and approval, April 18, 1977. This is in contrast with the usual Montana statute which takes effect on the 1st day of July of the year of its passage and approval. Lodge v. Ayers, 108 Mont. 527, 91 P.2d 691 (1939).

This information is important in answering your first two questions concerning when and in what manner the supplemental payments must be made. Giving Section 11-1846.1, R.C.M. 1947 a liberal construction, and reading it in pari materia with other metropolitan police laws leads to the conclusion that the legislature intended the increased retirement benefits to commence in July 1977 in the form of monthly payments.

Section 11-1846.1, R.C.M. 1947 is part of the Metropolitan Police Law found in Title 11, Chapter 18. It is intended to supplement the pensions that are received as monthly payments by eligible policemen, spouses, and minor children who were receiving pensions as of July 1, 1975. Section 11-1846.1, R.C.M. 1947 makes specific reference to other sections contained in the Metropolitan Police Law and depends on those referenced sections for the timing and funding of the minimum payments. Therefore, it should be read with reference to the other statutes as one system in pari materia. See Oxford v. Topp, 136 Mont. 227, 346 P.2d 566 (1959), which states the general rule that where one statute provides the formula and the other provides the definition of terms in the formula they both must be construed together. Furthermore, since Section 11-1846.1, R.C.M. 1947 is designed to provide a portion of the pension benefits, it must be read and construed with all other statutes having the same general purpose. City of Billings v. Smith, 158 Mont. 197, 490 P.2d 221 (1971).

Section 11-1821, R.C.M. 1947, which provided the pension benefits to policemen, spouses and minor children who became eligible for retirement prior to July 1, 1975 states:

> (1) Whenever any policeman or officer shall from age or disability become transferred from the active list of such city or town, he shall thereafter be paid in monthly payments from the funds in this act provided for, a sum equal to the one-half (½) the salary he was receiving during the year prior to the time he passed to the police reserve list (Emphasis supplied).

Section 11-1846.1(5), R.C.M. 1947 in part states:

> ...the department or board of trustees of the fund, as the case may be, shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met. (Emphasis supplied)

Section 11-1846.1, R.C.M. 1947 supplements the funds and is a part of the Metropolitan Police Act. The mandate of Section 11-1821, R.C.M. 1947 applies and controls payments under Section 11-1846.1, R.C.M. 1947, since the latter contains no language to the contrary.

When the first monthly supplement is to be received is indicated by the fact that the Legislature made this act effective immediately upon passage and approval. Subsection (5) directs the use of the funds to supplement the monthly payments so that the requirements of subsection (1) are met. Subsection (1) requires the payment to eligible recipients for each fiscal year, commencing with the fiscal year beginning July 1, 1977 be not less than one half the salary of a newly commissioned police officer in that fiscal year. Since payment was to commence with the fiscal year beginning July 1, 1977 and the act was made effective immediately upon passage and approval, it is clear the legislature intended the increased retirement benefits to commence July, 1977. To conclude otherwise would render the immediate effective date useless, and it is presumed the legislature does not perform useless acts. Kish v. Montana State Prison, 161 Mont. 297, 505 P.2d 891 (1973).

If Section 11-1846.1, R.C.M. 1947 is read in pari materia with the Metropolitan Police Law, the supplemental payments must be made monthly and should have commenced in July, 1977.

The problem of implementing this supplement arose when the mechanics for funding the supplement, provided by the Legislature, were examined. This leads to your third question concerning the time of payment to the administrator of the police reserve fund.

The question is specifically answered by Section 11-1846.1, R.C.M. 1947, which states:

> The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (1)(d)(i) through (1)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 11-1835, to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 11-1834. (Emphasis supplied)

The payment made by the State Auditor under Section 11-1834, R.C.M. 1947, is made at the end of each fiscal year. There-

fore, the State Auditor must transfer funds to the administrator of the police reserve fund at the end of each fiscal year. Where the language of a statute is plain, unambiguous, direct and certain, the statute speaks for itself and there is nothing left for the courts to construe, the court's function in such case being simply to ascertain and declare what is in terms and substance contained therein. Hammil v. Young, 168 Mont. 81, 540 P.2d 971 (1975); Olson v. Manion's Inc., 162 Mont. 197, 510 P.2d 6 (1973).

Two additional questions must be answered. First, in which fiscal year will the first transfer of funds from the State Auditor to the treasurer occur? Section 11-1846.1, R.C.M. 1947, indicates that this first transfer will occur at the end of the fiscal year commencing July 1, 1977. In order to determine the amount of the transfer, the Auditor must receive reports from each city and town involved, pursuant to Sections 11-1846.1(2) and 3), R.C.M. 1947, containing the names of eligible recipients, the amounts paid to such recipients in the base fiscal year, and the salaries to be paid to newly confirmed police officers for the fiscal year commencing July 1, 1977. Section 11-1846.1(4), R.C.M. 1947. The reports by each city and town concerning the names of the eligible recipients and the amounts paid to them in the base fiscal year are required to be filed with the Auditor on or before April 1 of each year. Section 11-1846.1(2), R.C.M. 1947. This act became effective April 18, 1977. Consequently, the first of these reports are due on or before April 1, 1978. The reports concerning the salary of newly commissioned police officers in each city or town are described in Section 11-1846.1(3), R.C.M. 1947:

> Each fiscal year, commencing with the fiscal year beginning July 1, 1977, immediately after the adoption by a city or town having a police reserve fund of its budget for that fiscal year each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town. (Emphasis supplied).

Since the cities and towns do not adopt their budget until August of each fiscal year pursuant to Section 11-1406, R.C.M. 1947, this report is also filed subsequent to the beginning of the fiscal year commencing July 1, 1977. Therefore, the Auditor did not have the necessary information to make the transfer of funds until after the fiscal year commencing July 1, 1977. It did not appear possible to make the transfer until the end of that fiscal year.

The first sentence of Section 11-1846.1, subsection (4), indicates that the State Auditor cannot transfer funds to the treasurer of the cities or towns until he has received the reports referred to in subsections (2) and (3). However, the second sentence requires that the State Auditor pay at the same time as and in addition to the payment under Section 11-1834, R.C.M. 1947, which states:

> 11-1834. Annual state payments to municipality with police department. At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana, having a police department, his warrant for an amount computed in the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to section 11-1919, R.C.M. 1947. (Emphasis supplied).

Section 11-1834, R.C.M. 1947 states the payment is due "at the end of each fiscal year." The obvious conflict between time of payment and the determination of the amount of the payment is resolved by the remaining portion of Section 11-1834, R.C.M. 1947 which provides that the amount of the warrant be computed in the same manner as the amount paid pursuant to Section 11-1919, R.C.M. 1947.

Section 11-1919, R.C.M. 1947 directs that the firemen's pension fund also be paid at the end of the fiscal year and provides the mechanics for determining the amount to be paid. Section 11-1919, R.C.M. 1947 must, however, be read in pari materia with the other section of the Fireman's Act. Section 11-1920, R.C.M. 1947 states:

> 11-1920. Estimate of payments. The state auditor shall estimate the portion of premium taxes needed to make the payments required by this act and shall pay an amount equal to the estimate into the state treasury, to the credit of the earmarked revenue fund. The state auditor shall pay the actuary fee as required by section 11-1914. Any balance remaining after such payments have been ordered shall be transferred to the general fund. (Emphasis supplied).

The reference concerning timing and payment in Section 11-1846.1(4) is to Section 11-1834, R.C.M. 1947 which in

turn refers to Section 11-1919. This fact and the effective date of the act, indicate the legislature intended to use a uniform process for paying both the police and firemen out of the fund created by premium taxes on insurance. Section 11-1920, R.C.M. 1947 provides for an estimate to be made to fund the payments and this amount to be paid into an earmarked revenue fund, with any balance remaining to revert to the general fund.

It is presumed that the legislature passed Section 11-1846.1, R.C.M. 1947 with full knowledge of all existing statutes on the same subject, and did not intend to interfere with a former law relating to the same matter unless repugnancy between the two is irreconcilable. Fletcher v. Paige, 124 Mont. 114, 220 P.2d 484, 19 ALR2d 1108 (1950).

Based on the inclusion by reference of method of payment contained in the Fireman's Pension Act, the State Auditor could have estimated the payments needed under Section 11-1846.1, R.C.M. 1947 and paid the sums into an earmarked revenue fund. That fund will be adjusted to actual payments when the reports are received and the difference calculated as provided in Section 11-1846.1(4), R.C.M. 1947.

The second question concerns the use of the funds transferred to the treasurer at the end of the fiscal year. In examining the procedure set forth in Section 11-1846.1(5), R.C.M. 1947, a supplement, not reimbursement, is contemplated.

> The treasurer of each city or town receiving funds under subsections (4) shall immediately deposit them with the department of administration or to the credit of the city or town's police reserve fund, as the case may be. The department or board of trustees of the fund, as the case may be, shall use the funds to supplement the monthly payments to persons described in subsection (2)(a) through (2)(c) so that the requirements of subsection (1) are met. (Emphasis supplied).

The administrator is to receive the funds from the Auditor before making the supplemental payments to the recipients. Those funds, if the terms of Section 11-1846.1, R.C.M. 1947, were strictly adhered to, would not be available until the end of the fiscal year in June, 1978.

Although the legislature intended to remedy the disparity between retirees receiving pensions prior to July 1, 1975, and those retiring subsequent to that date, they misconstrued the method of funding which would be adequate to effectuate that intent.

It must be kept in mind that a statute will not be interpreted to defeat its evident object or purpose, since objects sought to be achieved by legislation are of prime consideration. Doull v. Wohlschlager, 141 Mont. 354, 377 P.2d 758 (1963). Nor should statutory construction lead to contrary results if reasonable construction will avoid it. State ex rel. Ronish v. School District No. 1 of Fergus County, 136 Mont. 453, 348 P.2d 797, 78 ALR2d 1012 (1960). To achieve the object of Section 11-1846.1, R.C.M. 1947, and to provide immediate relief to recipients of the police retirement fund it is necessary that the supplement be available on a monthly basis retroactive from July 1, 1977.

To accomplish this, one of two possible approaches may be implemented. The first of these would be to use the payments from the Auditor as a reimbursement, even though a literal reading of the statute does not contemplate this.

The administrator of the Public Employees Retirement Division has assured this office that the reimbursement approach would be feasible and immediate payments could be made from the Municipal Police Officer's Retirement Fund. That fund could then be reimbursed in April, 1978 by payments from the Auditor out of the premium tax collected on insurance.

A better alternative would be for the State Auditor to retrieve the necessary funds from the general fund, pursuant to the expressed statutory intent of the legislature to provide immediate relief for eligible pension recipients.

These would be temporary measures to effectuate the purpose of this legislation. At the same time, the legislature would have an opportunity to consider clarifying the ambiguity of Section 11-1846.1, R.C.M. 1947, in the next session.

THEREFORE, IT IS MY OPINION:

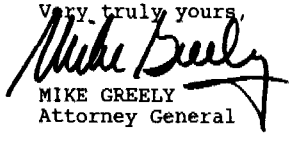
1. The first supplemental payment to the recipients was intended to be made in July, 1977. A lump sum

payment to cover the months of July, August, September and October should be made immediately.

2. The supplement is to be paid in monthly amounts after the initial lump sum payment is made.

3. The appropriate funding to be implemented may be determined by the administrator of the Public Employees Retirement Division in conformity with this opinion.

Very truly yours,



MIKE GREELY
Attorney General

RA/so

VOLUME 37 OPINION NO. 78

CONFLICT OF INTEREST - School Trustees, Furnishing Supplies For the Operation and Maintenance of Schools; SCHOOLS - Trustees, Furnishing Supplies for the Operation and Maintenance of Schools, Conflict of Interest.

HELD: It is unlawful under Section 75-6808, R.C.M. 1947, for a corporate business in which a school board trustee is a minor stockholder to furnish supplies for the operation and maintenance of the school.

14 October 1977

Keith D. Haker, Esq.
Custer County Attorney
Custer County Courthouse
Miles City, Montana 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

> Is it unlawful for a corporate business in which a school board trustee is a minor stockholder, to furnish supplies for the operation and maintenance of the school?

Section 59-501, R.C.M. 1947, sets out a general prohibition against interest by public officials in contracts made in their official capacity. However, Section 75-6808, R.C.M. 1947, is a specific and stricter prohibition against financial interest by school trustees in school affairs. The more specific statute is therefore applicable to the instant situation.

Section 75-6808 provides in part:

(1) It is unlawful for any trustee to:
(a) have any pecuniary interest, either directly or indirectly, in any contract for the erection of any school building or for the warming, ventilation, furnishing, or repairing the same; or
(b) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools; or
(c) be employed in any capacity by the school district of which he is trustee.

It is clear from a comparison of the above-quoted language to that in Section 59-501 that the legislature intended for school trustees to be held to a higher degree of accountability in this regard than public officials generally. While Section 59-501 is specifically inapplicable to a person whose only interest is that of a minority stockholder, Section 75-6808 prohibits being "in any manner connected with" furnishing supplies for the school. Ownership of a minority stock interest in a corporation clearly constitutes the minimal connection required in Section 75-6808.

THEREFORE IT IS MY OPINION:

It is unlawful under Section 75-6808, R.C.M. 1947, for a corporate business in which a school board trustee is a minor stockholder to furnish supplies for the operation and maintenance of the school.

Very truly yours,

Mike Greely

MIKE GREELY
Attorney General

ABC/ar

VOLUME 37 OPINION NO. 79

AUDIT - The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor; VOCATIONAL EDUCATION - The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor;

SECTIONS 79-2310, R.C.M. 1947; 79-2301, R.C.M. 1947; 82-4516, R.C.M. 1947.

HELD: The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor.

17 October 1977

Harold A. Fryslie, Director
Montana Department of Community Affairs
Capitol Station
Helena, Montana 59601

Dear Mr. Fryslie:

You have requested my opinion on the following question:

> Is the auditing of post-secondary vocational-technical centers the responsibility of the Department of Community Affairs or the Legislative Auditor?

The auditing responsibilities of the Department of Community Affairs and the Legislative Auditor are found in Section 82-4516, R.C.M. 1947 and Section 79-2310, R.C.M. 1947, respectively.

Section 82-4516, R.C.M. 1947 lists several governmental entities which are subject to audit by the Department of Community Affairs, one of which is "school districts." Each of these enumerated units can be characterized as functions of local government.

The audit responsibilities of the Legislative Auditor, on the other hand, is to audit the financial affairs and transactions of every "state agency." Section 79-2310, R.C.M. 1947. "State agency" is defined for the purposes of the Legislative Audit Act, Section 79-2301 et seq., R.C.M. 1947, as follows:

> ...all affairs, departments, boards, commissions, institutions, universities, colleges, and any other person or any other administrative unit of state government that spends or encumbers public moneys by virtue of an appropriation from the legislative assembly, or that handles money on behalf of the state, or that holds any trust or agency moneys from any source. (Emphasis supplied). Section 79-2302(1), R.C.M. 1947.

Therefore, the auditing responsibility of the Department of Community Affairs is directed at local government units, whereas the Legislative Auditor must audit every "state agency", as defined by Section 79-2302(1), R.C.M. 1947. Consequently, the determinative issue is whether post-secondary vocational-technical centers are "school districts" within the meaning of Section 82-4516(1)(c), R.C.M. 1947, or "state agencies", as defined by Section 79-2302(1), R.C.M. 1947.

The nature of post-secondary vocational-technical centers is best evidenced by the statutes which created the centers and define their control and direction.

Post-secondary vocational-technical centers were created pursuant to Sections 75-7701, et seq., R.C.M. 1947, making the Board of Public Education the governing board of Montana. Section 75-7702, R.C.M. 1947. The Superintendent of Public Instruction is the executive officer of the Board of Public Education pursuant to Section 75-7703, and Section 75-7708, R.C.M. 1947, gives the Board sole authority to approve post-secondary vocational-technical education programs and their budgets. It should be noted that Ch. 434, Laws of Montana, 1975 which attempted to amend these sections was declared unconstitutional in Board of Education

v. Judge, 167 Mont. 261, 538 P.2d 11 (1975). Therefore, the above-cited statutes remain controlling.

In comparison, school districts are governed by a local board of trustees pursuant to Section 75-5932, R.C.M. 1947, and the trustees have the authority to approve the school district budget. Section 75-6716, R.C.M. 1947.

School districts and post-secondary vocational-technical centers also differ from a financial viewpoint. School districts are primarily financed through taxation by the local government. Section 75-6717, R.C.M. 1947. However, although part of the vocational education financing may come from local taxation, Section 75-7709(1)(a), R.C.M. 1947 states:

> (1)The total of the budgets approved by the board of education together with the budget for the cost of state administration of the post-secondary vocational-technical centers shall constitute the total maximum approved, state-wide budget which shall be financed as follows:
>
> (a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing post-secondary vocational-technical education in Montana. (Emphasis supplied).

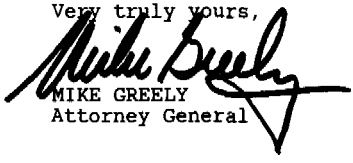
Furthermore, the legislative appropriations for vocational-technical centers are found within the appropriation to the Superintendent of Public Instruction not Public School Support. Montana Session Laws, 1977, Vol. II, p. 1998, H.B. 145. Also, Section 75-7706, R.C.M. 1947 designates the state treasurer as the custodian of all federal and state moneys designated, appropriated or apportioned for vocational education, whereas the county treasurer is the custodian of school district moneys purusant to Section 75-6805, R.C.M. 1947.

Consequently, post-secondary vocational-technical centers are best characterized, for the purposes of auditing responsibility, as "state agencies" as defined by Section 79-2302(1), R.C.M. 1947, and not as "school districts" within the meaning of Section 82-4516(1)(c), R.C.M. 1947.

THEREFORE, IT IS MY OPINION:

The auditing of post-secondary vocational-technical centers is the responsibility of the Legislative Auditor.

Very truly yours,



MIKE GREELY
Attorney General

VOLUME 37 OPINION NO. 80

RETIREMENT SYSTEMS - A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance;
TEACHERS - A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance;
EDUCATION, HIGHER - A faculty member of the Montana University System is not prohibited from receiving retirement credit for sabbatical performance;
SECTION 75-6213, R.C.M. 1947.

HELD: Section 76-6213, R.C.M. 1947 does not prohibit a faculty member of the Montana University System from accruing retirement credit for sabbatical performance.

17 October 1977

Dr. Lawrence K. Pettit
Commissioner of Higher Education
Montana University System
33 South Last Chance Gulch
Helena, Montana 59601

Dear Dr. Pettit:

You have requested my opinion on the following question:

Does Section 75-6213, R.C.M. 1947 prohibit a faculty member of the Montana University System from accruing retirement credit for sabbatical performance?

Faculty members in the Montana University System are required to become members of the Teachers Retirement System pursuant to Section 75-6209, R.C.M. 1947. Both the employer and the member contribute over six percent (6%) of the member's monthly salary to the member's retirement system account. Benefits upon retirement are based upon the member's years of "creditable service."

Sabbatical leave is best defined by the faculty's sabbatical policy enacted by the Board of Regents which provides that the sabbatical program or project will be approved only if it will improve the staff member professionally, or directly or indirectly benefit the institution and the state. Eligibility for a sabbatical is based on the following criteria: 1) service which is primarily teaching or research; 2) academic rank; 3) total length of service in the Montana University System with a minimum of seven years of service; and 4) the type and quality of the proposed program. No sabbatical leave may exceed more than one academic year, and throughout this period the faculty member remains under contract with the Montana University System, and the salary received thereunder may not exceed two-thirds of the academic year contract. Although recipients of sabbatical leaves may avail themselves of fellowships, assistantships, or sources of limited income, they are not permitted to maintain full-time employment for any person while on sabbatical leave and receiving payments from the Montana University System. If the faculty member's sabbatical involves an assignment for which he is to receive compensation, the compensation is received by his university unit, which in turn pays the faculty member.

The question presented arose when a faculty member of the University of Montana was recently informed by the Teacher's Retirement System that a twelve-month period in 1974 and 1975 when the faculty member was on a sabbatical did not constitute creditable service. The administrators of the Teacher's Retirement Service based this decision upon Section 75-6213, R.C.M. 1947. All employee contributions withheld during the sabbatical period were refunded, and the employer contributions were removed from the faculty member's retirement account.

Section 75-6213, R.C.M. 1947 concerns the application for and the purchase of creditable service for out-of-state employment, employment while on leave, and service in the armed forces. Subsection (1) addresses employment while on leave as follows:

> Any person applying for membership also may apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon completing five (5) years of active membership in Montana subsequent to his return, provided his employment while on leave enhanced his teaching experience as determined by the Board. The person shall be awarded creditable service as determined by the Board but for not more than two (2) years, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of five years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be a lump sum payment or in installments as agreed between the person and the retirement board.

This statute cannot be applied merely on the basis that the word "leave" is used at times to define a sabbatical assignment. The determinative factor is the substance of the sabbatical policy. If Section 75-6213, R.C.M. 1947 applied to all leaves when the member is in an active employment relationship with an "employer," as defined by Section 75-6201(3), R.C.M. 1947, then the member would have to purchase credit for periods of sick leave and vacation leave. This would be an absurd requirement.

The language of Section 75-6213, R.C.M. 1947 contemplates a termination of membership as shown by the first sentence which states "Any person applying for membership..." (Emphasis supplied). However, this is not the case with a faculty member on sabbatical assignment. To earn sabbaticals, faculty members must be employed by the University unit for at least seven years, during which time they are

required to be members of the Teacher's Retirement System. The faculty member retains active membership status in the Teacher's Retirement System during the sabbatical. The faculty member continues to be employed by the University unit and has not withdrawn his accummulated contributions to the Retirement System. Therefore, his membership has not terminated as defined by Section 75-6211, R.C.M. 1947, and there is no necessity for his "applying for membership" under Section 75-6213, R.C.M. 1947. Neither does a sabbatical leave result in inactive membership as defined by Section 75-6210, R.C.M. 1947. Consequently, a sabbatical assignment is simply a continuation of employment with the University System, and a faculty member continues to be an active member of the Teacher's Retirement System as defined by Section 75-6209, R.C.M. 1947.

Section 75-6213, R.C.M. 1947 grants to the Retirement Board the power to determine creditable service. However, Section 75-6205, R.C.M. 1947 which defines the powers and duties of the Retirement Board, states under subsection (14)(a):

> One year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than one year's creditable service shall be awarded for service during the same school fiscal year. (Emphasis supplied)

"Service" is defined by Section 75-6201, R.C.M. 1947 as the performance of such instructional duties or related activities as would entitle the person to active membership in the Retirement System under the provisions of Section 75-6209, R.C.M. 1947. A sabbatical assignment as previously defined is a "related activity" that entitles a faculty member to active membership in the Retirement System under the provisions of Section 75-6209, R.C.M. 1947.

Furthermore, member contributions are deducted from the faculty member's compensation and employer contributions are collected during the period of sabbatical assignment, as evidenced by the factual situation in which this dispute arose. Not only does this make any application of the purchase requirement of Section 75-6213(1), R.C.M. 1947 illogical, but Section 75-6212(1), R.C.M. 1947 also states in part:

> The creditable service of any member shall include the following:

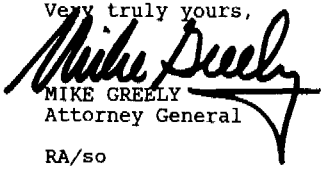
> (1) each year of service of a member for which contributions to the retirement system were deducted from his compensation under...this act.... (Emphasis supplied).

In light of the substance of the sabbatical policy, the retirement board is statutorily preempted from denying credit for service performed during sabbatical assignment.

THEREFORE, IT IS MY OPINION:

> Section 75-6213, R.C.M. 1947 does not prohibit a faculty member from accruing creditable service and receiving the employer contribution for retirement benefits during the performance of a sabbatical program.

Very truly yours,



MIKE GREELY
Attorney General

RA/so

VOLUME 37 OPINION NO. 81

BUILDING CODES - State Building Code, Adoption By Local Governing Bodies, Prohibition Against More Stringent Standards;

LOCAL GOVERNMENT - State Building Code, Adoption By Local Governing Bodies, Prohibition Against More Stringent Standards;

SECTION - 69-2112(1), R.C.M. 1947.

HELD: Section 69-2112(1), R.C.M. 1947, prohibits local governing bodies from adopting building codes more stringent than those adopted by the state.

17 October 1977

Jack C. Crosser, Director
Department of Administration
Mitchell Building
Helena, Montana 59601

Dear Mr. Crosser:

You have requested my opinion on the following question:

> Does Section 69-2112, R.C.M. 1947, prohibit local governing bodies from adopting building codes more stringent than those adopted by the state?

Title 69, Chapter 21, R.C.M. 1947, establishes a state building code designed to "provide reasonably uniform standards and requirements" for building construction. The

Department of Administration is required to promulgate building codes for all classes of buildings. Local governing bodies are empowered to enforce a local building code, but if they do not, state enforcement of the state building code will prevail.

Section 69-2112(1), prior to being amended in 1977, read as follows:

> The local legislative body of a municipality may adopt a municipal building code by ordinance to apply to the municipal jurisdictional area. A municipal building code shall require standards equal to those of the state building code or higher standards. A municipal building code must cover all general areas included in the state building code.

This provision required the local codes to be patterned after the state code, but clearly allowed for the adoption of more stringent standards. Section 69-2112(1) was amended by Chapter 504, Laws of 1977, and now reads as follows:

> 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.

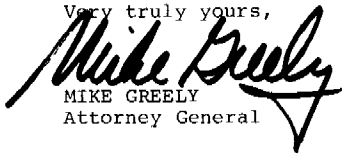
The new statute deletes the language that the local regulations "shall" be equal to or higher than the state building code, and the former requirement that the local code "must" cover all areas covered by the state building code.

This is clearly an instance in which the legislature intended an amendment to change the substance of a statute. Comparing the former language of Section 69-2112(1) with its present form, it is apparent that a local governing body may now adopt only provisions of the state building code, and no other provisions. This would apply either to lower or higher standards. I have previously held that a local building code may include part, but need not include all, of the state building code (Opinion 66, Vol. 37). The effect of Section 69-2112(1), makes the state building code the only standards local governing bodies may adopt.

THEREFORE, IT IS MY OPINION:

Section 69-2112(1), R.C.M. 1947, prohibits local governing bodies from adopting building codes more stringent than those adopted by the state.

Very truly yours,



MIKE GREELY
Attorney General

MG/AC/ar

VOLUME NO. 37 OPINION NO. 82

BOARD OF PARDONS - Responsibilities and powers of the Board of Pardons in administering prisoner furlough program;
DEPARTMENT OF INSTITUTIONS - Responsibilities and powers of the Board of Pardons and Department of Institutions in administering the prisoner furlough program;
PRISONER FURLOUGHS - Responsibilities and powers of the Board of Pardons and Department of Institutions in administering the prisoner furlough program.
SECTION - 95-2219 et seq., R.C.M. 1947.

HELD: 1. The Board of Pardons must adopt rules defining its procedures for reviewing furlough applications, and may in its discretion adopt rules interpreting and further defining the statutory criteria for its decisions. In deciding whether to approve or deny furlough applications, the Board of Pardons is required to consider the prisoner's furlough plans, criminal history, and pertinent case material. The Board may adopt interpretive rules further defining the factors encompassed by these categories, including a rule which permits consideration of the time remaining on an applicant's sentence where the time relates to the appropriateness of the proposed furlough plan.

2. Unless the Department of Institutions has adopted reasonable rules prohibiting application by certain prisoners until a certain state of incarceration, a prisoner may make application for furlough and have his application promptly considered at any time during his incarceration. No rule may prevent a prisoner from applying for furlough at any

time after he has served one-half the time required to be considered for parole.

3. The Department of Institutions, not the Board, may make periodic review and revision of furlough plans a condition of individual furlough agreements.

4. The Board of Pardons shall solicit information about pertinent case material from officials and individuals in the sentencing community before deciding whether to approve or deny a furlough application. It is the responsibility of the Department of Institutions to notify and to obtain approval of law enforcement agencies to which the furloughee is released.

17 October 1977

Mr. Henry E. Burgess
Board of Pardons
Carroll College
Helena, Montana 59601

Dear Mr. Burgess:

You have requested my opinion regarding the following questions:

1. Under the prisoner furlough program, what are the rule-making responsibilities and powers of the Board of Pardons? Specifically, is the Board required to adopt rules governing its procedures for consideration of furlough applications? May it also adopt rules specifying the criteria the Board will consider in deciding whether to approve or deny furlough applications? May such criteria take account of the time remaining on an applicant prisoner's sentence?

2. When may a prisoner make application to participate in the furlough program?

3. May the Board require that individual furlough plans be periodically reviewed or revised?

4. What is the extent of the Board's responsibility for informing criminal justice authorities and members of the sentencing community about an application for furlough? Are special notification procedures permitted or required when life sentences are involved?

I

The prisoner furlough program, more accurately labeled a work and educational release program, is established pursuant to Sections 95-2217 and 95-2226.1, R.C.M. 1947. Responsibility for administration of the program is delegated to both the Department of Institutions and the Board of Pardons. The division of responsibility has created some confusion concerning the respective authority of the Department and the Board.

The Legislature has given the Department of Institutions general responsibility for the furlough program, including rule-making responsibility. Sections 95-2219 and 95-2223, R.C.M. 1947. Within the framework of the Department's general authority over the furlough program, the Board of Pardons is given responsibility for approving or denying individual applications to participate in the program, Sections 95-2221(1), R.C.M. 1947, and for adjudicating requests for furlough revocation, Section 95-2226.1, R.C.M. 1947. These are quasi-judicial functions, as defined in Section 82A-103(9), R.C.M. 1947:

> "Quasi-judicial function" means an adjudicatory function exercised by an agency, involving the exercise of judgment and discretion in making determinations in controversies. The term includes, but is not limited to, the functions of interpreting, applying, and enforcing existing rules and laws; granting or denying privileges, rights, or benefits; issuing, suspending, or revoking licenses, permits, and certificates; determining rights and interests of adverse parties; evaluating and passing on facts; awarding compensation; fixing prices; ordering action or abatement of action; adopting procedural rules; holding hearings; and any other act necessary to the performance of a quasi-judicial function. (Emphasis supplied.)

The foregoing definition expressly recognizes that procedural and interpretive rule-making powers are incident to "quasi-judicial" functions such as those given the Board

under the furlough program. The Board may therefore adopt both procedural rules and rules which interpret provisions of the Furlough Act.

Adoption of procedural rules by the Board is mandatory. Although the Board is generally exempted from the rule-making requirements and procedures of the Montana Administrative Procedure Act (MAPA), it is expressly subject to those MAPA provisions which require state agencies and boards to adopt procedural rules. Section 82-4202(1)(a), R.C.M. 1947 (as amended by Chapter 285, Laws of 1977). Section 82-4203, R.C.M. 1947, enumerates those rules, providing in relevant part:

> * * * each agency shall:
> * * *
> (b) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

Pursuant to this provision, the Board is required to adopt rules governing all procedures and proceedings for the submission and review of furlough applications and describing all forms and instructions used by the Board in connection therewith.

Several procedural rules are already prescribed for the Board by statute. Section 95-2221(1), R.C.M. 1947, provides:

> At the meeting of the board following the signing of any prisoner's application the board shall approve or deny the application of each prisoner after careful study of the prisoner's furlough plans, criminal history, and all other pertinent case material. The following rules shall be observed when the board meets to consider an application:
> (a) each applicant may call two (2) witnesses from outside or inside the institution to testify as to the applicant's general attitude, participation in self-help activities, or his character or job references;
> (b) an applicant may remain present during the board proceedings on his application; however, the board may meet in executive session without the applicant for final decision on the application;
> (c) the board shall cause the applicant to be

notified of its decision immediately and shall provide the applicant with a written decision including a thorough statement of the reasons for the decision within two (2) days following adjournment;

(d) each applicant shall be viewed singly, and shall be recognized as an individual;

(e) each applicant shall be allowed to discuss any specific problem areas with any member of the board.

The Board cannot vary or disregard these statutory procedures and should incorporate them in any procedural rules it adopts. The Board must adopt rules describing any further procedural requirements or safeguards and forms and instructions it intends to use for furlough applications.

The adoption of interpretive rules is discretionary rather than mandatory. Standards applicable to the review of furlough applications are provided by Section 95-2221(1), R.C.M. 1947, which directs the Board to approve or deny an application "after careful study of the prisoner's furlough plans, criminal history, and all other pertinent case material." The standards are general ones and the Board may adopt rules which more precisely define each of the three factors it must consider in its decision process, such rules being "interpretive" ones, see Section 82-4202(2), R.C.M. 1947.

Whether the Board adopts interpretive rules or proceeds on an ad hoc decisional basis, the Board must consider all of the statutory factors set forth in Section 95-2221(1) and permit the introduction of relevant evidence bearing on them. Secretary of Agriculture v. Central Roig Refining Co., 338 U.S. 604, 612, 94 L.Ed. 38, 70 S.Ct. 403 (1950). Since the statute mandates consideration of all three factors, the Board cannot adopt any rule or make any decision based upon the consideration of any single factor or upon any criteria other than the statutory ones. It is axiomatic that "an administrative agency . . . has no power to create a rule or regulation that is out of harmony with the statutory grant of its authority." Ruiz v. Morton, 462 F.2d 818, 822 (9th Cir. 1972), aff'd, 415 U.S. 199, 39 L.Ed. 2d 270, 94 S.Ct. 1055 (1974). The Board may not adopt any criterion permitting the denial of an application on account of a single factor, such as the nature of the particular crime for which the applicant was sentenced or the amount of time remaining on the applicant's sentence. The Board may adopt or apply criteria which are related to and are encompassed

within the three statutory factors which the Board must consider under Section 95-2221(1). For example, the Board might adopt a rule further defining criminal history as including the applicant's prior criminal history, the nature of the crime for which he is currently incarcerated, and the circumstances which have led to his prior criminal acts.

In deciding what matters are encompassed within the category "other pertinent case material", the Board must be guided by the purpose of the furlough program and the nature of the Board's responsibilities thereunder. The general purpose of the program is to rehabilitate, educate, train and gainfully employ prisoners, while increasing their responsibility to society, Section 95-2217, R.C.M. 1947, without unduly endangering the public, see Section 95-2226.1(2) & (3), R.C.M. 1947. The criteria adopted by the Board must relate to matters concerning the applicant's background which bear upon whether the applicant will benefit from the furlough program without unduly endangering the public.

The final part of your first question asks whether in deciding to approve or disapprove furlough applications the Board may adopt a specific criterion taking into account the remaining time on the applicant's sentence. I have already pointed out that the Board may not base its decisions on any single factor but must weigh all three statutory standards. Furthermore, any denial of an application based solely on the time remaining on the applicant's sentence would violate an explicit legislative policy that after serving one-half of the time required for parole eligibility, a prisoner is eligible for participation in the furlough program, Section 95-2220, R.C.M. 1947, and see infra, page 6.

However, time remaining on an applicant's sentence has direct relevance to determining whether a particular furlough plan is appropriate and should be approved. A short term plan may be unsuitable for an applicant who has a long term wait before reaching parole eligibility. The time remaining on the applicant's sentence taken together with the nature of his past crimes and past inability to adjust in free society may indicate that a particular long term program is inappropriate. The Board may consider the length of sentence in this context. Finally, since the Board of Pardons is attached to the Department of Institutions "for administrative purposes only," Section 82A-804, R.C.M. 1947, and must "exercise its quasi-judicial * * * functions independently of the department and without approval or control of the department," Section 82A-108, R.C.M. 1947, it alone has the

authority to promulgate rules governing procedures for the review of furlough applications. The Board must exercise its independent judgment in approving and denying applications. The interpretation and application of the statutory standards of review are subject neither to the control nor direction of the Department, although the Board's decisions are ultimately reviewable by the Department under Sections 95-2219(4) and 95-2221(e)(7), R.C.M. 1947.

II

Your second question concerns the time at which a prisoner may apply for a furlough. That time is set forth in Section 95-2220, R.C.M. 1947, which provides:

> Any prisoner confined in the state prison except a prisoner serving a sentence imposed under 95-2206(3) may make application to participate in the furlough program at least by the time the inmate has served one-half of the time required to be considered for parole. (Emphasis supplied.)

The present language was adopted in 1975 by Section 4 of Chapter 496, Laws of 1975, with the exception of the words, "except a prisoner serving a sentence imposed under 95-2206(3)," which were added by Chapter 580, Laws of 1977.

Section 95-2220 has been construed and interpreted by a prior Attorney General's Opinion found at 36 Official Opinions of the Attorney General, No. 19 (1975), which held that under Section 95-2220:

> A prisoner may apply for participation in the work furlough program at any time but he is not eligible for release on work furlough until he has completed half of the time required by eligibility for parole. (Emphasis supplied.)

The District Court in Hawkins v. State, No. 40222, First Judicial District (1977) held that this interpretation was erroneous:

> 4. Section 95-2220, R.C.M. 1947, does not require that an inmate have served one-half of the time required to be served to be eligible for parole in order to have his application for work furlough submitted and considered by the Board of Pardons.

5. In the event applicant inmate's application for work furlough is approved by the Board of Pardons in accordance with Section 95-2221, applicant may be released on work furlough prior to having served one-half the time required for parole consideration.

Section 95-2220 expressly concerns the time at which a prisoner may apply for a furlough, that time being "at least by the time the inmate has served one-half (1/2) of the time required to be considered for parole." The language of Section 95-2220 must be construed in such a way that each of its components has some meaning, vitality and effect. Burritt v. City of Butte, 161 Mont. 530, 534, 508 P.2d 563 (1973). The words "at least" can be given vitality only by reading the section to mean that any application submitted before the designated half-way point may be accepted and considered, but any application submitted after that time must be accepted and considered upon its merits. There is no administrative discretion as to whether or not to accept application after the designated half-way point, but there is discretion to require prisoners to have served a minimum portion of their sentence, up to the half-way point, before they become eligible to apply for furlough. The authority to impose a minimum time requirement is with the Department rather than the Board. The Board's role under the furlough program is limited to adjudications of the merits of applications for furlough or furlough revocation, while the Department is given broad and comprehensive power, including rule-making authority, over all other aspects of the furlough program. Sections 95-2219 and 95-2223, R.C.M. 1947.

Determination of what time prior to the half-way point, if any, a prisoner may submit a furlough application is not susceptible to a case-by-case, quasi-judicial determination, but is legislative in nature. Any minimum time prerequisite to eligibility for furlough must be imposed, if at all, by rule. At the present time the Department has no rule restricting the time by which application may be made and since Section 95-2220 does not by itself prescribe a minimum time, any prisoner other than one sentenced under Section 95-2206(3), may apply for a furlough. Hawkins v. State, supra.

If in the future the Department decides to adopt a requirement that prisoners serve a minimum portion of their term before they may apply for furlough, it must do so upon some

articulated rational basis relating to the objectives of the program. The Legislature could easily have written a blanket, minimum time requirement into the statute. By using words of discretion, the Legislature intended that the Department should apply its practical experience in deciding the time at which prisoners should be considered for furlough. As an example of a permissible basis for a rule, the Department's experience may indicate that the purposes of the furlough program are best served by requiring perpetrators of certain violent offenses to wait the full one-half time to parole eligibility before they may apply for furlough. While experience with other classes of convicts may indicate that such prisoners would benefit from the program much earlier in their incarceration.

III

Your third question asks whether the Board may require individual furlough plans to be periodically reviewed or revised.

The Board's role under the Furlough Act is adjudicatory. See supra, page 2. Its function is to determine whether the applicant is a good candidate for furlough under the general plan or program he proposes. Once approval is given, the Board's role ends and the Department takes over. The Department is given responsibility for finding a supervising agency for the furloughee, Section 95-2221(3), R.C.M. 1947, and is responsible for fashioning the terms and conditions of release in a written agreement, Section 95-2221(3), R.C.M. 1947. "Final authority in all matters pertaining to prisoner furloughs is in the department." Section 95-2221(5), R.C.M. 1947. These explicit provisions give the Department authority and control over the particulars and details of furlough plans and indicate that the Boards quasi-judicial function does not extend to conditioning its approval of any furlough plan upon the incorporation of any particular term or condition in the plan.

Although the Board cannot require periodic review and revisions of a furlough plan, the foregoing recitation of the Department's responsibilities and powers establishes that the Department has the power to attach such terms and conditions to furlough plans. Section 95-2221(3), R.C.M. 1947, provides in relevant part:

> The supervising agency, the department, and the applicant shall enter into a written agreement

> setting out the conditions and purposes of the furlough and specifying the responsibility assumed by each of the parties.

The repositing of "final authority in all matters" with the Department, Section 95-2221(5), R.C.M. 1947, makes it the final judge of the terms agreements will contain. Although the Legislature has not specified what types of conditions may be attached to furlough agreements, in light of the purpose of the furlough provisions, the Department may include any conditions which further the purposes of the furlough program.

Periodic review, particularly of lengthy furloughs, is a reasonable and necessary response to the possibility of future changes which may effect the purpose and efficaciousness of the plan.

IV

Your final question concerns the responsibilities of the Board to notify the community from which a prisoner was sentenced that the prisoner has applied for a furlough.

The only statutory requirement for notification is found in Section 95-2221(6), R.C.M. 1947, which provides:

> When an inmate is to reside in the county or tribal jail, the consent of the sheriff or tribal chief of police in the receiving county or reservation is necessary. However, when the inmate is to reside in a community corrections center or some other supervised setting the sheriff or tribal chief of police of the receiving county or reservation shall be notified.

This notification is mandatory but concerns notification only of the law enforcement officials in the receiving community. It is not clear whether the duty to notify falls upon the Board or the Department. In view of the provisions in Section 95-2221 and the Department's overall responsibility in locating a supervisory agency and executing a furlough agreement, the duty is the Department's. A supervising agency is located by the Department only after the Board approves the application, Section 95-2221(2), R.C.M. 1947, and the board's functions end.

The Department has adopted a rule which provides in part:

> The board shall have the responsibility to notify receiving county sheriff and sentencing judge of the release of the furloughee.

Montana Administrative Code, §20-2.4(1) --S470. Although the rule does not seek to control the Board of Pardons in exercising its quasi-judicial or quasi-legislative functions, it does interfere with the Board's autonomy and improperly delegates the Department's responsibility of notification under Section 95-2221(b). It is my opinion that this rule is invalid.

The furlough program does not require notification to the community from which the applicant was sentenced either before or after approval of the application. However, individuals and officials in the sentencing community may possess information about the applicant's past activities which could be considered "pertinent case material" relevant to the furlough decision. In particular, the prosecuting attorney may possess such information. In fulfilling its duty to carefully study "pertinent case material," it is my opinion that the Board should adopt a policy of notifying those individuals in the sentencing community who are likely to have information about a prisoner's past and may request them to furnish relevant information concerning the applicant. This policy is consistent with the statement of principal contained in Section 95-2223(2), R.C.M. 1947:

> All state, county and local agencies shall be encouraged to co-operate in the administration of the furlough program.

If the Board also concludes that certain classes of prisoners (e.g., those convicted of violent crimes, or those sentenced to life sentences), should have their case histories subjected to closer scrutiny than is necessary for other classes of applicants, it may adopt a policy of giving public notice through a local newspaper to the sentencing community that a prisoner has applied for a furlough. However, mere community "sentiment" concerning furlough of the prisoner is not "pertinent case material" and the Board has no authority to solicit or consider such sentiment.

THEREFORE, IT IS MY OPINION:

1. The Board of Pardons must adopt rules defining its procedures for reviewing furlough applications, and may in its discretion adopt rules interpreting

and further defining the statutory criteria for its decisions. In deciding whether to approve or deny furlough applications, the Board of Pardons is required to consider the prisoner's furlough plans, criminal history, and pertinent case material. The Board may adopt interpretive rules further defining the factors encompassed by these categories, including a rule which permits consideration of the time remaining on an applicant's sentence where the time relates to the appropriateness of the proposed furlough plan.

2. Unless the Department of Institutions has adopted reasonable rules prohibiting application by certain prisoners until a certain stage of incarceration, a prisoner may make application for furlough and have his application promptly considered at any time during his incarceration. No rule may prevent a prisoner from applying for furlough at any time after he has served one-half the time required to be considered for parole.

3. The Department of Institutions, not the Board, may make periodic review and revision of furlough plans a condition of individual furlough agreements.

4. The Board of Pardons shall solicit information about pertinent case material from officials and individuals in the sentencing community before deciding whether to approve or deny a furlough application. It is the responsibility of the Department of Institutions to notify and to obtain approval of law enforcement agencies to which the furloughee is released.

Very truly yours,

MIKE GREELY
Attorney General

MG/MMcC/br

VOLUME 37 OPINION NO. 83

BONDS - COUNTY BONDS - County high schools; surplus funds;
COUNTIES - County high school bonds, disposition of surplus funds;
SCHOOLS AND SCHOOL DISTRICTS - County high school bonds, surplus;
SECTIONS 16-2041, 75-6501, 75-7133 to 7138, 75-7137, R.C.M. 1947.

HELD: The money remaining in a bond debt service (sinking and interest) fund after payment of a bond debt incurred for a county high school must be transferred to the county general fund unless the board of county commissioners directs that such funds be transferred to another series or issue of county bonds.

27 October 1977

James J. Masar, Esq.
County Attorney
Powell County
Deer Lodge, Montana 59711

Dear Mr. Masar:

You have requested my opinion on the following question:

What is the proper disposition of funds remaining in a bond debt service (sinking and interest) fund after payment of a bond debt which was incurred for a county high school under Title 75, Chapter 71, R.C.M. 1947?

County high schools, unlike district high schools, have no bonding authority. Section 75-6501, R.C.M. 1947. Instead, bonds are issued by the county as county obligations pursuant to Sections 75-7133 to 7138, R.C.M. 1947. The county commissioners are responsible for submitting the bond question to the electors, and in issuing, marketing, and paying the bonds, treat them as any other county bond. Sections 75-7135 and 7137, R.C.M. 1947. Therefore, the general provisions governing county bonds, rather than the district high school statutes, must be looked to in determining the proper disposition of surplus funds.

Section 16-2041, R.C.M. 1947 directs the disposition of funds remaining after payment of county bonds:

> When all bonds...have been fully paid, or called in for payment, and there remains...any amount not required for the payment of such (county) bonds and interest, such excess amount and all amounts subsequently collected for such fund shall be transferred to the general fund of the county, or to the sinking and interest fund of any other series or issue of bonds outstanding that the board of county commissioners may designate.

THEREFORE, IT IS MY OPINION:

> The money remaining in a bond debt service (sinking and interest) fund after payment of a bond debt incurred for a county high school must be transferred to the county general fund unless the board of county commissioners directs that such funds be transferred to another series or issue of county bonds.

Very truly yours,

MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 84

COUNTY ATTORNEYS - Salary, private practice;

COUNTY ATTORNEYS - Deputies;

COUNTY COMMISSIONERS - Power to increase county attorney's salary.

HELD: The county commissioners of a fourth class county which did not adopt a self-government charter have no power to increase the county attorney's statutory salary in exchange for an agreement by such attorney not to engage in private practice.

27 October 1977

Board of County Commissioners
Park County
Livingston, Montana 59047

Dear Board members:

You have requested my opinion on the following questions:

1. May the county commissioners of a fourth class county increase the county attorney's salary in exchange for an agreement by such attorney not to engage in private practice?

2. If such full-time county employment is permitted, would the State reimburse the county as they do now, based on the schedule set forth in Section 25-605, R.C.M. 1947?

The salaries of county attorneys are fixed and limited by Section 25-605, R.C.M. 1947, which provides in pertinent part as follows:

> The total salary paid to...county attorneys... shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that...county attorneys shall receive in additon to (such salary), the sum of $1,200 per year. (Emphasis added).

Section 25-609.1, R.C.M. 1947 requires the county commissioners to fix the county attorney's salary "in conformity with the appropriate salary schedule pertaining to (that) office."

The duty is mandatory and the county has no power to increase the salary. See Matson v. O'Hern, 104 Mont. 126, 142, 65 P.2d 619 (1937). Similarly, it is against public policy to increase the salary of a county attorney for performing any services imposed upon such public officer by law. Vol. 37, Opinions of the Attorney General, Opinion No. 63 (1977). This general proposition, however, has no application to counties which have adopted self-government charters, and such counties may increase the salaries of their county attorneys. Vol. 37, Opinions of the Attorney General, Opinion No. 70 (1977).

Because you may not increase the county attorney's salary, it is unnecessary to answer your second question.

However, short of legislative amendment, there is an alternative you might consider. This would alleviate your problem which is, due to demands placed upon the county attorney by his county and private work, not always available when the commissioners need his advice or services.

The alternative is the employment of a deputy county attorney. Section 16-3706, R.C.M. 1947, states that "[t]he whole number of deputies allowed the county attorney in counties of the first and second class must not exceed one chief deputy, and one deputy; and in all other counties such deputies as may be allowed by the board of county commissioners, not to exceed one chief deputy and one deputy. (Emphasis added).

You have the power to fix the deputy's compensation, subject only to the limitation that his salary may not exceed 90% of the county attorney's salary. Section 25-604, R.C.M. 1947.

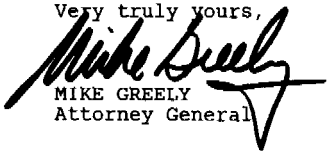
His entire salary would be paid out of the contingent fund as a county obligation. Section 25-602, R.C.M. 1947.

You may employ the deputy for less than a full year, for instance on a month-to-month or contract basis, in which case you must compensate him for the time so employed. Section 25-604, R.C.M. 1947. This alternative offers you wide freedom. A cooperative effort made between you and the county attorney in employing and fixing the duties of such deputy, would assure you available legal counsel in all instances.

THEREFORE, IT IS MY OPINION THAT:

> The county commissioners of a fourth class county which has not adopted a self-government charter may not increase the county attorney's statutory salary in exchange for an agreement by such attorney not to engage in private practice.

Very truly yours,



MIKE GREELY
Attorney General

BG/so

VOLUME 37 OPINION NO. 85

COURT REPORTERS - Court reporters may only charge 7 1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court;

COURTS - Court reporters may only charge 7 1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court;

APPEAL AND ERROR - Court reporters may only charge 7 1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court;

FEES - Court reporters may only charge 7 1/2 cents per folio per copy for transcripts to be used on appeal to the Montana Supreme Court;

SECTIONS 93-1901, 93-1904, R.C.M. 1947.

HELD:

1. The 7 1/2 cents per folio, provided in Section 93-1904, R.C.M. 1947 does apply to transcripts furnished for use to the Montana Supreme Court;

2. Charges in addition to the 7 1/2 cents per folio, provided in Section 93-1904, R.C.M. 1947 are not allowable;

3. The 7 1/2 cents per folio, provided in Section 93-1904, R.C.M. 1947, applies to each page of the original and copies, including the title pages and the index pages; and

4. The term "folio," as used in Section 93-1904, R.C.M. 1947, is defined in the

same manner as the definition provided in Section 25-215, R.C.M. 1947.

7 November 1977

John G. Winston, Esq.
Silver Bow County Attorney
Silver Bow County Courthouse
Butte, Montana 59701

Dear Mr. Winston:

You have requested my opinion as to the amount allowed a court reporter for transcripts prepared for use on appeal to the Montana Supreme Court. The specific questions you have asked are as follows:

1. Does the 7 1/2 cents per folio fee, as provided in Section 93-1904, R.C.M. 1947, apply to transcripts to be used on appeal to the Montana Supreme Court?

2. If so, are charges in addition to the 7 1/2 cents per folio under Section 93-1904, R.C.M. 1947 allowable?

3. Does the 7 1/2 cents per folio apply to each page of the original and copies including the title page and index pages? and

4. What is the definition of "folio" as used in Section 93-1904, R.C.M. 1947?

A court reporter is appointed by the judge of each district court, and serves as an officer of the court at the pleasure of the appointing judge. Section 93-1901, R.C.M. 1947. The compensation received by a court reporter for performance of his official duties is governed by Section 93-1906(1), R.C.M. 1947, which states in part:

> Each reporter is entitled to receive an annual salary of not less than $12,500 or more than $16,000 and no other compensation except as provided in 93-1904....(Emphasis supplied).

Section 93-1904, R.C.M. 1947 in turn states:

> (1) Each reporter must furnish, upon request, with all reasonable diligence, to the defendant in a criminal case or a party or his attorney in a civil case in which he has attended the trial or hearing a copy, written out at length or in narrative form from his stenographic notes, of the testimony and proceedings upon the trial or hearing, or a part thereof, upon payment by the person requiring the same of 7 1/2 cents per folio.
>
> (2) If the county attorney, attorney general, or judge requires a copy in a criminal case, the reporter is entitled to his fees therefor, but he must furnish it. Upon furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.
>
> (3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. In civil cases, all transcripts required by the county shall be furnished without cost.
>
> (4) If it appears to the judge that a defendant in a criminal case is unable to pay for a copy, it shall be furnished to him and paid for by the county.

The Montana Supreme Court discussed the duties of a court reporter and the compensation allowed in State ex rel. Kranich v. Supple, 22 Mont. 184, 188, 56 P. 20 (1899):

> An officer is always entitled to compensation for performing the duties to which the law attaches compensation. When the law provides no extra compensation, as in this case, he is not entitled to any. He must nevertheless perform the duty just as promptly and efficiently. He must not be permitted to evade or shirk his duty in the least, however unpleasant and onerous it may be. If he does not care to perform the duties of his office for the compensation fixed by law, he is not

> compelled to retain it. Some one else can be found to take his place.
>
> Neither, on the other hand, will the law permit the officer to be imposed upon by the citizen who demands more of him than the law enjoins. It is not permissible for the relator, or any other citizen, to demand of the respondent, under claim of right to the memorandum provided for by the statute a transcript of the testimony, or any substantial part thereof. The one can be demanded as of right without compensation. The other can be demanded only upon tender of the lawful fees. (Emphasis supplied).

Furthermore, the Court stated in Pelletier v. Glacier County, 107 Mont. 221, 225, 82 P.2d 595 (1938):

> In view of the strictly prohibitory language of the legislature, limiting the stenographer's salary and fees to definite specified amounts for definite services rendered, it is incumbent upon the stenographer clearly and unequivocally to show that his claim comes within the statute allowing fees over and above his official salary. If he is unable to do this, the presumption is that his services were rendered for his official salary....

To find that Section 95-1904, R.C.M. 1947 is inapplicable to transcripts to be used on appeal to the Montana Supreme Court and that a court reporter is entitled to fees in excess of the 7 1/2 cents per folio, would necessitate a finding that furnishing copies of the trial proceedings for an appeal is not a duty or service to be performed by the court reporter. This would directly conflict with the spirit of the legislation defining the duties and services to be performed by the court reporter. Section 93-1904, R.C.M. 1947 as previously set forth makes no mention whatsoever of making the reporter's duty to furnish a transcript conditional upon any particular use to be made thereof.

It may be suggested that Sullivan v. County Commissioners, 124 Mont. 364, 224 P.2d 135 (1950), renders Section 93-1904, R.C.M. 1947 totally inapplicable to the situation at hand. However, a complete reading of that decision, in light of the issue that was before the Court, indicates that the holding was not intended to affect the duties of court reporters. In Sullivan, the court reporter had been ordered

to make available six copies of a transcript for an indigent defendant in a criminal case. When his claim was presented to the county, the county contended that Section 93-1904, R.C.M. 1947, made the county liable for only one copy. In response to this contention the Montana Supreme Court stated, at 367:

> It will be observed from the terms of Section 93-1904, supra, and the history thereof, that this section only governs the furnishing of copies of the transcript of record for use in the trial court and that it has nothing to do with appeals to the Supreme Court.
>
> We find that the legislature has studiously refrained from enacting any statute in regard to the number of copies of the transcript, briefs, or other such matters necessary on appeal to this court, and rightly so, recognizing the fact that this court is better qualified to judge its needs in this respect and it is amply empowered to promulgate the necessary rules to require that such needs be supplied. (Emphasis supplied)

Consequently, Sullivan, supra, does not address the scope of the court reporter's duty under Section 93-1904, R.C.M. 1947, but the inapplicability of Section 93-1904, R.C.M. 1947 in limiting the number of copies of a transcript required by the Montana Supreme Court to perfect an appeal. To give Sullivan the broad interpretation that Section 93-1904, R.C.M. 1947 imposes a duty upon the court reporter to furnish a copy of the transcript when, and only when, the transcript is to be used in the district court, would insert a conditional duty where none is contemplated by the statute. The only contingency set forth in Section 93-1904, R.C.M. 1947 is the payment of the fees prior to the furnishing of the transcript in certain circumstances. It would be ludicrous, to say the least, to create a situation wherein the court reporter has a statutory duty to furnish a transcript for use in the district court, but no duty to provide the same transcript if the use intended was to perfect an appeal to the Montana Supreme Court.

It is clear from a plain reading of Sections 93-1902 through 1904, R.C.M. 1947 that the court reporter must attend all court proceedings and record the testimony given, unless excused by the district judge, file with the clerk a report of all objections, rulings, and decisions made, and to

furnish a transcript of the proceedings when requested by the persons enumerated in Section 93-1904, R.C.M. 1947. The court reporter is, however, entitled to the statutory fee when a transcript is furnished, unless requested by the judge or the county in a civil case. The duty to furnish a transcript exists regardless of the use contemplated by the requesting party. As stated in York v. Steward, 30 Mont. 367, 369, 76 P.756 (1904):

> The right to rely upon him (court reporter) is granted under these provisions of the statute, and he may be compelled to perform the resulting duty to furnish copies upon proper application (cite omitted);.... (Emphasis supplied)

Therefore, the furnishing of transcripts, regardless of the use intended, being within the statutory duties of a court reporter, the court reporter is not entitled to compensation in excess of the amount provided by law. State ex rel. Kranich v. Supple, supra. In answer to your first two questions 1) Section 93-1904, R.C.M. 1947 does apply when computing the compensation allowed for transcripts to be used on appeal to the Montana Supreme Court; and 2) additional charges in excess of the 7 1/2 cents per folio are not allowable.

The answer to your third question is provided by Sullivan v. County Commissioners, supra, wherein the county was required to pay the lawful fees for all the copies furnished for the appeal. Furthermore, the title page and index being necessary to adequately utilize the transcript, it is apparent the fees provided in Section 93-1904, R.C.M. 1947, also apply to those pages.

As for your fourth question, the term "folio" is not defined within the statutes addressing court reporters and their duties. However, "folio" is defined in Section 25-215, R.C.M. 1947, which states:

> The term "folio," when used as a measure for computing fees, means one hundred words, counting every two figures, necessarily used, as a word. Any portion of a folio, when in the whole paper there is not a complete folio, and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

As stated in Section 12-215, R.C.M. 1947:

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

No contrary intention plainly appears in Section 93-1904, R.C.M. 1947, especially since the Montana Supreme Court has held that the court reporter is an officer of the court and the sums paid to him for copies are designated as "fees." State ex rel. Donovan v. Ledividge, 27 Mont. 197, 70 P. 511 (1902). Therefore, the definition as found in Section 25-215, R.C.M. 1947 would apply. The exact method of determining the number of "folios" on a certain piece of paper, is not defined, and is therefore left to the discretion of the parties involved.

THEREFORE, IT IS MY OPINION:

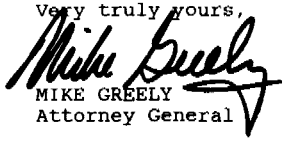
1. The 7 1/2 cents per folio, provided in Section 93-1904, R.C.M. 1947 does apply to transcripts furnished for use on appeal to the Montana Supreme Court;

2. Charges in addition to the 7 1/2 cents per folio, provided in Section 93-1904, R.C.M. 1947 are not allowable;

3. The 7 1/2 cents per folio, provided in Section 93-1904, R.C.M. 1947, applies to each page of the original and copies, including the title pages and the index pages; and

4. The term "folio," as used in Section 93-1904, R.C.M. 1947, is defined in the same manner as the definition provided in Section 25-215, R.C.M. 1947.

Very truly yours,



MIKE GREELY
Attorney General

RA/so

VOLUME 37 OPINION NO. 86

CREDIT UNIONS - Prohibition against checking account services, share draft programs;

CHECKING ACCOUNTS - Credit unions, share draft programs prohibited.

SECTIONS 14-613, 14-676, R.C.M. 1947.

HELD: State-chartered credit unions are prohibited by Section 14-613(16), R.C.M. 1947, from offering "share draft" programs. However, the Director of the Department of Business Regulation may authorize them to do so upon written request submitted pursuant to Section 14-676, R.C.M. 1947.

10 November 1977

Kent Kleinkopf, Director
Department of Business Regulation
805 North Main
Helena, Montana 59601

Dear Mr. Kleinkopf:

You have requested my opinion on the following question:

> May a state-chartered credit union offer a "share draft" program under Section 14-613(16), R.C.M. 1947?

Section 14-613 is a detailed enumeration of the general powers of a state-chartered credit union and provides in part:

> A credit union may:

* * *

(16) collect, receive and disburse moneys in connection with the sale of negotiable checks, money orders and other money type instruments, and for such other purposes as may provide benefit or convenience to its members, and charge a reasonable fee for such services, but not including checking account services. [Emphasis added.]

The question is whether share draft programs fall within the above-quoted prohibition against checking account services.

A share draft is an instrument which directs a credit union to withdraw funds from a member's account and to pay those funds either to the member or to a third party designated by the member. A share draft is payable through a bank and is in operation similar to or identical with the common bank check. While there are some operational and definitional differences between checking accounts and share drafts, these are differences of form rather than substance, especially in the context of Section 14-613(16) which broadly and without elaboration prohibits "checking account services."

The Montana Credit Union Act (Section 14-601, et seq.) does not define the term "checking account services," and no usable definition was found in the banking statutes (See, e.g., Section 5-1001). Section 87A-3-104 of the Uniform Commercial Code provides:

(1) Any writing to be a negotiable instrument within this chapter must
- (a) be signed by the maker or drawer; and
- (b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this chapter; and
- (c) be payable on demand or at a definite time; and
- (d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

* * *

- (a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

* * *

A general definition of check has been stated as:

> A check may be defined as a bill of exchange drawn on a bank and payable on demand. It is drawn against funds on deposit in a bank, and its office is well understood in all commercial circles. Checks on banks are made to take the place of actual cash, although the check itself is the means of obtaining money of the drawer from the bank for the holder of the check.

10 Am. Jur. 2d, Banks, §538. Further definition is provided as:

> A check is an order drawn upon a bank purporting to be drawn upon a deposit of funds for the payment in all events of a certain sum of money to a person or his order or to bearer upon demand. The sole function of a check is to transfer money, and it is of the essence that it should be payable in money.

11 Am. Jur. 2d, Bills and Notes, §16. In Brown v. Bank of Newkirk, 291 P.2d 828 (Okla. 1955), the court defined checking as follows:

> The contract entered into when the depositor opens a general checking account at a bank is usually one that is implied; the depositor delivers his money or funds to the bank in return for which the bank assumes the obligation to pay out on his demand or order a sum equal to the deposit balance.
>
> * * *
>
> This court has held that a check is merely an order on the bank to pay money.... [Emphasis added.]

While these definitions of "check" are all framed in reference to banks, that is not an indication that credit union share drafts are per se excluded from the generic category of checking accounts. Rather, it is only an indication that banks and only banks ordinarily offer "checking account services." This of course is no longer

the case since credit unions are seeking to provide their members with a variety of services such as share draft accounts which operate with the same convenience as a checking account. It is clear that the purpose and effect of share draft programs is for all practical purposes identical to the ordinary checking account as described in the above-quoted definitions. This same conclusion was reached by the Attorney General of Washington, who held on July 7, 1977, that share drafts constituted "checking accounts" under that state's equivalent to the prohibition of Section 14-613(16).

It should be emphasized that this conclusion is based only upon consideration of a general definition of share draft accounts. It is not based upon an analysis of any specific share draft plan. Therefore, it is possible that there might be a program labeled as a "share draft," but which could be fashioned to avoid the statutory obstacle of Section 14-613(16). Such a plan is being developed in the State of Washington, for example, in the wake of the above-cited opinion from that state's attorney general.

This opinion applies only to state-chartered credit unions organized under Section 14-601 et seq. Pursuant to regulations announced at 42 Fed. Reg. No. 39, p. 11247 (February 28, 1977), it is anticipated that federally-chartered credit unions will soon be empowered to offer share draft accounts to their members. This fact greatly concerns state-chartered credit unions who fear a significant competitive loss to the federal credit unions. This situation is specifically addressed by Section 14-676, which provides:

> The director [of the Department of Business Regulation] may authorize any credit union to engage in any activity in which such credit union could engage were it operating as a federal chartered credit union at the time such authority is granted. Such powers shall include but not by way of limitation, the power to do any act, and own, possess and carry as assets, property of such character including stocks, bonds or other debentures which, at the time the authority is granted, are authorized under federal laws and regulations for transactions by federal credit unions notwithstanding any restrictions elsewhere contained in the statutes of the state of Montana except that the director may not charter a credit

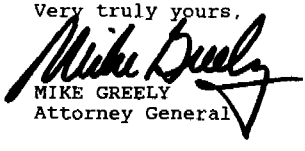
> union not having a common bond of membership as defined in section 15 [14-615] of this act. Upon receipt of a written request from any state chartered credit union, the director shall exercise such power by the issuance of a special order therefor if he deems it reasonably required to preserve and protect the welfare of such an institution and promote the general economy of this state. [Emphasis supplied].

This broad power to allow "any act...notwithstanding any restrictions elsewhere contained in the statutes" clearly encompasses the power to allow state-chartered credit union to offer share draft accounts. Therefore, if the offer of share draft accounts by federally-chartered credit unions threatens the "welfare" of state-chartered credit unions, that situation can be rectified.

THEREFORE, IT IS MY OPINION:

> State-chartered credit unions are prohibited by Section 14-613(16), R.C.M. 1947, from offering "share draft" programs.

Very truly yours,



MIKE GREELY
Attorney General

ABC/so

VOLUME 37 OPINION NO. 87

COUNTY CORONERS - Impaneling jury, discretion

HELD: The coroner has the power to select jurors by any reasonable mode suitable to perform his duty to impanel a coroner's jury.

10 November 1977

John G. Winston
Silver Bow County Attorney
155 West Granite Street
Butte, Montana 59701

Dear Mr. Winston:

You have requested my opinion on the following question:

> May the same persons serve on every coroner's jury, or must there be some means of randomly selecting such jurors?

You state you've observed that in the few instances coroner's inquests are held in Silver Bow County, the same jurors serve on each inquest.

Section 95-803, R.C.M. 1947, provides when an inquest is to be held "the coroner must summon a jury of not more than nine (9) persons, qualified by law to serve as jurors." Juror qualifications are specified in Section 93-1301. Section 93-1604 provides that jurors may be summoned orally by the coroner. The statutes are otherwise silent concerning the qualifications, and means of selecting, coroner's jurors.

The legislature has not provided specific rules governing coroner jury selection. In absence of legislative guidelines, the following rule applies:

> [w]hen an official duty is imposed and no mode of exercise is prescribed, the one who is required to

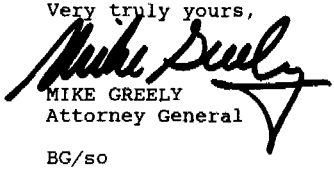
perform such duty may adopt any mode reasonably suitable to carry the duty imposed into effect.

State ex rel. School District No. 8 v. Lensman, 108 Mont. 118, 128, 88 P.2d 63 (1939). The manner of selecting coroner's jurors is therefore within the coroner's discretion. There is no authority to limit or to influence that exercise of discretion by imposing an arbitrary procedure.

THEREFORE, IT IS MY OPINION:

The coroner has the power to select jurors by any reasonable mode suitable to perform his duty to empanel a coroner's jury.

Very truly yours,



MIKE GREELY
Attorney General

BG/so

VOLUME NO. 37 OPINION NO. 89

COUNTIES - Powers to use federal revenue sharing funds to construct a medical building which will be used for public purposes;

FEDERAL AID - Powers of Counties to use federal revenue sharing funds to construct a medical building which will be used for public purposes;

MEDICAL FACILITIES - Powers of Counties to use federal revenue sharing funds to construct a medical building which will be used for public purposes.

SECTIONS - 16-1008A, 16-1037, 16-1038, 69-4507(c), 69-4512, 71-106 and 71-308, R.C.M. 1947.

HELD: Teton County may use federal revenue sharing funds and payments in lieu of taxes to construct the medical building which is described in the October 6, 1977, Resolution of the Teton County Board of County Commissioners. The medical building will be used for public purposes within the scope of powers and duties given the County Commissioners.

10 November 1977

Martin Shannon, Chairman
Bud C. Olson, Vice Chairman
Myron A. Wheeler, Member
Board of County Commissioners
Teton County
Choteau, Montana 59422

Dear Commissioners Shannon, Olson & Wheeler:

You have requested my opinion concerning the authority of Teton County to construct a medical building attached to the new Teton Medical Center Hospital. Included with your request is a copy of an October 6, 1977 Resolution, as amended on October 11, 1977, of the Teton County Board of Commissioners authorizing construction of the facility. The Resolution is lengthy and it sets forth in detail the purposes for which the facility is to be constructed, the need for such facility, and the uses to which the facility will be put. The Board proposes to use federal revenue sharing funds and payments in lieu of taxes to finance the construction.

I have previously issued an opinion concerning the construction of a medical building in Teton County. In that opinion, dated September 9, 1977 and found at 37 Official Opinions of the Attorney General, No. 61, I held that the County lacked authority to expend federal revenue sharing funds and payments in lieu of taxes to finance a medical building which would provide doctors' office and laboratory space. The County proposed to erect such building and lease it to the County's only two doctors. That opinion held that the Industrial Development Projects Act was the sole source of County power to construct facilities for lease to private persons for private purposes. Revenue bond financing is the exclusive source of financing for such projects. That opinion is limited on its facts: The building envisioned therein was a doctor's building to be used by private doctors for their private practices. Use of a building in this exclusive manner is not reasonably incident to any County powers other than the Industrial Projects Act.

Your most recent resolution makes clear that the medical building contemplated by the Commissioners will not be used solely for doctors' private purposes but will house public services and employees and ensure the supply of medical care which the County is obligated by law to provide to the indigent sick and aged. The building proposed in the Board's October 6, 1977 Resolution is a "public building" which the County is empowered to erect and maintain pursuant to Section 16-1008A, R.C.M. 1947.

Section 16-1008A, enumerates specific buildings which counties are empowered to erect. It additionally authorizes counties to erect "such other public buildings as may be necessary."

In my prior opinion I pointed out that under Section 16-1008A:

> 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.

The County's power under Section 16-1008A to build "such other public buildings as may be necessary" must be given meaning. "Every word, phrase, clause, or sentence employed is to be considered and none shall be held meaningless if possible to give effect to it." Fletcher v. Paige, 124 Mont. 114, 119, 220 P. 2d 484 (1950). Since the legislature has expressly provided for specific county buildings in Section 16-1008A, as well as other sections, e.g., Section 16-1037, R.C.M. 1947 (nursing homes); the words "such other public buildings as may be necessary" must grant counties the power to erect buildings which are not specifically described elsewhere in the Code. The scope of that power is delimited by the word "necessary."

In the context of governmental powers, the word necessary is rarely used in the sense of indispensable or strict necessity. Ordinarily, the test of what is "necessary" is one of what is reasonable and appropriate. Thus in State v. Whitcomb, 94 Mont. 415, 428, 22 P.2d 823 (1933), the Montana Supreme Court construed the word "necessary" as used in an eminent domain statute authorizing the State Highway Commission to acquire rights of way where "necessary," as follows:

> The statute requires that it be necessary to acquire a right of way; but the word "necessary" does not mean an absolute necessity of the particular location, but means reasonably requisite and proper for the accomplishment of the end in view, under the peculiar circumstances of the case. (Emphasis supplied.)

A similar test has been applied in the context of local governmental powers arising by implication from express powers.

> It is well settled that a county board possesses and can exercise such powers and such powers only, as are

> expressly conferred * * *, or such powers as arise by necessary implication from those expressly granted * * *. (Emphasis supplied.)

Roosevelt County v. State Board of Equalization, 118 Mont. 31, 37, 162 P.2d 887 (1947); and see also State ex rel Bowler v. County Commissioners, 106 Mont. 251, 257, 76 P.2d 648 (1938). In State ex rel Bowler, supra, the Montana Supreme Court discussed the nature of county commissioner's powers:

> It is true that a board of county commissioners is one of limited powers and must in every instance justify its action by reference to the provisions of the law defining or granting these powers. (Sullivan v. Big Horn County, 66 Mont. 45, 212 Pac. 1105.) Nevertheless, where there is no question of the existence of the power to do the act proposed, * * *, the board may use its own discretion in selecting the course it shall pursue. The board has the control of the county's property and the management of its business and concerns. * * * Within the scope of its powers it is supreme if the course pursued is reasonably well adopted to the accomplishment of the end proposed. * * *

Adopting language used in State ex rel Bowler, it is my opinion that the words "such other public buildings as may be necessary," empowers counties to construct such other buildings which are "reasonably well adopted to the accomplishment" of their statutory duties and powers.

On the face of the October 6 Resolution, the proposed medical facility is reasonably and appropriately related to the discharge of specific County duties and powers. The Resolution articulates several specific County purposes which the proposed facility will serve, including the following:

1. The Board intends to contract with the County's doctors for both hospital and outpatient care and treatment of the indigent sick. Pursuant to such agreement, the County will furnish office and laboratory space to the doctors in the proposed facility at a reasonable cost to the doctors. Provision will be made for outpatient care of the indigent sick at the facility and the doctors will provide medical services for the indigent sick at the adjacent hospital. The doctors will also be

permitted to conduct their own private practice at the facility.

2. The County maintains a County Nursing Home. The lessee doctors will provide care for the aged sick at the Home.

3. The proposed building will provide space and facilities for the County Health Nurse.

4. The proximity of doctors to the hospital will aid an active Emergency Medical Services program which operates in conjunction with the Teton County Ambulance Service.

5. The Teton County Public Hospital District, located wholly within Teton County, has received a federal grant from the Health Underservice of Rural Areas program. Pursuant to the program a family practioner and nurse practioner will provide medical care in rural areas, primarily within Teton County, thereby benefitting rural county residents, including the indigent. The program will be based in the proposed facility.

The uses and purposes to which the Commissioners propose to put the building are public ones.

Counties are obligated to provide hospitalization for the indigent sick. Section 71-106, R.C.M. 1947. The County may discharge that duty by operating a County hospital or by "otherwise provid[ing] for the same." Id. Teton County proposes to discharge its duty by agreement with the Public Hospital District. The hospital must have a staff of doctors to treat its patients. The Board proposes an arrangement for use of the new building to ensure that indigent persons needing hospitalization will receive proper medical treatment.

The County is further obligated to provide out-patient medical treatment for the indigent sick. Section 71-308, R.C.M. 1947, provides in relevant part:

> Medical aid and hospitalization. (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide such necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except

> as otherwise provided in other parts of this act, payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services * * *.
>
> (2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of the medical attendance.

The Board proposes an arrangement tying the rental of office space to doctors' agreements to provide medical out-patient care of the County's poor. It also intends to utilize the building for such care and finds that the location of the building will also promote and facilitate more efficient use of doctors' and the hospital's time in diagnosing and treating the indigent sick.

The County operates a County Nursing Home. The Home must first serve the indigent aged; residence for the non-indigent aged may be provided if space is available. Sections 16-1037 and 16-1038, R.C.M. 1947. Provision for medical care for the aged sick is a necessary incident to the operation of the Home.

Teton County also has authority to employ, and does employ, a County Health Nurse under any one of several statutory provisions. E.g. Sections 69-4507(c), 69-4512, 71-106 and 71-308, R.C.M. 1947. The new building will provide the Health Nurse with necessary space and facilities.

Finally, the County is empowered to and does operate an ambulance service. Sections 69-3601 and 69-3602, R.C.M 1947. The Board finds that centralization of doctors' offices adjacent to the hospital will promote better emergency service through fast and efficient cooperation of doctors, the hospital and Emergency Medical Services personnel.

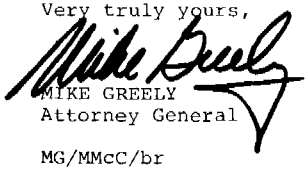
The Board's judgment that the proposed medical building is necessary to the discharge of its statutory duties and powers cannot be said to be arbitrary or a manifest abuse of discretion. See State ex rel Bowler v. Board of County Commissioners of Daniels County, supra. It is therefore my opinion that pursuant to Section 16-1008A, Teton County has the authority to build the medical facility described in the October 6 Resolution.

Since erection of the building described in the Board's Resolution is within the County's powers under Section 16-1008A, it follows that the County may use general funds, federal revenue sharing funds, or federal payments in lieu of taxes, or any combination thereof, to pay for the cost of construction. See 37 Official Opinions of the Attorney General, No. 61, page _____.

THEREFORE, IT IS MY OPINION:

> Teton County may use federal revenue sharing funds and payments in lieu of taxes to construct the medical building which is described in the October 6, 1977 Resolution of the Teton County Board of County Commissioners. The medical building will be used for public purposes within the scope of powers and duties given the County Commissioners.

Very truly yours,



MIKE GREELY
Attorney General

MG/MMcC/br